

October 10, 2011

The Honorable Janet L. Yellen
Vice Chairman, The Board of Governors
Federal Reserve System
Eccles Board Building
20th Street and Constitution Avenue, N.W.
Mail Stop 49
Washington, D.C. 20551

Re: G20 High-Level Principles on Financial Consumer Protection

Dear Vice-Chairman Yellen:

As you prepare to participate in the G20 French Presidency/OECD High-Level Seminar on Financial Consumer Protection, the American Bankers Association (ABA) offers our perspective about this international initiative to articulate a principled framework for financial consumer protection.

While the OECD Task Force on Financial Consumer Protection has promoted a constructive dialogue about the key elements of a set of High-Level Principles for financial consumer protection, ABA believes that the dialogue to date has not resulted in a complete set of principles worthy of consideration by the G20 members. Indeed, there are several improvements that industry representatives have identified in comments prepared by the International Banking Federation (IBFed) that should be addressed, and there is a major deficiency in the existing draft which must be remedied before any final action on the principles is warranted.

Any set of principles for a multi-jurisdictional framework on consumer financial protection must be built upon a keystone principle of consumer responsibility for their choices and uses of financial services and products. Until one articulates what consumers are responsible for in participating in the financial marketplace, you cannot determine what duties banks and other financial firms have to their customers. As stated in the OECD Draft Framework while it is essential to protect consumers' rights, "these rights do come with consumer responsibilities." This fundamental building block has been recognized by no less an advocate for consumer protection than the current Special Advisor to Treasury Secretary Geithner, Raj Date, who said on September 20, 2011, that "no one denies that borrowers have to be responsible for their financial decisions. In fact, that is the bedrock premise of the [Consumer Financial Protection] Bureau's approach to markets."

Without articulating such a "bedrock premise" among the founding principles, build-out of the regulatory structure for financial consumer protection will be irremediably incomplete. It follows that until a consensus principle of consumer responsibility is included in the set of High-Level Principles such Principles are materially flawed and do not merit adoption by the G20 ministers. We urge you to express these reservations during the upcoming Seminar.



Building Success. Together.

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The IBFed has proposed a principle of consumer responsibility in its comments that ABA recommends for the consideration of your colleagues as you discuss any international framework for financial consumer protection. For your convenience we have appended the IBFed comment to this letter.

Thank you for your time in considering our concerns. We wish you safe travels and constructive discussions at the Seminar.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Richard R. Riese', written in a cursive style.

Richard R. Riese

Enclosure

IBFed Comments on G20 High-Level Principles on Financial Consumer Protection

Mr Michael Chapman &
Ms Marta Trzcinska
Organisation for Economic Co-operation and
development
2 rue Andre-Pascal
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France

31st August 2011

Email: michael.chapman@oecd.org &
Marta.trzcinska@oecd.org

Dear Mr Chapman & Ms Trzcinska,

Comments on the Revised Draft G20 High-Level Principles on Financial Consumer Protection – OECD – 1 August 2011

The IBFed Consumer Affairs Work Group welcomes the opportunity to provide comments on the above captioned “Draft High Level” principles. Comments follow hereunder and in the order as set out in the document. We believe it is important to have close consultation in the drafting of such principles.

Legal and Regulatory Framework

In November 2010, at the G-20 meeting in Seoul, the Leaders asked the Financial Stability Board (FSB) to work in collaboration with the OECD and other international organisations to explore, and report back at the next summit, options for advancing financial consumer protection through informed choices that include disclosure; transparency and education; protection from fraud, abuse and errors; along with recourse and advocacy.

The Federation broadly supports the principles as enunciated in the public consultation paper. However, responsibility for financial consumer protection and education should not only be assigned to the banking and finance sector. The legal and regulatory framework must extend to other relevant sectors of the economy as well, in particular retailers, telecommunications, utilities, etc.

Whilst it is understood that banks play an important role within the economy and the majority of people across the community deal with banks, banks are only part of the framework for responding to the wide community needs associated with ensuring consumers make informed decisions about financial products and consumer choices.

The Federation, therefore, believes that governments, regulatory authorities, banks and other financial institutions, educators and trainers, consumer organisations and other stakeholders should work collaboratively to identify strategies and programs to raise the level of financial understanding. All relevant sectors should have access to consultation processes on policies related to financial consumer protection and education.

The Federation believes that the principles should distinguish between the concepts of “financial consumer protection” and “financial education”. Consumer protection and education are different, but complementary concepts. Legal obligations, regulatory standards, and industry codes of practice are methods of consumer protection. Awareness raising campaigns, financial literacy initiatives, and education programs are ways to assist people to better understand financial products, consumer choices, and financial risks, and therefore make more informed decisions.

