

# **SOUTH AFRICA**

## ***Diagnostic Review of Consumer Protection in Non-Credit Financial Services***

### **Volume I Key Findings and Recommendations**

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# South Africa

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### **Volume I – Key Findings and Recommendations**

#### **Contents**

Abbreviations & Acronyms.....	ii
Acknowledgments.....	iii
Foreword.....	iv
Executive Summary.....	1
Introduction.....	5
Importance of Consumer Protection and Financial Literacy.....	6
Background.....	7
Household Surveys on Financial Literacy and Consumer Financial Behavior.....	8
Complaint Data.....	12
Current Institutional Framework.....	13
Government Policy.....	17
Key Findings & Recommendations.....	20
Institutional Framework.....	20
Consumer Disclosure.....	24
Business Practices.....	28
Dispute Resolution Mechanisms.....	33
Financial Education.....	40
References.....	42

#### **Tables**

<i>Table 1: Household Assets and Liabilities.....</i>	<i>8</i>
<i>Table 2: Percent of South African Adult Population Using Consumer Financial Services.....</i>	<i>9</i>
<i>Table 3: Regulators of Financial Institutions and their Ministries.....</i>	<i>14</i>
<i>Table 4: Current Structure of Prudential vs. Market Conduct Supervisors.....</i>	<i>15</i>
<i>Table 5: Current Structure of Ombuds Services in Consumer Financial Services.....</i>	<i>34</i>
<i>Table 6: Banking Ombudsman Case Statistics 2010.....</i>	<i>36</i>

#### **Boxes**

<i>Box 1: Complaints to Ombuds for all Financial Services.....</i>	<i>12</i>
<i>Box 2: The Role of a Market Conduct Regulator.....</i>	<i>17</i>
<i>Box 3: International Approaches to Key Facts Statements.....</i>	<i>25</i>

## Abbreviations & Acronyms

AFM	Autoriteit Financiële Markten
ASISA	Association for Savings and Investments of South Africa
ATM	Automatic teller machine
BASA	Bank Association South Africa
BBBEE	Broad-Based Black Economic Empowerment
BIS	Bank for International Settlements
CBDA	Co-operative Development Agency
CCC	Central Coordinating Committee
CFR	Council of Financial Regulators
CIS	Collective investment scheme
CPA	Consumer Protection Act
EC	European Commission
EFT	Electronic fund transfer
FAIS	Financial Advisory and Intermediary Service
FCA	UK Financial Conduct Authority
FinCoNet	International Financial Consumer Protection Network
FSB	Financial Services Board
FSOSC	Financial Services Ombud Schemes Council
FSP	Financial Service Provider
GEPF	Government Employees Pension Fund
IDD	Initial Disclosure Document
INFE	International Network on Financial Education
INFO	International Network of Financial Ombudsman
NCC	National Consumer Commission
NCR	National Credit Regulator
NGO	Non-governmental organization
NGP	New Growth Path
OECD	Organisation for Economic Co-operation and Development
PASA	Payment Association South Africa
PCAOs	Provincial Consumer Affairs Offices
RSP	Remittance Service Provider
SAIRR	South African Institute of Race Relations
SARB	South Africa Reserve Bank
SMS	Short message service
SRO	Self-regulatory organization
TCF	Treating Customers Fairly
UK	United Kingdom
US	United States of America

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## Foreword

*Consumer protection in financial products and services lies at the heart of any financial sector that is efficient, competitive and fair. Three areas are important. Customers of financial institutions should have the right to receive information that is clear, complete, accurate and comprehensible before they decide to borrow or to invest. They should have access to recourse mechanisms that are efficient and cost-effective. They should also be able to obtain sufficient financial education to understand the terms and conditions and other information provided to them as financial consumers.*

*We are pleased to provide this pilot Diagnostic Review of Consumer Protection in Financial Services in South Africa and thank the South African authorities for their valuable cooperation and collaboration in its preparation. The Review not only looks at financial products and services in South Africa but also refines a set of good practices or benchmarks for use in reviewing consumer protection in financial services in any jurisdiction. It is expected that this work will prove helpful to the international community and those in emerging markets who seek to establish common ground for minimum good practices in consumer protection in financial products and services.*

# Executive Summary

**The Diagnostic Review for South Africa was prepared at the request of the Financial Services Board (FSB) and the National Treasury of South Africa.** The objectives of the South African Review are to: (1) to answer the question of how the South African framework for financial consumer regulation compares to international practice and (2) provide recommendations of measures to strengthen the framework. An assessment mission was conducted from June 2 to 17, 2011.<sup>1</sup>

**The Review focuses on non-credit financial services.** At the request of the South African authorities—and in light of the extensive work already done on consumer protection in credit services--this Review focuses on financial consumer protection in non-credit financial services. The Review also looks at collective investment schemes (CIS) in the securities markets but not at the broad range of securities instruments sold to retail investors.

**The key challenge thus is to maintain--and further develop--the high quality of sophisticated retail financial services while encouraging expanded use of formal financial services.** The consumer financial services sector in South Africa is characterized by a dichotomy. On the one hand, its retail financial markets are among the most sophisticated in the world. On the other hand, between 36 and 40 percent of the population uses no formal financial service at all. The challenge will be to retain the high quality of sophisticated financial services while finding ways to effectively serve the households that remain unserved or underserved.

**The household surveys of financial literacy and consumer behavior provide some useful insights.** The 2010 FinScope survey found that consumer trust was higher in informal financial institutions, such as burial societies, than in the formal institutions such as banks. Financial intermediaries, particularly insurance brokers, received very low marks from consumers. Yet, the OECD/INFE financial literacy survey found that most consumers in South Africa shop around for financial products and services before making their final selection—and that they have a basic understanding of the risk-reward tradeoffs in financial products.

**The South African Government has embarked on a substantive program of improving financial sector legislation and establishing a full market conduct regulator.** The National Treasury's "Red Paper" and the Treating Customers Fairly Program of the Financial Services Board will go far to achieve the Government's goals of making financial markets safe and fair for all South Africans. Two concerns are repeated over and over again: (1) fees charged by formal financial institutions are high and opaque and (2) financial products unsuitable for the buyer are often sold by retail sales personnel driven by high (and opaque) commissions. The Diagnostic Review presents some recommendations on measures to help implement the Government's program and address these issues.

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<sup>1</sup> In addition to the Financial Services Board and National Treasury, meetings were held with the South African Reserve Bank; the Department of Trade and Industry; the Ministry of Justice; the Competition Commission; the National Consumer Commission; the Advertising Standards Authority; the National Credit Regulator; the Co-operative Banks Development Agency; the Ombudsmen for Credit, Banking Services, Financial Advisory and Intermediary Services, Pension Funds, Medical Schemes, and Short and Long-Term Insurance; the Associations for Banking, Insurance, Financial Intermediaries, Savings and Investment, Payments, and Lawyers; the Institute of Retirement Funds; the Law Reform Commission; the Compliance Institute; the Financial Planning Institute; the Financial Education Fund; the National Consumer Forum; the National Consumer Union; FinMark Trust; and representatives of financial institutions, including burial societies.

**The Review recommends a strong role for the proposed market conduct regulator.** At a minimum, the market conduct regulator should monitor business conduct by all financial institutions. In addition, the market conduct regulator should conduct prudential supervision for those financial firms that receive funds from the public but for which there is no prudential regulator. Broker-dealers and insurance companies are examples of two such companies. In addition, in light of the highly concentrated and inter-connected financial market in South Africa—with just four banks conducting 80 to 90 percent of retail finance—the market conduct regulator might also be responsible for monitoring competition among financial firms.

**Achieving these objectives would likely require the merger of the National Credit Regulator with the Financial Services Board.** While it would be possible to separate consumer credit from other financial services (as has been done in the United States and may be the final result in the United Kingdom), it would be more efficient—and allow the organizations to be more effective—if a single market conduct regulator covered consumer credit as well as other consumer financial services.

**An initial study of the options for creating a unified market conduct regulator may be a useful approach.** However, other legislation will still need to be revised. Particularly in the insurance sector, the legal framework is fragmented by eight different pieces of legislation for long-term and another nine for short-term insurance. The payments legislation is also in need of redrafting to allow for increased participation in the payments system by non-bank institutions. At the same time, improved legislation on the protection of personal data—and measures to correct the high level of errors in the credit bureau—would be helpful.

**Strengthened roles for self-regulatory organizations (SROs) would be helpful.** With over 13,000 registered financial firms (and over 170,000 individuals) selling consumer financial products, not all financial institutions can be directly supervised by the Financial Services Board. An alternative approach would be to strengthen the roles of the industry associations and make them fully effective SROs. Membership in the respective SROs should be compulsory for all financial firms selling consumer financial products and services and the SROs should have delegated authority from the Financial Services Board to monitor—and enforce compliance with—the financial sector legislation.

**Alternatively the Financial Services Board might take a risk-based approach to market conduct supervision.** Use of a risk-based approach requires that the Financial Services Board define peer groups of organizations of similar market conduct risks. Based on the peer grouping, the Financial Services Board might provide tailored guidance on measures needed to improve business practices for the peer group—and then review if the guidance was successful in correcting the abusive practices that had been noted. If guidance was not sufficient, the Financial Services Board might request the institutions to conduct self-assessments and see if the key issues begin to emerge. On a worst case basis, the Financial Services Board might conduct audits of business practices of several organizations in the peer group—and then use the results of the audit to refine the guidance provided to the peer group organizations.

**Consumer advocacy organizations should be strengthened.** Consumer organizations need to be able to play their full voice as the advocate of financial consumers. Yet the organizations in South Africa are insufficiently developed to reach this objective. Support from international organizations, such as Consumers International, may be helpful in such institution-building of local consumer organizations and some state budget funding, at least in the early years, may be needed.



**At the same time, all financial institutions that deal with the public should be required to be formally registered with a financial supervisory agency.** While almost half (46 percent) of South Africans insure themselves through burial societies—and such societies have higher levels of public trust than formal insurance companies or banks—the current legal structure leaves the burial societies vulnerable to pyramids schemes and other financial frauds. The current plan to require that small burial societies be transformed into co-operatives would be helpful but still leaves open the option for societies with fewer than 2,500 members to be exempt from registration with a financial supervisor. Only the very small institutions (for example, those with fewer than 50 members) should be so exempted. In all cases, the members of governing council and boards and senior executives should be required to meet international fit and proper tests, including the prohibition against any who have received criminal convictions.

**Consumer disclosure should also be improved.** For consumers to efficiently shop around (and thereby encourage financial institutions to compete on price and quality of service) easy access to comparable information is needed. The supervisors could set up a website that allows for easy comparison on comparable terms. Alternatively they could require that financial institutions submit offers in comparable formats and leave it to the industry association, or a private sector consumer advocacy organization, to present the comparable information. Also helpful would be “Key Facts Statements” that provide a one or two page summary of key terms and conditions for consumer products. Here again the industry association could play a leading role in preparing a common format for Key Facts Statements. In any event, consumers should have access to complete information—before they make a final decision on any financial product. This will require that consumers be able to obtain a copy of the full standard contracts so that they can study the contracts before they make a final decision. Even with the best of intentions by financial institutions, some disclosure may be confusing for consumers. As has been seen in the United States with testing of credit card disclosure, testing of consumer understanding of standard disclosure documents would be helpful.

**Business practices of financial institutions should also be strengthened.** Similar to the groundbreaking study conducted by the National Credit Regulator on prices of credit products, a full study on comparable prices for non-credit financial products would be helpful. Data on levels of churning should also be compiled so that regulators can see the full extent of the issues. In addition, international experience has shown that mandatory cooling-off periods for products that carry high levels of commission—and are thus subject to heavy sales pressure—can be helpful. Cooling-off periods already apply to credit products and long-term insurance but they should also apply to other products, including pensions and short-term insurance. Consideration should also be given to upgrading the regulatory examinations of retail sales staff to ensure that they fully understand the financial products that they sell.

**It would also be helpful if coordination among the financial ombuds services could be improved.** Financial consumers are obliged to find their way through a thicket of eight different financial ombuds schemes with differing levels of authority and enforcement powers. The preferred option would be consolidation of the various ombuds structures into a unified financial ombuds scheme. However, care should be taken to ensure the ombuds that are currently working well can continue to do so. As a first step, improved coordination of ombuds services would be helpful. Measures should also be taken to ensure long-term financial sustainability of the financial ombuds schemes and for this, international experience may be very helpful.

**In addition, all financial institutions should be obliged to have dedicated internal complaint mechanisms.** Consumers should have an easy-to-find contact for their initial inquiries and

complaints. Such internal redress mechanisms would also help reduce the number of complaints that are submitted to the financial ombuds services.

**A national strategy on financial education—with implementation by a Central Coordinating Committee—would be helpful.** In the long-term, the best form of financial consumer protection is a well-educated financial consumer. Numerous financial education programs are currently underway but they should be coordinated in a national financial education strategy that engages all key stakeholders. The Financial Sector Charter commits financial institutions to provide a minimum percentage of their after-tax profits for financial education. However, international experience shows that financial education programs do not necessarily result in higher levels of financial literacy. Financial education programs should be coordinated as part of a national strategy and their effectiveness should be monitored to develop lessons learned from different approaches. Establishing a national Coordination Committee to implement the strategy would also be helpful.

# Introduction

**The Diagnostic Review of Consumer Protection in Non-Credit Financial Services in South Africa is the 14th report in the World Bank’s Global Program on Consumer Protection and Financial Literacy (CPFL).** The Global Program on CPFL was established in November 2010 to help countries worldwide help improve their financial consumer protection frameworks, using a successful methodology developed in the Europe and Central Asia Region. The Program consists of diagnostics (including legal and regulatory diagnostic reviews and household surveys), action plans, implementation programs and a knowledge hub for sharing information among CPFL stakeholders.<sup>2</sup> In preparing the legal and regulatory diagnostic reviews, the World Bank relies on its *Good Practices for Financial Consumer Protection*,<sup>3</sup> which summarize international practice on financial consumer protection and which support the recently prepared G20 High Level Principles on Financial Consumer Protection.<sup>4</sup>

**The Diagnostic Review for South Africa was prepared at the request of the Financial Services Board (FSB) and the National Treasury of South Africa.** The objectives of the South African Review are to: (1) to answer the question of how the South African framework for financial consumer regulation compares to international practice and (2) provide recommendations of measures to strengthen the framework. An assessment mission was conducted from June 2 to 17, 2011.<sup>5</sup>

**The Review focuses on non-credit financial services.** At the request of the South African authorities—and in light of the extensive work already done on consumer protection in credit services—this Review focuses on financial consumer protection in non-credit financial services. Thus analysis of consumer protection in credit products and services (including debt collection and counseling, credit reporting and personal bankruptcy) are not included in the Review. The Review looks at collective investment schemes (CIS) in the securities markets but not at the broad range of securities instruments sold to retail investors. Volume I notes the importance of consumer protection in respect of financial products and services, summarizes the South African Government's policy on financial consumer protection, provides statistics on household use of financial services, describes the findings of recent financial literacy surveys, and sets out the key findings and recommendations of the Review. The Annex lists the Review’s key recommendations. Volume II provides an assessment of the South African consumer protection framework and practices compared to the template of good practices for four segments of the financial sector—

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<sup>2</sup> Other CPFL Diagnostic Reviews were prepared for Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Kazakhstan, Malawi, Latvia, Lithuania, Malawi, Romania, the Russian Federation and Slovakia. The full set of published reports, including financial literacy surveys, action plans and implementation programs can be downloaded at <http://www.worldbank.org/consumerprotection>.

<sup>3</sup> See *Good Practices for Financial Consumer Protection*. A copy can be downloaded at [www.worldbank.org/eca/consumerprotection](http://www.worldbank.org/eca/consumerprotection).

