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# 论金融消费者权益的保护

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# 论金融消费者权益的保护

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**摘要：**随着金融产品和金融服务的多元化发展，我国的商业银行等金融机构与客户之间的交易关系日趋紧密与复杂，金融消费者与商业银行之间涉及理财产品、电子银行、金融衍生品、信用卡、代理保险等诸多金融业务领域的相关争议、纠纷亦逐步增加。而近年来的国际金融危机的爆发与蔓延，使各国深刻认识到：忽视对金融消费者的保护会损害金融业的健康发展，是导致危机发生的一个重要原因。因此，欧美等国已加紧出台保护金融消费者权益的一系列法案。对我国而言，金融消费者权益保护尚属一个全新的命题，相关的法律制度建设相对滞后，尚无一部专门针对金融产品、服务与消费者权益保护问题的系统性法律，造成了商业银行等金融机构缺乏保护消费者权益的内在机制、消费者与金融机构之间信息不对称、金融消费者欠缺必要的金融知识、消费者投诉的处理机制也不健全的局面。鉴于此，有必要推动立法及监管部门完善相关法律制度，保障金融消费者的合法权益不受侵犯，维护金融体系的安全秩序与健康发展。

**关键词：**金融消费者 金融产品或服务 权益保护 金融监管机制

## 一、金融消费者权益保护问题的提出

### （一）国际上普遍重视金融消费者权益保护

2007 年以来，国际金融危机的爆发与蔓延促使各国进行深刻反思，对金融消费者权益保护不力被普遍认为是危机发生的一个重要原因。金融危机的教训使人们认识到，忽视对消费者权益的保护会损害金融业的健康发展的基础，进而影响金融体系的稳定性。基于这种认识，欧美等国开始修正过去片面维护金融自由化的态度，将消费者权益保护上升到维护金融安全的高度，并作为金融立法改革的一项重要任务。2009 年以来，欧美等国和一些国际组织纷纷出台有关消费者权益保护的重要法案和改革文件，如：美国 2010 年出台的《多德—弗兰克华尔街改革与消费者保护法》、英国 2010 年推出的《金融监管的新方法：判断、焦点和稳定性》以及世界银行 2011 年发布的《金融消费者保护的良好经验建议》等，这些法案和文件明显拓宽了对消费者实施保护的金融领域，进一步细化了金融机构对消费者的义务和责任，完善了金融消费者投诉管理和赔偿制度，以使消费者得到更有利的保护，避免金融机构侵害消费者利益。

与此同时，为强化金融消费者权益保护，欧美等国金融监管机构也着手实施重要变革。一方面，设立或准备设立专门的消费者权益监管主体。例如：美国2010年创建消费者金融保护署，将原来分散在各个机构的消费者保护职能全面整合移转至该署，赋予其规则制定权、裁量权、执行权等多项权力，确保其履行消费者权益保护职能的权威性、独立性和专业性。另一方面，在监管环节上，调整过去主要强调对金融机构销售与服务的“行为监管”方式，开始注意对金融产品本身实施“产品监管”，将早期产品干预作为金融监管的有效组成部分，要求金融产品对消费者而言应当是“合理并合适”的。例如：2010年英国金融服务局宣布其有权采取新的监管措施，包括金融产品前置审批、禁止新产品推出、产品价格干预、产品功能限制等。

## （二）我国金融消费者权益保护倍受关注

据中国消费者协会统计，2010年该协会共收到“银行、保险”类投诉3775件，其中营销类投诉达1196件，质量类投诉700件，涉及理财产品、电子银行、金融衍生品、信用卡、代理保险等诸多金融业务领域。有关纠纷一旦被曝光，往往对金融机构声誉产生不利影响，未能妥善解决问题的还可能引发诉讼案件。特别是国际金融危机以来，公众的维权意识逐渐提高，社会有关方面要求加强金融消费者权益保护呼声日益高涨。

金融消费与传统消费存在巨大差异，我国有关传统消费的既有规范难以完全适于金融消费。其特殊性主要表现在：（1）消费标的具有高风险性，收益具有不可预见性。作为金融消费者购买的金融商品，其本身虽无形却与风险直接相关，虽不会因购买该商品给消费者人身造成直接伤害，却可能给消费者造成财产上的巨大损失。另外，相对传统消费的有偿性或双务性，金融消费具有对价的不必然实现性。（2）销售方式普遍具有较强的劝诱性。一方面，金融商品的巨大杠杆效应和金融企业普遍采取的业绩与收入挂钩的管理方式，使得金融商品在销售过程普遍存在诱导式、劝诱性的销售方式。另一方面，金融商品具有高度的专业性和复杂性，金融消费者对此难以完全识别和认知。（3）格式合同在金融业中的广泛使用。虽然我国在《合同法》实施之前即在《消费者权益保护法》中对格式合同就加以规制，以保护消费者权益。但金融商品大量使用格式合同，格式条款的消极影响仍不容忽视，这就需要通过格式合同条款的规制来保护格式合同相对方的权利。

基于维护金融秩序与社会和谐的需要，我国金融监管机构也开始关注消费者

权益保护问题。2006年中国银监会在《商业银行金融创新指引》中首次使用“金融消费者”的提法，指出商业银行的金融创新应“满足金融消费者和投资者日益增长的需求，充分维护金融消费者和投资者的利益”。近几年，受欧美等国家相关金融监管改革的影响，有关监管机构更加重视金融消费者权益保护问题，陆续出台了若干与消费者权益保护有关的监管政策与办法。

与此同时，金融行业自律组织也对消费者权益保护问题进行积极探索。2010年中国银行业协会颁布《中国银行公平对待消费者自律公约》，要求会员单位加强服务管理、优化服务流程、提升服务质量，切实维护消费者权益；2011年中国银行业协会成立了消费者保护委员会，在全国银行业金融机构组织开展“金融知识万里行”消费者教育活动以及一系列消费者权益保护研讨会，引导银行重视和加强消费者权益保护工作。

对我国的商业银行而言，保护金融消费者权益既是商业银行的责任和义务，也是商业银行提升形象和竞争力的内在要求。

## 二、金融消费者概念的界定

### （一）我国现有立法的考察

1993年我国颁布《消费者权益保护法》时，尚未形成金融市场体系，金融领域的消费者权益保护问题也无从谈起。从立法语义看，《消法》有关消费者“为生活消费需要购买、使用商品或接受服务”的表述与现实生活中公众购买金融产品或接受金融服务的大部分行为并不相符。例如：购买金融机构理财产品的目的应当是投资，而不能将其归于“为生活消费需要……”。可见，《消法》有关规定不能完全适用于金融领域。迄今为止，我国的其他法律法规及监管规定还没有对金融领域的消费者概念作出任何界定。《商业银行法》、《证券法》和《保险法》等有关法律中提及的类似概念包括“存款人”、“投资者”、“被保险人”和“客户”等，但并无“金融消费者”。

虽然国际上也没有对“金融消费者”形成统一的立法和观点，但我国金融领域的“消费者”概念主要受西方国家金融监管改革的影响，因此，有必要结合发达国家金融领域消费者保护立法经验和商业银行业务实际来识别和判断金融领域的“消费者”。

### （二）“金融消费者”辨识与范围划定

笔者认为，可将金融消费者概念界定如下：为满足个人或家庭的金融需要而购买、使用金融产品或接受金融服务的个体社会成员。

金融系统的复杂会使金融消费者与金融投资者有时在同一市场中身份竞合，使得两个概念出现混用。从交易特征上看，金融消费者在行为目标、主体范围方面和金融投资者有所不同：前者主要为了满足自然人个人的金融需要，后者主要是为了获取资本回报，主体范围不限于自然人。从交易对象上看，确定金融消费者和投资者身份需要考虑交易相对人的因素：以证券市场上的自然人主体为例，相对于所购股票的上市公司而言，该自然人应视为投资者；而相对于提供证券交易服务的证券公司和证券交易所而言，该自然人应视为消费者。因此，比较合理的判断方法是根据主体特征、交易目的和相对人的情况确定金融消费者或投资者的身份。

