



# ***Transparency as a regulatory tool***

**[An international literature review]**

Presented to:

**The Financial Services Consumer Panel**

by

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## 1 BACKGROUND

### 1.1 The Consumer Panel and its objectives

The Financial Services Consumer Panel (henceforth, 'the Panel') was established by the Financial Services Authority (FSA) in December 1998, to represent the interests of consumers in advising the FSA on its policy and practices, and in monitoring its effectiveness. Subsequently, the Financial Services and Markets Act 2000 made it a statutory requirement for the FSA to establish and maintain a Consumer Panel.

The main purpose of the Panel is to provide advice to the FSA. Currently, one of the most significant issues being considered by the Panel is that of '*transparency as a regulatory tool*'.

The Panel is of the opinion that transparency is a legitimate regulatory tool and, used effectively, can be a significant factor in improving compliance, without necessarily requiring the alternative of 'expensive' enforcement action. In addition, it is of the view that it can only help consumers better understand the work of the FSA and financial services firms better understand what is expected of them. Accordingly, the Panel thinks now is an appropriate time for the FSA to determine its policy on greater transparency. It has been encouraged in this by the findings of a recent Consumer Focus report, Rating Regulators, which concluded that the FSA '*could make more use of transparency as a regulatory tool*'.<sup>1</sup> The FSA has been given statutory powers that allow it to publish specific information which will help it better achieve its objectives; the Panel believes it is legitimate for the FSA to do so, and to a greater degree than it does at present.<sup>2</sup>

In order to develop the Panel's position on transparency further, i.e. to support its goal of greater transparency, the Panel wished to explore the approach of the FSA's equivalent regulators overseas and benchmark the FSA against them.

Areas of particular interest to the Panel are:

- The disclosure of complaints data about firms
- The disclosure of information about firms entering enforcement
- The equivalents, in other countries, of response rates on Freedom of Information
- Transparency in the area of governance procedures, including publication of regulator board meeting minutes
- The disclosure of complaints data about financial promotions

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<sup>1</sup> Rating Regulators by Consumer Focus (2009); p.9  
[http://www.consumerfocus.org.uk/assets/1/files/2009/06/10708\\_CF\\_Rating\\_Regulators\\_web.pdf](http://www.consumerfocus.org.uk/assets/1/files/2009/06/10708_CF_Rating_Regulators_web.pdf)

<sup>2</sup> The FSA is implementing a Code of Practice on Regulatory Transparency and has highlighted this as an area to which it is committed. Such commitment is not yet, necessarily, established international practice; for example, IOSCO (International Organisation of Securities Commissions) does not include 'regulatory transparency' in its thirty 'objectives and principles of securities regulation'.

## 1.2 Research approach

### 1.2.1 Research priorities

The assignment was to be an **initial** investigation into the approach to transparency as a regulatory tool by the FSA and by financial regulators in other countries. Depending on the findings, the Panel would determine whether or not to commission further in-depth research, such as closer investigation of a particular approach or interviews with specific regulators

The **objectives** of this initial investigation were to:

- *Summarise the approach taken by the FSA*
- *Identify the approaches adopted by a selection of overseas financial services regulators*
- *Summarise what appear to be areas of good practice, ideally distinguishing good and best practice*
- *Benchmark the approach of the FSA against international approaches, with the focus on areas of good practice*
- *Identify those areas where the FSA could be seen to be less, or more, transparent than its overseas equivalents and where its approach falls short of good practice, should that be the case*

Topics to be covered were:

- Disclosure of firms' complaints data
  - Are firms in other countries required to report to the financial services regulator on the complaints they receive, and, if so, how often must they do so and with what level of detail?*
  - How often do regulators publish firms' complaint data, and with what level of detail?*
  - Are complaints data aggregated?*
  - Are they at firm or at brand level?*
  - Are volumes of complaints categorised in other ways, such as by financial product or product group, by the nature of the complaint, by the type of customer, and by how the complaint has been handled?*
  - Is publication limited to firms receiving in excess of a specific number of complaints in a given reporting period?*
  - Are the performances of good firms, as well as of poorly performing ones, highlighted?*
  - Are comparative, or league, tables used?*
  - What context, if any, for levels or types of complaints is provided?*