The legal and regulatory framework should contain rules that govern market and business conduct, and thereby provide consumer protection, especially for retail consumers.

Role of Oversight Bodies

Whilst the content in general is unproblematic, the Federation believes that there should be scope for each jurisdiction to take account of the local regulatory circumstances of that jurisdiction, e.g. in some jurisdictions it may be an authority per se which has responsibility for consumer protection, whilst in other jurisdictions it could be the Courts of that country. It is important that there is no duplication of authority and where there are related supervisory responsibilities, that oversight bodies or agencies appropriately coordinate their efforts. Oversight should be left to each member state as to how they incorporate it into their local law.

The Federation believes that where there is more than one oversight body or agency, the end result should be a consistent approach of regulatory standards. In practice, too many oversight bodies could lead to inconsistent application and at times go beyond the original intent of those regulatory standards.

The draft principles note that oversight bodies should observe high professional standards, and provide two specific examples of standards that should be included. The Federation recommends that the examples be expanded to include another important characteristic of consumer protection oversight bodies: that they be unbiased - i.e., not perceived as an advocate for either consumers or the firms they regulate. It is important that consumer protection oversight bodies balance the interests of consumers and regulated entities and be perceived to be unbiased. We suggest amending the end of the last sentence of the first paragraph to read "including appropriate standards of confidentiality of consumer information and the avoidance of bias and conflicts of interest."

Equitable and Fair Treatment of Consumers

The general principle of this proposal is supported. However we believe that the second sentence in principle 3 viz “treating consumers fairly should be an integral part of the day to day governance and corporate culture of financial service providers”, is not in itself a principle but an example of best practice. We recommend that this sentence be deleted.

Also the words ‘equitably’ and ‘fairly’ have the potential to be misinterpreted and would recommend that they are replaced by more specific examples.

Disclosure and Transparency

The Federation supports the notion that an information model to the customer in an asymmetric relationship should be balanced.

The Federation believes that the use of the word ‘consumer/investor’ is unnecessary. We recommend in the context of the principles that the word ‘consumer’ is adequate and should be used consistently throughout. We consider that the principles should be about consumer financial products.

The Federation believes that the requirement that information on costs, penalties, surrender charges and risks should be provided at all stages of the relationship with the customer, could be problematic in the field of some financial products. Special risks could arise beyond the control of a financial institution which must be taken into account. Consumers should also be called upon to provide relevant information, honestly and accurately.

The Federation believes that total reciprocal transparency is to be encouraged. It is important for consumers to understand that the more accurate information they provide to their financial adviser or their financial institution, the more relevant the financial information and/or financial product advice will be to a consumer’s needs and circumstances.

Standardized pre-contractual disclosure practices can be a useful means to improve transparency and comparability of products and services of the same nature. However, further research is necessary to safeguard the effectiveness of such disclosure practices in order to avoid adding unnecessary compliance burden and cost for industry and to avoid resulting in information overload for consumers, and therefore result in little benefit for the consumer. We would also like to point out that the aim of better product comparability may not impair product diversity and choice for the customer, as products with different features are only comparable to a limited extent. We would therefore suggest rephrasing the third sentence as follows: “The effectiveness of standardised pre-contractual disclosure practices should be further elaborated as a possible means to facilitate comparison between products and services of the same nature”. The last sentence of this section on consumer testing and research would hence be dispensable.

The Federation believes that it should be open to further discussion whether product issuers or distributors are responsible for compiling such information. Standardized pre-contractual disclosure requirements should be imposed only for products developed specifically for retail consumers.

Financial Education and Awareness

The proposals espoused are supported. It is important for financial education to be contained in the school curriculum and begin from an early age. Financial education is life long learning – governments and regulatory authorities should work with stakeholders to ensure that opportunities for learning can be delivered at appropriate intervals at each stage in the life of a consumer.

The Federation believes that application of these principles should be much broader and not only apply to banks and financial institutions, but other relevant sectors of industry as well as being a component of the education systems in each respective jurisdiction.

Responsible Business Conduct of Financial Services Providers and Their Authorised Agents

Paragraph 2 of the proposal makes reference to an assertion that “financial services providers should work in the best interest of their clients”.

The Federation notes that unless defined the notion of ‘best interest’ is very subjective and could create unlimited liability for financial institutions. Whilst we recognize that some jurisdictions have implemented, or are currently contemplating the implementation, of legal obligations that may be equivalent concepts to “fiduciary duty”, “best interests duty”, “suitability requirements” and/or “reasonable basis for advice”, we do not support this principle without qualification and without clear application to the particular product and service situation. There should be differentiation between the sphere of the customer and that of the service provider. Financial service providers offer information which forms the basis for the making of a reasonable decision by the consumer to buy a certain financial product or attain a certain financial service. However, the responsibility for the decision itself must and should always remain with the consumer. We suggest that the principle should be reconsidered redrafted or deleted.