首先，对于金融机构而言，消费者与客户的关系可以从三个方面来分析：

1、消费者是客户的下位概念。客户与交易相对人基本同义，是指金融机构的任何交易对象。《商业银行法》中采用了“存款人和其他客户”的提法，《证券法》中也多次提到“客户”，如“依法为客户开立的账户保密”、禁止证券公司及其从业人员从事“损害客户利益的欺诈行为”等。虽然上述立法均未对“客户”给出定义，但就其指代任何交易相对人而言，并无认识上的分歧。消费者概念则不同，在立法上，各国大都根据一定的标准划定消费者的范围，这势必将消费者限定为金融机构客户群体中的一部分。

2、消费者不包括机构客户。美日等国立法将金融消费者限定为个人，置于中国的环境下也是合理的。主要原因有三点：一是机构客户虽然在某种情况下也存在一定的弱势性，如在金融衍生产品交易方面受制于专业知识和经验，但其自我保护能力整体强于个人；二是若对机构客户使用消费者保护规则，将不合理地加重执法部门的工作强度，也增加了金融机构的合规成本，甚至使机构客户产生依赖、怠惰心理；三是机构客户如确需接受特别保护，亦可作出专门规定。因此，金融消费者既不宜也没必要包括机构客户。

其次，针对金融消费者的范围，美国采取的是一种务实开放的立法模式。一方面，立法概括性地对“消费者金融产品或服务”作了较宽泛的目的限定，即主要为了个人、亲属或同住人的目的。另一方面，立法对其具体范围作了明确的列举，同时规定在扩大“金融产品或服务”的范围时，考虑因素包括：（1）某种金融产品或服务可能采取欺诈的方式达成；（2）可能逃避联邦消费者金融法律；（3）对消费者有重大影响。尤其是将“对消费者有重大影响”作为一个统括性的原则，体现了务实的法律精神，凡是对个人产生重大影响的金融产品或服务均可有条件

地纳入消费者保护规则中来。

参考欧美等国相关立法观念，从立法角度看，我国的《商业银行法》第三条规定了商业银行经营的业务范围。鉴于商业银行的有些业务基本上不涉及个人客户，可以从“消费者金融产品或服务”的范围中排除，这些业务包括：发行金融债券，买卖政府债券、金融债券，从事同业拆借、买卖外汇等。从银行客户投诉反映的信息看，客户投诉问题主要集中在个金业务、银行卡、电子银行、运行管理、结算与现金管理、信贷管理等业务领域。结合上述两方面情况，可以先确定“消费者金融产品或服务”的范围，进而将该类产品或服务的购买人或接受者有条件地视为商业银行视角下的消费者。鉴于我国并非所有的商业银行业务都对客户的目的进行考察，现阶段可将相关金融产品或服务所涉及的所有个人客户一律视为消费者。由此来看，我国商业银行“消费者金融产品或服务”的范围可包括：（1）吸收存款；（2）发放贷款；（3）办理结算；（4）办理支票业务；（5）代理买卖外汇；（6）银行卡业务；（7）代理收付款项及代理保险业务；（8）提供保管箱业务；（9）结售汇业务；（10）个人理财；（11）资产托管；（12）贵金属业务；（13）金融市场相关业务。此外，如果以后新的金融业务对个人客户权益可能产生重大影响的，或者实践中容易发生欺诈等违规情况的，商业银行也应将其视之为“消费者金融产品或服务”，一并纳入消费者权益保护范围进行管理。

### 三、我国金融消费者权益保护存在的主要问题

金融消费者权益保护是新近提出的一个课题，还没有形成像普通消费者权益保护那样从理论到实践都比较成熟的体系。

#### （一）金融消费者权益保护法制建设相对滞后

在金融消费者权益保护方面，我国迄今为止还没有一部专门针对金融产品、服务与消费者权益保护问题的系统性法律、法规或者规章，相关规定散见于各类法律和监管规定中：一是《民法通则》、《合同法》、《侵权责任法》等重要基本民事法律，这些法律的立法重点只针对平等民事主体之间民事行为应当遵循的普遍性要求作出规定，给予消费者相对倾斜和前瞻性的法律保护则并非其主要任务。二是《中国人民银行法》、《银行业监督管理法》、《商业银行法》、《价格法》、《广告法》、《反不正当竞争法》等经济法律，这些法律分别对商业银行经营管理过程中有关行为进行了规范，但是对金融消费者权益的保护性规定要么过于原则，缺乏可操作性，要么集中于某些特定的领域，不能形成体系。而《消费者权益保护法》中界定的消费者概念与商业业银行自然人客户的范围并不完全契合，并且相

关制度设计没有充分考虑银行业务的特殊性(比如金融产品的收益性和风险性并存,金融消费者购买金融产品应具有更高的注意义务等),不能完全适用商业银行消费者保护领域。三是中国人民银行、银监会、财政部、国家工商管理总局等部门制定的部门规章和规范性文件,这些规定对于构建金融消费者权益保护的基本框架而言,存在效力层级低、原则性强、规定分散、适用范围窄、权利义务关系未明确界定等问题。

## **(二) 金融消费者权益保护行政监管上存在缺陷**

我国实行的是分业监管模式,分别由中国银行业监督管理委员会、中国证券监督管理委员会和中国保险业监督管理委员会负责银行业、证券业和保险业的监管,这种监管模式决定了由“三会”承担金融消费者权益保护职责将存在以下固有缺陷:

一方面,金融业普遍存在跨界经营、混业经营现象,银行代售基金、保险,银行推出投资证券等理财商品屡见不鲜,因此,需要一个机构能够为消费者提供综合性的保障。“三会”专注于一个领域的监管模式显然会存在一个部门在其他领域缺乏足够的专业能力,多个部门协调保护又效率低难度大等问题,难以满足完全保护金融消费者权益的需求。

另一方面,“三会”是银行业金融机构、证券业金融机构和保险业金融机构的直接监管者,这些机构的盈利水平和社会公众对他们的满意程度是考核“三会”监管业绩的重要指标。而加强消费者保护往往与金融机构提高盈利能力、树立金融机构的良好形象相悖,此时再由“三会”承担消费者保护职责显然会增加道德风险的发生。

## **(三) 金融机构缺乏消费者保护内在机制**

由于我国对金融消费者保护体制缺乏明确的规定,一直处于统一监管和分业监管两种模式交叉共存的状态。一方面,工商行政管理部门依托《消费者权益保护法》不分行业地对消费者实施统一的保护;另一方面金融监管部门也承担着各自行业的消费者保护职能,因而在开展相关工作时往往需要工商与金融监管部门进行协作。实践中,由于商业银行等金融机构具有雄厚的经济实力、庞大的组织机构、大量的专业人才、丰富的金融交易信息,以及其对交易时间、交易标的、交易规则等因素的高度控制力,决定了其在相关业务中的实质主导地位;银行业具有较高的风险性,银行业的高风险性强化了银行对风险的防范,银行过度预期风险并强调风险的转嫁,可能导致与消费者之间风险分配的不公平与不合理;银

行业竞争激烈，而且盈利空间有限，迫于成本压力，商业银行对于长期形成的有利于银行的交易格局乐享其成。这些因素可能造成商业银行等金融机构缺乏加强金融消费者权益保护的内在动力。同时，在法制不健全的情况下，商业银行等金融机构也没有面临加强金融消费者权益保护的外部强制性要求。另外，虽然近期中国银监会成立了银行业消费者权益保护局并开始运作，但商业银行等金融机构大多未就金融消费者权益保护构建专门的体制机制，内部相关部门工作职责还不明确，分工配合、协调一致的金融消费者权益保护工作机制尚未形成。各银行在提供产品和服务的过程中，也很少将公平合理地设置消费者和银行双方的权利义务问题、稳妥解决消费者诉求问题等上升到金融消费者权益保护的高度来看待。