- Disclosure of enforcement procedures
  - Is information made available about firms against whom complaints have been received or who are entering enforcement procedures?*
  - What are the legal or other factors supporting or militating against greater transparency in this area?*
- Freedom of Information requests, or their equivalents
  - Response rates by the Regulators to such requests*
    - Number of requests received*
    - Number/ proportion acceded to*
    - Number/proportion published*
- Governance procedures
  - How transparent are other Regulators regarding their own governance processes?*
  - Specifically, are Board minutes and/ or documents publically available and, if so, with what restrictions?*
- Disclosure of financial promotions' compliance
  - What is the current approach?*
  - Is there a register of complaints about financial promotions or has this been considered?*

### **1.2.2 Selecting countries to review**

**The Panel wished to explore the policies and behaviour of a wide-ranging sample of regulators from countries within and outside of the EU.**

The Panel provided initial suggestions on countries to cover but asked for any recommended changes. The Panel's initial list of nine countries comprised US, Canada, Australia, New Zealand, Ireland, France, Germany, Sweden and Denmark.

It was decided to cover seven countries. Of these, the US, Canada, Australia, France, Germany and Sweden were adopted from the Panel's suggestions. Denmark was rejected as only limited information was available in English and New Zealand was excluded as preliminary investigation revealed little engagement with transparency as a regulatory tool. The additional country selected was Japan which, on initial investigation, was found to be engaged in an active policy of Better Regulation reform.

Consequently, the countries investigated were:

- Australia
- Canada
- France
- Germany
- Japan
- Sweden
- United States

It is important to bear in mind in interpreting the findings that this list does not represent an unbiased or 'random' selection of comparator countries against which to measure the FSA. They are countries who were believed to be able to offer interesting examples of 'leading-edge' behaviour on transparency.<sup>3</sup>

### **1.2.3 Selecting organisations to review**

The primary focus of the report is on financial services sector regulators. However, for two reasons this has been extended in some of the countries also to review Ombudsmen and Self-Regulatory Organisations. Firstly, this is because regulatory structures vary by country such that some of the FSA's functions or responsibilities are carried out by different types of organisation in other countries.<sup>4</sup> Secondly, it was felt sensible to explore examples of transparency in the key topic areas of interest to the Panel regardless of whether they were being implemented by a regulator.

The full list of organisations reviewed is provided at Appendix A.

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<sup>3</sup> Nor, however, is it the case that these are certainly the countries showing the greatest commitment to transparency since it was not practical, or cost-effective, to undertake a structured screening process.

<sup>4</sup> A brief summary of the different regulatory landscapes in each country is provided in section 1.3 following.



### 1.3 Variations in the regulatory landscape between countries

The countries reviewed cover between them a number of different regulatory approaches, structures and landscapes; several are more fragmented and complicated than the UK's single regulator approach. Each is summarised briefly in the following sections.

#### 1.3.1 Australia

Australia operates what is referred to as a 'Twin Peaks' model of financial regulation in which 'prudential' and 'market' regulation are separated. The key regulators are:

- ◆ **Australian Prudential Regulation Authority (APRA)**
- ◆ **Australian Securities and Investments Commission (ASIC)**

**APRA** is responsible for the prudential regulation of any entity that needs to be prudentially regulated. It is more of a 'behind the scenes' regulator than ASIC and has a lower profile among consumers.

**ASIC** is responsible for:

- ◆ Market and disclosure regulation of any financial products being offered to Australian consumers
- ◆ Regulating market integrity and consumer protection with the objectives of promoting market fairness and consumer confidence

Other important players are the **Financial Ombudsman Service (FOS)** and the **Credit Ombudsmen Service Limited (COSL)**. As of October 2009 they are the only authorised External Dispute Resolution services in the financial services sector.

