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Welcome to the FinCoNet Newsletter

Welcome to the second 2017 edition of the FinCoNet newsletter.

FinCoNet has now confirmed the date and venue of its Annual General Meeting: November 14-15, 2017 in Tokyo, Japan.

We are also very much looking forward to welcoming FinCoNet members and other interested parties to the International Seminar, which will immediately follow the AGM on November 16.

We thank the Financial Services Authority of Japan for kindly hosting this event and we look forward to welcoming participants to Tokyo in November.

In Focus

Introducing the FinCoNet Treasurer, Jean-Philippe Barjon



Jean-Philippe Barjon started his career in 2003, joining the French authority in charge of prudential insurance supervision. He rapidly leveraged his scientific background, adapting it to the insurance sector, and became an actuary. During these early years, he supervised a diverse range of insurance entities – big and small, life and non-life, mutual insurance and for-profit companies, and traditional insurers or “bancassurance” firms. Responsible for oversight responsibilities, he conducted on-site inspections and on-going supervision, involving regular analysis of prudential reporting and meetings with the top management of insurance entities.

These formative years taught him a great deal, particularly the importance of precise and thorough understanding of the legal structures on which a business is built (B2B contracts and contracts with retail).

In 2011, he became the head of one of the eight units in charge of supervising the French insurance market at the Autorité de contrôle prudentiel et de résolution (ACPR). This was a new authority, created in 2010 by merging the two former authorities responsible for prudential supervision in banking and insurance sectors. As a result of the merger, the ACPR acquired a new mission: consumer protection. From the outset, the department, Direction du contrôle des pratiques commerciales, which has responsibility for both sectors, assumed this mission. Jean-Philippe chose to pursue his career in this new area of financial supervision. In 2014, he was appointed head of the unit in charge of handling consumer complaints received by the ACPR. During the next two years, he developed the ACPR’s capabilities to monitor business practices through a consumer lens—assessing complaints, exchanges on social media, interviews involving consumer organizations, etc.

Drawing on his very strong experience, Jean-Philippe most recently assumed the position of head of the unit assigned to international work in the field of consumer protection in the insurance and banking sectors. This unit is currently involved in various European and international forums dedicated to this subject.

Current Issues Forum

Credit-linked notes: certificates industry reacts to announced distribution ban

Contributor: Matthias Aust, Federal Financial Supervisory Authority (BaFin), Germany

The German Banking Industry Committee (Deutsche Kreditwirtschaft – DK) and the German Derivatives Association (Deutsche Derivate Verband – DDV) have presented a self-commitment to issuing and distributing credit-linked notes to the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin). The industry has thus responded to the investor protection concerns raised by BaFin with regard to the retail distribution of these products. On this basis, BaFin has suspended its planned ban. In six months' time, it will examine whether the package of measures proposed by the industry is effective.

In the [ten principles](#) published on December 12, 2016, the industry, as represented by the DK and the DDV, commits itself to improving transparency and investor protection related to the issuance and distribution of credit-linked notes (previously called Bonitätsanleihen in German and in future to be called bonitätsabhängige Schuldverschreibungen). It will restrict both the product range and distribution to achieve this. The principles are the industry's reaction to BaFin's plans, announced on July 28, 2016, to prohibit the retail distribution of certificates linked to creditworthiness risks. BaFin's reasons for this include the products' complexity, unclear pricing and misleading name (in German).

"We will be watching very closely over the next six months to see if the self-commitment provides sufficient protection for retail investors investing in credit-linked

notes," stressed Elisabeth Roegele, Chief Executive Director responsible for consumer protection at BaFin. If this protection cannot be completely assured, BaFin will restart product intervention. Until then, it has suspended it, explained Roegele. In view of the industry's comprehensive self-commitment, the purpose of the planned ban – to significantly improve investor protection – can be achieved in a comparable manner, she said.

According to the new self-commitment, credit-linked notes will only be issued with a minimum denomination per unit of €10,000. It will no longer be possible to invest smaller sums, meaning that credit-linked notes will no longer be a typical product for retail investors. Moreover, credit-linked notes will only be allowed to be sold to investors with a risk tolerance category of 3 and above in order to ensure that only those retail investors who are willing to accept risk invest in this sort of product. It will also no longer be allowed to recommend these products to clients with no or a very low level of risk tolerance. This will ensure that retail investors are not offered products that do not correspond to their risk profile. In addition, the DK and DDV have committed to higher quality standards regarding the reference entities acting as underlyings. Credit-linked notes with several reference entities as underlyings may only be offered if they actually produce a spreading of risk for clients. The industry also only wants to sell credit-linked notes to retail investors that guarantee a sufficient creditworthiness of the reference entities (investment grade).