#### **（四）消费者与金融机构之间信息不对称**

保护消费者知情权的经济根源是经营者与消费者之间日益加剧的信息不对称现象。金融领域的信息不对称，消费者因信息劣势被迫面临不利选择，不得不承担双方交易的绝大部分风险，成为事实上的“弱者”，这就破坏了市场的正常秩序，导致了经济运行的低效率，严重的甚至可能造成消费市场崩溃的后果。从实践来看，一方面相当数量的金融消费者缺乏必要的金融知识，对金融服务和金融产品不够了解，对自身承受风险的能力评估不客观，对个人投资金融产品的适度性把握不准确；另一方面，已经市场化经营的商业银行面临着激烈的市场竞争压力，消费者并不知晓商业银行为此所付出的巨大成本和承担的风险责任。上述信息不对称的问题有可能导致消费者与商业银行之间出现误解和分歧，甚至产生争议和纠纷。当前，金融素养对家庭金融决策意义显得尤其重要；金融素养不仅是一个家庭的生存技能，也是金融稳定的重要支柱。伴随着金融创新和金融产品的日趋复杂，金融风险逐渐向普通家庭转移，金融素养的缺乏容易导致金融消费者无法做出正确合理的金融决策，使经济危机带来的不良作用更加恶化。因此，提高金融素养十分必要。加拿大和美国更早地意识到上述问题的严重性，为此相继在金融消费者保护机构内部设立了开展金融消费者教育和宣传的部门。

#### **（五）金融消费者权益纠纷解决机制上的缺陷**

我国金融消费者权益的保护，除了事先的权益保护制度缺失外，事后投诉受理与司法救济渠道不完善也是当前存在的一个突出问题。

目前，我国金融机构内部基本都设立了相应的投诉受理渠道，但由于其存在立场偏向，在发生纠纷时，该渠道并不能够取信于消费者。外部投诉受理机制主要由各金融监管部门组成，但往往和信访制度相混同，并非严格意义上的投诉处



理机制，无论在效力还是效率上都差强人意。另外，各投诉受理机制之间相互隔离，缺乏系统连接，难以形成妥善解决金融纠纷的合力，尚待有关立法予以整合。

对于司法与仲裁救济途径，金融消费者通过司法途径得到救济是比较困难的。首先，司法程序复杂、耗时耗力。其次，金融纠纷涉及内容专业性比较强，金融审判庭的水平在很大程度上，决定着案件能否得以妥善解决。再次，金融消费者能否搜集到足够的证据证明金融机构存在未尽充分信息披露义务或欺诈行为，这也是难题。最后，很多金融商品都有跨国性特点，如雷曼迷你债券案，在世界各地都有投资者，涉及到跨国诉讼的问题，其中管辖、准据法的适用以及跨国执行等问题都非常棘手。我国香港投资者向美国起诉就遇到了很大的障碍。

除此之外，仲裁解决模式在我国金融领域初显端倪，如 2007 年上海金融仲裁院正式成立，上海仲裁委员会是依法设立的专门解决上述金融争议的特设机构，独立开展金融仲裁业务。我国现有法律途径还不能解决专业性很强的金融纷争，金融仲裁的出现将有助于提高金融纷争解决的有效性和公正性。但是，目前仲裁解决模式尚未得到充分发展，实际操作中还存在很多问题，有待进一步完善。

目前，成立消保局的国家部门屈指可数，很多银行没有设立受理消费者投诉的部门，消费者在投诉时也没有明确的投诉部门和流程。监管机构还没有制定专门的消费者投诉监管办法，也没有建立行业性的消费者投诉处理机制。另外，消费者与商业银行之间纠纷处理机制也不健全，解决的手段比较单一，过度依赖诉讼途径，在投诉和诉讼之间缺乏一个具有缓冲作用的争议处理、调解机制，容易导致纠纷风险扩大化和复杂化，并形成连锁反应。

#### **四、健全商业银行消费者权益保护机制**

金融危机以来，许多国际大型银行深刻认识到：消费者是银行经营效益的重要来源，消费者权益保护工作关系到商业利益和银行信誉。商业银行应主动顺应金融改革趋势，积极在银行内部培育保护消费者合法权益的理念和企业文化，通过持续不断的宣传教育，促使全体员工充分认识到保护消费者合法权益就是保护银行自身利益，消费者权益保护工作做得好，不仅可以为银行赢得客户口碑和市场美誉度，还可以因客户忠诚度提高自身竞争力，保障商业银行可持续健康发展。为此，笔者提出以下相关建议：

##### **（一）推动立法及监管部门完善相关法律制度**

从金融市场特点、金融监管体制和金融业务性质等方面考虑，需要对金融消费者保护专门进行立法。首先，金融混业经营的市场造就了越来越多的新型金融

产品，这些产品的综合性和复杂程度很高。在这类新型金融产品面前，泾渭分明的分业监管体制内部如果出现错位和不协调，监管很容易出现真空、重叠或宽严不一等情况，金融企业损害消费者利益的问题将变得非常突出。其次，金融业具有极强的外部效应，行业内的纠纷和矛盾容易引发激烈的社会利益冲突，对社会稳定和经济安全构成较严重的威胁，金融业监管也因此有着和其他经济领域监管不同的特点，这种特点在金融消费者保护中也会有所表现，需要给予专门的保护。再次，随着金融业务的不断创新，金融产品和服务背后的契约结构和法律关系越发复杂，其风险更加扑朔迷离，很难为非专业人士了解和掌握，需要专门的规则保障金融消费者的知情权等权利。为此，在条件成熟时，我国应当考虑制定专门的《金融消费者权益保护法》或《金融消费者保护条例》，明确金融消费者的概念、金融权益类型、金融机构与金融消费者双方的权利和义务、金融权益保护范围、救济途径、金融消费者保护机构及其职责、权限、监管措施等，并建立强制信息披露制度、适度投资者准入制度、消费者信息保护制度、冷静期制度等，为我国强化对“金融消费者”这一弱势群体的保护提供有力的法律保障。尽快修改完善有关监管法律规定，将“适当保护消费者权益”列为银行业监管部门的监管工作目标，赋予监管机构在保护消费者权益方面更大的监管职能，并承担协调处理相关纠纷的职责，通过行政调解等方式缓冲有关纠纷和矛盾。同时，在相关制度设计过程中，应注意把握依法、合理、公平、适度的原则，既充分重视金融消费者保护问题，亦不可因过度保护而阻碍金融创新的发展。在专门立法出台之前，可通过修订《消费者权益保护法》和金融法律法规作为过渡期，明确金融消费者权益保护的基本规则，并在实践中积累相关的执法经验。

## **（二）健全消费者权益保护体制机制**

我国保监会的保险消费者权益保护局、证监会的投资者保护局和银监会的银行业消费者权益保护局先后于 2011 年、2012 年成立，表明我国金融消费者保护体制选择了在各金融监管机构内设立专门的金融消费者保护部门，全面担负起各金融行业领域内的消费者保护职能，但目前仍不清楚是否意味着工商部门不再行使金融消费者保护职能。在分业监管的机制下，要加强各分业领域监管政策的协调，实现对多种金融领域消费者权益的统一保护。我国实行的是以机构分业为基础的金融监管体制。现行的分业监管体制是建立在不同金融机构分业经营基础之上，其前提是不同金融机构的功能完全可分，并且不存在交叉重叠。而主要金融服务产品包括存款、保险、基金等诸多品种，其涉及诸多金融分业领域。各分业