#### 1.3.2 Canada

In Canada, the regulatory landscape is highly complex. Separate regulatory agencies regulate banking, insurance, securities and credit unions. Regulatory responsibility is also split between the national and provincial governments.

Regulation of the *banks* is shared between the **Office of the Superintendent of Financial Institutions (OSFI)** and the **Financial Consumer Agency of Canada (FCAC)**. They divide their regulatory responsibilities along the lines of prudential regulation (i.e., OSFI) and business conduct regulation (i.e., FCAC)

Regulation of *insurance companies* is divided between the national and provincial governments. The vast majority of insurance companies in Canada are subject to regulation by the OSFI and, to a limited extent, the FCAC. While the provinces retain the authority to engage in prudential supervision of insurance companies operating within their borders, several provinces contract this function to the OSFI. However, business conduct regulation of all insurance companies in Canada, including those that are subject to prudential supervision by the federal agencies, is performed by the provincial governments.

While regulation of banks and most prudential regulation of the insurance industry take place primarily at the national level, the provinces have the lead role in regulating the *securities industry and credit unions*. Credit unions and caisses populaires are incorporated under provincial law, and the provinces set the applicable regulation. Outside of Quebec, the national government does play a

limited role regulating the credit union industry as the Credit Union Central of Canada is chartered and regulated at the federal level.

Securities regulation is entirely in the hands of the provinces. Each province maintains its own securities commission. Four of these provincial commissions — Alberta, British Columbia, Ontario and Quebec — participate in IOSCO and Canada is the only major country that is not represented in IOSCO by its national government. In order to promote coordination of regulation across borders, the provincial commissions have formed the **Canadian Securities Administrators (CSA)**, consisting of the chairs of the thirteen provincial securities regulators. The CSA's goal is to "*harmonize and strengthen securities regulation in Canada through enhanced inter-provincial cooperation*".

In addition to the provincial commissions, several self-regulating organisations (SROs) play an important role in the regulation of Canada's securities markets. The most important of these are the **Investment Industry Regulatory Organization of Canada (IIROC)** and **Mutual Fund Dealers Association (MFDA)**. IIROC regulates the conduct of all investment dealers in Canada and enforces the trading and market integrity rules for the major trading markets and platforms. MFDA, which commenced operation in 2001, regulates the sale of mutual funds in Canada.

Finally, Canada also has a financial services ombudsman to handle individual consumer complaints and issues. In 2002, the investment industry and other firms under federal financial services laws joined the existing (founded in 1996) Canadian Banking Ombudsman to form the **Ombudsman for Banking Services and Investments (OBSI)**. At the same time credit unions were also invited to join.

### **1.3.3 France**

France has undertaken two recent reforms of its regulatory structures; in 2003 and 2010.

Under the 2003 structure, France operated a complex form of the "twin peaks" regulatory model for banking and securities, but a "functional" approach (i.e. a single regulator for a specific 'product' sector) for insurance, for which there is a separate regulator.

Overall surveillance of the financial markets in which *banks and investment firms* operate was shared between the **Autorité des Marchés Financiers (AMF)** and the **Banque de France (BdF)**. More specifically, banking supervision was divided between three bodies, the **Minister of the Economy (MoE)**, the **Commission Bancaire (CB)** and the **Comité des Établissements de Crédit et des Entreprises d'Investissement (CECEI)**; the last two falling within the ambit of the BdF. Licensing of credit institutions was the responsibility of CECEI while the CB was responsible for the supervision of individual credit institutions, including banks, and of individual investment firms with regard to their financial condition, operating practices and compliance with rules and regulations.

The AMF was also the sole agency responsible for *asset management firms*. For other investment firms, it shared responsibility for licensing with CECEI and for supervision with CB.

The regulator for the *insurance* sector was the **Autorité de Contrôle des Assurances et des Mutuelles (ACAM)**.

Early in 2010, the French regulatory structure was reformed. A new single regulator for the financial services and insurance industries was founded, the **Autorité de contrôle prudentiel (ACP)**. This was the result of the merger of the existing regulators including CECEI, CB and ACAM. The AMF, however, remained as a separate regulator.

