

The IAFICO webinar (held on May 22, 2020):

“The Financial Consumer Protection (FCP) Act of 2020 in Korea:

Implications & challenges ahead”;

Summary of the key points being discussed

Remark by Man CHO, Chairman, IAFICO

The Korean Congress passed the FCP Act of 2020 (henceforth, the Act) in March this year, and it is expected that the new law will lay a fundamental legal and institutional foundation for financial consumer policy in the country. The legislation took a nine-year long deliberation in the Congress, reflecting the difficulty in accommodating competing views and opinions expressed by various parties involved, and the Act will be in effective in March 2021 with full implementation ordinances by then. In order to discuss the implications of this new law, as well as challenges ahead in implementing that, the International Academy of Financial Consumers (IAFICO) organized an online seminar on May 22, 2020, by hosting three presentations (as shown below), followed by two designated discussions and general Q&As. This document contains the summaries of key points discussed by the three presenters, two discussants (Professor Jeong Kook SON, Kangwon National University, and Professor Ki Beom BINH, Myongji University), and the session chair (Professor Sung Sook KIM, Kye Myung University).

- Dr. Woon-Young JEONG, Chairman, Finance&Happiness Network, “The Legislation Process of the FCP Act and Tasks Future Tasks”
- Professor Chul CHOI, Sookmyung University, “The FCP Act and Financial Education Policy Directions in Korea”
- Attorney You Kyung HUH, Ph.D candidate, University of Virginia, “ The Same-Function-Same-Regulation principle of the FCP Act: Future Tasks”

The underlying intent of the Act is to minimize the chance of incomplete sales in the financial market, to ensure both welfare of financial consumers and stability in the financial system as a whole. To that end, the key enabling mechanism in the demand side is upgrading the financial education system, mainly by establishing the Council on Financial Education that will be empowered to set policies on, and quality standards of, the financial education programs that are currently initiated by various public and private entities. In the supply side, the Act differentiates three service providers – direct sellers, brokers or intermediaries, and advisors – and four financial products – deposits, loans, insurance products, and investment securities, and attempts to institute the so-called “same-function-same-regulation” principle: that is, applying the universal behavioral principles to be abided by financial institutions and their employees in all subsectors (i.e., banking, insurance, and security dealing) for both ex ante product sales and ex post conflict resolutions, the purpose of which is to reduce the likelihood of regulatory arbitrage across the subsectors. Further details of the Act will emerge in coming days, and IAFICO as the international academic association with a high intellectual stake with the way that the Act is implemented will keep monitoring the progress inside Korea and will also pursue to expand our knowledge base as to the international best practices for the main ingredients of FCP embodied in the Act.

Progress of legislation of the Financial Consumer Protection Act (FCPA) and further challenges for enhancing effectiveness

Finance and happiness network, Chairman, Woon-Young Jeong

1. The Progress of Legislation of the FCPA and its Significance

1.1 The Progress of Legislation of the FCPA

The focal point of implementing the global financial regulation has shifted from preventing system risks to strengthening the focus on protecting consumers in a financial market since the financial crisis in 2008.

The financial industries and markets in developed countries have continuously enhanced the protection of financial consumers. In the United Kingdom, in particular, the Financial Service Authority (FSA) has been established, which contributes to the bipolarization of the supervisory and regulatory systems of financial institutions and financial consumer protection. The financial consumer protection supervision in the UK, therefore, has been strengthened to a level equal to that of financial quality supervision.

In the case of South Korea, some juggernauts events (e.g. KIKO crisis, IB's subordinated debt, corporate bonds from Yuanta Securities Korea Co. Ltd, Foreign Derivative Linked Securities (DLS) issues) occurs. Due to the conflicting interests, systematic flaws of the administration and political issues, the legislation of the FCPA was not legislated, even though there have been quarrelsome financial issues which cause large-scale damages on financial consumers.

Following this process, 14 bills have been submitted since the enactment of the Financial Consumer Protection Act (FCPA) in the National Assembly in 2011 for the first time. The bill was recently passed at the plenary session on March 5, 2020, and is scheduled to go into effect in March 2021.

1.2 The Significance of the FCPA

The financial Consumer Protection Act refers to a law concerning the legal relationship between financial consumers and sellers of financial instruments. Previous financial laws consist of a sectional law, that is to say, the Deposit/Savings (Bank Act)/ Insurance Business Act/ Financial investment Products (Mutual Savings Bank Act) were in the form of complete segregation. At the same time, the current FCPA is a financial regulation enacted for the express purpose of protecting the rights of financial consumers from the viewpoints of fairness. 'The same function and the same principle' is applied to the sales activities of financial companies.