<sup>4</sup> See <http://www.oecd.org/dataoecd/58/26/48892010.pdf>

<sup>5</sup> In addition to the Financial Services Board and National Treasury, meetings were held with the South African Reserve Bank; the Department of Trade and Industry; the Ministry of Justice; the Competition Commission; the National Consumer Commission; the Advertising Standards Authority; the National Credit Regulator; the Co-operative Banks Development Agency; the Ombudsmen for Credit, Banking Services, Financial Advisory and Intermediary Services, Pension Funds, Medical Schemes, and Short and Long-Term Insurance; the Associations for Banking, Insurance, Financial Intermediaries, Savings and Investment, Payments, and Lawyers; the Institute of Retirement Funds; the Law Reform Commission; the Compliance Institute; the Financial Planning Institute; the Financial Education Fund; the National Consumer Forum; the National Consumer Union; FinMark Trust; and representatives of financial institutions, including burial societies.

banking, securities, insurance, and private pensions— and key issues in retail payments and remittances and financial education.

## Importance of Consumer Protection and Financial Literacy

**At its heart, consumer protection is needed to address imbalances of power, information and resources between consumers and financial institutions.** Financial institutions are very familiar with the terms and conditions of their financial products and services, but retail consumers may find it difficult or costly to obtain sufficient information on their financial purchases, or to assess complex financial products and services even when relevant information is disclosed. The overarching aim of any program to strengthen consumer protection is to redress the imbalances of power, information and resources. This is based on four themes: (1) giving consumers clear, complete and comparable information that allows them to make informed selections; (2) prohibiting financial institutions from engaging in unfair or deceptive practices; (3) ensuring that consumers have an efficient and inexpensive method of redress in case of disputes; and (4) providing financial education that allows consumers to evaluate the risks/rewards of financial products and services and understand their legal rights and obligations.<sup>6</sup>

**Financial consumer protection promotes the efficiency, transparency and deepening of retail financial markets.** Consumers who are empowered with information and basic rights—and who are aware of their responsibilities—provide an important source of market discipline to the financial system, encouraging financial institutions to compete by offering useful products and services. Where financial consumer protection is weak, the impact is seen in weak consumer confidence and few households using formal financial services. In addition, consumer protection helps financial firms face the risks that arise when dealing with retail customers, especially those related to mis-selling of financial products and services.

**The global financial crisis has highlighted the importance of financial consumer protection for financial stability.** As noted in the report of the Financial Stability Board, *Consumer Finance Protection with particular focus on credit: Report to the G20 Leaders*,<sup>7</sup> the global crisis showed that the impact of irresponsible lending practices can be transmitted globally through the sale of securitized risk, particularly of residential mortgages which represent the single largest debt obligation for virtually all consumers who own a home. Policies that protect financial consumers contribute to improved risk management by households, increased competition among financial firms, and strengthened financial stability. The crisis thus demonstrated the desirability of strengthening financial consumer protection policies (particularly on consumer credit) and ensuring that the use (and the misuse) of consumer financial products does not become a source of financial instability.

**Consumer protection and financial literacy are also important for any program of expanding financial inclusion.** They are needed to ensure that expanded financial inclusion does not result in undue risks to consumers. In the absence of strong consumer protection and financial literacy, the

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<sup>6</sup> Susan Rutledge, *Consumer Protection and Financial Literacy: Lessons from Nine Country Studies*, World Bank Policy Research Working Paper 5326, June 2010 available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSContentServer/WDSP/IB/2010/06/03/000158349\\_20100603082853/Rendcred/PDF/WPS5326.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSContentServer/WDSP/IB/2010/06/03/000158349_20100603082853/Rendcred/PDF/WPS5326.pdf)

<sup>7</sup> See [http://www.financialstabilityboard.org/publications/r\\_111026a.pdf](http://www.financialstabilityboard.org/publications/r_111026a.pdf)

growth-promoting benefits of increased access to consumer financial products and services may be lost or greatly diminished.

## Background

**The key challenge thus is to maintain--and further develop--the high quality of sophisticated retail financial services while encouraging expanded use of formal financial services.** The consumer financial services sector of South Africa is characterized by a high level of dichotomy. On the one hand, the financial services sector is ranked among the top ten countries worldwide in the World Economic Forum survey of sophistication in the provision of financial services. For example, in equity derivatives (such as options on single stock futures), retail customers—i.e. individual households—represent the primary form of customer. Similarly the Rand/US dollar foreign exchange contracts are sold entirely as a retail financial product. On the other hand, almost one-third of all adults in South Africa use no formal or even informal financial services<sup>8</sup> and 50 percent of all remittances are executed outside of the formal financial sector.<sup>9</sup>

**Specific parts of the population are particularly poorly served by the financial services sector.** In particular, blacks are most likely not to use formal financial services. A 2010 survey by the South African Institute of Race Relations (SAIRR) found that in 2009 as many as one-quarter of blacks do not even live in formal dwellings (versus one-third in 1994).<sup>10</sup> However, by 2009 as many as 85 percent of blacks had access to a telephone, most often a mobile cellular phone (vs. 29 percent in 1964), thus suggesting the large potential for using mobile telephony for access to financial services. Weak financial literacy remains an Achilles Heel for any program to expand the use of financial services by the black population. Financial literacy worldwide is highly correlated with general literacy and years of formal schooling. The SAIRR survey for South Africa found that an estimated 13 percent of blacks (but only 0.4 percent of whites) are considered to be functionally illiterate, not just in issues related to financial services.

**At the same time, weak competition in the South African financial services sector is an issue.** The sector is both highly concentrated and highly interconnected. Just four banks (out of about 24 in operation) represent more than 80 percent of the traditional retail banking market and share some 90 percent of the personal transactional account segment. Furthermore, there is heavy cross-ownership between the major banks and the leading insurance and securities firms. Thus South Africa's retail financial sector is highly concentrated regardless of how the market is defined. With this market power comes the implicit ability of the major banks to maintain prices above competitive levels.

**Furthermore the retail market is a potential source of instability for the financial system.** Credit has grown rapidly at an average annual rate of 15.2 percent over the last ten years due to low interest rates, rapid real income growth, a growing middle class, and initiatives to increase access for low-income groups. Residential mortgages represent the single largest asset for banks (36 percent of total loans in 2010)<sup>11</sup>. With more than 95 percent of mortgages carrying adjustable rates, the 450 basis-point rise in interest rates between mid-2006 and mid-2008 combined with softening in home prices, resulted in increased loans more than 90 days overdue. The most vulnerable area

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<sup>8</sup> FinMark Trust, *FinScope South Africa 2010*, available at [www.finscope.co.za](http://www.finscope.co.za)

<sup>9</sup> Genesis Analytics, *Supporting remittances in Southern Africa*, (under preparation)

<sup>10</sup> See <http://www.sairr.org.za> Cited in The Economist, *The price of freedom*, June 5<sup>th</sup>, 2010

<sup>11</sup> South African Reserve Bank, Bank Supervision Department Annual Report 2010

were high loan-to-value loans made in 2006 and early 2007, prior the introduction of the National Credit Act, which imposed stringent responsible lending provisions on lenders.

**The household credit market in South Africa has witnessed rapid growth in the past years while household investments in pension funds and long-term insurance products have fallen.** The household balance sheet shows a changing distribution of assets and liabilities, with a rise in investments in equities and debt in the form of mortgage advances (see Table 1).

*Table 1: Household Assets and Liabilities*

Percent of Total	2005	2006	2007	2008	2009
<b>Tangible Assets</b>	<b>28.6</b>	<b>27.3</b>	<b>27.8</b>	<b>30.5</b>	<b>29.4</b>
Residential buildings	23.5	22.9	23.5	25.5	24.9
Other tangible assets	5.1	4.5	4.0	4.9	4.6
<b>Financial Assets</b>	<b>71.4</b>	<b>72.7</b>	<b>72.2</b>	<b>69.5</b>	<b>70.6</b>
Assets with monetary institutions	8.0	7.4	7.5	9.3	8.8
Interest in pension funds and long-term insurers	32.7	33.1	32.0	33.2	31.0
Other financial assets	30.7	32.2	32.6	27.0	30.8
<b>Total assets</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Total liabilities</b>	<b>15.9</b>	<b>16.1</b>	<b>17.4</b>	<b>19.8</b>	<b>18.5</b>
Mortgage advances	9.0	9.6	10.7	12.5	11.8
Other debt	6.9	6.6	6.7	7.3	6.7
Net worth	84.1	83.9	82.6	80.2	81.5
<b>Total liabilities and net worth</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Reserve Bank of South Africa

## Household Surveys on Financial Literacy and Consumer Financial Behavior

**The 2010 FinScope survey found that over the last four years, use of some consumer financial services—notably insurance—have expanded, while others remained stable.** The FinScope survey was conducted from August to October 2010 by FinMark Trust and covered a nationally representative sample.<sup>12</sup> As noted in Table 2, savings accounts have fallen while low-cost Mzansi accounts and cellphone banking have seen major increases. Formal credit products have remained stable at about one-quarter of the population, although home loans have increased to 12 percent of the population. However, use of informal financial products has also remained stable with nearly half the population (46 percent) taking out burial insurance or policies in one form or another. At the same time, the purchase of long-term insurance has increased from one in ten to one in four of the adult population, while both short-term insurance and retirement products have increased to 15 and 18 percent of the population respectively.

**The 2010 FinScope survey found that more than a third of the South African population remains outside the formal banking sector.** The survey noted that since 2007, the level of unbanked in South Africa has remained largely unchanged at 37 percent of adults (in 2008 and

<sup>12</sup> FinScope South Africa 2010

2010) or 40 percent (in 2007 and 2009). However, the unbanked population is deeply concentrated among blacks, those living on tribal lands and those earning between 1000 and 2000 Rand per month. Blacks formed 89 percent of the unbanked population (but only 77 percent of the sample). Similarly, consumers who lived on tribal lands represented 39 percent of those had no access to banking services (but were only 27 percent of the sample.) One quarter of the unbanked (but only 17 percent of the sample) earned between 1000 and 2000 Rand per month.

**While low-cost bank accounts have brought more consumers into the formal financial sector, the bank accounts have not proven to be a gateway to other financial services.** Over 80 percent of blacks rely on low-cost no-frills Mzansi bank accounts for payments transactions. However, such accounts rarely provide the gateway to broad financial services (such as investment products and pension funds) that was envisaged during the creation of such accounts. Any transactions beyond the limited number provided at no cost carry high fees and other penalties.

**The FinScope survey also indicates that public trust of banking institutions is lacking.** Only one-third of the population—and three percent of those who have never used banks--sees banks as a “place where your money is safe”. Only one in ten (and one in twenty among the never banked) feels that they “can trust banks”.

**Other financial institutions, such as insurance companies (which are poorly regulated) and burial societies (which are either exempt from regulation or regulated through a fragmented system of legislation), have higher levels of public trust than banks.** Almost one-third of the population (30 percent) felt that insurance institutions offered protection and could be trusted. For burial societies, “trust” was the third most important factor in consumers’ decisions, with 16 percent of the population stating that they “trusted” the societies. Yet, as noted below, regulation of insurance companies is weak by international standards. Burial societies have little financial regulation, while banks are subject to extensive financial regulation and supervision, at least from a prudential perspective.

*Table 2: Percent of South African Adult Population Using Consumer Financial Services*

	2007	2008	2009	2010
<b>Use of Financial Services</b>	<b>60%</b>	<b>63%</b>	<b>60%</b>	<b>63%</b>
ATM Card	55%	58%	55%	57%
Savings/Transaction Account	43%	38%	36%	34%
Mzansi Account	10%	11%	13%	15%
Cellphone Banking	4%	4%	4%	12%
Current/Check Account	8%	9%	9%	10%
<b>Formal Credit Products</b>	<b>26%</b>	<b>16%</b>	<b>24%</b>	<b>24%</b>
Store Card/Account	16%	9%	19%	10%
Credit Card	9%	5%	8%	7%
Home Loan	6%	3%	5%	12%
<b>Informal Credit Products</b>	<b>8%</b>	<b>13%</b>	<b>14%</b>	<b>12%</b>
Borrowing from Friend/Family	5%	11%	12%	9%
<b>Funeral Insurance</b>	<b>46%</b>	<b>43%</b>	<b>40%</b>	<b>46%</b>
Belong to Burial Society	29%	25%	20%	16%
Funeral Policy with a Bank	7%	8%	12%	12%
Funeral Cover through Undertaker/Parlour	9%	9%	8%	12%
Funeral Policy with an Insurance Company	8%	8%	8%	10%
<b>Short-term Insurance Products</b>	<b>10%</b>	<b>10%</b>	<b>11%</b>	<b>15%</b>



<b>Vehicle Insurance</b>	7%	7%	7%	11%
<b>Long-term Insurance Products</b>	<b>10%</b>	<b>14%</b>	<b>15%</b>	<b>26%</b>
Life Insurance/Cover	10%	12%	14%	19%
Medical Aid/Scheme	9%	8%	10%	14%
<b>Retirement Savings/Investment</b>	<b>13%</b>	<b>13%</b>	<b>14%</b>	<b>18%</b>
Pension Fund	8%	9%	11%	13%
Provident Fund	5%	6%	8%	12%
Retirement Annuity	6%	6%	7%	10%
<b>Formal Investment/Savings Products</b>	<b>11%</b>	<b>10%</b>	<b>11%</b>	<b>17%</b>
Investment/Savings Policy	4%	5%	5%	8%
<b>Informal Investment/Savings Products</b>	<b>13%</b>	<b>15%</b>	<b>20%</b>	<b>13%</b>
Keep at Home	7%	8%	13%	7%
Stokvel/Umgalelo/Savings club	6%	9%	8%	7%

Source: FinScope Survey 2010

**Financial intermediaries, especially insurance brokers, have particularly weak levels of consumer trust.** The issue is particularly evident with insurance brokers. More than half (52 percent) of those who purchase insurance products do not use insurance brokers because they do not “trust” the brokers.

**One specific issue in the use of formal banking services is the level of fees and commissions.** More than one in ten adults—13 percent—feels that bank charges are too high.

**The 2010 OECD/INFE survey of financial literacy and consumer behavior also identified heavy reliance on informal financial networks.** The survey was conducted in November–December 2010 and covered over 3,000 households.<sup>13</sup> The survey found that in times of financial duress, about half (49 percent) of respondents borrowed from family or friends—either food or money. This suggests that informal and familial networks are critical for South Africans during hard times. When funds were low, about 30 percent of households, scaled back on expenditures. Other strategies were to borrow from employers, pawn assets, take a loan from a savings or loan club, or withdraw funds from a flexible home loan account. Those relying most on informal networks were women, black and colored respondents, and those with low levels of schooling.

**A majority of South Africans have only limited financial reserves.** Most households have few available funds to draw upon in the face of a sudden loss of income. Almost one-third (29 percent) of respondents said that if they suddenly lost their main source of income, they would not be able to manage for more than a week. Only 45 percent could survive for as long as three months. Those with the shortest survival horizons were young (16-19 age group), women, and colored people with low standards of living, weak education and living in rural areas.

**Virtually all South Africans are familiar with basic financial products.** More than nine in ten (91 percent) were aware of basic financial products. Credit cards and post office savings accounts were known to two-thirds of respondents. More than half the respondents were aware of insurance (such as home content insurance, car insurance and funeral insurance), stokvels (savings clubs) and private pension funds. Men were generally more knowledgeable than women and those aged 30 to 39 more familiar than those over 70 years.

<sup>13</sup> Financial Services Board, *Financial Literacy in South Africa: Results of an OECD/INFE pilot study*, June 2010 available at <http://www.fsb.co.za/>



**Most shop around for financial products.** Nearly half (48 percent) considered several products from different companies before deciding. Another fifth (19 percent) said that they contemplated the range of products available from one company before deciding. Comparison shopping is especially common in relation to house bonds, investment accounts, insurance policies, and private pension funds. However, some services enjoy less comparison shopping. When looking for stokvels (savings clubs), 26 percent did no comparison shopping. Similarly no comparison shopping was done for 22 percent of those looking for post savings accounts, 21 percent of consumers for bank accounts, 19 percent for credit cards and 18 percent for household, vehicle or funeral insurance.

**For most consumers, the primary source of information on bank accounts, credit cards is either the retail staff at bank branches or family and friends.** Over one-quarter (28 percent) relied on product-specific information from a bank branch as did another 28 percent who looked to family and friends for advice. Television and radio programs provided information for 17 percent and television advertisements for another 16 percent.