France also has a complex structure of self-regulatory organisations. These include **Federation Bancaire Francaise (FBF)** which is the banking self-regulatory organisation and, previously, **Fédération Française des Sociétés d'Assurance (FFSA)** and **Groupement des Entreprises Mutuelles d'Assurance (GEMA)**, both of which were insurance self-regulatory organisations before being absorbed in 2007 into the **Association Française des Assureurs**.

### **1.3.4 Germany**

Germany, like the UK, has a single financial regulator. The **Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)** was created in 2002 by the merger the Federal Banking Supervisory Office, the Federal Supervisory Office for Securities Trading, and the Federal Insurance Supervisory Office.

Additionally, Germany has a number of Ombudsman services covering different segments of the financial services market. In the case of insurance undertakings, there is one ombudsman service for private health insurance as well as one ombudsman covering almost all other forms of private insurance. In the case of banks, there are a number of different ombudsmen, depending on the type of bank (e.g. public sector banks, co-operative banks, mortgage banks, building and loans associations, etc.)

### **1.3.5 Japan**

Japan also has a single regulator, the **Financial Services Agency (FSA)** which is responsible for overseeing banking, securities and exchange, and insurance. Included within the FSA is the **Securities and Exchange Surveillance Commission (SESC)** which acts as a market watchdog independent from supervisory divisions of the FSA.

Self-regulatory organisations play an important role in Japan, including by offering Ombudsmen services. Examples are the **Japan Securities Dealers Association (JSDA)** which operates in-house securities mediation and consultation centre and the **Japan Securities Investment Advisers Association (JSIAA)**.

### **1.3.6 Sweden**

Sweden has a single financial regulator. **Finansinspektionen (FI)** was established in 1991 as an integrated regulator covering banking, securities and insurance through the merger of the former banking and insurance supervisory bodies. It is responsible for promoting stability and efficiency in the financial system as well as ensuring effective consumer protection. It authorises, supervises and monitors all companies operating in Swedish financial markets.

In addition to the regulator there is a national Ombudsman service, **Allmänna reklamationsnämnden (ARN)**, which has departments covering all consumer markets, including the financial services sector. Also involved is the **Swedish Consumer Agency (Konsumentverket)** which is the agency responsible for safeguarding consumer interests across all sectors.

### 1.3.7 United States

The present US regulatory structure is highly fragmented and complex. It has been strongly criticised in the wake of recent financial crisis and is currently the subject of far-reaching reform proposals from the administration.

The US Government Accountability Office recently summarised the regulatory landscape: *'Today, responsibilities for overseeing the financial services industry are shared among almost a dozen federal banking, securities, futures, and other regulatory agencies, numerous self-regulatory organizations, and hundreds of state financial regulatory agencies'*<sup>5</sup>

A similar summary was provided in a report commissioned by the OECD: *'The US has a highly fragmented regulatory structure, characterised by specialisation and competition between regulators. Insurance regulation operates at the state level; regulation of securities markets operates at the federal level with a significant involvement of self-regulatory organisations; and banking regulation operates at both state and federal level, with institutions having a choice as to who to be regulated by.'*<sup>6</sup>

Regulation of banking was summarised by GAO as follows *'Insured depository institutions are overseen by five federal agencies—the **Federal Deposit Insurance Corporation (FDIC)**, the Board of Governors of the Federal Reserve System (**Federal Reserve**), the **Office of the Comptroller of the Currency (OCC)**, the **Office of Thrift Supervision (OTS)**, and the **National Credit Union Administration (NCUA)**—and states supervise state-chartered depository and certain other institutions'*.

GAO noted In respect of securities markets and investments: *'Securities activities and markets are overseen by the **Securities and Exchange Commission (SEC)** and state government entities, and private sector organizations performing self-regulatory functions. Commodity futures markets and activities are overseen by the **Commodity Futures Trading Commission (CFTC)** and also by industry self-regulatory organizations'*.