Expected benefits of the implementation of the FCPA

Enabling more comprehensive protection of financial consumers, as previously unprotected areas for the transactions of financial products have now been under the jurisdiction of the current FCPA.

Applying strict rules to the financial company for the financial instruments sales activities.

Establishing an institutional basis for protecting financial consumers by preventing incomplete sales

Contributing to achieving the sustainable growth of a financial company.

2. Tasks for enhancing effectiveness of the FCPA

2.1. Major contents of a law

Contents of the Act for preliminary preventions

Broaden the six major selling principles to all financial instruments to prevent incomplete sales

Strengthening the managerial responsibility and setting guidelines for financial companies.

Sales Restriction Order: When financial consumers suffer from the remarkable asset losses by a financial company, the Financial Service Commission(FSC) has the rights to order the financial company to restrict their sales activities.

Contents of the Act for post damage relief

Extending and guaranteeing the right to terminate illegal contracts (when a financial company violates the financial rule while selling their products, consumers may cancel contracts without fees or penalties within a certain period of time)

Liability to prove damages (A financial company is accountable for proving whether or not it has caused damage to its customers)

Introduction of punitive damages

Easier access to information by financial consumers involved in an allegation of negligent dispute.

2.2. Points of discussion following the enactment of the FCPA

Whether the FCPA clearly defines various types of financial instruments and sellers.

For the 'same function, same regulatory principle', it is necessary to consider whether individual roles can be properly distinguished between financial instruments and sales types (e.g. insurance products externally but investment products are included) and the sales types are classified as direct sellers, sales agents/ brokers and advisors.

Are the 'six financial products sales principles' of the FCPA enough to prevent the incomplete sales?

In this enforcement order, the scope of liability for proof of damages (financial institutions

shall be made to bear the burden of proof of damage or negligence) is limited to a violation of their obligation to explain, excluding the principle of suitability and appropriateness. Hence, further discussion is needed.

Punitive damages are introduced and imposed on cases such as violation of the obligation to explain, unfair business, improper solicitation, and false/exaggerated advertising. The upper limit of the imposition of a non-penal fine may be revised from the existing 50m Won to 100m Won, and up to 50% of profits earned could be fined. However, the aforementioned punitive damages still require further reviews to determine the appropriate level of compensation.

Further point of discussion regarding the general principle

With regards to the prohibition of discrimination, the wording ‘without justifiable reasons’ and ‘improperly’ is somewhat nebulous. It is necessary to make a compromise to determine the exact meaning of sentences or to establish the range of understanding that is accepted as a legal interpretation.

Further discussion on how we can manage to apply the managerial responsibility to those who are selling the financial instruments.

Further discussion on the terms of a seller’s behaviour by type of financial instruments.

The principle of conformity: In South Korea, the principle is comprehended in an ambiguous and broad sense which simply implies that financial institutions are not allowed to sell inappropriate financial products. This could result in many legal grey areas and, hence, it is necessary to set clear boundaries for the imposition of fines. (e.g. We could learn from the UK and the US which take an aggressive approach to recommend appropriate products. Also, it is required to design a differentiated approach.

The principle of appropriateness: In the case of the UK, the subject of ‘the principle of appropriateness’ and that of ‘the principle of conformity’ are clearly distinguished. At the same time, significant efforts are put into clarifying the application of consultations to a large extent. Likewise, in South Korea, it is also necessary to introduce a clear standard to distinguish the two principles and to determine which of the two is to be applied.

Although ‘the principle of appropriateness’ is significant in that even voluntary transactions of financial product, conducted by ordinary financial consumers, can be kept reasonably secure through warnings concerning the risks and duplicate transactions, new measures should be taken to ensure that such transactions can be realized in actuality.

According to questionnaires regarding the bank’s operational rules, the questions are focused mainly on marketing purposes and escaping future accountability. The principle of suitability and appropriateness should also be included in the future.

Are the regulatory provisions – i.e. obligation to explain, the prohibition of illegal business activities, and prohibition of the improper solicitation – really fair? Has it been understood sufficiently by consumers, leading them to make rational choices?

Discussions on how to resolve any ambiguity in the legal interpretation of matters concerning compliance with the terms of advertisements related to financial products (e.g. ambiguous definitions of advertisements related to business as well as the scope of advertisements themselves)

Duty to provide Contract Documents: How do you supplement the fact that there are no grounds for financial consumers to request re-issuance of Contract Documents if they lose the Contract Documents?

Financial Instruments Consultants' Operational Rules: Measures to minimize conflicts of interest are needed.

Data recording, maintenance and management: Can the management of data be performed conscientiously?