**However this is different for private pension funds, where consumers rely more on advertising and information from banks in making their decisions.** More than one-quarter (26 percent) relied on television paid advertising and bank-based information and another 21 percent on television or radio programs. More than one in ten (14 percent) relied on financial advisors or brokers for private pension funds (the highest of any financial product) or the sales staff of product providers (11 percent) or internet websites (9 percent). Regarding post-office savings accounts, almost one-third (30 percent) of respondents relied on advice from family and friends, 16 percent used newspaper articles and 11 percent found junk-mail helpful. For investment accounts, media coverage was marginally more important than information from a branch of a bank. Advice from employers was used by 11 percent of respondents in buying investment funds.

**Financial literacy remains weak but consumers recognize that high-return investments carry high risk.** Only about half (55 percent) can correctly estimate the impact of both simple and compound rates of interest, although the responses to the two subsequent questions on interest and compound interest received on a savings account suggest that respondents struggled cognitively with these elements of financial literacy. When asked to make a simple calculation,<sup>14</sup> 25 percent answered incorrectly and another 28 percent could not even hazard a guess. Similar results were seen on a question on compound rates of interest. However three-quarters are aware that high return on investments was associated with high risk. When asked about potential investments that offer the prospect of getting rich quick, with nearly three-quarters (73 percent) acknowledged that such schemes also pose the risk of quick losses.

**The surveys suggested that increased awareness of financial products is not needed but finding ways to build consumer trust—by empowering consumers—is essential.** The findings of the household surveys suggest opportunities for building consumer trust in formal financial institutions. One valuable way of building trust is to empower financial consumers, i.e. give consumers the tools needed for them to select the financial products that best meet their needs. For example, the surveys indicate that South African consumers are already engaged in some comparison shopping when selecting financial products. Easy access to clear and comparable information about offers from financial institutions would help consumers make informed selections of service providers. Publication of comparative fees and charges would encourage financial institutions to compete with each other on price and quality of service for consumers. The surveys also suggest that advertising by financial institutions should be carefully monitored to

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<sup>14</sup> Respondents were asked to estimate savings after 12 months, assuming a two percent annual rate on an initial R100 deposit.

ensure that it is accurate and reliable—and that the “front office” staff of financial institutions should be trained to give complete and understandable information to retail customers. The data also suggest that consumers would benefit from improved levels of financial literacy.

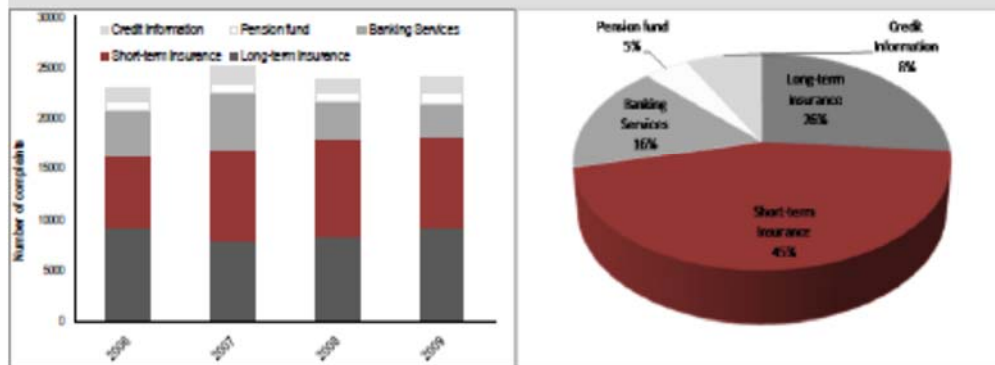
## Complaint Data

**National Treasury’s Red Paper highlights weaknesses in financial consumer protection in South Africa.** In the section on protecting consumers of financial services, the Red Paper notes that the South African financial services industry is characterized by: (1) high and opaque fees and (2) provision of inappropriate services driven solely by commissions. The insurance sector is a particular cause for concern. Box 1, taken from the Red Paper, provides a summary of the types of consumer complaints submitted to the various financial ombuds services. In 2009, almost three-quarters of all complaints related either to short or long-term insurance policies. For complaints submitted to the ombuds for services provided by financial advisors and intermediaries (FAIS Ombud) alone, over half related just to long-term or short-term insurance.

### *Box 1: Complaints to Ombuds for all Financial Services*

Except for 2008 when complaints received by the Pensions ombud peaked, most complaints relating to financial services are received by the long-term and short-term insurance ombuds. Complaints received by the Financial Advisory and Intermediary Services (FAIS) ombud have increased each year since 2007. The banking services ombud has seen a decrease in complaints since 2007.

Distribution of complaints received by the financial sector ombuds since 2006



**Long-term insurance:** Most of the complaints received by the long-term insurance ombud in 2009 related to claims declined due to policy terms or conditions not met (49 per cent). The second highest complaints were about poor service or communication as well as non-provision of documents (22 per cent)

**Short-term insurance:** Most of the complaints received by the short-term insurance ombud in 2009 related to motor vehicles insurance (56.4 per cent). The second highest number of complaints was with respect to homeowners insurance (16.8 per cent).

**Pensions:** Two-thirds of complaints received by the pensions ombud were on withdrawal benefits, followed by death benefits, divorces (visible for the first time in 2009) and disabilities.

**Banking service:** Complaints varied from mortgage finance (20.9 per cent), credit cards (14.3 per cent), ATMs (10.7 per cent) to debit orders (2.8 per cent).

**FAIS ombud:** Most complaints were about long-term (24.6 per cent) and short-term (18.7 per cent) insurance products followed by investment products (13.3 per cent), retirement products (5.4 per cent) and medical schemes (1.1 per cent).

Source: Red Paper

**The 2010 Impact Assessment Report of the National Credit Regulator (NCR) also provides insight into the types of issues faced by financial consumers.**<sup>15</sup> Researchers identified five common complaints regarding credit services. They were that: (1) the complaints process remains fragmented, (2) accreditation of debt counselors was deficient, (3) the court system was not equipped to deal with cases related to “debt rearrangement”, (4) “negative marketing” continued to be practiced, and (5) the staff of credit providers were not clear how the National Credit Act should be applied in practice. It is likely that many of the issues apply not just to credit services but to all retail financial services in South Africa.

**The 2008 Banking Enquiry also highlighted weaknesses in financial consumer protection.** In December 2008, the Competition Commission released its Banking Enquiry which looked at competition in retail banking and the national payment system.<sup>16</sup> The Banking Enquiry had been two years in the making and dealt with such issues as plain language requirements, facilitation of switching accounts, basic comparison of costs and the disclosure of costs. Most of the issues are to be addressed as part of the revised Code of Banking Practice. However, many of the Enquiry’s recommendations have yet to be put in place, although all are to be included in the National Treasury’s Strategic Plan for 2011-14. These include recommendations on:

- 1) Pricing, penalty fees, ATMs and direct charging;
- 2) Standards and criteria for transparency and disclosure;
- 3) Measures to reduce costs and improve comparability of banks’ product offerings and prices;
- 4) Measures to reduce switching costs and facilitate customer switching of banks;
- 5) Expansion of the mandate of the Ombud for Banking Services to include monitoring and enforcement of compliance with codes of conduct;
- 6) Expansion of the payment system to include non-bank providers to allow for their participation in clearing and settlement activities for low-value, retail payment streams; and
- 7) Development and implementation of an adequate regulatory scheme for interchanges in the payment card and other relevant payment streams.

**The Diagnostic Review presents some recommendations on specific measures to address consumer complaints and implement some of the Banking Enquiry’s recommendations.** In particular, the Review suggests ways of improving the ability of consumers to: (1) shop around for reduced prices and improved service in the delivery of consumer financial services and (2) resolve disputes with financial institutions. The Review also provides summary recommendations related to strengthening of the payment system with a view to improving service for consumers.

## **Current Institutional Framework**

**The current legal and regulatory framework for financial consumer protection is highly fragmented.** Among other areas, the South African Reserve Bank (SARB) is responsible for promoting financial stability, formulating and implementing monetary policy, supervising the banking system and ensuring the effective functioning of the national payment system. The National Credit Regulator (NCR) conducts regulation of the South African credit industry. It is responsible for registration of credit providers, credit bureaus and debt counselors as well as

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<sup>15</sup> Rudo Research and Training, *Final Report: Impact Assessment 2010*, April 2010 available at [http://www.ncr.org.za/publications/Impact\\_Assesment\\_2010.pdf](http://www.ncr.org.za/publications/Impact_Assesment_2010.pdf)

<sup>16</sup> See: <http://www.compcom.co.za/enquiry-in-to-banking/>

investigation of complaints and ensuring enforcement of the National Credit Act. Under the CPA of April 2011, the National Consumer Commission (NCC) was established in April 2011 to protect consumers' rights, including the rights of financial consumers. The Financial Services Board (FSB) regulates the non-banking financial services industry. Regulated industries include: (1) insurers, reinsurers, and their agents; (2) collective investment schemes, including participation bond schemes; (3) trusts in securities (including property shares); (4) retirement funds; and (5) nominee companies and (6) friendly societies. The Co-operative Banks Development Agency regulates small co-operative banks. Large co-operative banks are regulated by the Financial Services Board.

**This framework suffers from inconsistencies, overlaps and gaps.** Numerous laws and regulations cover financial consumer protection issues. In addition, comprehensive industry codes of conduct for the banking and short-term insurance sectors provide self-regulatory voluntary guidance to financial institutions at levels higher than exist in many other jurisdictions. Nevertheless in some areas, such as payments, consumer protection is not sufficiently covered by the existing framework. An inconsistent framework opens the opportunity for regulatory arbitrage among financial service firms, where a product will be redefined in order to select the regulator that is preferred by the service provider. A still greater risk is that some financial products lie outside all financial regulation and thus the sector lies vulnerable to financial pyramids and other types of financial frauds.

**Financial service firms are regulated by seven regulators under three ministries.** If one includes medical insurance schemes, financial service firms are regulated by no fewer than seven different regulatory agencies falling under three ministries (see Table 3). The Ministry of Finance supervises the FSB and the Co-operative Banks Development Agency (CBDA). A second ministry, the Ministry of Trade and Industry, covers the NCR, the National Consumer Commission (NCC), and the Registrar of Co-operatives (the Companies and Intellectual Property Commission). A third ministry, the Ministry of Health, covers the Council for Medical Schemes. In addition, the Ministry of Labor oversees the Unemployment Insurance Fund

*Table 3: Regulators of Financial Institutions and their Ministries*

Type of Institution	Regulator	Ministry
Banks	South African Reserve Bank National Credit Regulator	Independent agency Ministry of Trade and Industry
Payment system	South African Reserve Bank	Independent agency
Co-operative banks (Over R20 million)	South African Reserve Bank	Independent agency
Financial advisors & intermediaries	Financial Services Board	Ministry of Finance
Insurance companies	Financial Services Board	Ministry of Finance
Friendly societies	Financial Services Board	Ministry of Finance
Collective investment schemes	Financial Services Board	Ministry of Finance
Pension funds	Financial Services Board	Ministry of Finance
Co-operative banks (Under R20 million)	Co-operative Banks Development Agency	Ministry of Finance
Postbank	None	Ministry of Communications
Credit providers	National Credit Regulator	Ministry of Trade and Industry
Credit bureau	National Credit Regulator	Ministry of Trade and Industry
Debt counselors	National Credit Regulator	Ministry of Trade and Industry
Debt collectors	Council for Debt Collectors	Ministry of Justice and Constitutional Development
Financial Services Co-operatives	SRO (South African Microfinance Apex Fund)	Ministry of Economic Development Ministry of Trade and Industry

	Registrar of Co-operatives	
Other Co-operatives	Companies and Intellectual Property Commission	Ministry of Trade and Industry
Traditional Stokvels (savings clubs)		Ministry of Trade and Industry
Burial societies	Financial Services Board	Ministry of Finance Ministry of Trade and Industry
Other financial service providers		Ministry of Trade and Industry
Unemployment insurance fund	None	Ministry of Labor
Medical (insurance) scheme providers	Council for Medical Schemes	Ministry of Health

Source: Staff analysis

**At the same time, financial supervision—for prudential and market conduct—is spread among several different regulatory agencies.** As noted in Table 4, responsibility for supervision of the business conduct of financial service firms is assigned to three different regulatory agencies while prudential supervision falls under five regulators. Furthermore in some cases, the FSB is a market conduct regulator (as for financial intermediaries). In other cases (such as for insurance companies and investment and pension funds), the FSB is both a prudential and a market conduct regulator. However the planned introduction of the "Treating Consumers Fairly" approach and the ongoing debate about the twin-peak supervisory model mean that the FSB is active in the market conduct supervision and its future.

**Furthermore the role of the NCC and the Provincial Consumer Affairs Offices (PCAOs) vis-à-vis financial services is unclear.** The issue is one of concurrent jurisdiction under the Consumer Protection Act (CPA), which makes provisions for co-operation and consultation between the national and provincial consumer protection authorities.<sup>17</sup> In addition, if a province does not have its own PCAO established by law, the relevant Minister can delegate functions of the NCC to the province's Member of the Executive Council.<sup>18</sup> This in turn suggests that some provinces may not have such laws. The only provincial consumer protection legislation is the Western Cape Act (which in broad terms relates to "unfair business practices", which in turn are broadly defined and therefore likely include financial services). The South African Government has set up PCAOs countrywide to provide consumers with protection, information and advice. Consumers can approach a PCAO and ask it to intervene in disputes over contracts, quality of products or services.

*Table 4: Current Structure of Prudential vs. Market Conduct Supervisors*

Type of Institution	Prudential Supervisor	Market Conduct Supervisor
Banks (except for credit products or services through intermediaries)	South African Reserve Bank	National Consumer Commission
Banks when selling credit products	South African Reserve Bank	National Credit Regulator National Consumer Commission
Banks when selling through intermediaries	South African Reserve Bank	Financial Services Board
Payment system	South African Reserve Bank	National Consumer Commission Payments Association of South Africa (SRO)
Co-operative banks (Over R20 million)	South African Reserve Bank	National Consumer Commission
Financial advisors & intermediaries	Financial Services Board	Financial Services Board
Insurance companies	Financial Services Board	Financial Services Board
Friendly societies	Financial Services Board	Financial Services Board

<sup>17</sup> See s. 41(2) and Schedule 4 in the Constitution and ss. 83 and 84 in the Consumer Protection Act.

<sup>18</sup> See Schedule 2, section 7

		National Consumer Commission
Collective investment schemes	Financial Services Board	Financial Services Board National Consumer Commission
Pension funds	Financial Services Board	Financial Services Board National Consumer Commission
Co-operative banks (Under R20 million)	Co-operative Banks Development Agency	National Consumer Commission
Credit providers	None required	National Credit Regulator National Consumer Commission
Credit bureaus	None required	National Credit Regulator National Consumer Commission
Debt counselors	None required	National Credit Regulator National Consumer Commission
Debt collectors	None required	Council for Debt Collectors National Consumer Commission
Financial Services Co-operatives	SRO (South African Microfinance Apex Fund)	National Consumer Commission
Other Co-operatives	Companies and Intellectual Property Commission	National Consumer Commission
Traditional Stokvels (savings clubs)	SRO (National Stokvels Association of South Africa)	National Consumer Commission
Burial societies	SRO (National Stokvels Association of South Africa)	National Consumer Commission
Collective bargaining funds	Financial Services Board	
Other financial service providers	None required	National Consumer Commission
Medical (insurance) scheme providers	Council of Medical Schemes	National Consumer Commission

Source: Staff analysis

**The Red Paper calls for a “twin peak” regulatory structure for financial services—and the South African authorities should be commended for diligently trying to work out an effective institutional structure to resolve overlapping mandates.** The Red Paper would assign the responsibility for financial supervision into two agencies, one with a focus on prudential issues of market soundness and stability and another to focus on issues of market conduct, including consumer protection in financial services. Australia was the first country to set up a twin peak structure. This was followed by the Netherlands.<sup>19</sup> In the United Kingdom, the June 2011 proposal of the Financial Services Authority is to create a Financial Conduct Authority (FCA) as the market conduct regulator.<sup>20</sup> The FCA would be responsible for regulating conduct in retail and wholesale markets, supervising the trading infrastructure, regulating firms not prudentially regulated by the Prudential Regulation Authority, as well as monitoring competition in the financial sector. Responsibility for macro-prudential regulation and stability of the financial system would lie with the Bank of England. Similar separation of market conduct supervision is seen with the Financial Consumer Agency of Canada and, to a lesser degree, the Consumer Financial Protection Bureau in the US Federal Reserve System. While no one financial supervisory structure is considered to be “best practice” worldwide, many analysts favor the separation of market conduct regulation from

<sup>19</sup> In supporting this structure, Hans Hoogervorst, chairman of the Dutch AFM (market conduct) regulator argued, “To be effective, a regulator should have a clear, focused sense of purpose. He should never be in a position where he is tempted to sacrifice the goal of transparency to prudential concerns or vice versa.” <http://blogs.reuters.com/financial-regulatory-forum/2009/10/09/dutch-regulator-says-twin-peaks-supervision-best/>

<sup>20</sup> See [http://www.hm-treasury.gov.uk/fin\\_financial\\_conduct.htm](http://www.hm-treasury.gov.uk/fin_financial_conduct.htm)



prudential regulation. Box 2 provides a summary of market conduct regulation in the United States, United Kingdom and Australia.