领域对金融消费者权利的规制原则及具体内容不尽相同。如券商集合理财和信托公司的集合理财是十分相似的两类业务，却要适用《证券公司客户资产管理业务试行办法》和《信托公司资金信托业务管理办法》两项不同的规定，形成代理关系和信托关系两个不同的法律关系，接受证监会与银监会两个不同监管部门的监管。因此，须在各监管部门之间形成统一的规范，进行统一的监管，实现金融消费者权益的保护。

商业银行在构建消费者保护体制机制过程中，可统筹考虑以下几个方面的问题：第一，制定适用于全集团的消费者权益保护规章制度，落实有关法律法规和监管要求，确保集团范围内的消费者保护工作有章可循。第二，落实消费者权益保护的全流程管理措施，明确各个业务环节上需要重点关注的与消费者权益保护相关的法律、法规和监管规则要求，并按照相应的要求进行流程控制。第三，建立有效的信息传递和反馈机制，确保商业银行总行能够及时、准确、全面获取分支机构的相关信息，形成有效的系统支持和信息传递。第四，建立集团口径的消费者权益保护应急处理机制，对附属机构与境外机构发生的客户投诉事件等进行监测与管理，防控相关风险。第五，进一步完善中间业务收费机制，有关产品收费项目推出前由相关部门对收费的合法性、合规性、合理性等进行审核，对于涉及消费者权益保护的重要的业务收费事项，应提交银行高管层或者消费者权益保护机构审议决定。

### **（三）加强消费者信息安全保护工作**

从国内外相关法律规定和监管要求来看，消费者信息和相关隐私普遍受到法律保护，任何违反规定使用、转移、泄露、出售消费者信息和隐私的行为均应承担法律责任。金融消费者信息保护不当有可能引发重大的声誉和法律风险，商业银行要从战略高度重视消费者信息保护问题，建立消费者信息保护组织架构，确立消费者信息保护牵头部门，合理规划消费者信息保护架构和基本流程，明确相关部门的工作职责，逐步形成一套组织严密、分工明确、流程科学、依法合规的消费者信息保护制度，明确消费者信息保护的基本原则、相关职能部门管理职能分工、消费者信息使用许可与限制、内部审批流程、境内外机构和总分行机构之间的防火墙设置、监督检查及应急处理机制等相关制度规范，做到有章可循，有效防控相关风险。

### **（四）加强金融知识的普及和教育，严格履行相关信息披露义务**

随着金融混业经营体制的建立，金融综合创新此起彼伏，新型金融专业术语

不断涌现，导致消费者颇难理解而影响其判断力，作出金融决策的风险日趋增大。因此，建议我国政府一方面规定在学校中普及金融基础知识，另一方面鼓励金融机构开展消费金融知识咨询和宣传活动。

全面、透明、客观的信息披露是消费者权益保护的关键，也是商业银行依法尊重消费者知情权的具体表现。商业银行在履行信息披露义务过程中应注意：第一，信息披露应真实、完整、易懂。商业银行的信息披露应遵循如实告知原则，不得进行虚假陈述和误导；披露所有可能影响消费者判断和选择的资讯，包括对产品有利和不利信息，不能有重大遗漏或隐瞒；尽量使用浅显易懂、清晰直白的语言，帮助消费者有效地理解相关信息。第二，信息披露应充分、及时、有效。商业银行向消费者提供金融产品和金融服务，要做到全方位和全程的信息披露。在业务的前、中、后各个阶段充分保障消费者的知情权，通过多种方式和渠道及时向消费者进行定期和不定期的信息披露，确保消费者充分获得相关信息。

#### **（五）改进客户投诉管理工作**

结合近几年银行客户投诉情况，商业银行应注意加强和改进以下几方面工作：一是进一步加强客户投诉风险定期通报和报告机制，由客户投诉牵头管理部门定期向业务部门提示客户投诉反映出来的风险和问题，有针对性地提出解决或改进的意见和建议；二是完善重大客户投诉处理机制，重点关注重大、敏感、重复、处理不及时和客户不满意的客户投诉问题；三是加强客户投诉信息化建设，利用电子信息系统统计、跟踪、监测客户投诉处理情况，督促和指导分支机构及时妥善处理；四是加大对银行客户投诉运行机制的监督、检查和评估，进一步完善有关责任追究制度；五是加强客户投诉处理工作培训，不断提高网点人员、坐席客服和专业部门管理人员现场处理客户投诉的技巧和能力。

#### **（六）不断完善适当投资者评估机制**

依照银监会有关规定，商业银行在一定程度上已经建立客户适度风险评估机制。由于商业银行产品涉及个人客户数量众多，消费者权益保护性质相对敏感，商业银行应对相关产品设计及销售情况进行定期排查，对客户是否具备购买相应风险产品的主体资格以及在保护消费者知情权方面的情况也要进行重点排查，及时纠正和解决发现的问题，不断完善客户风险等级动态评估调整、刚性限购等措施，防止出现损害消费者权益的行为，维护金融消费者信心，促进银行业的健康有序发展。

#### **（七）境外机构注意遵循当地监管规定**

商业银行各境外机构（特别是在美国、欧盟、英国、日本、香港地区等重点区域有个人业务的境外机构）应注意严格遵守当地有关法律和监管要求，重点关注相关产品和服务中涉及的适当投资者制度、客户信息保护、说明义务履行、产品信息披露等问题；尽快设立有关专门机构或明确专人处理消费者权益保护事宜，必要时聘请当地律师对有关服务和产品进行消费者权益保护的特别审查；根据当地法律环境提前制定相关应急预案，遇到涉及消费者权益的重大事项，立即向总行报告，并依法合规妥善处理，防止相关法律风险和声誉风险。同时，各商业银行总行要加大对境外机构消费者权益保护的 legal 支持力度，有针对性地加强对高风险国家（地区）的管理，严格遵守客户信息跨境转移的禁止性规定，建立健全集团内部的风险隔离机制，明确总行各部门及相关境外机构的职责及处理流程。

总而言之，笔者认为：现代金融是市场化金融、是法治金融，一切金融活动既要遵守市场规则，又要受到法律的调整和规范。一国市场化进程的快慢及金融立法的完善与否直接关系到该国金融行业发展的速度和质量，而金融活动中相关利益者权益的保护程度则直接影响到该国金融体系的安全与稳定。金融消费作为现代金融的重要组成部分，其对保证我国经济持续健康快速发展，建设社会主义现代化强国意义重大而深远。因此，加强保障为数众多且广泛分散的金融消费者权益，建立高效、便捷、公正的金融消费者权益保护机制，发展和繁荣我国金融消费市场，是当前实现建设我国国际金融中心目标的重要任务，应积极探索保护金融消费者权益的机制。

## **An Analysis of the Protection of Financial Consumer's Rights and Interests**

PANG Hua-ling

**Abstract:** With the multiplex development of financial product and financial service, the relationship between financial institutions such as commercial banks and consumers tends to be closer and more complex. Meanwhile, the controversy between financial consumers and commercial banks referring to financial business such as Chowmatistic products、electronical bank、finance-derivate products、credit card、agency insurance and so on is increasing as well. The international fianciance crisis which broke out and overspread in recent years makes each country realize that it is a significant factor contributing to the crisis to ignore the protection of finance consumer, for which is harmful to the development of financial industry. Because of this, Western countries have pressed on with a series of legislation concering protecting financial consumer's rights and interests. In terms of china, the financial consumer's rights and interests protecting is a brand-new proposition of which Correlative legislation is comparatively lagged behind, and there is not a systemic law relating to financial products, services and the protection of financial consumer's rights and interests. Owing to this, commercial banks and other financial insititutions lack the inherent mechanism to protect consumer and have not build special system to protect it. There is asymmetric information between consumers and financial institutions. Financial consumers lack necessary financial knowledge. The mechanism to handle consumer's complaints is not perfect. Based on the statement above, it is necessary to promote legislative and regulatory authorities to improve the relevant legel system, guarantee the legal rights and interests away from invasion and preserve security of finance system to keep it develop in a fit way.