Non-face-to-face transaction and financial consumer protection law through future technology innovation

Online and remote contact between the sellers and consumers may cause the problem that the sellers provide the information about the financial products unilaterally and lay all the responsibility on the consumers for the losses of assets. Further consultation on how can we solve the issue of the increasing likelihood of incomplete sales.

Aged consumers and the FCPA

Rigorous examination on the practical function of current FCPA pertaining to the protection of the elderly consumers whose decisions of purchasing financial products are less likely to be made based on a strong understanding of the financial market.

Restriction of high-risk financial instrument

In case of high-risk financial products, not only to confirm and understand the buyers, but also make a clear and accurate emphasis that there is a possibility of losses, in the appliance of the principles of appropriateness and obligation of explanation, is essential and to prevent sales encouragements in the case of non-compliance must be obeyed.

The separation of duties of FSS is discussable, wherein under the current system it is widely in charge of supervising the soundness of financial institutions and sales activities and settling complaints. However, to protect the rights of financial consumers, it should be considered to establish a separate independent authority for supervising of sales activities

How can we find the answer to the issues that the jurisdictional system cannot reflect real life?

Financial culture and ethic and enhancement of ability of the financial consumers

* References are not provided in the summary.

Financial Education policy Directions after the Enactment of Financial consumer Protection act in Korea

Sookmyung Women's University, Professor. Chul Choi

MOTIVATION AND BACKGROUND

Restructuring of the Financial Consumer Protection Bureau (FCPB) of the Financial Supervisory Service (FSS) in January 2020

- To provide more effective protection to financial consumers, the FSS fine-tuned the structure of the FCPB with both ex ante and ex post protection measures

Enactment of the Financial Consumer Protection Act (FCPA) in March 2020

- Article 29 stipulates that the Financial Services Commission (FSC) should endeavor to improve the financial capability of financial consumers
- Article 30 stipulates that the FSC should develop financial education programs and make policies to improve the financial capability of financial consumers
 - Parallel to the provision of the Framework Act on Consumers which stipulates the State and local governments' responsibility for developing programs to enhance consumers' ability in line with economic and social development
 - Emphasis on the government's responsibility for financial education on account of its characteristics as a merit good and a public good
- Article 31 stipulates the establishment of the Council on Financial Education (CFE), which is tasked to review and decide financial education policies
 - The CFE consists of 25 or less representatives from the government agencies related to financial education and is chaired by the vice chairman of the FSC
 - Similar to the Financial Literacy and Education Commission in the US
- The FCPA will take effect from March 2021

Release of 「Plans for Improving Financial Education」 in May 2020

- The FSC announced the basic plans decided by the Council on Financial Education
- The council plans to work on improving the effectiveness of financial education through an enhanced level of cooperation between the public and private sectors

- Designing a set of financial literacy indicators to help develop and manage educational contents in a more systematic way
- Ensuring credibility through a contents certification system
- Establishing a financial education center tasked with overseeing the contents certification system and maintaining the one-stop online contents site

LITERATURE REVIEW

Financial Education

- Financial education is to improve the capability to make informed financial decisions
 - Includes the ability to find sources of appropriate information and help
 - The ultimate purpose is financial well-being (CFPB, 2015)

Financial Education can be defined as “the process by which financial consumers improve their understanding of financial products. Concepts and risks and through information, instruction and/or objective advice, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed choices, to know where to go for help, and to take other effective actions to improve their financial well-being. (OECD, 2005)

Closely related to personal finance and financial planning

- Financial education facilitates the progress of financial inclusion by helping to overcome the limitations and vulnerability of financial consumers
- Included in the High-level Principles on Financial Consumer Protection endorsed by the G20 Finance Ministers and Central Bank Governors in 2011

Financial Literacy and Financial Capability

- Definitions by the worldwide organizations

Financial literacy is a combination of awareness, knowledge, skill, attitude and behavior necessary to make sound financial decisions and ultimately achieve individual financial wellbeing (OECE INFE, 2012)

Financial capability encompasses the knowledge, attitudes, skills and behaviors of consumers with regard to managing their resources and understanding, selecting, and making use of financial services that fit their needs. (World Bank website)

- Both terms can be used interchangeably, reflecting similar perceptions of the reality they aim to cover. Financial literacy is considered the most common international term (OECD INFE, 2011)
- Financial literacy is generally used as a narrower term than financial capability (World Bank, 2014)
- Financial literacy focused on knowledge and skills but now tends to include attitudes and behaviors. Nonetheless, financial capability is more comprehensive (Hahn, 2019)

Financial Education System in the US

- Financial Literacy and Education Improvement Act
 - President’s Advisory Council on Financial Literacy/Capability
- Financial Literacy and Education Commission (FLEC)
 - Development of a national strategy to promote financial literacy and education
 - Establishment and maintenance of best practices for teaching financial literacy
 - Establishment and maintenance of a website, which is currently MyMoney.gov
 - Cooperation (consultation) with representatives from private and nonprofit organizations
- Participation and role of the private sector
 - Council for Economic Education (CEE)
 - Jump\$tart Coalition for Personal Financial Literacy

