HM Treasury

A new approach to financial regulation: draft secondary legislation

A Response by Credit Action

Background

Credit Action is a national financial capability charity (registered Charity in England & Wales No. 1106941) established in 1994.

Credit Action empowers people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives. It develops and delivers products and services which provide education, information and advice on money matters, in an appropriate way for young people and adults. Through its work Credit Action reaches over 500,000 UK citizens every year.

creditaction
Better thinking about money

Introduction

As an organisation which is committed to helping people build their financial capability, Credit Action believes that it is vital to ensure that consumers are empowered to engage successfully with the market for financial products. The regulatory reforms which are set to take place in 2013 will play a major role in determining how that market works in the future, and will have an enormous impact on consumers throughout the UK. We therefore welcome the opportunity to contribute to the Treasury's consultation on the secondary legislation that will underpin certain aspects of the new regime.

Credit Action is primarily concerned with the changes that are taking place with respect to conduct regulation, and the implications that these will have for consumers. Therefore, in responding to this consultation we have focused on those aspects of the secondary legislation which will affect the work of the Financial Conduct Authority (FCA). In particular, we comment on the proposed threshold conditions for firms regulated by the FCA, the division of responsibility between the FCA and the Prudential Regulatory Authority (PRA), and the proposed criteria for designating consumer bodies as super-complainants to the FCA. In order to explore these issues specifically, we have chosen to answer questions 5, 9 and 28 in our submission.

Question 5: What are your views on the proposed threshold conditions?

Paragraphs 3.29 to 3.33 of the consultation outline the proposed threshold conditions for FCA-authorised firms. In general we believe that these threshold conditions are appropriate, and also think that the overall approach outlined in paragraph 3.5 (by which separate regulators have separate sets of threshold conditions) will help to provide clarity under the new regime.

At this stage therefore, there is little that we would change about the threshold conditions for FCA-authorised firms that are presented in the consultation itself. However, we do feel that in due course, the FCA may wish to consider whether it is appropriate for it to make additional rules under the "threshold conditions code" (mentioned in paragraph 3.10) concerning the behaviour of firms towards vulnerable and financially excluded consumers. This is an area which is not covered in the threshold conditions put forward in the consultation, but which we believe may merit attention once the FCA takes on responsibility for conduct regulation.

In particular, certain amendments to the Financial Services Bill in the House of Lords have, in our view, brought the issue of vulnerable and financially excluded consumers within the sphere of the FCA's mandate. Notably, the FCA's competition objective was amended during the Report stage to require the FCA to have regard to "the ease with which consumers who may wish to use … [regulated financial] services, including consumers in areas affected by social or economic deprivation, can access them". In meeting this requirement we would expect the FCA to develop an understanding of how such consumers are treated by firms and, with respect to authorisation, we therefore wonder if the FCA should give consideration to the way in which applicants' behaviour is likely to affect these groups. Consequently, we feel there may be grounds for the FCA to at least

examine whether it would be appropriate for it to use its powers under the "threshold conditions code" in this context.

In addition, we would also note that these points might, potentially, also be applicable to firms subject to dual regulation by the FCA and PRA, and so could prospectively be relevant to Question 3 of the consultation as well.

<u>Question 9:</u> What is your view on the high-level approach taken to splitting the functions between the PRA and the FCA?

Paragraph 4.4 of the consultation states that, with respect to the regulation of mutuals, functions will be split between the PRA and the FCA, with the former taking on responsibility for tasks relevant to the "safety and soundness of mutuals that are PRA-authorised", while the latter will take over the FSA's other functions "including those related to registration, the register and the public file, enforcement of offenses, and the majority of the functions related to administering mutuals in general".

We recognise that, within the consultation, these split functions are justified as reflecting "the high-level approach taken with the division of the FSA's functions under FSMA to the PRA and the FCA" (paragraph 4.4), and that the Financial Services Bill "imposes a duty on the PRA and the FCA to co-ordinate the exercise of their respective functions" (paragraph 4.7). However, we would simply note that, from our perspective as an external observer, this division of responsibilities does seem rather cumbersome, and potentially adds a new layer of complexity to regulation of the mutuals sector.

We realise that this sort of functional division is to some extent inherent in the switch from one unified regulatory body to a system of separate conduct and prudential regulators, and that at this stage the focus should be on clearly communicating the changes to the mutual sector rather than seeking any kind of structural solution. However, in our view splitting the regulatory functions in this way also serves to raise a wider point concerning the role of the FCA within the new regulatory framework.

We note that, in this instance, the FCA is taking on a primarily administrative set of responsibilities, to the point where the Government does not deem it necessary to apply the FCA's objectives to its functions under mutuals legislation as "it will have little or no discretion in exercising the majority of its functions (which are mostly administrative in nature)" (paragraph 4.13). It is our hope that this is not indicative of a broader attitude amongst the new regulatory bodies to see the FCA as a "soft target" to which awkward or process-driven tasks can be easily handed off. In our view, the conduct regulator will play an essential role in the new regime, and we would be concerned if it was to be somehow marginalised or viewed as being of secondary importance.

Ultimately, while we recognise that the shift to a model of two regulators will inevitably result in certain responsibilities being split as is the case with mutuals regulation, we believe it is important that in such instances the FCA is not overburdened with low-level functions, and that it is afforded a

sufficiently prominent role within the new regime to ensure that conduct issues are not unduly overshadowed by other priorities.

Question 28: Do you have any comments on the Government's proposals for designating consumer bodies as super-complainants to the FCA, or on the text of the draft criteria and guidance in Annex G?

We believe that giving consumer bodies the capacity to make super-complaints to the FCA is a valuable way of connecting the regulator to developments on the ground in the market for financial products, and that such an initiative could therefore play an important role in facilitating the more forward-looking and proactive approach which it is hoped the FCA will pursue.

However, based on the draft criteria for designating super-complainants in Annex G, one comment we would make is that the barriers to entry for designation appear quite high. In particular, the expectation that "Bodies will need to demonstrate that they are able to deal with any competition and economic issues involved in super-complaint cases, whether through in-house experience or using external advice" (Paragraph G.25) will probably exclude all but the very largest consumer bodies, as smaller organisations are unlikely to have the resources available to meet such requirements.

One consequence of this is that the FCA may not get the depth of market intelligence that it could if smaller players had a better chance of designation. Ultimately, we recognise that it is the Treasury's prerogative to define what sorts of consumer bodies it would like as super-complainants and the function that it would like them to serve, but we would highlight that in deciding on the final criteria for designation there will be a trade-off between breadth of coverage and depth of analysis, and the Treasury will need to choose where it draws this line.

Contact

For further information on any of the points made in this response, please contact John Davies at Credit Action, either by email at johndavies@creditaction.org.uk or by telephone on 0207 380 3390.