**key words:** financial consumer; fiancial product or service; rights

and interests protection; financial regulatory mechanism

## **I. The backdrop against which the issue is raised**

### **(I) The international community to highlight financial consumer protection**

The global financial crisis since 2007 has provoked deep reflection among nations and it is widely believed that one of the main reasons attributing to the crisis is lack of effective consumer protection. The lessons the financial crisis has taught lead to the awareness that neglect of consumer protection would undermine the foundation of the sound development of the financial sector and hence affect the stability of the financial system. Based on such awareness, Europe and USA have set out to correct their unilateral attitude toward financial deregulation, highlight consumer protection, and include it as one important mission of financial legislation reform. Since 2009, Europe, USA and some international organizations have released important laws and reform acts in respect of consumer protection, for example, “Dodd-Frank Wall Street Reform and Consumer Protection Act” issued in 2010 in USA, “A New Approach to Financial Regulation: Judgment, Focus and Stability” issued in 2010 in UK, “Good Practices for Financial Consumer Protection” issued by World Bank in 2011. All these initiatives obviously broaden the financial areas for consumer protection, refine the duties and obligations of financial institutions for consumers, and improve the financial consumer complaint management and compensation policy so that consumers can get more protection and financial institutions are not in a position to infringe on consumers’ rights.

In the meantime, to consolidate financial consumer protection, financial regulators in Europe and USA have embarked on important reforms to set up dedicated consumer protection regulation body on the one hand, USA created Consumer Financial Protection Bureau in 2010 by integrating consumer protection functions that scattered in various institutions and granted the bureau authorities in rules setting, discretion, execution, etc to ensure its authoritativeness, independence and specialization in consumer protection. On the other hand, the past

approach of behavioral regulation in financial institution sales and service was adjusted to implement product regulation and incorporate early product intervention as an effective part of financial regulation which requires financial products ought to be reasonable and appropriate for consumers. For example, the Financial Services Authority announced in 2010 that it has the right to adopt new regulation measures, including financial product front-end approval, prohibiting new product launch, product price intervention, product function restriction, etc.

## **(II) Increased attention to financial consumer protection in China**

According to China Consumers Association, it received 3775 pieces of complaints concerning banking and insurance areas in 2010, including 1196 about marketing and 700 about quality. The complaints covered wealth management products, e-banking, financial derivatives, credit card, agency insurance and other areas. Once such disputes are exposed, it would invite unfavorable effect on the reputation of financial institutions and if not properly disposed, would bring about potential litigations. Particularly since the global financial crisis, the voices of requiring enhanced financial consumer protection have become increasingly louder with the increased awareness in this regard.

Due to big differences between financial consumption and traditional consumption, the existing regulations are difficult to accommodate financial consumption. The particularity lies in: (1) High risk for consumption object and unpredictability for yield. Financial products purchased by financial consumers are directly linked to risks and may cause enormous loss to them though they would not cause direct injury. In addition, financial consumption would not necessarily realize its consideration. (2) Widespread induced consumption. On the one hand, the big leverage in financial products and the widespread management approach of performance linking to income as adopted by financial institutions lead to induced consumption. On the other hand, financial products are highly specialized and sophisticated so they are not completely understandable to consumers. (3) The wide use of formatted contract brings negative impact and it is required to protect the rights and interests of the counterpart through restricting the clauses in the formatted



contract.

Out of the need for safeguarding financial order and social harmony, Chinese regulators have started to highlight consumer protection. In 2006, China Banking Regulatory Commission put forward “financial consumers” for the first time in its released guidance for financial innovation of commercial banks, and pointed out that “financial innovation of commercial banks should meet the increasing demand of financial consumers and investors and fully protect their interests”. In recent years, influenced by financial regulation reform in Europe and USA, Chinese regulators are putting more weight on the issue of financial consumer protection and have issued regulations and rules in this regard.

Meanwhile, China Banking Association has actively explored the issue of consumer protection. It released the self-discipline agreement on fair treatment of consumers by banks in China in 2010 requiring its members to enhance service management, optimize service process, improve service quality and practically protect consumer’s rights and interests. In 2011 China Banking Association set up Consumer Protection Committee and launched consumer education campaign and a series of seminars on consumer protection among banking institutions and guided banks to increase attention to and enhance consumer protection.

For commercial banks in China, financial consumer protection is the intrinsic requirement of improving their image and competitive edge as well as their obligation and responsibility.

## **II. The definition of the concept of financial consumers**

### **(I) The investigation of Chinese existing legislation**

In 1993, when we promulgated the “Consumer Protection Law”, China has not yet formed a financial market system, the financial problems of the field of consumer protection is also out of the question. From the perspective of legislative semantics, the statement “purchasing or using goods or receiving services for a living need” about consumers in “Consumer Law” is not consist with the most behavior of the public purchasing financial products or accepting financial services in the real life. For example, the purpose of purchasing financial institution financing products should be an investment, rather than attribute it to “life

consumption need”. Obviously, the relevant provisions in “Consumer Law” can’t be fully applicable to the financial field. So far, the other regulations and regulatory requirements also do not make any defined concept in consumer financial field. The other similar concepts which include “deposit”, “investor”, “insured person” and “customer” are referred to in the “Commercial Bank Law”, “Securities Law”, “Insurance Law” and some relevant laws, but there is no “financial consumers”.

Although it has not formed the legislation and unified view to the concept of “financial consumer” in the world, the “consumer” concept in financial field is mainly affected by the financial regulatory reform in western countries. Therefore, it is necessary to combine financial consumer protection legislation experience and commercial banking business practice of the developed countries to identify and judge the “consumer finance”.

## **(II) The identification and scoping of “financial consumers”**

I believe that the concept of financial consumers is defined as follows: individual members of society who purchase and use the financial products or accept financial services to meet the financial needs of individuals or families.

The complexity of the financial system sometimes will make the identity concurrence of financial consumers and financial investors in the same market, the two concepts appear mixed. From the characteristics of transaction, the financial consumers is different with the financial investors on target, main scope: the former mainly in order to meet the personal financial needs of a natural person, the latter mainly in order to obtain a return on capital, the main scope is not limited to natural persons. From the transaction object, to determine the identity of financial consumers and investors, the counterparty factors need to be considered: the natural person subject on the securities market, for example, should be deemed to investors in terms of the listed company that the person subject purchases stock from; on the other hand, the natural person shall be deemed to consumers in terms of the securities companies and stock exchange who provide securities trading services. Therefore, a reasonable judgment is according to the main characteristics, trading purposes and

the counterpart's situation to determine the identity of financial consumers or investors.

First of all, in terms of financial institutions, the relationship between consumer and customer can be analyzed from three aspects:

1. The consumer is a subordinate concept of client. The concept of client almost synonymous to trading counterpart is the object of any transactions of the financial institutions. It has been mentioned as “depositors and other clients” in “Commercial Bank Law”, “client” also has been mentioned many times in “Securities Law”, such as “keep secret for the opened clients’ accounts according to the law”, securities company and their employees engaged in fraud behavior of “damaging the interests of clients”. None of the above-mentioned legislation gives the definition of “client” refers to, but in terms of any trading counterpart, no differences on understanding. However, the concept of consumer is different. Countries mostly delineated the scope of the consumer based on certain standards, which is bound to the consumers as a part of the clients of financial institutions on legislation.