POLICY DIRECTIONS

There should be the government’s strong will to promote financial literacy (education) and people’s consensus (voluntary and active participation)

Effectiveness of Financial Education Contents

- It is necessary to consider a life-cycle based financial education and financially vulnerable groups of people

- Financial consumers may have different concerns and needs according to their life-cycle stages
- Financial Literacy Map
 - Consideration of dimensions of financial literacy: different aspects (knowledge, skill, attitude, behavior, and self-efficacy), life-cycle horizon, etc
 - Consideration of the standard (or minimally required) level of financial literacy for each dimension
- Increasing importance of financial education for financial fraud prevention and detection

Setting up of a One-stop Gateway

- How to link diverse channels for financial education contents
- Who is charge of the administrative work
 - An alternative solution is to utilize the existing system of the FSS

Emphasis on Financial Education at School

- Financial education for each stage as early as possible
- More of essential topics about basic finance should be included in the related courses of the National Curriculum
 - Still in progress whenever the National Curriculum is amended but not enough
 - Minimum requirements in the common or mandatory courses
- In a more practical manner
 - Tell me and I forget / Teach me and I remember / Involve me and I learn
 - Start from students' real life stories and situations in which finance matters
 - An intensive and experience-based learning week is recommended

Cooperation between the public and private sectors

- The most important thing for success when carrying out the government's plans

- Many participants with potentially diverging interests and approaches
- To avoid duplication of efforts and resources
- To ensure the quality and consistency of financial education initiatives

Finance + Education

- Convergence of the two disciplines (areas) with an equal weight

SOUTH KOREAN LEGISLATORS PASS A NEW FINANCIAL CONSUMER PROTECTION LAW

*You Kyung Huh*¹

On March 24, 2020, South Korea has passed the long awaited Financial Consumer Protection Act, (hereinafter the “FCP Act,” or “Act “), which will become effective on March 25, 2021.² According to the South Korean primary financial regulator, the Financial Services Commission (FSC), which will administer the new legislation, the FCP Act is a part of the government’s policy initiative to improve the fairness in the economy, aiming specifically to level the playing field between consumers and financial institutions. According to the FSC, the FCP Act “represents a significant turning point, as it will help enhance consumer rights and improve public confidence in financial institutions.”³

1. Toward the Principle of “Same Function-Same Regulation”

The FCP Act is an omnibus legislation that is a result of the reformatting of major financial regulatory laws by extracting consumer protection provisions from the existing laws and combining them in a *single piece of comprehensive legislation*.

Previously, the Korean financial regulatory laws were largely divided by sector — with one law for each major financial sector such as banking, insurance, and securities and credit card companies. The existing system in Korea became inadequate as the boundaries between the industry sectors became blurred and the products they sold could not be neatly categorized under the existing law. One example of this was the emergence of structured products that were a hybrid of more than one traditional financial product; these posed a significant risk for financial consumers and the regulators whose job was to regulate the products. Cross-sector selling (i.e., bancassurance, where banks sell insurance products or credit card companies selling insurance-like products) became more common.

Under the existing sector-based system, overlapping or underlapping of the laws could occur, presenting a risk of regulatory arbitrage. Even if the financial products posed the same risk to the consumer, the level of regulation applied to these products could differ, depending on what type of financial company sold the product. In some cases, more than one set of standards could apply to a sale

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² Financial Consumer Protection Act (금융소비자보호에 관한 법률). Law no. 17112, Enacted March 24, 2020. While most provisions will take on effect on March 25, 2021, some provisions will only be in effect on September 25, 2021, Addendum Art. 1 of the Act.

³ Financial Services Commission, Press Release, March 17, 2020, “New Legislation of Financial Consumer Protection Approved at Cabinet Meeting” (hereinafter FSC Press Release of March 17, 2020)

of a similar financial product, while some financial sectors laws did not have adequate sales regulations.

2. The FPC Act in a Nutshell: The Structure of the Act and Sales Rules

To reduce the regulatory arbitrage that existed in the consumer protection regulatory system, the FCP Act re-sorts financial products and companies' activities based on the functions of their products. At the heart of the Act are six major sales rules that are designed to apply consistently across the board, regardless of the type of financial product or the type of financial company. Most (but not all) of these rules existed in the sector-based laws and were transferred to the FCP Act.

