HONG KONG MONETARY AUTHORITY
香港金融管理局

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2 September 2022

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Enhancing Consumer Protection in Respect of "Buy Now, Pay Later" Products

With recent innovation of consumer credit products in different parts of the world, in particular the rapid development of "Buy Now, Pay Later" ("BNPL") products, I am writing to remind Authorized Institutions ("AIs") of the HKMA's expectations in respect of consumer protection on this front, and also set out a series of enhancement measures with the aim of ensuring that bank customers are well protected in midst of consumer product innovation.

BNPL Products

Primarily driven by technology companies, BNPL products have emerged as an innovative consumer credit product in recent years. Generally speaking, BNPL products have similar features as instalment payment plans ("IPPs"), which entail payment by instalments for purchase of goods or services, and are often marketed to customers as "interest-free". The repayment period of BNPL products is typically shorter than that of conventional IPP products, usually around a few months. If a customer repays on time, there is usually no need for the customer to pay any extra charge. Otherwise, the customer would need to pay a fee or charge, which is often in a fixed amount and less costly than that of current IPPs in the market. Riding on the e-commerce trend and the characteristic of being "interest-free", BNPL products are gaining wider popularity in some parts of the world.

Based on overseas experience, from the perspective of consumer protection, BNPL products create concerns on whether customers understand the nature of such products, and on their implication on impulsive borrowing and even over-borrowing by customers.

While BNPL products are mainly operated by non-bank service providers in some parts of the world, it is noted that the banking industry in Hong Kong has also started to launch BNPL or similar products. Taking into account international practices, the HKMA considers it important to set out its expectations in respect of consumer protection when banks pursue innovation in consumer credit products. In particular, enhancement measures are introduced as additional safeguards to customers of BNPL products launched by banks.

Unless otherwise specified, the measures laid out in this circular apply if either or both of the following two criteria are met:

(a) **Product features:** The measures laid out in this circular apply to BNPL products (i.e. payment by instalments for the purchase of goods or services) with product features as set out in the second paragraph above, or other similar innovative consumer credit products that may emerge in the future (collectively referred to as "BNPL products" thereafter), even if they may not be called BNPL exactly in their names. For the avoidance of doubt, products which are riding on credit cards and using the pre-existing credit limits of such cards (such as conventional credit card IPPs) are not considered as BNPL products meeting this criterion. Such conventional credit card IPPs will, however, continue to be subject to pre-existing applicable consumer protection requirements.

(b) **Naming and/or promotional approach:** If AIs choose to use a term very similar to "(Action word) Now, Pay Later" (e.g. "Buy Now, Pay Later", "Spend Now, Pay Later", "Enjoy First, Pay Later") in the name and/or market or promote any credit product in such a way, given the connotation implied by "pay later" and the potential of customers considering such credit products as BNPL products, those products will be deemed as BNPL products and be subject to the measures set out in this circular, irrespective of the actual features of those products.

There may be cases where AIs engage or partner with third-party service providers (e.g. e-commerce platforms) in launching BNPL products. In such circumstances, AIs are reminded that from the customers' perspective, AIs will also be responsible and accountable for the actions of those third-party service providers. As a result, AIs are expected to put in place proper mechanisms and controls to assess and manage the potential issues and relevant risks (e.g. consumer protection issues, complaints handling, reputation risks, etc.) arising from such engagement or partnership with third-party service providers. For the avoidance of doubt, it is the responsibility of AIs to ensure that the requirements set out in this circular are observed when AIs engage or partner with third-party

service providers in the offering of BNPL products.

Applicability of Consumer Protection Measures

The HKMA considers that BNPL products entail lending by AIs to customers and are basically credit products. Therefore, AIs should follow all consumer protection measures as set out in the Code of Banking Practice ("CoBP") and Treat Customers Fairly Charter where applicable, taking into account the nature of the BNPL product. In addition, other relevant guidance issued by the HKMA, such as the HKMA's circular of 4 September 2020 on "Enhanced Disclosure Measures in respect of Digital Platforms for the Application of Unsecured Loan and Credit Card Products" should also be observed. Moreover, AIs are reminded to comply with other applicable legal and regulatory requirements, including the Personal Data (Privacy) Ordinance ("PDPO") and any relevant codes of practice issued by the Privacy Commissioner for Personal Data ("PCPD") on compliance with the PDPO.

Responsible Borrowing

Riding on innovation in particular on online purchases, BNPL products are commonly marketed to customers in a way that may obscure the fact that borrowing is involved, for example by packaging it as a "means of payment" or even a "lifestyle enabler". It is also noted that the marketing approaches of some BNPL operators overseas may deliberately avoid highlighting the provision of credits in BNPL products. This may mislead customers to believe that they are not taking any form of borrowing, which can have an adverse implication on impulsive borrowing and even over-borrowing by customers.

As a measure to educate the public about responsible borrowing, the HKMA currently requires AIs to include the educational message of "To borrow or not to borrow? Borrow only if you can repay!" ("借定唔借？還得到先好借！" in Chinese) in advertising and promotional materials for AIs' lending business to retail customers and small and medium-sized enterprises ("SMEs")[1]. This requirement is also applicable to BNPL products.