2. The concept of consumers does not include institutional clients. The financial consumers are limited to individuals in the legislation of the United States, Japan et al. It is reasonable under the environment of China. There are three main points: Firstly, Although the institutional clients are vulnerable in some cases such as financial derivatives transactions are subject to the professional knowledge and experience, their ability to protect themselves as a whole stronger than the individuals; Secondly, if using consumer protection rules on institutional clients, it will unreasonably increase the intensity of the work of the law enforcement agencies, increase compliance costs for financial institutions, and even make the institutional clients to produce dependence, lazy mental; Thirdly, special provisions could be made when the institutional clients need special protection if it proves necessary. Therefore, financial consumers neither suitable nor need to include institutional clients.

What's more, for a range of financial consumers, the United States has adopted a pragmatic and open legislative mode. On the one hand, the legislative made a broader purpose limited summarily of “consumer

financial products or services”, that is primarily for personal, family or household purposes. On the other hand, the legislation made explicit enumeration for its specific scope, while providing to expand the range of “financial products or services”, the factors is considered including: (1) some kind of financial product or service may be reached by fraudulence; (2) may escape federal consumer financial laws; (3) having a significant impact on consumers. In particular, making “a significant impact on consumers” as an omnibus principle embodied the pragmatic spirit of the law and a significant impact on all of the personal financial products or services can be conditionally included in the consumer protection rules.

Referring to the legislative concepts of Europe and the United States et al. and from the view of legislations, article III of “Commercial Bank Law” provides the scope of business of commercial banks. In consideration of some commercial bank businesses basically does not involve individual customers, they can be excluded from the scope of the “consumer financial products or services”. These businesses include: the issuance of financial bonds, trading in government bonds, financial bonds, engaged in inter-bank borrowing, to buy and sell foreign exchange et al. The information complained from bank customers reflects that customer complaints are mainly concentrated in a gold business, bank cards, electronic banking, operation management, settlement and cash management, credit management, and other business areas. Combining these two aspects mentioned above, the scope of “consumer financial products or services” could be first determined. And then purchasers or recipients of this kind of products or services could conditionally as the consumers under the commercial banks perspective. Not all commercial banking of our country investigating the customers’ purposes, at this stage, all of the individual customers related financial products or services could be regard as consumers. From this point of view, the range of “consumer financial products or services” of our commercial banks may include: (1) deposits; (2) loans; (3) apply for settlement; (4) the check business; (5) Agent of trading foreign exchange; (6) bank card business; (7) collection and payment agency insurance business; (8) providing a safe deposit box services; (9) foreign exchange transactions;

(10) personal finance; (11) asset custody; (12) precious metals business; (13) financial markets-related businesses. In addition, if the new financial business has a significant impact on customers' personal interests, or fraud and other irregularities occur in practice, the commercial banks should be regarded them as "consumer financial products or services", and bring them together in the scope of protection of the interests of consumers to manage.

### **III. The main problems of China's financial consumer protection**

There is a new topic proposed recently which is called Financial Consumer Protection. Comparing with the ordinary consumer protection, it has not formed a relatively mature system from theory to practice.

#### **(I) The legal system of financial consumers protection is lagging behind relatively**

In the aspect of Financial Consumer Protection, China has so far not had systemic laws, rules or regulations which are specifically about financial products, services and consumer protection issues. The relevant provisions are scattered in various legal and regulatory requirements: First, in "Civil Law", "Contract Law", "Tort liability Act" and other important basic civil laws, the legislative focus of these laws only provides the civil behavior which should follow the universal requirements among the equality civil subjects. However, to give consumers the relative tilt and the forward-looking legal protection is not the main task of these laws. Second, in "the People's Bank of China Law", "the Banking Supervision Law", "Commercial Bank Law", "Price Law", "Advertising Law", "Anti-Unfair Competition Law" and other economic laws, they have standardized the behaviors which relate to commercial banks management process, but the protective requirements about the financial consumers rights and interests are either too principle to maneuverability, or too concentrated in certain areas to form a system. However, the range of the concept of consumers and commercial banks natural clients which defined in "Consumer Protection Law" is not fully fit, and the system design does not take full account of the special nature of the banking business (such as the coexistence of profitability and risk of financial products, financial consumers who buy financial products

should have a higher duty of care, etc.). Thus, this concept of consumers can not be fully applicable to the field of commercial banks consumer protection. Third, The People's Bank of China, China Banking Regulatory Commission, the Ministry of Finance, State Administration for Industry and Commerce Administration, etc. which develop departmental regulations and normative documents, for building the basic framework of the financial consumers protection, exist the questions such as low level of effectiveness, principled, require dispersed, narrow scope of application, and the rights and obligations are not explicitly defined.

## **(II) Defect of financial consumer rights and protection by administration regulation**

Our country implements is divided industry the regulatory model, respectively be responsible for the banking, securities and insurance regulatory by the banking regulatory commission of China, the securities regulatory commission of China and the insurance industry supervision and management committee of China, this regulation mode determines the borne by this “three organization” of financial consumer rights and interests protection responsibility inherent defects will exist the following:

On the one hand, the financial sector are widespread cross-border management and mixed management phenomenon, banks sell funds, insurance, the other bank financial products, such as investment securities is common, therefore, we need an institution to provide comprehensive protection for consumers. This "three organization" focus on one area of regulatory model will obviously there is a department of the lack of adequate professional ability in other areas, multiple departments coordinated protection and difficult problems such as low efficiency, difficult to meet the needs of complete protection of financial consumer rights and interests.

On the other hand, this “three organization” is direct supervisors of banking financial institutions, securities financial institutions, financial institutions and insurance, profitability of these institutions and the social public's assessment for their satisfaction is this “three organization” important indicator of regulation. And strengthening the protection of

consumers is opposite to improve profitability and financial institutions, establish a good image of the financial institutions, at this time ,this “three organization” take the functions of consumer protection will obviously increase the occurrence of moral hazard.

### **(III) Financial institutions lack of consumer protection mechanism**

Due to the lack of clear rules of financial consumer protection system, has been in a unified regulation and cross pattern differentiated regulation two coexistence state. On the one hand, the administrative authority for industry and commerce rely on the “Law on Protection of the Rights and Interests of Consumers” industry-agnostic implement unified protection for consumers; On the other hand, financial regulators also bear the function of consumer protection in the respective industries, so when carrying out related work often need to collaborate with financial supervision and regulation department for industry and commerce. In practice, because the commercial banks and other financial institutions have strong economic strength, large organizations, a large number of professional talents, rich financial transaction information, and it has height of the control for the trade time, trade mark, trading rules, determines its real dominant position in related business; Banking has high risks, the higher risk for banks strengths the bank of risk prevention, bank risk of excessive expectations and to emphasize risk passed on, may leads to the unfair of risk allocation between customers and unreasonable; Banking industry competition is intense, and the profit space is limited, under cost pressure, commercial banks enjoy advantageous to the bank's trading pattern formed by a long period of time. These factors may cause commercial banks and other financial institutions lack the inner motive power of strengthening the protection of financial consumer rights and interests. At the same time, in the case of a legal system is not sound, commercial banks and other financial institutions also have no face to strengthen external mandatory requirements of financial consumer rights and interests protection. In addition, although the China banking regulatory commission recently established banking consumer rights and interests protection and come into operation, but commercial banks and other financial institutions are not just financial consumer rights and

interests protection to build systems and mechanisms, internal related departments responsibility is not clear, division of labor cooperation, coordinated financial consumer rights and interests protection mechanism has not yet formed. Banks in the process of providing products and services, and rarely set fair to consumers and banks, err on the side of the rights and obligations of both sides solve the problem of consumer demands and rose to the height of the financial consumer rights and interests protection.