### ***Box 2: The Role of a Market Conduct Regulator***

Under the “twin peaks” regulatory structure, one peak—the Market Conduct Regulator—is responsible for overseeing the way in which market participants behave in the market, while the other peak—the Prudential Regulator—is charged with overseeing the financial health, safety and soundness of market participants in the way they operate their businesses. The Market Conduct Regulator focuses on ensuring that the financial markets are fair and transparent, supported by confident and informed investors and consumers.

One part of the activity of the Market Conduct Regulator is the oversight of the financial markets themselves to make sure that the markets function properly and are not manipulated to create unfair and distorted prices of financial products. This involves the oversight and regulation of both formal exchanges and over-the-counter markets. In addition, the activity of intermediaries, institutional investors and collective investment vehicles are scrutinized to make sure that their activities in the financial markets are carried out in a transparent and fully disclosed manner and thus support an open and well functioning market for financial products, which results in a fairly negotiated price for financial services.

The Market Conduct Regulator’s activity also directly deals with the manner in which financial services providers deal with their customers. This is particularly important for retail customers who don’t have the resources to protect themselves in financial transactions. The Market Conduct Regulator supervises the disclosures given by financial services providers to their consumers in the areas of credit, insurance, pensions and securities to ensure that the customers are treated fairly and are fully informed regarding the nature of the financial products that they are buying or selling. In addition, the Regulator is responsible for seeing that consumers are not subject to deceptive sales practices.

Finally, the Market Conduct Regulator is generally responsible for overseeing the education of the public in regards to the financial markets and increasing the financial literacy of the public. The confident and informed participation by consumers in the financial system is one of the best means to ensure a stronger and healthier financial system. Helping financial consumers to become well informed is one of the best ways to help consumers defend against financial fraud and make sound decisions about their financial transactions and relationships. Consumers also have a responsibility to participate in this effort to increase their financial literacy.

Source: Staff analysis of market conduct regulation in the US, UK and Australia

## **Government Policy**

**In 2010, the South African Government adopted an ambitious and broad ten-year development strategy that relies on increasing the level of financial inclusion.** The objectives of the New Growth Path (NGP) include: (1) creating five million jobs over the next ten years (and raising economic growth by six to seven percent), (2) increasing domestic savings in order to reduce the economy’s reliance on capital inflows, and (3) reducing the deep cleavages that characterize the South African economy, particularly those between the large corporate sector and small enterprises and between those employed in the formal sector and the unemployed (and discouraged) work-seekers. Implementation of the NGP—and in particular, increased domestic deposits and other savings—will require improved financial consumer protection to encourage households to keep their savings in formal financial institutions. Thus, to achieve the Government’s program, South African consumers need access to financial services that are both safe and fair.

**In February 2011, the National Treasury published a comprehensive strategy to strengthen the South African financial markets, including improvements in financial consumer**

**protection.** The policy document entitled *A safer financial sector to serve South Africa better* (the "Red Paper")<sup>21</sup> sets out the Finance Minister's proposals to:

- 1) separate prudential and market conduct regulation into two different agencies;
- 2) create a new Financial Stability Oversight Committee, co-chaired by the South African Reserve Bank's (SARB) Governor and the Minister of Finance;
- 3) enhance consumer protection by broadening the structure of the FSB to include regulating and supervising the market conduct of banking services within its ambit of responsibilities;
- 4) encourage increased access to financial services, following a review of the Financial Sector Charter;
- 5) enhance regulatory coordination, strengthen regulators as required, and formalize the Council of Financial Regulators (CFR);
- 6) table legislation with Parliament during 2011 dealing with banking, financial markets, credit rating agencies and the regulatory powers of financial supervisors; and
- 7) ensure that all businesses in the financial sector are licensed or registered.

**In addition, the National Treasury has released its Strategic Plan for 2011-14 that includes a Financial Sector Policy sub-programme.**<sup>22</sup> Four out of the five outputs of this sub-programme are related to consumer protection and financial literacy. The *consumer protection* output aims to set up the legislative framework for a new market conduct regulator in 2011-12. In this same period, the recommendations of the Competition Commission's Banking Enquiry (from 2008) are to be implemented and a consumer financial education policy is to be finalized. Implementation of these measures is to be monitored from 2012-2014. Success will be measured by the extent to which consumers of financial services are protected in practice (although the specific benchmarks for measurement of success have yet to be set). The *financial stability* output includes as targets the implementation of the Red Paper's proposals to strengthen the financial regulatory system and increased support for the financial regulatory agencies. Success will be measured by increased stability of the financial system (also with no specific benchmarks yet identified). The *financial sector transformation and access* output is to be achieved through the finalization of a Financial Sector Code and the implementation of the Financial Sector Charter's access targets by the financial industry. Success will be seen in the extent to which access to banking services has been broadened and improved, with a target of at least 70 percent of South African adults being banked by 2014 (compared to 63 percent using banking services in 2010, according to FinScope.)

**To encourage financial institutions to improve treatment of financial consumers, the FSB has launched a "Treating Customers Fairly" (TCF) program across the financial services sector.** The program is a way of "raising the bar" and encouraging financial firms to voluntarily improve their treatment of retail customers. The *Roadmap for Treating Customers Fairly* identifies six fairness outcomes to be achieved.<sup>23</sup> They are: (1) customers are confident that the fair treatment of customers is central to the financial firm's culture; (2) consumer financial products and services are designed to meet the needs of identified customer groups (i.e. those firms operating in low-income target markets are expected to target increased financial inclusion when designing financial products and services); (3) customers receive clear information and are kept appropriately informed; (4) financial advice is suitable to the customer and takes into account the customer's

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<sup>21</sup> National Treasury of Republic of South Africa, *A safer financial sector to serve South Africa better*, 23 February 2011 available at <http://www.treasury.gov.za/documents/national%20budget/2011/A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf>

<sup>22</sup> See [www.treasury.gov.za/publications/strategic%20plan/Strat%20Plan%202011-2014.pdf](http://www.treasury.gov.za/publications/strategic%20plan/Strat%20Plan%202011-2014.pdf)

<sup>23</sup> Financial Services Board, *Treating Customers Fairly: The Roadmap*, March 31, 2011 available at <http://ftp.fsb.co.za/public/TCF/TCFRoadmapFinal231Mar2011.pdf>



circumstance; (5) retail financial products meet customers' expectations and the associated services are acceptable and in line with what customers had been led to expect; and (6) no unreasonable post-sale barriers apply when customers wish to change products, switch providers, submit claims or make complaints. Following the release of the Roadmap, the FSB is to develop a self-assessment tool, first to be piloted with a limited number of financial firms and then to be made available to all financial service firms. Once the self-assessment methodology has been finalized and published, it is expected that FSB will conduct a benchmarking by reviewing the submissions of a sample of regulated firms. Future work will be determined by a TCF Regulatory Framework Steering Committee, which will include representatives from the regulated sectors. This will include a review of over 25 major laws, subordinate legislation and codes of conduct.

**The FSB is also working to strengthen financial literacy through consumer education.**

Following on its legal mandate to promote financial education programs by the financial services industry, the FSB adopted a consumer education strategy in 2001. The long-term vision of the strategy focused on three areas: (1) educating individuals on money management topics such as savings and debts; (2) making customers aware of the wide range of products and services available to them to help them ascertain the best "fit" for their needs, of their legal rights and responsibilities and of available recourse mechanisms; and (3) ensuring that unscrupulous financial institutions are reported. The strategy aims to implement both long-term and short-term policies to improve financial literacy, awareness, and consumer protection across different sectors and regions of South Africa. For this purpose, FSB has established partnerships with stakeholders like the Ministry of Education and the South African Insurance Association to implement specific initiatives. The strategy being implemented by FSB is based on quantifiable measures. In line with the long term objectives, a rigorous implementation and evaluation methodology has been developed using measurable indicators, based on in-depth client research. This strategy underscores FSB's role as a facilitator, recognizing the need for government intervention to prevent the large scale impact of future financial crises.

**A new National Strategy for Consumer Financial Education is currently being developed by the National Treasury, building upon the lessons learned from the FSB strategy.** The results of the FSB consumer education strategy were mixed, especially due to the lack of complete buy-in from all relevant stakeholders and limited resources for implementation. As a result, in 2009 the FSB started to review its strategy, engaging in a process of consultations with stakeholders. Since then, the National Treasury has taken the lead at a national level and developed a draft policy for consumer financial education, which calls for the establishment of a multi-stakeholder Central Coordinating Committee responsible for the development of the national strategy.

**In addition, the financial industry is supporting the institutionalization of the Financial Sector Charter, which will mandate financial institutions to fund financial education initiatives.** Dating back to 2004, the Financial Sector Charter commits the financial industry to promote the development of a transformed, vibrant, and globally competitive financial sector. As part of the Charter, the financial sector will: (1) reflect the demographics of South Africa and (2) contribute to the establishment of an equitable society by providing accessible financial services to black people and directing investment into targeted sectors of the economy. The charter also requires that, until December 2014, financial institutions will annually invest a minimum of 0.2 percent of their post-tax operating profits in consumer education. The Charter is based on the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003 and expected to be transformed into a Financial Sector Code by the end of 2011 and then published in the Official Gazette. It is also expected that the 0.2 percent target will be further increased.

## Key Findings & Recommendations

**The Diagnostic Review recommends five key measures:**

- 1) Restructure the institutional arrangements for financial consumer protection,
- 2) Improve the disclosure of information for financial consumers,
- 3) Improve regulation of business practices,
- 4) Strengthen dispute resolution mechanisms, and
- 5) Strengthen the financial education and consumer rights awareness.

### Institutional Framework

**For South Africa, it would be helpful if a single market conduct regulator could be established, combining the FSB and the NCR.** To achieve a “twin peak” regulatory structure with a separate market conduct regulator, several changes in institutional arrangements will be needed. A new single market conduct regulator/supervisor of financial services should be established and housed under a single line ministry, thereby consolidating the FSB and the NCR into one institution. The new agency should also develop a new field of market conduct supervision regarding transactional banking issues, currently covered by the recently established NCC.

**The new market conduct regulator should have the sole responsibility for consumer protection issues in financial services in South Africa.** Such institutional consolidation would ensure that consistent approaches are undertaken by a single market conduct regulator, as well as eliminate or minimize the systemic risk of contradictory financial sector policy objectives which could undermine the stability of the financial sector, thereby negatively affecting the well-being of South Africans. This would also ensure the effectiveness of the new market conduct regulator by providing for strong experienced leadership and significant capacity-building.

**The market conduct regulator should go beyond strict consumer protection issues and also cover competition issues in the financial sector.** It is recommended that the market conduct regulator be responsible for not only consumer protection issues but also the market (or business) practices of financial institutions under its supervision. This includes, for example, governance structures for financial intermediaries. In addition, in light of the high level of concentration in South Africa’s financial sector, it may be helpful if the market conduct regulator were also responsible for monitoring the levels of the competition in the financial services market — and for making recommendations on measures to further increase competition among financial institutions. This would also follow the scope of authority proposed for the UK FCA.

**Funding will be a critical issue for the new market conduct regulator.** The new regulator needs to be able to exercise its mandate pro-actively. It is therefore crucial that it is equipped with enough resources to supervise the market conduct of all financial institutions, oversee the application and implementation of all pertinent laws and regulations, and seek to enforce these laws and regulations as appropriate when transgressions occur.

**One open issue is the broad mandate for prudential supervision to be assigned to the SARB.** Prudential supervision is needed wherever financial firms hold deposits or other clients’ funds. For firms such as advisors and intermediaries where no client funds are at risk, no prudential supervision is required. In the proposed UK approach, the Financial Conduct Authority (FCA) would be responsible for: (1) market conduct supervision of all financial services firms plus (2) prudential *and* market conduct supervision for firms (such as insurance companies and broker-dealers) not covered by the prudential regulator. By contrast, under the proposed twin peaks

approach for South Africa, the SARB would be responsible for prudential supervision of all financial institutions. However the details remain to be worked out. It is important that the SARB has sufficient capacity and resources to undertake such a broad supervision mandate.

**Regarding legislative reform, as a first step all financial consumer protection laws should be consolidated into a new single Financial Consumer Protection Act.** At a minimum, a new Financial Consumer Protection Act should provide consumers with as much protection as is afforded by the current regulatory regime, including by the CPA, the Financial Advisory and Intermediary Services (FAIS) Act, the National Credit Act and the Policy Holder Protection Rules. Consolidation into a single act would be the result of a detailed analysis of the strengths and weaknesses of all relevant existing laws and regulations. In addition, the consumer protection topics that are the subject of various Policy Circulars should become the subject of appropriate mandatory provisions as soon as possible. The drafting of the Financial Consumer Protection Act should be undertaken by a highly qualified team of senior South African experts, including extensive initial and ongoing input from all relevant stakeholders, including financial industry associations, consumer groups and all relevant government agencies. This team should also draw on international best practices, including in respect of treating consumers fairly.

**As a second step, the consumer protection rules regarding the financial services industry should be carved out of the CPA.** This could be done by: (1) enacting the new Financial Consumer Protection Act, that deals exclusively with consumer protection in financial services and provides consumers as described in the paragraph above , and (2) the FSB successfully applying to the Ministry of Trade and Industry for an exemption from the provisions of the CPA on the grounds that the Act overlaps or duplicates a regulatory scheme administered by the FSB regarding other national legislation.<sup>24</sup>

**In the meantime, the CFR should play a more active role than it currently does.** By incorporating a forum for coordination among all agencies currently playing a role in financial consumer protection, the CFR can improve market conduct supervision through an effective and timely system. This would include not only entities under the Ministry of Finance but also agencies currently under the Department of Trade and Industry, namely the NCR, the NCC, and the Competition Commission.

**Special focus should be placed on regulation and supervision by a financial regulator of stokvels or financial institutions that provide “micro” financial products and services to the poor.** Such institutions include burial societies, which provide microinsurance products, as well as small savings clubs or traditional stokvels. According to the “Red Paper”, a stokvel is “an association of individuals who make regular contributions to a common pool of savings, which is generally given in total or in part to each contributor on a rotational basis.” There are three forms of stokvels:

- 1) Traditional stokvels or general savings clubs that rotate pooled funds to members on a mutually agreed basis, and are established for a variety of purposes (e.g. for women to buy groceries in bulk at reduced prices, or for members to organize parties at which food and liquor are sold and the host takes the profits)
- 2) Burial societies are established to assist members with funeral costs. They are generally formed between people with a social connection to provide a way for members to save for and insure themselves for expenses incurred in connection with the death or funeral of a family member.

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<sup>24</sup> As provided for under Section 5 (3) of the Consumer Protection Act.

- 3) Investment stokvels, where members save for capital projects or to invest in a business venture, property or shares.

**Thousands of small informal burial societies take funds from the public but are exempt from any financial supervision.** Burial societies are often incorporated as unregistered “friendly societies” under the Friendly Societies Act of 1956. Under this Act, large friendly societies are subject to supervision by the FSB but those with aggregate annual income of less than Rand 100,000 need not be registered and thus the Friendly Societies Act does not apply to them. In addition, friendly societies are exempt from registration as insurance providers under either the Short-term Insurance Act of 1998 or the Long-term Insurance Act of 1998, if the maximum amount of benefits per beneficiary does not exceed Rand 5,000. The proposed Microinsurance Act would require that all friendly societies, including burial societies, register either as financial service co-operatives or co-operative burial societies under the Co-operatives Act of 2005—and then be subject to supervision by a financial supervisor. However, under the current draft of the Act, burial societies with fewer than 2,500 members would still be exempt from registration with a financial supervisor.