The key SROs are the **Financial Industry Regulatory Authority (FINRA)**, which was formed in 2007 through the merger of the National Association of Securities Dealers and the relevant regulation activities of the New York Stock Exchange, and the **National Futures Association (NFA)**.

In respect of insurance GAO recorded: *'Insurance activities are primarily regulated at the state level with little federal involvement'*.

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<sup>5</sup> Source: Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System (GAO-09-216) at <http://www.gao.gov/new.items/d09216.pdf>

<sup>6</sup> Source: Black, J. and S. Jacobzone (2009), "Tools for Regulatory Quality and Financial Sector Regulation: A Cross-Country Perspective", *OECD Working Papers on Public Governance*, No. 16, OECD Publishing, © OECD. doi:10.1787/218772641848

Finally, GAO commented ‘*Other federal regulators also play important roles in the financial regulatory system, such as the **Federal Trade Commission (FTC)**, which acts as the primary federal agency responsible for enforcing compliance with federal consumer protection laws for financial institutions such as finance companies that are not overseen by another financial regulator*’.

The administration has put forward proposals which have resulted in a Bill being passed (December 2009) in the House although not yet in the Senate. The keystone of the reforms is the proposed creation of a new **Consumer Financial Protection Agency (CFPA)**, intended to become a regulator covering nearly all consumer-related financial products and with a sole focus on consumer protection. Among other things, this agency would assume the consumer protection authorities of the current banking regulators and would have broad jurisdiction and responsibility for protecting consumers of credit, savings, payment and other consumer financial products and services. However, it would not be a completely ‘one-stop shop’ The SEC and CFTC would retain their consumer protection role in securities and derivatives markets and the FTC would also continue to have a role in consumer protection. Other new entities proposed are a National Bank Supervisor and an Office of National Insurance, both situated within the Department of Treasury. The Office of National Insurance would introduce federal-level regulation to the sector for the first time. It is also intended to introduce a new co-ordinating body, the Financial Services Oversight Council which would contain representatives of all the key agencies and regulators and would be responsible for ensuring efficient co-ordination and transfer of information.

#### **1.4 Caveat**

This review has covered five transparency ‘issues’ across seven countries and as approached by over forty organisations. In addition, the practices of the FSA have been summarised. Whilst searching has been conducted primarily in English documents and web-pages have also been reviewed in French, German, Japanese and Swedish.

In order to undertake this work, which is intended as an initial exploration, within a realistic budget it was agreed that it would be conducted on a ‘best efforts’ basis within the time available. Consequently, it cannot be guaranteed that some examples of transparency among the organisations reviewed have not been missed.

Further, it is emphasised that the report represents the author’s best endeavours to meet the Panel’s objectives and that any errors or omissions are the responsibility of the author and not the Panel.

However, it is believed that the review provides a valid input to the Panel’s work since:

- Although coverage may not be completely comprehensive a broad picture of how the FSA is performing relative to other regulators does emerge
- The key objective was to identify interesting examples, or lessons, from international experience which might inform future FSA policy, not to conduct a comprehensive audit per se of the activities of individual foreign regulators

#### **1.5 Reporting format**

This volume provides an executive summary of the research findings and then details the evidence collected on each of the five specific topics. It ends with a brief conclusion seeking to summarise the FSA’s position relative to international practice.

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Appendix B contains examples of documents demonstrating particularly transparent approaches identified by the research.

## **2 EXECUTIVE SUMMARY**

### **2.1 Background**

- This international literature review was commissioned by The Financial Services Consumer Panel (the Panel) as an initial exploration of the role of transparency as a regulatory tool
- It concentrated on five specific areas:
  - The disclosure of complaints data about firms
  - The disclosure of information about firms entering enforcement
  - Response rates to Freedom of Information requests
  - Transparency in the area of governance procedures
  - The disclosure of complaints data about financial promotions
- Its objectives were to benchmark the performance of the FSA and to identify the most interesting international examples of the use of transparency as a regulatory tool
- A total of seven countries were reviewed. These were selected as likely to be ones with an above average commitment to the use of transparency and so are not representative of international practice in total. The selected countries were:
  - Australia
  - Canada
  - France
  - Germany
  - Japan
  - Sweden
  - United States
- A range of organisations were researched covering regulators, dispute resolution organisations (Ombudsmen) and self-regulation organisations. A total of 44 were covered (These are listed in Appendix A)
- In order to operate within a realistic budget it was agreed the work would be conducted on a 'best efforts' basis within the time available. Consequently, it cannot be guaranteed to be comprehensive