In addition, AIs should ensure that all advertising and promotional materials are fair and reasonable, and do not contain misleading information. Specifically, advertising and promotional materials for BNPL products should not create an impression that no borrowing by the customer is involved. AIs are also required to disclose in marketing and promotional materials of BNPL products that it is a

[1] Please refer to the HKMA's circular titled "Engagement of Intermediaries by Authorized Institutions (AIs)" dated 30 November 2016.

"credit product" ("信貸產品" in Chinese). Such disclosure should be made in a clear and prominent manner, so that it is easily legible and/or clearly audible. At a minimum, the disclosure of the BNPL product being a "credit product" should be as prominent as the responsible borrowing message as mentioned in the preceding paragraph.

Furthermore, when AIs engage or partner with e-commerce platforms, AIs are encouraged to assess the potential implication on impulsive borrowing (given the specific nature of BNPL products) when considering whether BNPL products are to be placed as the default or preferred choice among different payment methods, in particular when payment options include direct payments from bank accounts or e-wallets.

Disclosure of Fees and Charges

AIs should ensure that the relevant fees and charges, as well as interest where applicable, should be indicated in a clear and prominent manner in the advertising and promotional materials of BNPL products such that customers are well informed. Where reference is made to an interest rate, relevant fees and charges should be taken into account in the calculation of Annualised Percentage Rate. Furthermore, if a BNPL product is marketed as "interest-free" in any advertising and promotional material, the existence of such fees and charges should be included in the same piece of material.

Key Facts Statement

To remind customers on the need to fulfil repayment obligations, AIs are required to add into the Key Facts Statement ("KFS") of BNPL products that if a borrower does not fulfil the repayment obligations, it may adversely affect the borrower's credit records maintained at the credit reference agencies and consequently further access to credit in the future.

Chargeback Mechanism

The HKMA takes the view that the chargeback mechanism is an important mechanism for protecting customers who are using cards for making prepayments for goods and services, particularly in the case of merchant closures. In this connection, enhancements have been made in the revised CoBP launched in December 2021, in order to strengthen the transparency of chargeback mechanism and facilitate customers to initiate chargeback requests. It is considered that customers using BNPL products should also be fully informed of the applicability of chargeback mechanisms on their products. The arrangements for the disclosure are set out in the **Annex**.

Creditworthiness Assessment

AIs are reminded that approval of applications for BNPL products is subject to credit assessment which should take into account the applicants' ability to repay. AIs should also follow the requirements in Supervisory Policy Manual Module IC-6 "The Sharing and Use of Consumer Credit Data through Credit Reference Agencies" in the sharing and use of consumer credit data in connection with consumer credit products through credit reference agencies.

Implementation Timeframe

The measures set out in this circular should be implemented as soon as practicable and no later than end-2022. AIs are also reminded to enhance staff capacity and training to handle customer enquiries as appropriate.

Should you have any questions regarding this circular, please feel free to contact Ms Stella Ma on 2878-8601 or Mr Leonard Tso on 2878-8589.

Yours faithfully,

Alan Au
Executive Director (Banking Conduct)

c.c. Secretary for Financial Services and the Treasury (Attn: Mr Desmond Wu)

Annex

Disclosure Arrangements for Chargeback Mechanism of BNPL Products

A. New section in KFS

A new section on "Chargeback Mechanism" should be added in the KFS to provide information on the chargeback mechanism applicable to the BNPL products. The information should specify (i) whether a chargeback mechanism is available; and (ii) basic information on the chargeback mechanism with reference to section 29.7 of the CoBP where applicable. If chargeback mechanism is available, the section should also cover (i) whether customers need to continue repayments after receiving refunds as a result of chargeback mechanism; and (ii) whether any fee would be charged if a customer chooses to repay early after receiving refunds, and if yes, the level of the fee.

B. Websites and Internet banking platforms of AIs

AIs should provide basic information on the chargeback mechanism as stipulated in part A above on their websites and principal Internet banking platforms. AIs should ensure an application form to initiate any error/dispute resolution process is provided on their websites and principal Internet banking platforms, and upon cardholders' requests.

C. BNPL products not subject to chargeback mechanism

If a BNPL product is not subject to chargeback mechanism, AIs should follow the risk management measures as set out in the HKMA's circular of 16 August 2010 on "Marketing through Third Parties of Instalment Payment Plans involving Pre-payment for Goods or Services" where applicable, in particular paragraphs 6 to 8 of that circular relating to terms and conditions about absence of chargeback mechanisms.

When designing the application process of such products, customers should be informed that they will not enjoy chargeback protection and they should be requested to confirm that they have read and understood the statement before proceeding to apply for the product. With the increasing use of digital platforms, while AIs are not restricted to make hard copy disclosures, AIs should ensure the effectiveness of the disclosures from customers' perspectives. For instance, AIs should ensure that customers tick the box separately against each of the relevant clauses to confirm that they have read and understood the relevant conditions.