The Act re-categorized all of the financial products and services that financial companies offer into four categories – deposit-type products,⁴ investment-type products,⁵ protection-type products,⁶ and loan-type products.⁷ If a product has the characteristics of more than one of these categories, for the purpose of the Act, that product will fall under all of the relevant categories.

The Act also reclassifies the activities of financial companies into three categories, by the ways that the financial company sells financial products to the financial consumers. These are (i) direct sales companies, which sell products directly to the consumer without the use of intermediaries (i.e., banks, insurance companies), (ii) sales agent intermediaries who broker the sale of products between the financial company and the consumers (i.e., insurance brokers, loan brokers), and (iii) advisory agents who provide advisory services to consumers.

Through this reformatting the existing sector-based law into a regulatory matrix of four types financial products and three types of financial companies, the authorities expect to have closed all of the loopholes and eliminated the regulatory arbitrage that existed in the former system.

The Act stipulates six major sales rules, which are the core of the substantive sections of the Act. ***Principle of Suitability:***⁸ This principle stipulates that financial companies shall consider consumers'

⁴ Deposit-type products include deposits and those that are similar to deposits. Deposits are typically products that yield interest profit, and which have a guaranteed principal. Typical examples are bank deposit savings and installment savings.

⁵ Investment-type products include financial investment products and those that are similar to financial investment products. Financial investment products can yield profits from the investment, but do not have guaranteed principles, so losses can incur as a result of the investment. Examples are securities, mutual funds, and trusts.

⁶ Protection-type products include insurance products and those that are similar to insurance products. Insurance products require the insured to pay insurance premiums, and in return, the insurance company provides insurance coverage. Examples are securities, mutual funds, and trusts.

⁷ Loan-type products include loans, credit cards, installment loans, financial leases, and those that are similar to these products. Loan products entail lending from banks or finance companies and requires repayment in the future.

⁸ Art. 17 of the Act.

personal assets and investment experience or the purpose of the contract before recommending or advising a sale of financial products. The Act extends the current application of suitability requirements for financial investment products to all other types of financial products – most significantly the loan-type ones.

Principle of Appropriateness:⁹ This principle requires financial companies to seek certain types of information from the consumer and to notify consumers if it deems products inappropriate, given the consumers' information. This principle applies to certain types of financial contracts, even if the consumer is entering the contract of his/her own accord, without the recommendation of a financial company.

Duty to Explain:¹⁰ The principle requires a financial company to explain important product details and other relevant information to the consumer. Previously, the duty to explain was stipulated separately in every sector-based financial law; it has now been transferred and incorporated into the Act. The Act specifies the type of information to be explained according to each type of financial product.

Prohibition of Unfair Business Activities:¹¹ The Act prohibits a wide variety of unfair business activities. It prohibits financial companies from violating consumer rights by abusing their superior bargaining positions or engaging in unfair business activities when selling financial products. The Act specifically bars sellers of 'loan-type products' from using coercion or force with regard to the consumer.

Prohibition of Unfair Recommendation:¹² Under the Act, financial companies may not make inappropriate recommendations of a financial product. The Act prohibits activities that apply commonly to all types, and as well as those that apply only to specific types of financial products.

Prohibition of False or Misleading Advertisements:¹³ The Act requires a financial company to advertise in a clear and fair manner so that financial consumers do not misunderstand the details of the financial products in question. Specifically, the Act determines which information companies should include in their advertisements and prohibits misleading advertising.

In addition to setting forth the six major sales rules, the Act also provides stricter punishments, as well as enhanced mechanisms for consumer rights that were not available in previous laws. The Act gives consumers the right to terminate contracts that were sold in violation of the sales rules;¹⁴ grants regulators the authority to impose punitive fines of up to 50% of income that a company earned from

⁹ Art. 18 of the Act.

¹⁰ Art. 19 of the Act.

¹¹ Art. 20 of the Act.

¹² Art. 21 of the Act.

¹³ Art. 22 of the Act.

¹⁴ Art. 48 of the Act.

its violations,¹⁵ impose administrative fines of up to 100 million Korean won,¹⁶ or ban the sale of financial products that are likely to cause severe consumer harm.¹⁷ Some of these measures were not available, or were substantially weaker, in the former sector-based laws.

3. Discussion

The Act strives to follow the principle of “same function-same regulation,” thus eliminating or reducing regulatory arbitrage. To this end, the Act combines the exact language of the provisions that existed in sector-based laws into a single statute. In so doing, the Act reformats the existing regulatory system by re-categorizing financial products and financial companies, and by applying the six major sales rules to all relevant sales activities. As a result of achieving the principle of “same function-same regulation,” some sectors that were previously not regulated (or had less stringent rules) saw a general increase in the rigorousness of substantive regulations. Although the Act delegates many matters for further FSC rulemaking, the Act provides a framework that promises a more leveled regulatory playing field.

