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Treating customers fairly

Introduction

The Treating Customers Fairly (“TCF”) Roadmap, published on 31 March 2011 by the Financial Services Board (“FSB”), informed the financial services industry of the new TCF framework for market conduct regulation. It is largely based on a similar programme which is currently being implemented in the United Kingdom.

TCF Principles

The TCF principles require the financial services industry to consider the treatment of customers at all stages of the product life-cycle. These stages include the design, marketing, advice, point-of-sale and after-sale phases. The programme is designed to encourage firms to look at their existing culture and how customers are treated. The main objective of the TCF principles is to ensure that customers’ interests come first and that the customer is treated fairly under all circumstances.

The paper clearly states that TCF is not the same as being polite to customers nor does it necessarily mean that all customers will be satisfied. For example, a customer with a low level of understanding may be satisfied with a complex product but may not realise that they are being unfairly treated.

Outcomes of the TCF policy

There are six outcomes of the TCF principles:

Outcome 1 – Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the firm’s culture.

Outcome 2 – Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are marketed accordingly.

Outcome 3 – Consumers are provided with clear information and are kept appropriately informed before, during and after the point of contracting.

Outcome 4 – Where consumers receive advice, the advice is suitable and takes account of their circumstances.

Outcome 5 – Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect.

Outcome 6 – Consumers do not face unreasonable post-sale barriers to change products, switch providers, submit claims or make a complaint.

The paper explains that there are three final desired outcomes:

- Improved customer confidence;
- The supply of appropriate products and services; and
- Enhanced transparency and discipline in the industry.

The TCF Framework

Delivery of TCF will require the development of a regulatory framework that will effectively balance principles-based and rules-based regulation. This will ensure consistent delivery of the desired outcomes of discipline and transparency by regulated firms.

The regulatory framework will consist of a suitable mix of legislation, subordinate legislation and specific guidance for firms. It will aim to achieve consistently fair outcomes for all customers, review any existing regulation that may present an obstacle to TCF, reduce the risk of duplication or gaps in regulation and align with international best practice.

Compliance with the rules-based components of TCF will require firms to develop particular processes and controls.

Financial Advisory and Intermediary Services Act ("FAIS") and TCF principles

One may argue that having legislation in place for example FAIS protects the interests of customers, but this does not mean that customers will always be treated fairly. Outcomes 3 and 4 which deal with clear information and suitable advice are already covered under FAIS but this does not mean that the TCF framework will have no impact on FAIS regulated services rendered by approved representatives. In fact these representatives will need to pay particular attention to outcomes 2, 5 and 6.

The TCF principles aim to ensure that customers are given sufficient information and that they are educated with regard to financial issues and decisions.

TCF and retirement funds

Retirement annuity funds, pension preservation funds and provident preservation funds, where fund members enter into individual membership contracts, are regarded as retail business for TCF purposes. According to the FSB commercially operated umbrella retirement funds, particularly with small to medium sized participating employers, should also be regarded as retail operations for TCF purposes and an assessment of TCF accountabilities will be required for these funds.

Implementation of the TCF principles

Firms will be expected to build a TCF approach into the following organisational structures and processes:

- Leadership: The Board, senior and middle management need to provide direction and monitor the delivery of TCF behaviours and outcomes. They will have to ensure the delivery of TCF at all levels.

- Strategy: The TCF aims should form part of the firm's stated vision, values and the firm's broader business strategy.

- Decision-making: Decision-making procedures should ensure that decisions are tested for customer impact.

- Governance and controls: Governance processes around product approval, distribution models, service standards, claims reviews and complaint escalations should cater for TCF.

- Performance management: TCF deliverables should form part of staff performance appraisals where appropriate. This should include middle and senior management levels to ensure that both staff and management are appropriately held accountable for TCF successes and failures.

- Reward: Remuneration, incentive and reward policies must take into consideration fair customer outcomes and entail consequences for TCF successes and failures.

To successfully implement the outcomes, management information systems must be designed to monitor and measure the firm's performance in delivering the six outcomes. This enables the firm to ensure that they always treat customers fairly.

Piloting the self-assessment tool

The FSB has drafted a self-assessment tool and has decided to pilot it with a number of regulated businesses. This will allow the FSB to refine the tool before making it available for general industry use. MMI Holdings have accepted the FSB's invitation to participate in this pilot exercise.

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