### **2.2 Disclosure of complaints data**

- Organisations varied in terms of the degree of detail they released and also whether they published data on the number of complaints received by firms themselves or the number that reached them
- The FSA was unusual in requiring firms to provide and publish their own data; most regulators release only data on complaints they have handled
- Typically, the organisations reviewed only released aggregated data and did not provide information about individual firms. Consequently, the FSA's arrangements to do this place them at the more transparent end of the spectrum

- Nevertheless, examples were found that provide considerably more detail and analysis than will be provided by the FSA under its revised procedures, meaning that there is scope to consider greater transparency.
- A particularly key consideration is the extent to which information, especially in a very detailed format, is truly helpful to consumers unless it is provided alongside market share or similar data to put it in to context; the decision of the FSA not to insist on directly comparable context data may be a weakness in this area

### **2.3 Disclosure of firms entering enforcement**

- The Panel has a particular interest in this area and is currently sponsoring an amendment to the Finance Bill to give the FSA the power to release the identity of firms either entering enforcement or that are part-way through enforcement<sup>7</sup>
- The regulators reviewed generally did not disclose information on firms entering their enforcement procedures; indeed, in some cases information was not released, or was anonymised, even on completion of formal processes leading to sanctions. Informal enforcement related to minor infractions is, by its nature, confidential
- A limited number of instances of information being released before the end of enforcement processes were found. Some organisations in Canada provide details ahead of formal hearings which, in some cases, are held in public. However, even where the identity of firms involved is released prior to 'judgement' such an approach is not taken in all cases and, indeed, is often the exception
- It is more common, however, to release details of those sanctioned once the regulator's own processes are complete but before the respondent has decided whether to appeal
- As a result, the present FSA arrangements are not out of line with those of their international peers
- Nor is there evidence of a movement among the regulators studied to seek earlier disclosure of enforcement proceedings. In some instances this reflects legal restrictions but it is also recognised that a policy of early release, before all processes are exhausted, is likely to result in less co-operation from the industry and may, therefore, be counter-productive

### **2.4 Response rates on Freedom of Information requests**

- Differences in behaviour on this topic essentially reflected the legislation and general practice in the countries concerned, rather than different policy choices by individual organisations

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<sup>7</sup> A revised Financial Services Act 2010 subsequently gave the FSA increased power to release the names of firms at an earlier stage of the enforcement process. This does not go as far as the Panel requested in its own amendment but is nevertheless a further step towards greater transparency.



- There was very little disclosure from organisations in Canada, France, and Japan. Consequently, the FSA is ahead of these examples since it provides feedback on its performance and also provides access on its web-site to previously released documents
- Interestingly, there was no specific feedback in Sweden, which has the oldest and most deeply-entrenched legislation. However, this probably reflects the fact that individuals' rights of access are so comprehensive that there is not a separately designated 'freedom of information' procedure on which to report
- The level of information on responsiveness to requests released by BaFin in Germany is similar to that of the FSA. However, considerably more detailed feedback is available in Australia and, particularly, the US where a highly comprehensive standard-format report is used by the federal agencies. This level of transparency is no doubt helpful as a means of insuring that organisations will be scrutinised if they appear not to be meeting their obligations; however, the US examples especially may represent too much information from the perspective of individual consumers
- Turning to the issue of how willing organisations are to release information when requested to do so, data were only available from the FSA and Germany, Australia and the US on the proportion of requests that were declined. It is debateable whether it is legitimate to compare these data; however, refusal rates were easily highest in Germany (BaFin), followed by the FSA and then the Australian regulators. Refusal rates, typically, were much lower in the US