Three approaches for policy on deposit insurance for digital financial products

Contributor: Juan Carlos Izaguirre, Senior Financial Sector Specialist at CGAP

Globally, policy makers are increasingly gaining understanding of the potential benefits and potential risks that digital financial services play in reaching financially excluded and underserved customers. The rapid scaling of digital stored-value products coincides with a sustained interest in establishing or strengthening [deposit insurance systems](#)¹.

The typically lower cost of digitally delivered financial services and products allows customers to transact and store value in irregular, small amounts, and helps them manage what are often uneven income and expenses. Despite the opportunities digital finance offers, the expansion of these new services presents a [number of risks](#) that need to be considered by policymakers.

Answering the question, What is a deposit? is becoming more difficult as digital financial services continue to evolve rapidly, and as underserved customers use products in new ways. The appearance of electronic wallets, prepaid plastic or virtual cards, online transaction accounts, and other value-storing instruments is making it harder for authorities, providers, and consumers to identify clearly which products are

considered deposits and which are deposit-like enough to consider insuring.

At present, countries with deposit insurance have adopted one of the following three approaches to [digital deposit-like stored-value products](#) based on their market structure, legal and regulatory frameworks and their assessment of risks associated with the widespread adoption of these products:

- the exclusion approach, whereby such products are explicitly excluded from deposit insurance coverage, although other measures to protect customers' stored value are adopted (e.g., Peru and the Philippines)
- the direct approach, whereby such products are directly insured by a deposit insurer and their providers are prudentially regulated and supervised financial institutions that are or must become members of the deposit insurance system (e.g., Colombia, India and Mexico)
- the pass-through approach, whereby deposit insurance coverage "[passes through](#)" a custodial account at a depository institution that is a deposit insurance member and holds customer funds from deposit-like stored-value products, to the individual customer of the digital product provider, although this provider is not a deposit insurance member (e.g., Kenya and Nigeria).

¹ A CGAP Brief on Deposit Insurance and Digital Financial Inclusion was published on October 2016 http://www.cgap.org/sites/default/files/Brief_Deposit_Insurance_and_Digital_Financial_Inclusion.pdf and a Technical Working Paper is forthcoming in 2017.

As new digital finance products and providers emerge, it is essential that deposit insurers participate in discussions about strengthening or developing protective and enabling policy frameworks that address the protection of digital customer funds. Authorities will improve their understanding

of opportunities and challenges of different approaches to deposit insurance for digital deposit-like stored-value products, and consciously adopt one of such approaches to safeguard customer funds.

CGAP training on behavioral research for consumer-protection policymaking

Contributor: Silvia Baur, Financial Sector Analyst and Rafe Mazer, Independent Consultant, Policy at CGAP

[CGAP](#) held its third training on May 15-18, 2017 on “behavioral research for consumer-protection policymaking,” targeting policymakers from eight markets across Africa and Asia. Implemented in collaboration with Innovations for Poverty Action (IPA), academics joined policymakers to facilitate an exchange on behavioral research in financial inclusion topics and to explore potential research partnerships.

Featuring a series of behavioural-mapping and human-centered design tools alongside CGAP case studies, the training explored how policymakers can apply behavioral research to inform their consumer protection policymaking. The case studies include Armenia (Financial Capability), Ghana (Recourse Systems), Kenya (DFS Price Sensitivity), Malaysia (Life Insurance Sales), Mexico (Disclosure Format Testing), the Philippines (Truth in Lending Reforms), Peru (Mystery Shopping) and Tanzania (Digital Insurance and Consumer Risks). The methodology includes the following phases: problem definition; process and bottleneck mapping; behavioral mapping;

opportunity statement development; creative ideation (brainstorming); and concept development.

Participants spent the three-day training identifying a policy ‘problem statement’ that reflected a challenge they face in their markets, diagnosing the problem and building towards a rough prototype for an intervention to test, and ending with a lab-testing demonstration at the [Busara Center](#)’s lab. On Day 4, policymakers were joined by researchers from IPA’s network, who shared behavioral research in financial-inclusion topics from across the globe, including trust of digital payments in Bangladesh, SMS reminders for credit-card payments in Brazil, disclosure-testing methods across the globe, and crowdfunding and household indebtedness.

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The Central Bank of Ireland publishes a discussion paper on its Consumer Protection Code and the digitalisation of financial services

Contributor: Sinead Cawley, Central Bank of Ireland

In June 2017, the Central Bank of Ireland (the Central Bank) published a discussion paper on the Consumer Protection Code and the digitalisation of financial services. The objective of the discussion paper is to generate discussion and stimulate debate on how the Central Bank's Consumer Protection Code addresses emerging risks from digitalisation, and to determine if the existing protections need to be enhanced or adapted in specific areas.