#### **(IV) Information asymmetry between consumers and financial institutions**

To protect consumers' right to know the economic root of is growing between operators and consumers of information asymmetry phenomenon. Asymmetric information in the field of financial, consumer information disadvantage forced to face the adverse selection, for the most part have to bear the transaction risk, become "the weak", in fact, it destroyed the normal order of the market, led to the low efficiency of economic operation, serious consequences may even cause consumer market collapse. From the practice, on the one hand, a considerable amount of financial consumers lack the necessary financial knowledge, the financial services and financial products is not enough to understand, to own the ability of the risk assessment is not objective, suitability of personal investment financial products inaccurate grasp; on the other hand, the market-management of commercial banks, facing the fierce market competition, consumers did not know the amount of the commercial banks huge cost and the risk of responsibility. The information asymmetry problem may lead to misunderstanding and disagreement between the consumer and commercial banks, and even generate controversy and disputes. At present, the financial literacy to family financial decision is especially important. Financial literacy is not only a family's survival skills, also is the important pillar of financial stability. With increasingly complex financial innovation and financial products, financial risk gradually shift to ordinary families, lack of financial literacy is easy to cause the financial consumers can't make the right financial decision, make the bad effect caused by the economic



crisis even worse. Therefore, it is necessary to improve the financial literacy. Canada and the United States earlier aware of the seriousness of the problem, for this one after another in the financial consumer protection agency set up to carry out internal financial consumer education and propaganda department.

#### **(V) Defects in financial consumer rights and dispute resolution mechanism**

Protection of financial consumer rights and interests in our country, in addition to the lack of rights and interests protection system in advance, after the complaint acceptance and the judicial relief channels not perfect is also a prominent problem at present.

At present, the internal basic financial institutions have set up corresponding complaint channel, but because of its position to, in the event of a dispute, the channel is not able to win the trust from consumers. External complaint acceptance mechanism is mainly composed of all financial regulators, but often with letters and visits system confusion, not complaint handling mechanism in a strict sense, no matter on the effectiveness or efficiency. In addition, the isolation between each complaint acceptance mechanism, lack of system connection, together, difficult to form a proper settlement of the financial dispute pending legislation to be integrated.

For justice and arbitration relief way, financial consumer it is difficult for relief through judicial channels. First of all, the judicial process is complex, time-consuming. Secondly, the financial disputes involving the content of professional stronger, the financial division level to a great extent, decides the case can be solved properly. Thirdly, the financial consumers can collect enough evidence to prove the existence of financial institutions in the information disclosure obligations in full or not fraud, it is also a real problem. Finally, a lot of financial products have transnational characteristics, such as Lehman Minibonds Case, have investors all over the world, involve the issue of transnational litigation, including applicable jurisdiction, applicable law and multinational implementation problems are very difficult. Hong Kong investors to the United States to prosecute, encountered many obstacles

In addition, the arbitration pattern in our country at the beginning of the financial sector into being, such as Shanghai financial arbitration court formally established in 2007, Shanghai arbitration committee is set up in accordance with the law to solve the financial dispute the AD hoc institution, financial arbitration business independently. Our country existing legal avenues also cannot solve very professional financial disputes, and the emergence of financial intermediation will contribute to improve the effectiveness of the financial dispute solution and impartiality. But the current arbitration mode has not been fully developed, still exist many problems in the actual operation, remains to be further improved. Currently, set up the consumer bureau ministry are numbered, many banks have not set up to accept consumer complaints department, and there is no specific complaints department and process for consumer complaints. Regulators have yet to make special regulation of consumer complaints, nor the consumer complaint handling mechanism in the industry. In addition, consumer and commercial banks between the dispute resolution mechanism is not sound, solve the method is single, over-reliance on litigation approach, on complaints and litigation between the lack of a buffer role disputes, mediation mechanism, risk escalation and complicated, easy to cause disputes and form a chain reaction.

#### **IV. Improve the protection mechanism of commercial bank consumer rights and interests**

Since the financial crisis, many large international banks recognize: consumers are the important source of banks' profit, the work of consumer protection is related to the business interests and the credibility of the bank. Commercial banks should adapt to the trend of the financial reform, cultivating the concept and the corporate culture of protecting the consumers' legitimate rights in the bank actively. By continuing publicity and education, to impel that all the staff are fully aware of the protection of consumers' legitimate rights is the protection of the banks' own interests. Do the consumer rights protection work well, can not only win the customer reputation and market reputation for banks, but also enhance their own competitiveness because of customers' loyalty, ensuring the

sustainable and healthy development of commercial banks. Therefore, the author put forward the following suggestions:

**( I ) Promote legislative and regulatory authorities to improve the relevant legal system**

Considering the characteristics of financial market, financial supervision system and financial business nature, we need to legislate to protect the financial consumer. First of all, the market of financial mixed operation has created a growing number of new financial products, comprehensive and complexity of these products is very high. In front of this new type of financial products, if it appears dislocation and uncoordinated in the differentiated regulation system, supervision is prone to be vacuum, overlapping or inconsistent, financial companies damage the interests of consumers will become very prominent. Secondly, the financial industry has a strong external effect, disputes and conflicts within the industry easily lead to intense social conflict of interest, and constitute a serious threat to the social stability and economic security. Supervision of the financial industry has a different characteristic with other economic supervision fields, this feature is also reflected in the financial consumer protection, and need special protection. Thirdly, with the continuous innovation of financial service, contract structure and legal relations behind the financial products and services is becoming more and more complex, the risk is more complicated and confusing, it is difficult for non-professionals to understand and grasp, so it needs special rules to ensure the financial right and other rights of consumers. Therefore, when conditions are ripe, China should consider to establish a special “Financial Consumer Protection Law” or “Financial Consumer Protection Ordinance”, to clarify the concept of financial consumers, financial types of rights and interests, the rights and obligations between financial institutions and consumers, the range of financial interests protection, relief ways, financial consumer protection agency and its responsibilities, authorities, and regulatory measures. And establish a system of mandatory information disclosure, moderate investor admittance system, consumer information protection system, the cooling-off period system and so on, to provide a strong legal guarantee for our country to

strengthen the protection of the vulnerable groups—“financial consumers”. Revise and improve relevant legal provisions as soon as possible, and regard “the protection of consumer rights and interests” as a supervision target of the banking supervision department, give regulators institutions greater regulatory functions in protecting the interests of consumers, and assume the responsibility of coordinating the related disputes, to buffer the related disputes and conflicts by the ways such as administrative mediation. At the same time, in the process of designing related system, we should pay attention to the principles of law, reasonable, fair and moderate. We must pay attention to the problem of financial consumer rights protection, and can't prevent the development of financial innovation because of excessive protection. Before the introduction of special legislation, we can found a transition period by revising “Consumer Protection Law” and the financial laws and regulations, and clear the basic rules for the protection of financial consumers' rights and interests, accumulate the law enforcement experience in practice.

## **(II) Improve the system of consumer rights and interests protection mechanism**

Consumer Protection Bureau of [China Insurance Regulatory Commission](#), Investor Protection Agency of [China Securities Regulatory Commission](#) and Banking Consumer Rights and Interests Protection of [China Banking Regulatory Commission](#) has been founded in 2011, 2012. It shows that our financial consumer protection system choose to set up dedicated financial consumer protection departments in financial supervision mechanism, fully assume the functions of consumer protection in various financial industry. But now we are still not clear whether it means that the business sector is no longer exercise financial consumer protection functions. Under the separate regulation mechanism, we should strengthen the coordination of the separate areas of regulatory policy, achieve the uniform protection of consumer rights and interests in financial fields. The financial regulatory system in our country is based on mechanism of separation. The current separate supervision system is built on the basis of the separate operation of different financial

institutions, the premise is that the function of different financial institutions can be divided completely, and there is no overlap. But major financial services products including the deposit, insurance, funds, and many other varieties, and it involves many separate financial areas. The regulation principles and specific content of financial consumer rights in different separate areas are not the same. For example, the two types of business which are brokerage collection of financial management and the collection of trust financing are very similar, but they have to apply the two different rules of “Trial Implementation Measures for the Customer Asset Management Business of Securities Companies” and “Trust Business of Trust Company Management Measure”, form two different legal relationships which are the agency relationship and the trust relationship, and they have to accept two different regulatory authorities by [China Securities Regulatory Commission](#) and [China Banking Regulatory Commission](#). Therefore, it must form a unified standard between the regulatory departments, and unified supervision, implement the protection of financial consumers' rights and interests.