**Traditional stokvels also accept funds from the public and are exempt from financial supervision.** Stokvels differ from burial societies in that they are typically rotating credit and savings societies. Members of stokvels make regular contributions (say weekly, fortnightly or monthly) to a common pool and then take it in turns to take the proceeds which may be spent for any purpose, not just burial-related expenses.

**All financial institutions offering financial products and services to the public should be registered with a financial supervisory agency and formally regulated from a market conduct perspective.** Almost half of adult South Africans—and as many as three-quarters of vulnerable black communities—are estimated to be members of burial societies.<sup>25</sup> Yet with such an informal structure, stokvels are vulnerable to becoming fronts for financial pyramids and other frauds. One solution is to require all financial institutions working with the public to register with financial supervisors (with the list of registered firms to be publicly available) and follow minimum standards for market conduct and corporate governance. Furthermore, such firms should be subject to minimum levels of corporate governance, requiring that the members of governing boards or councils and key executives be “fit and proper” and free of criminal convictions.

**The FSB could also consider developing and strengthening self-regulatory organizations as part of the regulatory framework for market conduct supervision.** An estimated 13,000 financial institutions provide financial services to households in South Africa. In light of the large number of financial firms, the FSB may wish to consider developing self-regulatory organizations (SROs) to whom authority could be delegated for the purpose of monitoring market conduct. As a first step, all regulated financial firms should be obliged to join their respective industry associations. The associations should then adopt codes of conduct, setting minimum standards of acceptable business conduct for the member institutions. As the industry associations develop sufficient institutional capacity, the FSB could consider certifying the associations as formal SROs with powers to monitor the market conduct of their members. Such SROs should have the authority to apply fines as specified under their delegated authority from the FSB.<sup>26</sup> Only very small mutual

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<sup>25</sup> The National Stokvels Association of South Africa estimates that 8.3 million adults are members of 800,000 stokvels. According to the 2010 Finscope Survey, 38% of adults (12 million people) use stokvels.

<sup>26</sup> Currently there are several industry associations with some self-regulatory authority, such as the National Stokvels Association of South Africa, the South African Microfinance Apex Fund, the Savings and Credit Cooperative League, the Council for Debt Collectors.

institutions, with membership limited to a small number (such as 50 individuals) should be exempt from the requirement to register with the financial supervisors.

**Alternatively the FSB might take a risk-based approach to market conduct supervision.** Use of a risk-based approach requires that the FSB define peer groups of organizations of similar market conduct risks. Based on the peer grouping, the FSB might provide tailored guidance on measures needed to improve business practices for the peer group—and then review if the guidance was successful in correcting the abusive practices that had been noted. If guidance was not sufficient, the FSB might request that institutions conduct self-assessments and see if the key issues begin to emerge. On a worst case basis, the FSB might conduct audits of business practices of several organizations in the peer group—and then use the results of the audit to refine the guidance provided to the peer group organizations.<sup>27</sup>

**Legislation for the insurance sector should be consolidated into a single law on insurance.** The consumer complaints data point to the critical need to strengthen regulation of insurance, both short-term and long-term. In particular, rationalization is needed of the fragmented regulatory regime in the insurance sector which results from the numerous applicable Acts, Regulations, Directives and mandatory and voluntary Codes. No fewer than eight Acts make provision for some kind of long-term insurance and nine provide for short-term insurance.<sup>28</sup> At a minimum, the legislation for short- and long-term insurance should be combined together. In addition, there should be a review of the currently applicable exemptions in respect of this legislation. This position will be further complicated by the proposed Micro-insurance Act and the consequential amendments that are proposed to be made to other legislation for the purposes of that Act. The current fragmented approach to insurance regulation provides extensive, but confusing, coverage with gaps and overlaps and room for regulatory arbitrage. A single law would be more appropriate than the current structure.

**Exemptions for market conduct regulation of some insurance and pension funds should be reconsidered.** There are various types of insurance funds which are subject to no market conduct regulation—but should be. This includes the Government Pension Fund and the collective bargaining funds (although the latter are subject to prudential regulation by the FSB). The exclusions need to be addressed as a matter of urgency, since the two Funds control substantial assets under management. Also exempt from market conduct regulation are: (1) insurance companies (and insurance intermediaries) registered under either the Land and Agricultural Development Bank Act of 2002 or the Co-operatives Act of 2005; (2) unemployment insurance funds established under the Unemployment Insurance Act of 1966; (3) collective bargaining agreements under the Labour Act or (4) boards of trustees of medical schemes under the Medical Schemes Act of 1998. Consideration should be given to bringing all these types of insurance and pension funds under market conduct regulation.

**Regulation of the Government Employees Pension Fund (GEPF) should also be improved.** The Pension Funds Act does not apply to the GEPF. The GEPF is Africa's largest pension fund and seventh largest in the world. This Fund has more than 1.2 million active members, 318,000 pensioners and beneficiaries, and assets worth R700 billion. This Fund should be regulated under the Pension Funds Act and the proposed new financial consumer protection provisions should apply for the benefit of its members.

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<sup>27</sup> For additional information on implementation of such a risk-based approach to market conduct supervision, see the work of the Financial Consumer Agency of Canada.

<sup>28</sup> As evidenced by the exclusions listed in s. 7(2) of the Long Term Insurance Act and s. 7(3) of the Short Term Insurance Act.

**Consideration should also be given to the regulatory structure on the protection of personal data, and on a related issue, accuracy of personal data in the credit reporting system.**<sup>29</sup> It is estimated that as much as half of the information in the credit bureau is inaccurate and needs to be corrected and revised. The lack of a reliable system leads to many inaccuracies in the allocation of credit to individuals. In coordination with authorities in charge of the national identification numbering system, private sector specialized companies should work on verification and matching techniques which would enable the best possible identification of consumers, thereby reducing the exposure of financial institutions to misleading accounts of any consumer's financial capacity. This innovation will need, however, to be closely monitored by the relevant authorities so that the rights of consumers regarding all data held about them and linked to their respective identification numbers will be fully respected.

**It is also important to promote and support an extensive multi-stakeholder consultation process.** Financial industry associations, as well as consumer organizations, should have clear voices in the process of policy formulation, from the outset to the realization of the second of the twin peaks. There should be extensive consultation with consumer representative groups, as well as other stakeholders, in relation to financial services legislation. In particular, this should be done in the course of designing and implementing any regulatory changes as a result of implementing the proposed TCF principles and any recommendations in this report.

**Consideration should also be given to strengthening consumer organization.** As vital members of civil society, consumer advocacy organizations have an important role to play in ensuring that the consumer's voice is heard. However, issues of insufficient funding and weak institutional strength plague consumer organizations in South Africa. Consideration should be given to possible state funding to help build expertise in financial sector issues, so that these organizations are better able to play advocacy, advisory and monitoring roles regarding financial consumer protection and improvements in financial literacy. In addition, international organizations (such as Consumers International) should be encouraged to further support institutional development of local consumer organizations.<sup>30</sup>

**The Financial Services Board might also wish to consider joining FinCoNet.** The International Network of Financial Consumer Regulators was established in 2003 as a mechanism by which market conduct regulators might share experiences in supervising financial consumer protection practices in their own countries. Since the area of market conduct supervision is one that is rapidly developing worldwide—and South Africa is positioning itself to become a global leader in this area—the FSB may find that FinCoNet can provide a useful forum for further development of best global practices in market conduct supervision.

## **Consumer Disclosure**

**Consumer disclosure requirements should be improved.** The promotion of clear and comparable consumer disclosure has proven to be an effective mechanism to promote competition and bring down the cost of consumer financial products and services. The financial services legislation established general requirements on consumer financial disclosure and the CPA recognizes consumers' right to information in plain and understandable language. However, neither

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<sup>29</sup> The issue of credit reporting was not covered in depth by the Diagnostic Review on Non-Credit Financial Services but could be analyzed in depth in any subsequent review.

<sup>30</sup> The National Consumer Forum is an affiliate member of Consumers International.

legislation nor voluntary codes of conduct provide sufficient specific guidance to financial institutions on the type and form of information for their retail customers—and where such guidance does exist, it is undermined by a fragmented and inconsistent approach to regulation, particularly in the insurance sector.

**As a starting point, financial institutions should be required to provide consumer information that is easily comparable.** A key issue for consumers is the ability to shop around for financial products to find the product that best meets their needs. For this, consumers need information that is: (1) easily accessible and (2) easily comparable among offers from financial service providers. Disclosure rules should apply in a similar manner, regardless of the distribution channel used. Thus the same disclosure standards should apply to both direct marketing and sales through intermediaries.

**Key Facts Statements would be helpful.** A Key Facts Statement provides consumers with simple and standard disclosure of key contractual information of a financial product or service, contributing to the consumers’ understanding of the product or service. Prior to purchasing a financial product or service, Key Facts Statements allow consumers to compare offers provided by different financial institutions. After buying the product or service, the Statements provide a useful summary for reference during the life of the financial product or service. This is of special importance when the retail market is opening up to new financial consumers who may be inexperienced in the use of financial products or services. For similar types of products and services, the disclosure materials should be as close as possible to limit possible misunderstandings. Prior to a consumer opening any account—or signing any legal agreement to buy a financial product or service—the consumer should be required to sign a statement saying that he/she has duly received, read, and understood the relevant Key Facts Statement.

**Key Facts Statements should be developed for basic non-credit financial products in South Africa, following the example of pre-agreement statements in the credit sector.** The National Credit Act and its subsequent Regulations already require credit providers to give a consumer a pre-agreement statement and quotation for all types of credit agreements (including credit cards and mortgage loans).<sup>31</sup> Key facts or pre-agreement statements should also be prepared for the range of available bank accounts, long-term and short-term insurance policies, such as life insurance and vehicle insurance.

**Key Facts Statements should be presented in plain and easily understandable language, and should summarize the key terms and conditions of the financial product and service.** Examples of international approaches with Key Facts Statements are provided in Box 3.

***Box 3: International Approaches to Key Facts Statements***

Several countries provide formats on Key Facts Statements. The UK FSA has developed mandatory key facts statements in the form of initial disclosure documents (or IDD) applicable to housing credit products, including residential mortgage credit. IDDs are supported by a regulation on Mortgage: Conduct of Business. The regulation provides recommendations for wording pre-disclosure and offering documents. In the European Union, the Directive on Credit Agreements for Consumers (2008/48/EC) includes a recommended format, namely the Standard European Consumer Credit Information form. Also the European Associations of Consumers and the European Credit Sector Associations have developed the European Standardized Information Sheet which provides a recommended format for pre-contractual information on home loans. In the US, the Truth in Lending Act (Appendix G-10) includes models for the

<sup>31</sup> The National Credit Act 2005 and National Credit Regulations 2006 include the following disclosure format requirements: NCR Form 20 “Pre-agreement statement and quotation for small agreement”, NCR Form 20.1 “Quotation for intermediate and large agreements”, and NCR Form 20.2 “Small agreements”.

"Schumer Box" for credit cards. Peru has developed the "Hoja Resumen" or Summary Sheet, following similar key-fact-statement principles. Australia has also recently introduced legislation which will require credit licensees to provide consumers with a "Key Facts Sheet" for standard home loans and certain credit card contracts.

Source: Staff analysis

**Key Facts Statements and any other required disclosure materials should be developed by the FSB, or by the financial industry associations working with the FSB.** For example, the FSB and the Association for Savings and Investment of South Africa (ASISA) should develop a Key Facts Statement for savings and investment products and the disclosure requirements should be monitored by ASISA, under supervision from the FSB. In cooperation with the FSB and consumer organizations, ASISA should further develop disclosure rules (including the definition of commonly used terms, as well as the text and size of relevant warnings) and ensure that all disclosures are understandable to average clients as well as properly used and explained in the sales process. In this respect, the proposal for the micro-insurance market to use a simplified one page policy statement (as described in the Micro-insurance Paper) and should apply to all consumer financial products and services. Consumer organizations should also be engaged to provide comments on the proposed disclosure.

**Consumer disclosure should be extensively tested.** It may be helpful to test consumer understanding of mandatory disclosure statements. In the US, the Federal Reserve Board has conducted extensive consumer testing of credit card disclosure information in order to develop an easily understood format.<sup>32</sup> In South Africa, some limited consumer research has been undertaken to gather information on consumers' experiences with credit products (including understanding of loan agreements, required disclosure of interest rates, and legal disputes with creditors), which has proven useful to the NCR. Similar and more comprehensive consumer research studies would also be useful to the FSB.<sup>33</sup>

**Comparison websites would also help consumers shop around.** Establishment of websites that provide consumers with comparable information such as commissions, charges, fees, interest rates, as well as the number and types of consumer complaints would be very helpful. For example, remittance services in South Africa are considered among the most expensive in the world. One way to increase competition and reduce consumer prices would be through a national price comparison website, as has been done by Australia, New Zealand, Germany, France, Italy, and the United Kingdom. The World Bank has also developed a standard methodology for consumer remittances information. In addition, the World Bank maintains a website that shows trends in remittance costs in a large number of corridors and provides a useful reference points.<sup>34</sup> While many low-income migrants lack internet access, the availability of the information in an internet-based user-friendly form facilitates dissemination of the information through the media, embassies and consulates, faith groups, and migrant associations. A similar approach of comparison websites could be used for any major consumer financial product or service.

**Financial advisors should also be required to explain disclosure documents to consumers.** Many financial service providers (FSPs) treat disclosure rules primarily as a compliance requirement, making sure that the client receives all paperwork rather than on explaining the

<sup>32</sup> For a summary of lessons learned, see <http://www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm>

<sup>33</sup> These consumer research studies were developed by CGAP and included 8 consumer group discussions and 8 in-depth individual interviews with consumers. For further information on the findings of this and other consumer research studies, see <http://www.cgap.org/gm/document-1.9.55701/FN74.pdf>

<sup>34</sup> See <http://remittanceprices.worldbank.org/>



meaning of disclosed information and its impact on customer's decisions. While financial advisors are required to provide clients with a significant volume of disclosure documents, the policy should be upgraded to require that the information and its impact are explained to their customers. Supervisory processes should be upgraded to monitor this requirement, including by using mystery shopping.

**Pre-contractual information should be complete, including a copy of the standard contract.**

Consumers should also be given complete information on any financial product or service they receive, including its terms and conditions, as well as a record of any personal investment advice provided to them. This information should be given in time for the consumer to make an informed decision as to whether to acquire the relevant financial product and, in any event, before it is actually acquired although some exceptions may be needed, for example for insurance cover which is sold over the phone where immediate coverage is required. The law provides general guidance on pre-contractual information. However FSB regulations should require that, for all basic financial products and services, consumers can receive a copy of the standard contract before they sign the contract. This will allow consumers to take a copy home and review it at their leisure and thus improve their understanding of the legal rights and obligations under the contract.

**Specifically, the rules regarding disclosure of charges for using Automated Teller Machines (ATMs) should also be revised.**

Although the industry has made significant efforts regarding the adoption of secure and innovative authentication methods such as biometrics, disclosure of information on charges and fees, particularly regarding foreign or “off- us” charges has yet to be finalized. A requirement to inform consumers of the additional costs they might be incurring during their interactions at ATMs would be very beneficial (e.g. SASSWITCH fees paid by the issuing bank to the acquiring bank). Frequently, interchange fees apply merely to debit and credit cards while in South Africa these fees also apply to a much broader range of transactions including EFTs, Mzansi money transfers above certain thresholds and Early Debit Orders.

