

Regulating Retail Banking Conduct of Business

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Retail Banking Overview

- ▶ Sale of current and savings account and credit products
- ▶ Responsibility currently split
- ▶ Deposit-taking – FSA – FSMA 2000
- ▶ Credit – OFT – CCA 1974

Current Position on Deposit-taking

- ▶ No comprehensive rules
- ▶ No enforcement action unless breaches have prudential implications
- ▶ Self regulation – the Banking Codes
- ▶ MOU – FSA and BCBS

Why the change?

- Generally worked well
- FSA desire to address more comprehensively and effectively prudential and conduct risks
- 40% of provisions in Banking Code → PSD
- FSA should regulate core financial services
- Restricts regulatory effectiveness
- Consumer detriment – Principle 6
- Cost benefit

What have the key issues been?

- ▶ Two types of potential failure
- ▶ Conduct of business not prudential/capital issues
- ▶ Asymmetric information – providers and consumers
- ▶ Regulatory failure
- ▶ Increased complaints regarding current and savings accounts

Current Self-Regulatory Arrangements

- ▶ The Banking Code – introduced 1992
- ▶ The Business Banking Code – introduced 2002
- ▶ BBA, BSA and APACS
- ▶ Voluntary – 119 subscribers
- ▶ BCSB – contractual relationship

The Banking Codes

- ▶ Key Commitments
- ▶ Detailed information
- ▶ Provision of information to customers
- ▶ Standards for customers in difficulty
- ▶ Customer responsibilities

The Banking Code Supervision Board

- ▶ Monitoring
- ▶ Risk-based approach
- ▶ Disciplinary and enforcement action
- ▶ Sanctions

FSA's review of the Codes

- ▶ User- friendly statements of good business practice
- ▶ Reasonable balance between detail and higher-level standards
- ▶ Insufficient overarching fairness objective
- ▶ No public consultation during reviews
- ▶ No systemic cost benefit analysis

FSA's Review of the BCSB

- Supervisory tools and processes appropriate
- “can be successful in influencing firm behaviour”
- Open and helpful
- Uses full range of monitoring tools
- Thematic work – not achieving all objectives
- Focus on rules – not fairness
- Deterrence limited

Snapshot of the new FSA proposals

- ▶ Full application of the Principles – deposit-taking and issuing e-money
- ▶ New high-level rules for matters outside PSD
- ▶ Transfer of existing COB rules and guidance on deposit-taking to BCOBS
- ▶ Monitoring and enforcement
- ▶ Industry Guidance
 - FSA approved?

The Proposed New Framework

- ▶ Principles
- ▶ Unfair Terms in Consumer Contracts Regulations
- ▶ Payment Services Regulations
- ▶ High-level outcomes-focused rules

Timetable

- ▶ Implementation
 - with PSD – November 2009; or
 - Later (but not beyond 2011)
- ▶ Closing date for consultation – 16 February 2009
- ▶ Approach document to PSD implementation – February 2009

The Principles

- ▶ Currently applied only in prudential context
- ▶ Move to conduct of business context
- ▶ TCF

The Banking Conduct of Business Sourcebook

- ▶ New definition “retail banking services”
- ▶ New definition “banking customer”
- ▶ Does not apply to services within scope of PSD
- ▶ Cash Deposit Child Trust Funds, non-sterling accounts, structured deposits
- ▶ Replicate coverage of Banking Codes and PSD

BCOBS

- ▶ Application
- ▶ Communications with banking customers and financial promotions
- ▶ Distance communications
- ▶ Information to be provided to banking customers
- ▶ Post sale requirements
- ▶ Cancellation

BCOBS 1 - Application

- ▶ Accepting deposits from banking customers
- ▶ From an establishment maintained in the UK
- ▶ Activities connected with accepting deposits
- ▶ Not payment services
- ▶ Application to
 - Overseas firms
 - Offshore accounts

BCOBS 2 - Communications with banking customers and financial promotions

- ▶ Principle 6 and 7
- ▶ Clear, fair and not misleading
- ▶ General requirements
- ▶ Structured deposits, cash deposit ISAs and cash deposit CTFs

BCOBS 3 – Distance communications

- ▶ Distance marketing
 - Information about the firm
 - Information about the financial service
 - Information about the contract
 - Information about redress
- ▶ E-commerce

BCOBS 4 – Information to be provided to banking customers

- ▶ Enabling customers to make informed decisions
 - Appropriate information
- ▶ Statements of account

BCOBS 5 - Post sale requirements

- ▶ Service standards
- ▶ Financial difficulty
- ▶ Moving between banks
- ▶ Lost and dormant accounts

BCOBS 6 - Cancellation

- The right to cancel
- When does the cancellation period begin?
- Notifying the customer
- Exercising the right to cancel
- Effect of cancellation
- Payment before cancellation
- Obligation to return funds

How will it differ from the current arrangements?

► Monitoring

- Principles-based focus
- TCF
- Non-subscribers
- Specific features

How will it differ from the current arrangements?

- ▶ Enforcement
 - Procedural
 - Threshold
 - Penalties
 - Action against individuals

So what do firms need to do?

- ▶ Apply principles (in particular TCF) to deposit taking activities
- ▶ Do gap analysis against BCOBS
- ▶ Ensure new disclosures and post sales requirements are
 - Met
 - Monitored
- ▶ Extend SYSC and MI to COB compliance
- ▶ Train staff
- ▶ Be ready for new monitoring/enforcement
- ▶ Transitionals and re-papering?
- ▶ Integrate with
 - PSD
 - Lending code?

ANY QUESTIONS?