It is important, however, to note that the focus of the substantive sections of the Act is on *sales rules*. In other words, the legislature did not move *all* consumer protection provisions to the Act. A significant body of sector-specific consumer protection provisions remains in the sector-based laws, which are still in effect, while only consumer protection sales rules that are generalizable enough were moved to the Act. Other non-generalizable provisions – those that lacked commonalities across the sectors – were left behind in the sector-based laws. For example, investor protection-specific rules (i.e., best execution rules, prohibition of front running, and prohibition of insider trading) are largely left in relevant securities laws. Also, even within the Act, many provisions are sector-specific (i.e., duty to explain insurance contract-specific matters), while others involve a more general practice or proscription that involves all sectors (i.e., the requirement of clarity of language or the list of banned practices in advertisements).

In short, while the Act is an omnibus act that appears to cover all-things-consumer-related, and strives to set the basic common principles (i.e., the six major sales rules) across the board, it is by no means the *only* financial consumer protection law, nor does it mark the *end* of financial consumer protection laws. While the Act provides a framework and lists “six major sales rules,” it also delegates many more matters to the FSC’s further rulemaking (by way of an “Enforcement Decree”). The success of the Act lies in the further rulemaking process, in which the regulators are currently engaged.

¹⁵ Art. 58 of the Act.

¹⁶ Art. 69 of the Act.

¹⁷ Art. 49 of the Act.

We urge the regulators to be transparent and to ensure that stakeholders participate in the development of the additional rules, and that scholars and researchers remain vigilant and contribute to the rulemaking processes and discussions.

Financial Consumer Rights improvement through the new legislation of Financial Consumer Protection in Korea in 2020.

Keimyung University, Department of Consumer Information Studies, Professor, Sungsook Kim

The legislation of Financial Consumer Protection Act in Korea is output of efforts of Government (The Financial Services Commission and the Financial Supervisory Service) and civil sectors like many scholars and civil NGOs for a long time. After the world economic crisis, 2009, we recognized the necessity of the law and independent governmental body, not only to protect financial consumers with high-risk investment products, predatory lending, and unfair sales conducts but also to remedy consumer damages enough in the entire financial markets. We can have the new law eventually on March, 24, 2020 since the first submit to the parliament of 2011. The independent government body for financial consumer protection is not established.

The new law will help enhance consumer rights and improve public confidence in financial institutions. It establishes a new rule of applying the same regulations for same functions in any financial institutions. Financial institutions will be subject to the following six sales principles like principle of suitability principle of adequacy, duty of explain, prohibition of unfair practices, prohibition of undue recommendation, and prohibition of false or exaggerates advertising. Also, the financial education schemes can be enhanced more than before from schools to other social institutions, through both offline and online in according to the new law. However, the new law on Financial Consumer Protection lets the lower statute like the Enforcement Decree on the Act to regulate many concrete important rules in detail.

I am so pleased to be able to discuss the meaning and following subjects to improve the enforcement of the new law through this seminar of the IAFICO. The issues of effectiveness of financial education until now and the better methods to enhance financial consumer capability and wellbeing was discussed, too. The IAFICO will continue to compare the financial consumer protection legislation internationally and contribute to enhance financial consumers' capability and wellbeing in the world.

Discussion

Discussant (1) Jeongkook Son **Professor, Kangwon National University**

1. New act for financial investors protection introduced in Korea.

Korean authorities have recently introduced the Financial Consumer Protection Act. The purpose of the Act is to enhance the protection of financial investors. The goal of financial investor protection is simple. We have to use financial instruments for our life especially after retirement due to long life expectancy, low fertility rate and low interest rate. We, however, experience extreme difficulties to select proper instruments for each of us because of “information asymmetries” as we recently saw from Derivatives Linked Funds scandals or Lime Investment Funds.

The main contents of the Act are as follows: First, applying same regulation to same function. As barriers between different sectors of financial industry are being lifted recently, one financial company can distribute financial instruments with similar function. Second, enhancing financial education and providing information. Third, introducing of Independent Financial Advisor (IFA).

I fully agreed with lawyer Huh (one of the presenters) in that this is not the end but the beginning, for so many details are left to the Enforcement Decrees or Rules. An additional question I have in mind is if Korean authorities can treat the internal incentive system in financial companies, as the UK authorities did in 2012.

2. The Act is just beginning.

It is not easy to select a proper product for each individual investor, for financial products are credence products. Most of the definitions of finance are difficult to make out, and it is even more difficult to decide proper risk and expected return in 20 or 30 years. Furthermore, the number of financial products is enormous. For example, the number of the public investment fund in Korea is over 3,000.

