# PANEL DISCUSSION ON THE LAUNCH OF CBFL

*Remarks by General Counsel Ng Heng Fatt, Monetary Authority of Singapore*

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1. First, let me congratulate Professor Dora and her colleagues on the launch of the Centre for Banking and Finance Law. Second, I would like to thank Professor Philip Wood for his insightful exploration of what the future could look like for international banking and finance law, and for lawyers practising in these fields. Professor Wood has given us much food for thought.

2. Thank you for allowing me to share my thoughts on some of the points raised by Professor Philip Wood. I will focus on 4 aspects that influence the future of international banking and finance law, and lawyers; which I have termed the “iPAD Perspective” – “I” stands for innovation and interconnectedness; “P” for the panorama of laws; “A” for anticipation of problems and solutions; and “D” for the direction of regulators in balancing the interests of various stakeholders.

**I – innovation and interconnectedness**

3. First, innovation and interconnectedness. The innovation in and evolution of the finance industry is a natural result, of the workings of a competitive economy. Innovation is a key and life-blood of a thriving financial market.

4. Take the examples of Zopa in pioneering Peer to Peer lending in the UK, Lenddo in the Philippines for micro-financing, and M-Pesa in originating the mobile person-to-person payments in Kenya. Prior to the introduction of M-Pesa, 80% of Kenya's population didn't have access to a basic bank account. Today, it has been reported that 64% of Kenya's adult population use M-Pesa. Consider also Dwolla in the US, which is a payment network that makes use of the internet without the customer having to pay interchange fees, and UBank in Australia, which is a pure-play digital bank. Here in Singapore, we are familiar with Paypal, which reported US$43 billion in total global payments volume in just Q3 of 2013. And two days ago, Apple has just announced the launch of a new mobile payments service called Apple Pay, which takes advantage of near-field

communications (NFC). This enables an iPhone user to make purchases with a single touch, without having to enter his credit card details.

5. Innovations will only continue on a domestic and global scale as more countries' financial systems  become more sophisticated. Indeed, we encourage financial developments and innovation, as this keeps the economy competitive, and encourages growth.

6. Casting a glance at the history of the finance industry, we discover that innovation is sometimes borne out of necessity. We see this in the move to take advantage of information technology.  For example, the USAA, which is a financial service provider, has innovatively created 200 separate navigational points inside its mobile app for financial services, ranging from deposit taking to investment and insurance. This has been necessitated by its customers (primarily military personnel), who are in places where access to brick and mortar banks is not feasible.

7. The early history of the banking industry in the US also bears many classic examples of innovation borne out of necessity. Investment banking began life in the US as a means for the Treasury to sell securities to fund the Civil War.  The checking or demand deposit account, which we are all familiar

with today, was developed by state banks in the US, because Congress imposed taxes on bank notes issued by state banks, in an attempt to encourage people to use federal banks instead.

8. In short, innovations challenge and break the status quo of providing traditional financial services. To borrow the tag-line of Canon, the financial engineers of the world are here in "delighting you (the consumers/investors) always."

9. In contrast, law tends to looks backwards, and seeks for precedents. We should not allow the law to be fossilised by the traditional legal paradigm, but should instead quest for new ways to address financial innovation. We saw this in the development of the law on bills of lading. In the Medieval Ages, shippers accompanied their cargoes on the voyage to their destination. The bill of lading served only as an invoice of the goods shipped. Later, in the sixteenth and seventeenth centuries, when larger ships began to carry varied cargoes belonging to several shippers, merchants ceased to travel with their goods but dispatched them to a consignee. Bills of lading began to exist as a separate and distinct title document. The growth of international trade in the medieval world, had

given rise to a need for the law to evolve. And today we have the digital bill of lading.

10. There is sometimes the fear that financial innovations may lead to financial debacles. How does the law deal with this? The legal framework need not overreact but, like photography, should rise to the challenge by developing from the negatives. However, innovation should not come at the expense of any segment of society (for example, by misrepresenting or not properly explaining the complexities of new products to end-users, or by failing to adequately manage the credit or market risk of new products). This is where lawyers can be creative in embedding investors' interests, and managing the risk exposure of financial institutions – when considering the legal aspects of new financial products.

11. Markets have also become increasingly interconnected; many of these financial innovations cross sector boundaries and involve banking, securities, and insurance elements, which are interlinked with clearing, payment and settlement systems that, in turn, traverse multiple legal systems. There has also been an increase in cross border financial products, and financial institutions which have cross border operations.