**Consumer disclosure should also be improved for international remittance services.** There is no requirement for international money transfer companies, such as Western Union and MoneyGram, to display information such as commissions and exchange rates at the time of origination. Also as a general rule, no rate boards or exchange rate leaflets are available--only information on commissions. At a minimum, information should be provided to the consumer at the time that money is being sent regarding: (1) the fee paid by the sender; (2) the estimated exchange rate to be applied; and (3) the timing and location of pay-out. Ex-post information should include: (1) the actual exchange rate used and (2) the amount that will be received by the beneficiary in local currency. The receiver should be provided with: (1) a written receipt, showing the exact amount received; (2) information on the fees the receiver is obliged to pay; (3) the exchange rate applied, (4) in case of a cash collection, the documentation needed to collect the cash; and (5) information on policies and procedures in respect of filing a complaint.

**Financial institutions should be obliged to identify their regulator as part of the print and TV and radio advertising.**

As a measure to build consumer confidence, it may be helpful to require that all financial institutions indicate the name of their regulatory agency in their advertising. This approach is widely used as a way of advising consumers that the regulator is supervising the financial institution and its business practices. This is in line with responsible and fair advertisement practices. The consumer should be able to verify the claims made by any bank as advertiser.<sup>35</sup>

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<sup>35</sup> See for example, see the UK Financial Services and Markets Act 2000 or the UK Consumer Credit Act 1974.

**A general consumer guide to financial advice would also be helpful.** In cooperation with other stakeholders, the FSB should develop a simple, easily readable guide to financial advice. The guide should show consumers what to expect and explain their legal rights and obligations. The guide should have the widest possible distribution.

## **Business Practices**

**The costs of non-credit banking services should be analyzed.** Anecdotal information suggests that the prices of non-credit banking services in South Africa are high by comparison with international practice. The spread between banks' direct costs and the commissions, fees, charges and penalties applied to consumers (and especially the poorest of consumers), as well as the high cost and practical difficulties for a consumer to switch accounts from bank to bank, appear out of line with international practice. Although the effective cost of credit in South Africa has been thoroughly analyzed, the real costs of other banking sector services on which to base fair commissions, charges, fees and penalties for consumers is unknown. A study on the high cost of bank commissions, charges, fees (including interchange fees) and penalties on customers' transactions would be helpful. The results should be publicized, with regulation to follow.

**The proposed financial market conduct regulator or expanded FSB should also monitor implementation of the revised Code of Banking Practices to see if it provides useful guidance for banks in addressing the source of most consumer complaints about banks.** Of concern, however, is the way in which the many obligations that the revised Code of Banking Practices places on each bank will be honored in practice. With no statutory or self-regulatory body in a position to enforce the revised Code, it falls solely to a consumer to raise a complaint with his/her bank when the bank fails to comply. This will not be possible, however, unless the consumer is first made aware of the bank's obligations. In addition, while the proposed revisions to the Code of Banking Practice deal, in part, with the matter of switching, all pertinent recommendations of the Banking Enquiry of 2008 should be carefully considered by the expanded FSB in conjunction with the Competition Commission and other stakeholders. This is necessary so that the long-standing and widely held complaints of consumers regarding high and non-transparent costs, as well as of undue administrative hurdles encountered in switching, are finally put to rest.

**As a first step, actions should be taken so that the revised Code of Banking Practices is well-publicized.** Copies of the Code should be given to all customers of the banks. The Code should be prominently displayed in all bank branches. Each bank should post the Code on its website and distribute brochures with a copy of the Code or at least a summary of its key provisions and a reference to where consumers can access the full copy (either in premises or the bank website) and contact details for the Banking Services Ombudsman.

**The SARB should also review current practices regarding mobile banking.** Mobile banking can become an important additional channel for banking services, thereby contributing to reducing the cost of transactions, increasing access to financial services in remote areas and serving as an instrument for peer-to-peer payments. Banks, however, are currently not offering consumers all potential benefits of mobile banking. Rather, they limit their offerings to SMS (information on their account), cross selling of airtime and limited e-wallet services. The SARB and the Payments Association of South Africa (along with the expanded FSB in the future) should encourage banks to expand range of services offered on mobile channel while at the same time consider the following aspects:

- 1) monitoring of the design and authorization of payments mechanisms so as to ensure safety and reliability;
- 2) protection against the loss of funds and unauthorized transfers;<sup>36</sup>
- 3) prescription of details that needs to be included in statements and account information;
- 4) provision of clear, simultaneous information about the cost of each transaction undertaken by consumers; and
- 5) upholding consumer's rights regarding the settlement of any related disputes.

**Adequate physical, logical and technological safeguards should be established at ATM locations.** All too frequently, South African consumers face the threat of robbery when using ATMs. Financial institutions should install cameras at ATMs in both urban and rural areas and safe locations need to be identified for the installation of ATMs.

**New entrants into the payments system would increase competition.** The retail payments system should also be regulated to allow for innovation and the entry of new players, promoting further competition in the provision of financial services especially to the poor, while at the same time providing adequate consumer protection rules.

**Codes of conduct should be developed by the associations of all parts of the financial sector.** However there are numerous industry associations. The Banking Association of South Africa includes the major banks--although not all banks in South Africa are members of the Association. The Banking Association has issued a Code of Banking Practice, applicable for all member banks of the Association. Under the Code, the members of the Banking Association have agreed to accept the decisions of the Office of the Ombudsman for Banking Services. The Association of Collective Investments represents all collective investments (for example, unit trusts) management companies. The Linked Investment Service Providers Association represents financial institutions which package, distribute and administer unit trust-based investments. The South African Insurance Association represents the short-term insurance industry and the Life Offices' Association of South Africa represents long-term insurance companies. The supervisory agencies should encourage each of the associations to prepare codes of conduct for the members of the associations.

**A code of conduct for remittance service providers (RSPs) would be helpful.** The Code should incorporate the relevant principles and governance arrangements underlined in the General Principles for International Remittance Services issued by the Bank for International Settlements (BIS) and the World Bank.<sup>37</sup> In particular, the adoption of General Principle Number 1 and underlying guidelines regarding transparency and consumer protection should be considered by the South African authorities. In addition, while taking into account South Africa's specific domestic circumstances, the World Bank model charter could serve as a useful guide when developing the code of conduct.

**The FSB should strengthen its regulation of collective investment schemes (CIS).** With the growth of investment in such schemes, the capacity of the FSB should be upgraded to keep abreast of the increasing volume of work. Also, alternative investment products that are currently not regulated should be included under the mandate of the CIS department and rules on disclosure for these products should be drafted and applied. If emergency action is needed at any of the CIS, the

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<sup>36</sup> For example, if a phone is lost, no account information should be retrievable.

<sup>37</sup> Committee on Payment and Settlement Systems and The World Bank, *General principles for international remittances services*, January 2007 available at [http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New\\_Remittance\\_Report.pdf](http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New_Remittance_Report.pdf)

FSB's CIS department should be given adequate powers to conduct any action without delay that is in the best interest of the clients of the CIS, including selecting a curator for the CIS. In addition, alternative financial products (e.g. property syndications, bridging finance, etc.) should be included under the regulatory umbrella of financial advice when they are offered by financial advisors so that the customer remains protected by the consumer protection rules when financial advice is provided.

**Improved competition among CIS providers would also be helpful.** To improve competition in the CIS arena, the FSB should consider allowing improved access to foreign-registered mutual funds, letting funds registered in selected jurisdictions (for example, the European Union, the United States, etc.) be distributed in the South African market. Alternatively, at a minimum, these funds should be allowed to be included in portfolios of South African funds of funds.

**Special care should be taken with financial intermediaries, in terms of their selling and marketing practices.** The South African financial market is significantly intermediated, especially in the areas of insurance (including burial policies), collective investment schemes, pension funds and alternative non-regulated financial products. There are currently about 170,000 financial advisers and intermediaries, working for a total of 13,873 Financial Services Providers (FSPs). This scenario might be promoting pervasive and aggressive competition among FSPs, with potentially harmful consequences to consumers.

**A study of churning would be helpful.** Retail customers are often advised to buy and sell securities in their portfolios, even if there is very limited benefit of changing. While churning is often pointed out as a major issue for consumers, no data is available to quantify the estimated volume and impact of churning. The issue of churning should be studied by the FSB to define its impact on consumer well-being and potential need for regulatory action. Significant effect of high commissions on product sales (especially if inappropriate cancellation of other products is included) may pose systemic risks and thus should be carefully addressed. Other issues involving commissions should also be studied, e.g. the suitability of duration of life investment policies (as commission is based on the length of policy, there may be potential miss-selling as policies are written for too long).

**A special focus should be placed on sales by telephone.** Anecdotal evidence suggests that a significant part of churning is related to telesales. With different market conduct regulations for telesales (especially for sale of insurance products) and dangers of inadequate disclosure and explanation of products during telesales, there is significant room for mis-selling and the telesales should thus be closely monitored.

**A mandatory cooling-off period for all financial products may be helpful.** Cooling-off periods can be very beneficial for all financial products that have high selling commissions or are otherwise subject to high-pressure sales. Consumer credit already has a five day cooling-off period. Long-term insurance policies have a 30-day cooling-off period. All long-term financial products, and in particular private pensions, should have a cooling-off period.<sup>38</sup>

**The commission structure for financial advisors should be reviewed and revised.** Another area the FSB should thoroughly analyze is the impact of commissions on the volume of sales of each product. Commission schemes vary for alternative products (e.g. investment life insurance vs. mutual funds). As a result, financial advice may not always be fully objective. Possible regulation

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<sup>38</sup> For products whose pricing is market-sensitive, the customer who cancels a contract after signing should be obliged to compensate the financial firm for its out-of-pocket costs in unwinding the contract.

may include structuring and paying the commission strictly on pay-as-you-go basis, outlawing causal event charges to clients for early cancellations of products, etc. Whatever the results of the study, some preliminary revisions could be considered. For example, when advisors recommend cancellation of a product, they should always quantify any losses the client will suffer from that cancellation.

**Financial institutions should be required by the FSB to structure commissions to deter churning.** Regulation on commissions and churning should focus on implementing minimal controls over up-front commissions on insurance products that would inevitably encourage intermediaries to churn these products, to the detriment of policy holders who may face early termination and other costs. Accordingly, consideration should be given to banning such commissions so that intermediaries are rewarded strictly on a fee-for-service basis. A possible exception could be in relation to low-value policies, given the small amounts involved. To limit the potential for mis-selling, commission payments to financial advisors should be made only in amounts agreed in writing between the advisor and the client and, preferably, only on a pay-as-you-go basis without any prepayments. Apart from the agreed fee, no other incentive or motivating factor for any representative should be permitted. Special attention should also be placed on questions of conflict of interest. While the rules for conflict of interest are in place, many industry representatives pointed out that better enforcement is needed by the FSB as some companies develop new ways of motivating the distribution channels they use.

**Special attention should be paid to clarifying who is responsible for the advice that is given to a consumer.** Complex business structures are a feature of modern financial institutions. However this can be confusing for consumers. Especially in the insurance sector, with brokers, underwriting managers and other types of institutions, it may be difficult to define a clear chain of responsibility for advice provided and products sold. Regulations should therefore cover all companies and persons with direct or indirect impact on the sales of financial products. Their activities should be subject to FSB supervision, comply with relevant FAIS rules, and fall under the jurisdiction of the FAIS Ombud. In addition, financial institutions should be explicitly responsible for the actions and statements of their formal agents.

**Care should also be taken to analyze non-regulated products offered by financial advisors.** Anecdotal information suggests that financial advisers often recommend products that are not regulated (e.g. property syndication, bridging loans, etc.). However clients often see unregulated products as a low-risk (and low-cost or high-yield) alternative to regulated financial products. Furthermore consumers often rely on their advisors when buying unregulated products. In addition, there is a lack of adequate procedures regarding suitability analysis and record keeping at the lower parts of the industry, especially for short-term insurance (often offered through telesales) and funeral policies. The FSB should also develop market conduct regulations in line with the FAIS Act (and future changes related to the concept of Treating Consumers Fairly) for these products (including extending the jurisdiction of the FAIS Ombud to cover all financial products offered to retail customers by financial advisors). As a model of coverage, the Financial Planning Institute's Code of Ethics and Professional Responsibility could be used.<sup>39</sup>

**Tying of financial products should be prohibited.** Consumers should not be required to buy any insurance product as a condition of buying another financial service (such as a loan), other than mortgaged property insurance or insurance required by law. Even in that case, there should be a requirement that the policy be subject to renewal every 12 months so that the insured can consider

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<sup>39</sup> See <http://www.fpi.co.za/Membership/StandardsandDiscipline/tabid/3249/Default.aspx> to download the Code.

if he/she wants to use a different insurer. Furthermore the insured should be given a list of acceptable insurers so that the consumer can shop around for the best price on credit insurance

**Training of financial advisors is critical to building consumer trust in the financial sector.**

While regulation often focuses on traditional financial institutions, proper regulation of distribution channels and effective enforcement of rules is very important, especially in markets with limited history of using modern financial services. Especially for new customers, financial advisors are often the first point of contact with the financial industry and the experience with the financial adviser often influences the future financial behavior of people. Should a significant lack of trust of the financial sector due to negative previous experience develop, financial inclusion and the savings level will be negatively influenced.

**The regulatory examinations are being improved.** Issues have arisen with intermediaries not fully understanding their products and engaged in conflicts of interest that result in mis-selling. Consequently, the FSB decided to revise the fit-and-proper requirements, requiring FSPs who are sole proprietors, key individuals and representatives to complete regulatory examinations Level 1 by December 31, 2011. The regulatory examinations consist of two levels:

- 1) **Level 1** focuses on testing the application of factual knowledge of key individuals in relation to their regulatory role and responsibility as a key individual, the relevant legal provisions, their appreciation of the legal meaning and implications of these provisions, and their ability to apply these provisions correctly.
- 2) **Level 2** is product specific, and focuses on product knowledge as it relates to the various subcategories of financial products, and the processes and procedures that should be followed for each financial product when rendering financial services or giving advice in relation to specific financial products.

**Regulatory exams for financial advisers and intermediaries could be further improved.** While many financial institutions rely on intermediation in their sales activities and financial advisers are often the first point of contact with financial institutions for many South Africans, the quality of financial advisers varies significantly. To further ensure that the regulatory exams support improved provision of financial advice, a FSB task-force should be established to monitor the progress of these regulatory exams and act proactively on any findings in terms of pass rates, exam capacity before deadlines and the added value the design of the exams brings to improved provision of financial services. In addition, the education of financial advisers and key individuals should be defined as an essential responsibility of the financial institution they work for, with the FSB approving education programs, the licensing of trainers and the monitoring of their conduct. These education programs should focus on improving provision of financial services and better financial advice capability of representatives. Key consumer-related issues then should be included into yearly refresher retraining provided by FSPs. When regulatory exam Level 2 is prepared, the FSB should coordinate all companies providing training and verify that the training provided is relevant to the exam.

**The FSB should strengthen its capacity to review the suitability of financial advisory services.**

The FSB divides FSPs into three categories and tailors supervisory activities and focus for each FSP based on the category to which it belongs. In 2010, the risk-based division was as follows:

- high impact FSPs 288
- medium impact FSPs 3,219
- small FSPs 10,368

To improve monitoring of the financial advice and ensure proper provision of service, the FAIS department of the FSB should develop its capacity and knowledge to be able to verify on a regular

basis the suitability of the financial advice provided, building also on the input of the FAIS Ombud to select areas most in need of supervisory attention.

**In light of the large number of financial intermediaries, the FSB may also wish to further rely on SROs for ongoing supervision of intermediaries.** The structure used in the United States and United Kingdom is one of delegated authority to SROs where the membership in the respective SRO is obligatory for all financial firms. The SRO is then responsible for monitoring the market conduct activities of member firms and can impose fines to ensure compliance with financial legislation and codes.

**Consideration should also be given to legislation on personal insolvency.** The issue is complex. For households with high levels of indebtedness—and no way of meeting their obligations—declaring bankruptcy under a court-supervised plan of financial reorganization may be the only solution. Where personal insolvency is an easy option, households may accumulate large debts and then default on their obligations, thus undermining lending institutions. However where personal bankruptcy is not possible, unscrupulous lenders may aggressively target vulnerable households, knowing that consumers cannot walk away from their financial debts. Consideration should be given to developing a program in line with best international practice.