How long do we have to educate finance to investors? Cases such as an experiment to students in Whatron School, ‘the Korean Professors Mutual Aid Association’ fraud in 2012, and the mistakes of

Novel Prize laureates reveal that much educating cannot guarantee protecting investors. What makes it worse is that those who need financial education tend to be the marginal in society, whose spare time for education is not enough.

3. Behavior Science is gaining more attention

What is the relationship between financial knowledge and financial attitude or financial behavior? At the test of financial capability held by INFE in 2016, France ranked the first place: France came in the sixth in financial ‘knowledge’ ear, the twelfth in attitude while the first in behavior. Asian countries including Korea, Hong Kong are in higher ranks in financial knowledge but lower in other areas. This study shows that knowledge is not directly connected to behavior.

The UK and the States have already applied behavioral science in various policies. Especially UK has improved the IFA system since 2013 to be paid only by investors not financial companies. The US has expanded the subjects of the fiduciary duty from financial advisors to broker-dealers. This initiative is going to effective in June 30. In Japan ‘The Central Council for Financial Services Information’ issued a paper for protecting consumer from fraud applying behavioral economics in 2017. Recently, Korean Supreme Court have made some decisions related to protecting consumer, such as restraining firms from providing crucial information with 1mm size letters and how ‘1+1’ sign can be interpreted as discounts by consumers.

4. The combination of financial education and IFA may be the solution.

It is important to apply behavioral science to protecting financial investors. Financial education is important, too, but it will be extremely difficult for investors to attain practical perspective through financial education.

Korean authorities should consider how to settle down Independent Financial Advisor (IFA) system in Korea. IFA should not be treated as one of the distribution channels, but as a unique and effective mean for protecting financial investors. Because IFA provide financial products to investors with bounded rationality based on the investor’s interest rather than that of provider’s. Therefore, I suggest that the combination model of financial education and IFA may be the practical way for protecting financial investors. Investors will still need to have intuitive and minimum knowledge, such as the reason for diversified investment, the relationship between expected return and risk. Also they need enough knowledge to choose who the right IFA is for them. The selection of proper products, however, should be delegated to IFA.

Discussant (2): Ki Beom Binh

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Good afternoon?

I'm Ki Beom Binh at Myongji University. Today, Dr. Jeong, professor Choi, and lawyer Huh gave great presentations on the *Financial Consumer Protection Act* and Financial Education. As you know, the law had been discussed more than 10 years and was finally passed at the plenary session of the Korean National Assembly in April 2020. All presenters pointed out that, nevertheless, the law is still insufficient to protect financial consumers. I also agree with that.

In the Korean economy, the financial sector is not the only case where consumers suffer various economic damages in the market. In fact, financial consumer protection is nothing special and the same as consumer protection in other industries. In Korea, consumers are not protected in almost every area of the daily economic trades. The fact that the official accredited certificate software in online financial trading which had been enforced for more than a decade was legally abolished a few days ago shows how much the government has treated only producers and ignored consumer welfare well. Above all, the regulations, investigations, and punishments for consumer protection by the Korean Fair Trade Commission and the Korea Consumer Agency which are both governmental agencies should be well implemented. But it is difficult for them to strongly execute consumer protection policies due to the frictions between branches within Korean government. In this condition, I guess that even the KFTC has put the consumer protection issue behind its priorities.

Although there are still flaws, it is fortunate that financial sector would lead consumer protection more than any other sectors. I think it's because the banking and finance is an area closely related to people's daily lives. In addition, the Financial Consumer Protection Act should be a priority in that the volumes of transactions and potential losses and damages in financial service market are quite large. Given the damage possibility and the potentially damaged amount, the apartment market is likely to take over next in the financial sector in Korea. As you can see, various hundreds of millions of won worth of consumer damage has frequently occurred so far during the process of selling, financing, constructing, and moving into new apartments. Unlike financial institutions, builders have never bowed to damaged consumers.

Rather, the Korean government provides financial support to distressed companies in the construction sector. So I think that the financial sector in Korean economy would be relatively far ahead,

given that there are no attempts at legislation to protect consumers in real estate, house or apartment transactions. In Korea, unlike other areas, the Financial Services Commission and the Financial Supervisory Service which are governmental agencies with prime authority in the financial market has been carried out policies and regulations covering the entire financial sector for a long time. Even so, the Fair Trade Commission should not be idle in the field of financial consumer protection.

I would like to talk to you about a few issues.