The [Consumer Protection Code 2012](#) (the Code) places obligations on regulated financial services providers (firms) across all areas of a consumer's interaction with a firm. As the growing digitalisation of financial services introduces new benefits and risks for consumers, the Central Bank is considering how consumers are protected in this increasingly digital financial services environment, and if the risks emerging from digitalisation are adequately addressed in the Code. The Central Bank aims to ensure that the right outcomes are achieved for consumers regardless of the method through which they undertake their financial affairs.

In particular, the Central Bank is seeking views on:

- whether consumers are adequately protected under existing consumer protection rules contained in the Code
- if the Code needs to be enhanced in specific areas
- whether there are impediments in the Code to firms adopting technologies that may be beneficial to consumers.

The Central Bank of Ireland is seeking views specifically on the requirements of the Code in relation to:

- access
- provision of information
- suitability
- complaints handling
- claims handling
- retention of consumer records/record keeping.

The feedback to the discussion paper will inform the Central Bank's consideration of whether the Code protections for consumers should be enhanced or amended in the face of innovative trends and products. Learnings from this project will also be considered in any future review of other parts of the Central Bank's suite of consumer protection rules that are in place. The discussion paper can be viewed [here](#). To inform the content of the discussion paper, the Central Bank issued a survey to regulated firms seeking information on the new and innovative products and services that have been offered or are in development in the Irish market for consumers in the digital financial services context. The results of this survey are available [here](#). The Central Bank also issued a survey to FinCoNet members on 'Innovation – Consumer protection rules in other jurisdictions' and would like to thank members for the feedback provided in response to that request.

The discussion paper is open for submissions until 27 October.

Complaints handling services of supervised financial institutions by Banco de España – Supervisory review and issuance of guidelines

Contributor: Isabel Torre, Banco de España

After the creation of the Division for Oversight of Institutions' Conduct (hereafter, the Division) within the Market Conduct and Claims Department in the Banco de España, the operations of the complaints handling services of financial institutions was identified as a high priority. This is because these services are crucial to the relationship between financial institutions and their customers. The Spanish legal norm regulating these complaints handling services is the Ministerial Order ECO/734/2004 of 11 March 2004 that applies to customer services departments (CSDs) and ombudsmen at financial institutions.

In 2015, the Division decided to launch an ambitious analysis to gain a deep knowledge of the complaints handling services that are supervised by Banco de España, their operations, characteristics and practices. During the first phase of this supervisory review, a comprehensive survey about the most varied aspects of complaints handling services was prepared and sent to 226 financial institutions. The survey had more than 100 questions and was organized into three main sections:

Section A. Organizational structure, objectives and resources.

Section B. Criteria and procedures for the reception, processing and resolution of complaints.

Section C. Knowledge management and mechanisms for monitoring and controlling complaints.

The output of the first phase of the exercise was an aggregated analysis of the quantitative and qualitative information obtained from the responses. This feedback included useful information on best practices for carrying out these services. They also enabled researchers to plan and manage the second phase of the exercise.

In 2016, the Division carried out the second phase of the supervisory exercise. This phase involved a deeper analysis of the 24 most relevant financial institutions, their size and complexity. Findings were also used to correct the deficiencies detected. The Division sent letters with recommendations to 24 financial institutions to provide guidance on how to correct the weaknesses detected in their complaints handling services. The main weaknesses observed in each section were related to the following aspects:

1. Regarding the organizational structure, objectives and resources of complaints handling services, it was observed that in some cases the financial institutions had outsourced some tasks of the complaints handling service. Although Spanish legislation includes provisions for financial institutions to outsource some functions, complaints handling services can be considered an essential function. Because of this, stronger requirements for outsourcing apply. In cases where the existence of "call centers" or similar services were perceived as an additional and supplementary step before formalizing a complaint, increasing the burden on

consumers, the need to change the structure was highlighted.

Other areas where weaknesses were observed related to the lack of effective measures to prevent conflicts of interest associated with the hierarchy within the financial institution or with the availability of sufficient resources and adequate training for staff.

2. Regarding the criteria and procedures for the reception, processing and resolution of complaints, the most relevant deficiency identified was the lack of written acknowledgement of complaints, especially those complaints made by telephone.

3. Regarding knowledge management, lines of communication and mechanisms for

monitoring and controlling complaints, in the majority of cases the shortcomings were related to the frequency of internal audit reviews of the operations of complaints handling services and lack of participation of the Head of the Service on the New Products Committee.