## **Dispute Resolution Mechanisms**

**For financial services in South Africa, consumers need to find their way through a thicket of seven different ombuds services.** As noted in Table 5, consumers must choose among three different systems of redress with two ombuds for insurance (short-term and long-term) and an appeal board for medical insurance. Separate Short-Term Insurance Ombudsman and Long-Term Insurance Ombudsman have been established by the respective industry associations. The Credit Ombud resolves complaints related to the credit bureaus, credit providers, debt counselors and payment distribution agents that are members of the Credit Ombud. All of the industry association-based (non-statutory) ombuds are authorized under the Financial Services Ombud Scheme Act. The Credit Ombud is also authorized under the National Credit Act. The Pension Funds Adjudicator can make binding decisions in response to complaints regarding private pensions and is a statutory body. However exercise of some of the Adjudicator's administrative powers requires the concurrence of the FSB. The Financial Advisory and Intermediary Services Ombudsman (FAIS Ombud) was established by statute and handles complaints for any financial service not otherwise covered by other ombuds services.

**Some ombuds have a particularly difficult task.** The FAIS Ombud covers all formal financial services not covered by the other ombuds. This ensures that all financial services are covered by one or another system of redress. However the task is a difficult one. The scope of authority for the FAIS Ombud includes sophisticated asset management companies or CIS which sell their services to the top one percent of income-earning consumers. However, the scope also extends to burial societies, which provide a savings vehicle for almost three-quarters of consumers in low-income households. Even for the most efficient organization, such a wide scope makes it difficult for coverage to be both sufficiently sophisticated and comprehensive as to adequately serve both types of consumers.

*Table 5: Current Structure of Ombuds Services in Consumer Financial Services*

Type of Institutions Covered	Ombud	Status of Ombud
Pension funds	Pension Funds Adjudicator	Statutory
Financial advisors & intermediaries & any financial service provider not covered by other ombud including:	Ombud for Financial Advisory and Intermediary Service Providers	Statutory
<ol style="list-style-type: none"> <li>1) Non-bank financial institutions</li> <li>2) Collective investment schemes companies, managers, trustees, custodians, nominee companies</li> <li>3) Co-operative banks</li> <li>4) "Friendly societies"</li> <li>5) Traditional Stokvels (savings clubs)</li> <li>6) Burial societies</li> </ol>		
Credit providers	National Consumer Tribunal	Statutory
Banks & payment system	Banking Services Ombud	Voluntary
Non-bank credit providers, credit bureaus, debt collectors	Credit Ombud	Voluntary
Short-term insurance companies	Short-term Insurance Industry Ombud	Voluntary
Long-term insurance companies	Long-term Insurance Industry Ombud	Voluntary
Medical insurance schemes	Council of Medical Schemes Appeal Board	Voluntary

Source: Staff analysis

**Furthermore the seven types of ombuds services operate under two different types of authority.** The ombuds for general financial services and pension funds and the National Consumer Tribunal have been established by law and have statutory authority. By contrast, the ombuds for banking, payments, other credit services and the three types of insurance products were set up under the authority of the five different industry associations.

**The voluntary ombuds work at a disadvantage.** Voluntary ombuds are based on industry agreements and must rely on cooperation from financial institutions, peer pressure being the only tool they can use to push for full and speedy cooperation of financial institutions. The lack of statutory powers and enforcement powers means that many cases last significantly longer as the ombud is not provided with relevant material from financial institutions promptly, thus having negative influence on efficiency of the voluntary ombud schemes.

**Furthermore the role of the NCC in handling complaints is unclear.** Nevertheless the NCC receives large number of consumer complaints regarding financial services. They note that during their first ten weeks of operation, about 3,000 consumer complaints were submitted to the Commission—and of these, 20 percent related to financial services or products.

**The ombud-related issues arising from the CPA should be officially clarified as soon as possible.** Of particular concern are two issues. The first relates to accreditation (i.e. whether voluntary ombuds need to be accredited with the NCC according to Section 69 of the CPA if they have already been recognized under financial services legislation). The second issue is one of jurisdiction, i.e. whether all cases should first go to the NCC as stipulated by Section 70 (2) of the CPA or whether the Commission should only deal with cases outside the jurisdiction of existing financial services ombuds. Clarification of the jurisdiction of the Commission would help avoid forum shopping by consumers.



**Decisions by ombuds services should be binding on financial institutions, up to a maximum amount.** The scope of authority of ombuds services varies greatly. For example, decisions by the Ombud for Short-Term Insurance are binding on the insurance company whereas decisions by the Banking Services Ombud are not binding for banks. However the Banking Ombud has the right to publish its decision regarding a bank, and thus “name and shame” those banks which ignore his/her recommendations. However such a system is confusing for consumers. All decisions by financial ombuds services should be binding on the financial institutions up to a certain limit. Once the process is complete, consumers should still have the right to take the case to court if she/he wishes.

**Few consumers know about the existence of ombuds schemes.** In a 2009 survey conducted by Ipsos Markinor for the Ombudsman for Banking Services, only 11 percent of survey respondents had heard about the Banking Ombud and 9 percent about the Credit Ombud. Of these, most were full-time employees with higher education. In the claim denial letter, insurance companies are required to inform customers about their right to refer a denied claim to the insurance ombudsman. However, only 40 percent of complainants in 2010 learned about the Banking Ombud through their banks--almost as high a share as the word of mouth at 36 percent. The trend is however improving. Only 25 percent of complainants learned about the Banking Ombud through their banks in 2009.

**At the time a complaint is submitted, all financial institutions should be required to inform their customers about the relevant ombudsman.** To facilitate better knowledge of customers and their access to ombud schemes, all financial institutions should be required to:

- 1) inform customers about the existence of the relevant ombud in all of their marketing materials discussing complaints and service guarantees, including contact information and basic rules for approaching the ombud;
- 2) inform customers about the existence of the relevant ombud and their right to approach him when they offer to settle or decline to settle any consumer complaint;
- 3) have necessary ombud forms for clients to fill complaints at the branches and if the client decides to submit the complaint to the ombud via the branch of a financial institution or via a financial advisor, deliver such a submission to the ombud within 5 working days.

**The ombuds services should be actively promoted.** While the joint hotline that directs consumers to the proper ombudsman is a significant improvement, it should be actively promoted. Other joint activities, e.g. a joint website about consumer rights and the ombuds system could be considered. Improved cooperation with PCAOs could be an effective tool to increase awareness about the ombuds, as well as an effective tool to collect complaints. Access to the ombuds services should be easy for consumers. While the hotline is toll-free, it works only for landline lines. Since there are no toll-free numbers for calling from mobile phones (and penetration of landlines is very low in many areas of the country), many poor people cannot afford to consult with the ombud service. Also, as most ombuds have only a single office (the credit ombud being an exception with three offices across the country) and all claims must be submitted in writing, many potential complaints are probably never lodged. Toll-free access via mobile telephones would be helpful.

**The ombuds services should coordinate their communication and media policy.** The ombuds should provide the media with easy-to-understand press releases about case rulings and settlement examples (no names included), so that the media can be inspired to cover both the behavior in question and the work of the ombud. The current FAIS Ombud media policy and the case summaries in the Banking Ombud Annual Report or the Short-Term Insurance Ombud Annual Report or quarterly newsletters with case studies could be used as a starting point to develop press releases and to consult with the media whether they clearly understand such information..

**All the ombuds services should publish detailed statistics on complaints.** Of the seven ombud services, only the Banking Ombud publishes an annual report with detailed statistics on the number of complaints, the types of complaints and the final resolution of the disputes. All the financial ombuds services should publish similar information. Complaint data provide early warning signals of the types of issues faced by financial consumers. Published data allows financial supervisors, consumers organizations, and other stakeholders to analyze trends in the nature of the complaints and thus easily identify systemic issues in financial consumer protection. On the basis of the complaint data, supervisors and other stakeholders can consider what measures would best address the issues commonly faced by financial consumers. Furthermore in most countries, the overwhelming number of complaints does not relate to disputes over contracts—or even questions of fairness and equity. The vast majority of complaints are generally inquiries asking for information, asking how financial institutions operate and how they as consumers can best understand their legal obligations. In most cases, these are requests for financial education. Providing thoughtful analysis about the underlying sources of consumer complaints can help policy-makers design improved financial consumer protection policies as well as effective programs of financial education.

**As an example, data from the Banking Ombud provides useful insight into the concerns of consumers in South Africa—and their probability in winning a case.** The single largest complaint—representing one of four of all complaints—related to use of ATMs. For these, complainants won less than half the cases (44 percent). For other major categories of complaints—mortgage finance, internet banking, credit cards and vehicle finance—the customer won between 27 and 44 percent of cases. However, on complaints related to estates/trusts and insurance, only one in four cases was resolved in favor of the customer.

*Table 6: Banking Ombudsman Case Statistics 2010*

	Favor of Bank	Favor of Complainant	Total Cases	% Favor of Complainant
ATM	529	408	937	44%
Mortgage Finance	482	184	666	28%
Internet Banking	275	209	484	43%
Credit Cards	235	129	364	35%
Vehicle Finance	215	81	296	27%
Personal Loan	168	102	270	38%
Current Account	108	75	183	41%
Savings Account	56	30	86	35%
Checks	47	28	75	37%
Debit Orders	38	21	59	36%
Business Finance	42	12	54	22%
Investments	38	14	52	27%
Estates & Trusts	32	4	36	11%
Cash/check Scams	16	11	27	41%
Overdraft	20	4	24	17%
Credit Bureau	15	6	21	29%
Insurance	15	5	20	25%
Foreign Exchange	10	10	20	50%
Other	<u>29</u>	<u>12</u>	<u>41</u>	29%
<b>Total</b>	<b>2370</b>	<b>1345</b>	<b>3715</b>	<b>36%</b>

**The current structure of ombuds services leaves the system open to “forum shopping” by consumers.** The consumer is free to approach any ombud he deems relevant to his case. If the ombud feels he/she has no jurisdiction in the area, he would forward the case to the proper ombud. The FAIS Ombud is the ultimate catch-all for any complaints across financial services. However, there are no provisions for joint cases, so if a case has for example a long-term insurance part and a financial advice part, the consumer would have to approach both the long-term insurance ombud and the FAIS Ombud separately, with two investigations being conducted and two decisions made. This might lead to forum shopping on one hand when a consumer tries to change his complaint to suit several ombuds and see which approach brings him best benefits. On the other it leads to increased costs to the industry, the ombuds system and the consumer.

**The structure is also not as efficient as is needed.** Some voluntary schemes have agreed disclosure rules for ombuds. However the information standards vary widely from one financial sector to another and consumers may be confused by too many ombuds. Also having several ombud schemes creates delays when a complaint is to be handed to another ombud after an investigation was conducted by the first ombud that was approached.

**A study could be conducted to analyze options for bringing all ombud services under one roof.** However it should primarily be an operational change, allowing for better coordination of cases, joint judgment when several aspects of financial services are involved, and the avoidance of forum shopping or dealing with the same case at several ombuds. The main focus of improved coordination should be on increased efficiency, lower costs of operation and easier access to justice for consumers. If a single financial services ombud organization is created, it should still retain its individual areas of expertise along the lines of today's ombuds and build on their substantive experience.

**To unify the ombuds schemes, a two-stage process is recommended.** It is expected that the Financial Services Ombud Schemes Council (FSOSC) will act as a coordinating body of the recognized voluntary ombud schemes. This will be very helpful. The first stage would be operational cooperation (coordinate cases, run joint marketing, allow for joint proceedings when guilt should be apportioned e.g. between an insurer and an advisor), giving more powers and authority to the FSOSC to coordinate ombuds' activities more closely. The second stage would be to conduct a study to see how to merge all the ombuds in the future, possibly into one statutory body. However whichever process is selected, consideration should be given to the best of international experience with financial ombuds schemes.<sup>41</sup>

**It may be helpful to prepare a feasibility study on the best way of unifying the various ombuds structures.** A detailed study is needed to find the best way of combining the different forms of ombuds structures, some more effective than others, some having more funding than others. The ombud schemes for credit, banking, short-term and long-term insurance as well as pension funds are members of International Network of Financial Services Ombudsman Schemes (INFO) and

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<sup>40</sup> Ombudsman for Banking Services, *An Account of Activities for the Period 1 January – 31 December 2010*, [http://www.obssa.co.za/documents/2009\\_obs\\_annual\\_report.pdf](http://www.obssa.co.za/documents/2009_obs_annual_report.pdf)

<sup>41</sup> See World Bank (forthcoming), *Resolving disputes between consumers and financial businesses: Principles for a financial ombudsman, A practical guide based on experience in western Europe*. [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial\\_Ombudsmen\\_Voll.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Voll.pdf)

they could tap into the expertise of INFO in designing the new structure for a unified ombuds service in South Africa.<sup>42</sup>

**The preferred solution would be a single unified ombud scheme, set up by statute.** It would be helpful if a unified ombud had statutory powers to ensure cooperation of financial institutions. However the industry-based ombud schemes are currently working well and should remain in place.

**As a starting point, coordination and consistency among the different ombuds schemes should be improved.** Four areas could be strengthened: (1) coordination among ombud schemes when dealing with consumer complaints involving more than one type of financial service provider; (2) consistency of approaches and rules; (3) increase of consumer awareness regarding the various available schemes; and (4) the expansion of outreach. Also every consumer should be provided with a complaints roadmap related to every purchased product, explaining what steps should be taken and what institutions could be approached in case of a complaint, including all relevant contact details. In addition, an annual chart should be prepared, comparing the performance of all financial services ombuds, including such matters as the number of complaints received, consumer confusion regarding appropriate jurisdiction, the average time for disposition, the percentage of cases appealed by the consumer and applicable monetary sanctions. The powers should be designed to provide as speedy provision of documents needed for decision as possible. Also, strict limits for case decisions should be set, with 30 days for simple cases and 60-90 days for complex cases.

**Clarification is also needed in the jurisdiction among dispute resolution schemes.** Currently overlaps in jurisdiction are seen between the statutory Pensions Fund Adjudicator, the statutory NCC and the voluntary Long-Term Insurance Ombudsman (which also deals with life insurance policies that are part of pension plans). Specific guidelines should also be established to clarify the role of NCC *vis-a-vis* the voluntary Banking Services and Credit Ombuds, as well as the National Consumer Tribunal. By speeding up the process of establishing these guidelines, the clash of perceived jurisdiction between the statutory bodies can be avoided. This will promote a just, efficient and less costly system for dealing with unresolved complaints that consumers have with their banks.

**It would also be helpful if the balance of law versus equity in the decision-making process by ombuds could be clarified.** When deciding a case, South African ombuds are obliged to consider not only valid laws but also equity and fairness, since using equity in decision-making is one of the conditions for the scheme's recognition under the Financial Services Ombud Scheme Act. While the fundamental reasons why ombuds should use equity and fairness are sound, the financial industry needs guidance from the ombuds on their approach. As each case has too many specifics to allow for a simple usage of precedents, the ombuds should actively communicate and explain their way of thinking on often-repeated cases and should strive for as unified decision-making as possible. Such an approach would increase the predictability of rulings from the perspective of the financial industry. It would thereby lead to financial institutions' upgrades in their disputes and complaints handling policies to avoid the most often repeated issues.

**In addition, institutional arrangements regarding the administration of dispute resolution and consumer protection for payment systems matters should be clarified.** Since all payments of inbound remittances in South Africa are provided through banks (in partnership with either Western Union or MoneyGram), the international remittance services are regulated by the SARB in respect of the efficiency, reliability and safety of the systems used to transfer the money, as well

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<sup>42</sup> See <http://www.networkfso.org/>

as by a self-regulatory body of the banking industry, the Payment Systems Association. However, no adequate codes of conduct, policies and procedures have yet been developed for the industry regarding transparency and consumer protection in respect of remittance services. In practice, consumers have only a very vague sense of their rights, including how they can file a complaint in case of fraud or disagreement. The Payment Systems Association only issues fact sheets on the products and services offered across the financial sector. Consumers do not have clear procedures for resolution of disputes related to payment services and the mandate of the NCC mandate over payment systems remains unclear. In addition, the Payment Systems Association has not issued clear guidelines regarding consumers and their recourse in case of conflicts. Furthermore new mobile banking and other innovative services introduce additional service providers that may not be covered by existing financial sector regulation. Finally institutional arrangements for remittance services regarding consumer protection are not clearly established.