First, the Financial Consumer Protection Act increases the regulation of financial institutions' code of conduct more specifically. This law focuses only on the sale of financial instruments and regulates various acts of "pre-sale – sales and contracts – post-sale". The enhanced regulation of the code of conduct is bound to trigger backlashes from financial institutions, which are producers of financial services. The producer's resistance would be a factor that makes the government and assembly difficult to legislate and enforce legislation. The conflicting arguments for adding more regulations on conduct and for excessive regulations on conduct will be at odds. There may even be a case of consumers being harmed by the code of conduct regulation. In addition, the increase in the code of conduct regulation will lead financial consumers to fill out and write so many items in the course of contracting for financial products. Both institutions and consumers must sign contract documents. However, such a contract is likely to be disadvantageous to consumers in the case of post-conflict disputes. Nevertheless, in the future, financial consumer protection regulations are expected to be in the form of the addition of conduct regulations. Thus, the regulation of conduct should focus on post-sales conflict issues. For example, subscription termination right and burden of proof of damages, etc. However, financial institutions will respond to the financial authorities' executive orders with administrative litigation and to consumers with legal action. In the end, if the matter of the dispute is crucial and serious, most of it is expected to get the Supreme Court's decision. Therefore, I hope that the judiciary will have '*consumer sensitivity*' as the court makes its ruling based on the so-called '*gender recognition sensitivity*' recently. In any case, the Financial Consumer Protection Act needs to specify the basis for the court judgment for consumer protection, considering the circumstances leading to the Supreme Court ruling on the post-conflict issue.

Second, we should clarify some terminology in the financial market field. Even in the Financial Consumer Protection Act, financial institutions are regarded as producers who produce and sell financial products. In other words, financial institutions manufacture and produce financial products and sell them to financial consumers. However, financial products are not products like smartphones or

ice cream. To produce smartphones, factories, machines, and workers must be combined. Selling KRW 1 trillion worth of smartphones makes Samsung Electronics' sales, but selling KRW 1 trillion worth of financial products does not make financial institution's sales. As you know, there is no sales item in the accounting standard of financial institutions. The financial industry is not manufacturing but the service industry. Financial instruments, no matter how much they are manufactured or sold, do not fall into GDP, the sum of goods and services produced. Financial institutions are not producers of financial instruments, but producers and suppliers of 'financial services' in the financial intermediation service market. Financial consumers would consume financial services, not products. This is similar to the relationship between producers and consumers who consume telecommunication services in the telecommunications market by carriers that produce intangible telecommunication services. Financial services even include services that devise and supply financial instruments that can be a diverse means of saving to consumers. Therefore, the Financial Consumer Protection Act needs to be a legal framework across overall financial services, not just a law that should be limited to the sale of financial instruments.

Third, in the financial sector, terms such as financial consumer protection, investor protection, and shareholder protection are often used interchangeably. Thus, a mixture of terms and concepts can make it difficult to clearly establish a financial consumer protection policy. So I would like to define it more clearly. Financial consumer protection is to protect consumers who are trading counterparty against financial institutions. In such trades, financial services are sold and purchased as services not goods. Moreover, investors may be included in some financial consumers, but investors and financial consumers are not exactly the same. For example, stock investor protection or shareholder protection is not the relationship between shareholders and financial institutions, but the protection of shareholder rights in the matter of ownership and governance scheme between shareholders and the management of the equity issuing company. So, this has nothing to do with protecting financial consumers. However, if there is a conflict between stock traders and securities firms who broker the stock trades, there may be a financial consumer protection issue. There seems to be no problem between securities firms and stock traders. However, the interest on the loan is extremely low and the brokerage's brokerage fee is too high when the stockholder's stock is lent through the securities firm. Also, there was a ghost stock incident of Samsung Securities about two years ago. There may be many financial consumer protection issues in this sector as well. Of course, it is also important to have legislation that protects shareholders.

Finally, the fundamental reason why consumers have been not protected in the Korean economy, not only in finance but also in other industries, lies not in the lack of conduct regulations, but

in the promotion policies of each governmental industry departments who have given preferential treatment to producers or enterprises. As I mentioned earlier in the apartment market, the major cause of such problems is the Ministry of Land, Infrastructure, and Transport's producer preferential policy. The producers would be protected by the relevant governmental ministry. Each department of government has implemented such policies since the 1960s, believing that profitability and scale should be guaranteed and increased in the industry under its jurisdiction. In the recent Corona 19 crisis, many people argued that the government should put financial resources into struggled firms and not inject cash into households. Some even criticize that giving cash to households is socialism. If so, the government should not help enterprises. The majority of Koreans still have a strong perception that businesses should take precedence over households, workers, and consumers. The completely wrong way of thinking that prioritizing business is capitalism and pro-market is also dominant. This is nothing more than the mercantilist ideology that Adam Smith fiercely criticized. In any case, this kind of public awareness is one of the core reasons that make it difficult to protect not only the general consumer but also financial consumers.

This concludes my discussion. Thank you.