In the process of constructing the system of consumer protection, we can consider the following aspects of the problem: First of all, set up the rules and regulations of consumers' rights and interests protection which are suitable for the whole group, implement the relevant laws and regulations and regulatory requirements, ensure that it has rules to follow of consumer protection work within the scope of the group; secondly, set up the whole process management measures of consumers' rights and interests protection, clear the relevant laws, regulations and regulatory requirements of consumers' rights and interests protection that all business links need to focus on, and in accordance with the relevant requirements for process control; Thirdly, establish an effective information transmission and feedback mechanism, ensure that the head office of commercial bank can get the relevant information from branch timely, accurately and comprehensively, and form effective system support and information transfer. Fourthly, establish the emergency handling mechanism of the group size of consumers' rights and interests protection, to monitoring and manage customer complaints in affiliated

institutions and foreign institutions, prevent and control the related risks; Fifthly, to further improve the charging mechanism of intermediary business, the relevant product fees should be inspected by the relevant departments whether it is legal, compliant or rationality before it is launched, the important business charging items that relates to consumers' rights and interests protection, should be submitted to the bank executives or the consumer protection mechanism for deliberation and decision.

### **(III) Strengthen the protection of consumers' information**

According to the relevant domestic and international laws and regulatory requirements, consumers' information and privacy are generally protected, the conduction against the requirement such as using, transferring, disclosure or selling consumers' information or privacy should be liable. The improper protection of consumers' financial information may lead to significant reputation and legal risk. From a high strategic level, commercial banks should attach great importance to the protection of consumers' information, build consumers' information protection's organization structure, establish consumers' information protection's leading department, rationally plan consumers' information protection's framework and basic processes, clarify the duties of the relevant departments, gradually formed a set of consumers' information protection system which should be well-organized , clearly labor divided, scientifically processed and compliance with laws and regulations, clarify the basic principles of the protection of consumers' information, the management division of functions of the relevant functional departments, the license and restrictions of consumers' information, the process of internal approval, the firewall settings between the domestic and foreign institutions and branches, the specification of supervision and inspection and emergency handling mechanism system, in order to have reliable regulations which can effectively prevent relevant danger and have all the relevant risks under control.

### **(IV) Strengthen the popularity of financial knowledge and education, strictly fulfill the obligation of information disclosure**

With the establishment of the financial mixed-operation system,

consolidated financial innovation is setting up everywhere one after another, new financial jargon is emerging at every moment, which is making consumers quite difficult to understand and influencing their judgments, the risk to make financial decisions is increasing day by day. Thus, it is suggested that on the one hand, the Chinese government should provide financial literacy in schools, on the other hand, we should encourage financial institutions to carry out knowledge of consumers' finance advisory and advocacy activities.

Revealing information comprehensively, transparently and objectively is the key to protect consumers' rights, also, it is the specific performance of commercial banks in accordance with the law and respect for the consumers' right-to-know. In the process of information disclosure obligations, the commercial banks should be noted: First, information disclosure should be truthful, complete, and easy to understand. Information disclosure of the commercial banks should follow the principle of truthfully inform, should not have false statements and misleading; Disclosure of all information that may affect consumers' judgments and choices, including favorable and unfavorable product information, cannot have a material omission or concealment; Using understandable, clear and straightforward language as much as possible, in order to help consumers understand the information effectively. Second, information disclosure should be complete, timely and effective. To provide financial products and financial services to consumers, commercial banks should achieve all-round and full disclosure of information. Each stage of before, during and after business should fully protect the consumers' right-to-know. To make sure that consumers have full access to relevant information, regular and irregular information disclosed to consumers through a variety of ways and channels can be useful.

#### **(V) Improve the customers' complaints management.**

Based on the complaints of bank customers in recent years, commercial banks should pay attention to strengthen and improve the work in following aspects: First of all, strengthen the regularly informing and reporting mechanisms to the risk of customers' complaints,

customers' complaints leading management department should regularly report to the business sector about the risks and problems of customers' complaints, specifically proposing the comments and suggestions of solving or improving the complains; Second of all, complete the major customer complaint handling mechanism, focusing on major and sensitive problems, repeat treatments and customers' dissatisfactions; Third, strengthen the customers' complaints information construction, using electronic information system to count, track and monitor customers' complaints handling situation, supervising and guiding all the branches to handle the information timely and properly; Forth, exert the strength of supervision, inspection and evaluation to the operational mechanism of the complaints from bank customers, keep on improving the relevant system of accountability; Fifth, enhance the training to the ability of handling customers' complaints, continuously improving the skills and ability of handling customers' complaints to the outlet staff, seating customer service tellers and professional sector manage personnel.

**(VI) Keep on improving proper assess mechanism for investors**

According to relevant provisions of the China Banking Regulatory Commission, to a certain extent, commercial banks have been established customers' moderate risk assess mechanism. As commercial banking products involves a large number of individual customers, the protection of consumers' rights is relatively sensitive, commercial banks should regularly check the design and sales of related products, should concentrate on customers of whether they have the qualification to buy the related risky products, and on the protection of their right- to- know, promptly correct and fix the problems that have been found, continue improving customers' dynamic evaluation of the risks and obligatory limited consuming measures, prevent the behavior of damage consumers' rights, maintain the confidence of financial consumers, and promote the development of the banking sector healthily and orderly.

**(VII) foreign institutional compliance should observe local regulatory requirements**

The foreign institutions of commercial banks (especially for the ones



which have personal business in the United States, the European Union, the United Kingdom, Japan, Hong Kong, China and other key areas) should be noted that they should strictly compliance with local legal and regulatory requirements, focusing on the proper investors institutions, the protection of customers' information, the fulfillment of the obligations to describe, the disclosure of products' information and other issues which are involved in the related products and service systems; setting up specialized agencies or professional personnel to deal with consumers' rights-protective matters as soon as possible, hire a local lawyer to review the Consumer Protection on related services and products when it gets necessary; basing on the local legal environment to formulate pre-plans for emergency, if significant matters involving consumers' rights arise, they should report to the head office immediately, and should properly handle in compliance with laws and regulations, avoid risk which might related to laws and reputations. Meanwhile, the head office of commercial banks should strengthen the support to the laws which protect the foreign consumers, strengthen the management of high-risk countries (regions) purposefully, strictly compliance with the prohibitive provisions of the cross-border transfer of customers' information, establish and improve the intra-company's risk isolation mechanism, clarify the responsibilities and processing process of head office departments and the outside related agencies.

All in all, I believe that: Modern finance is market-oriented finance, is the legal finance, all the financial activities should both comply with the market rules and be regulated and normalized by laws. To a country, the speed of its marketization and the perfection of its financial legislation are directly related to the speed and quality of its financial sector development, and the extent of protection to the rights and interests of stakeholders in the financial activities is straight concerned to the security and stability of its financial system. As an important part of modern finance, financial consumption has far-reaching significance for our economy's sustainable, healthy and rapid development, and also for building a modern, powerful socialist country. Therefore, strengthen the protection efforts of the numerous and widely dispersed financial

consumers' rights, establish an efficient, convenient and fair protection mechanisms for financial consumers' rights, develop and boom our financial consumptive market, currently are important tasks to achieve the goal of building Chinese international financial center, we should actively explore the mechanisms to protect the financial consumers' rights.