**Corporate governance of the ombuds schemes should also be strengthened.** When looking at the corporate governance of the voluntary ombud schemes, no clear rules exist as to the composition of such a board and a ratio of various types of board members. Most boards include industry representatives and consumer representatives, some include also independent directors. The boards of voluntary ombuds should include representatives of financial institutions and consumer organizations, with industry representatives forming only a minority of members. There should also always be an FSB representative on the board to monitor the functioning of the ombud and behavior of financial institutions when dealing with individual cases brought against them.

**A uniform method of financing the ombuds system would be helpful.** While the statutory ombuds are financed from the state budget, some of the voluntary ombuds are financed by financial institutions with fees based on their market share as well as number of complaints while other voluntary ombuds are financed only by fees charged to financial institutions for every complaint lodged against the institution. For voluntary schemes, risk-based fees are preferable to fixed fees for every complaint lodged. The ombud should be able to plan his budget properly and should not be motivated to increase number of cases to finance his budget. The risk-based payments should be based primarily on size of the financial institution in the market segment covered by the ombud and the number of complaints lodged against the institution in that segment in the previous year. Should a single ombud be developed, a joint government-industry financing should be considered, with the industry contributing to sector-specific budgets using risk-based fees.

**The ombuds should provide annual reports on systemic issues to the National Treasury, the FSB and SARB.** All ombuds should be required to report to the National Treasury and the FSB on yearly basis systemic risk issues they have come across when dealing with cases brought to them. The Treasury and the FSB should be required to officially react to the ombud report and use the findings both to improve financial services legislation if needed and/or change supervisory processes. Ombuds should also be actively consulted when new financial services legislation is being drafted.

**Ombuds could also strengthen the effectiveness of SROs.** Each ombud should also actively communicate with the relevant financial sector association to discuss potential self-regulatory improvements of the practices of financial institutions. All companies under the jurisdiction of the ombud should receive a yearly statement with the share of complaints against them compared to total number of complaints to measure "market share". These statistics should also be provided to the FSB and SARB and included into their risk-based supervision planning.

**In addition, all financial institutions should be obliged to maintain dedicated internal complaints mechanisms.** Currently some banks—but not all—have established specific internal

departments to receive consumer complaints. The new Code of Banking Practice recommends that all banks have designated contact points for customer complaints and the FAIS Code requires the same for financial intermediaries and advisors but such facilities are not required for all financial institutions. Furthermore the Pension Fund Adjudicator notes that the lack of dedicated internal complaints mechanisms means that even simple inquiries to pension funds are submitted to the Adjudicator as formal complaints. Even the smallest financial institution should have a designed contact point whereby customers can submit complaints and present disputes over actions by the financial institution. Furthermore at the time of opening a new account, each customer should receive in writing information on the contact point and telephone number for submitting customer complaints. A designated point for consumer complaints is also needed for all financial services and products that use mobile telephony for their delivery.

## Financial Education

**There is a critical need to address the relatively low levels of financial literacy in South Africa.** Financial consumers have insufficient knowledge and understanding of basic financial matters, are not aware of their rights and responsibilities when entering into contractual agreements, do not know about various redress mechanisms in place, struggle with budgeting, and do not understand investments in general.

**The approach taken by FSB to focus on targeted education programs follows international good practice.** The focus of the FSB's consumer financial education program for the past seven years has been on consumers falling within Living Standard Measures 1-5, as these consumers are the most vulnerable. Financial education areas have included: budgeting, saving, debt management, fraudulent schemes, insurance, retirement, investment, and financial advisory schemes, rights and responsibilities, and formal and community education.

**It would be helpful if the FSB could evaluate the impact of its financial education programs.** Research in both developing and developed countries shows that general financial education programs are not as effective as one might hope.<sup>43</sup> However, targeted financial education programs—helping consumers understand the risks and rewards of using financial products as well as their legal rights and obligations—have proven to be a good investment. It would be useful if the FSB could identify the impact of its current financial education programs.

**A single government authority should provide leadership on the financial education agenda, promoting multi-stakeholder coordination and exchange of lessons learned.** There are multiple financial education initiatives in South Africa that are undertaken by Government bodies, regulators, industry associations, consumer organizations, NGOs, and private sector entities. However, these initiatives are piecemeal (as seen in Annex 2: Financial Education of the Diagnostic Review's Volume II). As a result, they lead to duplication of programs, ineffective allocation of limited resources, and limited monitoring and impact evaluation. Furthermore, a strong case can easily be made for public involvement in financial education for consumers. While some financial institutions are proud to state they support and deliver financial education programs, too often these

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<sup>43</sup> See Lauren E. Willis, "Against Financial Literacy Education," University of Pennsylvania Law School, Public Law and Legal Theory Research Paper Series, Research Paper No. 08-10, November 2008. See also Shawn Allen Cole, Thomas Sampson, and Bilal Zia, "Prices or Knowledge? What Drives Demand for Financial Services in Emerging Markets?" (October 12, 2010). *Journal of Finance*, Forthcoming; Harvard Business School Finance Working Paper No. 09-117. Available at SSRN: <http://ssrn.com/abstract=1374078>

programs are also used for marketing programs. The mixing of marketing and educational messages should be prohibited. The National Treasury has taken responsibility to lead the formulation of a national financial education policy, which will be followed by a national financial education strategy. Thus, it is important that the Treasury continues to drive this process, accelerate it, and send a clear message to stakeholders that it will take a leading role in the coordination and development of such a strategy.

**A national strategy on financial education should be formulated and a Central Coordinating Committee consisting of all stakeholders should be established.** A national policy for consumer education and financial literacy is already under development. This should be finalized and endorsed by the Government. In addition, a Central Coordinating Committee (CCC) consisting of all stakeholders should be created, and a national strategy should be developed as soon as possible, including an action plan for program implementation and measurement. The role of the CCC is crucial to provide proper coordination of actions and ensure support for the most efficient and large-scale financial literacy initiatives. In terms of funding, consideration should be given to pooling funds for major financial literacy programs as sanctioned by the CCC. A central repository of all projects should be maintained and monitoring and evaluation should be made part of every project.

**The strategy should include consumer education by financial ombuds services.** All financial sector ombuds should have consumer education about ombud services included as an integral part of their mission and should devote a part of their budget to improving access to their services. In all their education activities, all ombuds should inform the public not only about existence of their office but about existence and jurisdictions of all ombud schemes. Coordination among all ombuds is highly recommended to make sure that the communication activities are as effective as possible, possibly including a joint awareness campaign.

**Evaluation of the effectiveness of financial education programs would also be helpful.** International experience in financial education demonstrates that increasing the number of financial education programs and initiatives does not necessarily lead to improvements in financial literacy or positive change in the behavior of consumers who have participated in these programs. It is important to introduce the practice of evaluating the results of educational programs so as to identify the ones that are most beneficial. Controlled trials provide an effective means of determining the effectiveness of financial education programs, using controlled groups as a basis for comparison against the results of education programs provided to experimental groups. The programs which prove to be most beneficial should receive wide support and be widely publicized. Currently, the Russia Financial Literacy and Education Trust Fund is funding the piloting of an entertainment education project that will include financial capability storylines in a South African soap opera. This project includes a comprehensive impact evaluation of the effectiveness of the selected delivery method for improving financial capability.

**Testing and surveys are critical tools in the evaluation of financial education programs and consumer protection initiatives.** The FinScope survey and the OECD/INFE pilot study on financial literacy have provided useful findings on the state of financial literacy of adults in South Africa. In addition, South Africa will undertake a nationally representative financial capability survey, which should complement the findings of the previous surveys. The results of the nationwide financial capability survey should serve as baseline for the overall evaluation of the financial education program. The results should be widely disseminated and the data made readily available to all relevant stakeholders. The survey should be conducted on a regular basis to see if financial education programs and consumer protection initiatives are working –and if they need to be revised further..

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## Annex: Summary of Recommendations

<b>RECOMMENDATION</b>	<b>ACTION REQUIRED</b>	<b>AGENCY</b>	<b>PRIORITY</b>
<b>REGULATORY AND SUPERVISORY STRUCTURES</b>			
Establish a single market conduct regulator, housed under a single line ministry, thereby consolidating FSB and NCR in one institution.	Merge NCR with FSB	NT	High
Consolidate financial consumer protection laws into a new single Financial Consumer Protection Act.	1. Analysis of strengths and weaknesses of existing laws and regulations 2. New single Financial Consumer Protection Act or FSB applying to Minister of Trade and Industry for an exemption from the provisions of the CPA on the grounds that the Act overlaps or duplicates a regulatory scheme administered by the FSB regarding other legislation	NT	High
Promote a more active role of Council of Financial Regulators.	Incorporate a forum for coordination among all relevant agencies	NT	Medium
Establish market conduct regulation of all institutions selling financial products or services to the public. Develop SROs or alternatively FSB should take a risk-based approach to market conduct supervision.	New law Initiative of industry associations or new policy	NT FSB	Medium Medium
Formal regulation of financial institutions that provide "micro" financial products and services to the poor, including burial societies and traditional Stokvels. Consolidate legislation for insurance sector into a single law of insurance. Reconsider exemptions for some insurance and pension funds. Improve regulation of the GEPPF.	New legislation	FSB	Medium
Improve regulatory structure on the protection of personal data and on accuracy of personal data in the credit reporting system. Promote and support extensive multi-stakeholder consultation process. Strengthen consumer organizations.	New single law on insurance New policy Amend Pensions Fund Act New law	FSB FSB Min of Labor	Medium Low High Medium
FSB should consider joining FinCoNet.	New policy New policy	FSB, NT FSB, Min of Trade	Medium Medium
	New policy	FSB	Low
<b>CONSUMER DISCLOSURE</b>			
The FSB or the financial industry associations with the FSB should establish Key Fact Statements for each type of retail financial service. Test consumer understanding of mandatory disclosure statements.	Initiative of professional associations Consumer survey	FSB, associations FSB	High Medium

<b>RECOMMENDATION</b>	<b>ACTION REQUIRED</b>	<b>AGENCY</b>	<b>PRIORITY</b>
Establish comparison websites for consumer financial products and services.	National price comparison website	FSB	Medium
Require financial advisors to explain disclosure documents to consumers.	New FSB regulation	FSB	Medium
Require complete pre-contractual information, including a copy of the standard contract.	New FSB regulation	FSB	Medium
Revise rules regarding disclosure of charges for using ATMs.	Revise legislation or regulation	SARB, FSB	Medium
Require international money transfer companies to display information such as commissions and exchange rates at the time of origination.	New policy	SARB, FSB	Medium
Require that all financial institutions indicate the name of their regulatory agency in their advertising.	New regulations	SARB, FSB	Medium
FSB in cooperation with other stakeholders, develop a general consumer guide to financial advice.	Initiative of FSB and stakeholders	FSB	Medium
<b>BUSINESS PRACTICES</b>			
Conduct study on costs of non-credit banking services.	Analysis	FSB	Medium
FSB should monitor the implementation of revised Banking Code.	New policy	FSB	Medium
Promote display and distribution of the New Banking Code.	Initiative of financial institutions	FSB, BASA	Medium
SARB should review current practices regarding mobile banking.	New policy	SARB	Medium
Establish physical, logical and technological safeguards at ATM locations.	Initiative of financial institutions	FSB, SARB, PASA	Medium
Promote further competition in the provision of financial services.	New policy	FSB	Medium
Establish a code of conduct for remittance service providers.	New policy	FSB, SARB	Medium
FSB should strengthen its regulation of CIS and improve competition among CIS providers.	Amend regulation	FSB	Medium
Study of churning conducted by FSB, with special focus on sales by telephone.	Study	FSB	Medium
Set cooling-off period for all financial products, in particular private pensions.	Amend legislation	NT, FSB	Medium
FSB should review and revise the commission structure for financial advisors. Consideration should be given to banning up-front commissions on insurance products so that intermediaries are rewarded strictly on a fee-for-services basis.	Analysis, Amend regulation	FSB	Medium
Establish clear chain of responsibility for advice covering all companies with direct or indirect impact on sales of financial products. Their activities should be subject to FSB supervision, comply with FAIS rules and fall under the jurisdiction of the FAIS Ombud.	New regulation	FSB	Medium
Analyze non-regulated products offered by financial advisors. FSB should develop market conduct regulations in line with the FAIS Act for these products.	Analysis, New regulation	FSB	Medium
Prohibit tying of financial products.	New regulation	FSB	Medium
Enhance training of financial advisors in order to build consumer trust in the financial sector.	New policy	FSB	Medium
Further improve regulatory exams of financial advisors and intermediaries by establishing a FSB Task Force to monitor the progress of these regulatory exams. In addition, FSB should approve education programs for financial advisors, license trainers and monitor their conduct.	Establish Task Force, New policy	FSB	Medium
FSB should strengthen its capacity to review the suitability of financial advisory services.	New policy	FSB	Medium
FSB could further rely on SROs for ongoing supervision of intermediaries.	New policy	FSB	Medium
Develop legislation on personal insolvency. Consideration should be given to developing a program in line with best international practice.	New legislation	NT, FSB	Medium
<b>DISPUTE RESOLUTION MECHANISMS</b>			
Clarify ombud-related issues arising from the Consumer Protection Act regarding accreditation and jurisdiction.	New policy	FSB, NT,	Medium
Strengthen the ombuds schemes.	New policy	FSOSC	Medium
<ul style="list-style-type: none"> <li>Decisions by ombuds services should be binding on financial institutions, up to a maximum amount.</li> </ul>			

RECOMMENDATION	ACTION REQUIRED	AGENCY	PRIORITY
<ul style="list-style-type: none"> <li>Enhance knowledge about the existence of ombuds schemes.</li> <li>At the time a complaint is submitted, all financial institutions should be required to inform their customers about the relevant ombudsman.</li> <li>Actively promote ombuds services.</li> <li>Ombuds services should coordinate their communication and media policy.</li> <li>All ombuds services should publish detailed statistics on complaints.</li> <li>Strengthen corporate governance of the ombuds schemes.</li> <li>Clarify the balance of law versus equity in the decision-making process by ombuds.</li> <li>Apply a uniform method of financing the ombuds system.</li> </ul>	New policy, Feasibility study	FSB, FSOSC	Medium
<p>Unifying the ombuds schemes, by a two-stage process: (1) Operational cooperation: FSCOC should act as a coordinating body of recognized voluntary ombud schemes, (2) Conduct study how to merge all ombuds in the future, possibly in one statutory body, and access international experience through the INFO.</p>	New regulation	Ombuds, NT, FSB, SARB	Medium
<p>The ombuds should provide annual reports on systemic issues to the National Treasury, FSB and the SARB. Requiring National Treasury, FSB and SARB to react to these reports and use findings to improve financial services legislation and/or change supervisory processes.</p>	Amend legislation	NT	Medium
<p>Clarify jurisdiction among dispute resolution schemes by eliminating overlaps in jurisdictions and establishing specific guidelines to clarify the role of NCC vis-à-vis the voluntary Banking Services and Credit Ombuds, and the National Consumer Tribunal.</p>	Amend legislation	FSB, SARB	Medium
<p>Clarify institutional arrangements regarding the administration of dispute resolution and consumer protection for payment systems matters.</p>	Initiative of ombuds	Ombuds	Medium
<p>Ombuds should strengthen the effectiveness of self-regulatory organizations by providing a yearly statement to all companies under the jurisdiction of the ombud with the share of complaints against them compared to total number of complaints.</p>	New regulation	FSB	Medium
<p>Oblige all financial institutions to maintain dedicated internal complaints mechanisms.</p>			
<b>FINANCIAL EDUCATION</b>			
<p>A single Government authority should provide leadership on the financial education agenda in South Africa, promoting multi-stakeholder coordination and exchange of lessons learned.</p>	New policy	FSB	High
<p>Design a national strategy on financial education including consumer education by financial ombuds services, and establish a Central Coordinating Committee.</p>	New policy	NT, FSB	High
<p>Evaluate effectiveness of financial education programs.</p>	New policy	FSB	High
<p>Conduct regular financial capability surveys to evaluate financial education programs and consumer protection initiatives.</p>	New policy	FSB	High
<p>FSB should evaluate the impact of its financial education programs.</p>	New policy	FSB	Medium