Thanks to this exercise, the Market Conduct and Claims Department was able to identify best practices and the most common weaknesses in financial institutions' operations. Based on these results, a guidance note has been produced. It is called "The complaints handling function of customer services at institutions supervised by the Banco de España," and is available on the Banco de España [website](#).

Self-regulation development in Russian financial markets

Contributor: Daria Silkina, Central Bank of Russia

Basic standards development

To increase the role of self-regulation in the financial market and improve relations between self-regulating organizations (SROs) and financial regulators, the Federal law No. 223-FZ, "On self-regulating organizations on the financial market," (hereinafter – Law), was adopted on July 13, 2015.

The Law regulates SRO activity, as well as relations between SROs and their members with the Central Bank of Russia (CBR), federal executive authorities, executive authorities of the constituent entities of the Russian Federation, local authorities and financial services consumers.

Membership in SROs is obligatory for the financial organizations specified in the Law. According to the Law, SROs are entitled to set the rules of conduct for their members.

This regulatory function has been introduced in legislation as a new source of legal regulation on basic standards for non-credit financial institutions' activity.

Basic standards stipulate requirements, which are mandatory for each type of non-credit financial institution, regardless of whether the organization is an SRO or not. The CBR sets the requirements for the content of basic standards under which the following aspects of relations between financial organizations and clients specified by each type of non-credit financial institution are regulated:

- principles and scope of information provision; requirements for the quality of financial advice
- minimum amount of information to be provided, including information about financial organization, its products and

services, as well as additional services at extra cost

- rules of conduct at any stage of client interaction
- the order of consumer complaints handling.

SROs draw up the text of the basic standards, taking into account the requirements established by the Bank of Russia.

Basic standards should be agreed on by the CBR Standards Committee of the relevant type of financial institution. The committee is composed of representatives of SROs, the Bank of Russia and the Ministry of Finance of the Russian Federation.

This approach ensures joint regulation provided by the CBR as the financial regulator and financial market participants via SROs. This means that financial market issues not specified in the legislation are regulated according to more severe requirements than the basic ones, if SROs deem it necessary and timely.

The Law stipulates basic standards for the following:

- risk management
- corporate governance
- internal supervision
- protection of consumers of financial services provided by members of SROs
- financial market transactions.

The Law ensures transparent, competitive, efficient and sustainable financial market development in financial consumers' interests.

Basic standard for protecting consumers of microfinance organization (MFO) services

In accordance with the requirements of the financial regulator, SROs of MFOs have developed the basic standard for protecting consumers of MFO services. The standard establishes the rules that MFOs should follow when interacting with consumers of their services. As of July 1, 2017, it is mandatory for all microfinance organizations in Russia.

To limit the debt burden of MFOs' borrowers, the basic standard introduces a ban on providing the borrower with more than 10 (from January 1, 2019 – nine) short-term (up to 30 days) microloans within one year. In addition, the MFO will not be able to renew such contracts more than seven times (and from January 1, 2019 – five) under one contract. Also, to reduce the aggregate debt burden on the borrower and exclude the practice of relending, the standard prohibits an MFO from issuing a new short-term consumer microloan until the full repayment of the previous one.

In accordance with the provisions of the basic standard, MFOs will be the first among financial institutions to respond to all appeals of financial service consumers within 15 working days from the date of receipt of the request. It is expected that this will increase the likelihood of pre-trial dispute settlements and will allow borrowers to apply to an MFO without intermediaries to resolve conflict situations.

The standard also contains recommendations for working with persons with disabilities and regulates the procedure for arrears restructuring.

Since the current legislation does not explicitly prohibit some unfair practices, the standard makes it unacceptable to exert pressure on a consumer to induce him/her to choose a particular service, to encourage signing up for a new loan agreement under

the worst conditions for the return of the initial loan, and to reward MFOs' employees solely for issuing loans without accounting for their actual return.

If an MFO does not comply with the provisions of the basic standard, any interested person has the right to apply to a self-regulatory organization that is an MFO member with a request to apply measures of influence to it. The CBR oversees how

self-regulatory organizations of MFOs monitor compliance with the requirements of the basic standard.

The basic standard will regulate the relationship of MFOs not only with citizens, but also with small and medium-sized enterprises and other legal entities.

FinCoNet

Established in 2013, FinCoNet is an international organisation of supervisory authorities that have responsibility for financial consumer protection. It is a member-based organisation set up as a not-for-profit association under French law.

FinCoNet promotes sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision.

Each member of FinCoNet has responsibility for protecting the interests of consumers of financial services. FinCoNet seeks to enhance the protection of consumers, and to strengthen consumer confidence by promoting robust and effective supervisory standards and practices, and sharing best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services.

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