Furthermore, the Federation believes that the requirement to assess a client’s financial capabilities, situation and needs prior to the conclusion of a contract should depend on the product concerned and whether an advisory situation is involved. Such an assessment would be inappropriate for standard retail banking services (e.g. a current account), even for more complex products, it is not always in the client’s interest. It should be left to the consumer to decide, whether he/she wants to reveal this information unless it is required by the provider (e.g. for creditworthiness assessment). Moreover, clarification as to what exactly is meant by “financial capabilities” in this connection (solvency vs. financial knowledge and ability) would be necessary. We would, therefore, suggest deleting sentences 1 and 2 of the second paragraph as those duties characterize a contractual relationship, where the provider acts on behalf of their client, and go far beyond the mere provision of a financial product or financial service.

The Federation proposes that jurisdictions should promote and enhance financial capability. We understand that financial capability is the consumer’s capacity, based on their knowledge, skills, and access, to manage their financial resources effectively. In order to develop this capacity, individuals must have appropriate access to, and understanding of, financial products, services, and concepts. Financial capability empowers individuals to make informed decisions and consumer choices, avoid pitfalls, know where to go for information or assistance, and take other actions to improve their present and long-term financial well-being. We feel that this aspect would be better located in section 5 on Financial Education and Awareness.

Whilst the Federation does not disagree that remuneration structures and policies are not important, we believe that remuneration of staff of financial service providers and related authorised agents does not belong in these principles and should be deleted. We note that

remuneration is adequately dealt with by other agencies, such as the FSB, etc, and through numerous prudential and operational frameworks.

The Federation strongly believes that financial consumer protection should be upheld by all stakeholders, not only financial service providers. The principle as it stands places too much responsibility solely on banks and other financial institutions.

Protection of Consumer Rights

The proposed principle is supported because many jurisdictions are already regulated in this regard through investment protection schemes.

However, the Federation believes that the words ‘as much as possible’ should be deleted from the principle as there is a redundancy with ‘with a high degree of certainty’ and the highest possible level of protection may not always be desirable, e.g. if the associated costs cannot be justified. Additionally, each jurisdiction will have individual schemes or arrangements associated with the protection of deposits, savings, and other similar financial assets.

Alternatively, the Federation recommends that the principle should promote consumer awareness and understanding of each jurisdiction’s consumer protection regimes, in particular ensuring that consumers are aware of government schemes, capital and financial resource obligations, personal indemnity insurance arrangements, etc.

Protection of Consumer Data and Privacy

The proposed principle is supported.

Complaints Handling

The proposed principle is generally supported.

The Federation believes that to avoid possible misunderstanding, it should be further clarified that the provision to make ‘aggregate information with respect to complaints and their resolution’ available to the public should only apply to independent complaints handling, external dispute resolution and redress mechanisms (e.g. ombudsmen schemes) and not to individual service providers’ internal dispute resolution mechanisms.

Taking into account the kind of elaborate complaints mechanisms that banks and other financial institutions have built up in the securities business, and having regard to the very wide definition of what a complaint is across the different jurisdictions, the Federation considers that complaint information on an individual bank level would not be of assistance and has the danger of misleading the public.

Competition

The Federation generally supports the principle. We are in favour of open markets and competition within financial services. It is important to advocate equal and level playing fields.

However, the Federation believes that the notion of 'free to switch' implies that a consumer may be entitled to switch providers or products without potential recourse. In reality, there may be contractual obligations that are to be upheld. We do not believe that the principle should espouse that breach of contract, and is possibly irrelevant where the consumer wants to choose between products and suppliers.

General

In addition to our comments above we believe that there should also be a statement and principles should be developed around the responsibilities of the consumer, failing which, without such specific and significant language in the principles, the G-20 Principles would be inadequate and incomplete.

In this regard we suggest the following:

A consumer financial protection regulatory framework should be predicated on the enforceable expectation that consumers are responsible for their choices and uses of financial products and services, including accepting responsibility for:

- the extent of shopping or comparisons they undertake;
- communicating to financial service providers honestly, accurately and without material omission when applying for, qualifying for, or using a product or service;
- reading and understanding the information, disclosures and agreements they receive;
- evaluating the benefits, costs and risks of the options they explore against the preferences, tolerances and resources they have;
- using the product or service consistent with their capabilities and means; and
- fulfilling the obligations they agree to perform.

Yours sincerely,



Mrs Sally Scutt
Managing Director
IBFed



Mr Nicky Lala-Mohan
Chairman – IBFed Consumer Affairs Work
Group