12. Innovation and interconnectedness will see an evolution in the laws and regulations which are likely to see some convergence in some areas. This will also have an impact on the role of lawyers in having to take a more holistic and integrated approach when advising on financial laws.

**P – panorama of laws**

13. "P" stands for the Panorama of laws. The interconnectedness of the financial industry has resulted in a panorama of domestic, regional and global laws. Banking and finance lawyers will have to be tuned in to global financial developments, to understand the applicable laws and how these will affect the bank or financial institution in question. For example, a lawyer in Singapore advising a financial institution with operations in the US or the EU may need to have an understanding of the Dodd-Frank Act and EMIR. Some of these laws also have extraterritorial effect. Financial law firms will also have to be global in outlook. I note for example, the recent alliance by a local law firm with other law firms in the region in order to provide its clients with a one-stop service across Asia.

14. As Professor Philip Wood noted, understanding the different types of legal systems and jurisdiction families is helpful in understanding cross border

legal risks. I echo this call that finance lawyers should have a knowledge of different legal systems. Given the rapid financial development in Asia and the growth of Islamic banking, knowledge of laws of this region and on this subject are useful too.

**A – anticipation of problems and solutions**

15. "A" stands for the anticipation of problems and solutions. For lawyers, this could be a response to present innovations in the financial system and its interconnectedness. For Regulators, this could be a response to past financial pandemics. I will touch on this briefly – the recent global financial crisis has prompted a major review of international regulatory standards. New rules have been developed with a focus on financial stability; through the Basel Committee on Banking Supervision and the Financial Stability Board, or the "FSB", for example. These new rules address the quantity and quality of capital and liquidity requirements. There is also ongoing work to strengthen cross-border supervision and resolution frameworks for global banks.

16. The FSB has issued a set of principles in this regard, which are called the 'Key Attributes of Effective Resolution Regimes for Financial Institutions'.

In keeping with these principles, member countries are expected to equip their national authorities with the capacity to respond effectively and swiftly, when a financial institution is in distress.

17. MAS has been closely involved in these international regulatory reform efforts. MAS has also embarked on a review of its regulatory framework for financial institutions, with a view to strengthening the framework for financial stability and having safeguard measures for depositors, insurance policy holders and consumers of financial services. The MAS Act was amended in April 2013 to enhance and expand MAS' suite of powers, for resolving distressed financial institutions. These amendments implemented many of the principles in the FSB's Key Attributes.

18. The work to consider effective resolution regimes for financial institutions remains ongoing.

19. Will these rules mean that in the future, financial crisis will never happen? No. But they would mean that there would be tools in place to deal with them, and potentially, to reduce their impact.

**D – direction of regulators in balancing the interests of various stakeholders**

20. The last letter “D” stands for the direction of regulators in balancing the interests of various stakeholders. Professor Philip Wood, while observing that restrictions are necessary for survival, has commented that the size of the law at present is driven by emotions. Not being a psychologist, I will keep to my role as a regulator, and comment on the direction of regulators in balancing the interests of various stakeholders when formulating rules and regulations.

21. Businesses want minimum rules but at the same time, certainty and stability. Consumers want maximum protection. Shareholders want maximum returns. Investors want both. Creditors want to ring-fence their securities while debtors want to avoid a fire sale of their assets, when they are in distress. The key question as a regulator is: how to balance the interests of all these different stakeholders?

22. What is too much regulation for one group, may be too little for another. The regulator has to rise to the challenge in making the appropriate judgement call, to deftly balance these different interests.

23. What then, guides us as Regulators in this determination? In this context, whilst we welcome Canon's approach of "delighting you always"; in parallel, to borrow Nikon's tagline, "at the heart of the image" – as regulators, our focus continues to be facilitating the fundamentals (or as Professor Philip Wood puts it, the basics) of banking, capital and financial markets in serving trade and commerce, channelling savings and investments, and growing the economy. At the same time, we seek to preserve financial stability and adopt a supervisory approach for Financial Institutions which is risk-based, outcome-focused and on a shared responsibility basis with the financial institutions and the financial industry; while being responsive to changes and safeguarding the interest of the public. In short, as Regulators, our philosophy is to do what is right, just and fair – past, present and future. And may I advocate that a similar thread could be adopted by banking and finance lawyers as well. Thank you.

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