## **2.5 The transparency of regulators' governance procedures**

- The FSA emerges as above average, but certainly not the leader, in terms of the transparency of its governance processes. It provides somewhat anodyne summaries of its board minutes and details the attendance record of board members
- The only other countries where board minutes are released are Sweden, and the US. In both these cases the level of detail provided appears to be greater, and more insightful, than that provided by the FSA, especially in the US
- Easily the most extensive initiatives in transparent governance are from the US, largely under the influence of the many so-called 'Government in the Sunshine Acts' at state and federal level
- Examples include the prior release of board agendas and non-confidential board papers and the holding of open board/ commission meetings including the live and archived web-casting of such meetings

## **2.6 Disclosure of complaints data about financial promotions**

- The Panel has recommended stronger action in this area by the FSA and, specifically, has proposed the introduction of a public register of financial promotions that have been found to be non-compliant
- Internationally, no example was found of a regulator maintaining a formal register nor of intending to introduce one
- What did emerge was considerable diversity in the methods used by regulators internationally to enforce compliance of financial promotions. These ranged from purely reactive to very proactive approaches. Also, it was

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noticeable that transparency per se forms only one part of the methods used to seek to protect consumers in this area

- The most proactive methods used to enforce compliance were found in the US

### **3 DISCLOSURE OF COMPLAINTS DATA**

#### **3.1 Background**

There are several reasons why regulatory or dispute resolution organisations may wish to publish data on the volume (and nature) of complaints made against financial services organisations. Providing greater market transparency to assist individual consumers in choosing between suppliers is only one of these. Other motivators/ drivers include:

- Providing perhaps more complex or detailed data which individual consumers may choose not to access but which may still benefit them via market commentators who will conduct detailed analysis and report on their key findings
- A belief that publication will, of itself, act as a deterrent against poor behaviour even if individual consumers make little or no direct use of the information
- To help guide (and, if necessary, justify) decisions regarding the prioritisation and targeting of regulatory or enforcement efforts
- To provide a performance indicator for the organisation's own activities by demonstrating the number of complaints handled and the proportion completed within target timescales

Data about the number of complaints made against regulated organisations can be drawn from two sources; the numbers of complaints received by the organisation/ firm itself and/ or the numbers of complaints received about it by the appropriate ombudsman or regulatory body.

There is also a wide range in the level of detail published which, arguably, has a major impact on how useful the information might be for consumers. Different formats found in the study are summarised in Table 1.

**Table 1 Levels of complaints data information published**

| <b>Level<sup>8</sup></b> | <b>Approach</b>  | <b>Comment</b>  |
|--------------------------|--|---|
| <b>4</b>                 | <i>Total number of complaints by firm, with supporting context data</i>  | May also be broken down by topic area. Provides the most detailed background information to inform individual consumer choices. However, can also be counter-productive if sheer volume of information makes it less likely to be used.   |
| <b>3</b>                 | <i>Total number of complaints by firm</i>  | May be broken down by topic area but not put in to 'context' by also providing data on, for example, number of active policies; number of accounts; number of transactions; etc.<br><br>Can be used by consumers to inform individual choices but may be 'misleading' without context information   |
| <b>2</b>                 | <i>Total number of complaints (not by firm) broken down by, for example:<br/>Firm type<br/>Product type<br/>Topic/ Issue<br/>Outcome</i> | Motivation is often to show trends in complaints so that 'hot spots' can be identified.<br><br>Can be used by individual consumers at a high level to alert them to, say, which types of firm are more or less likely to perform well for specific products or on particular aspects<br><br>Typically used to alert regulators to problem areas and, thereby, to guide investigation and enforcement activities |
| <b>1</b>                 | <i>Overall total number of complaints received/handled (not by firm)</i>   | Typically used as a performance indicator for the regulatory/ dispute resolution organisation to demonstrate the volume of complaints/ contacts handled   |

<sup>8</sup> These Levels are designated for the purposes of this report. They are not officially-recognised industry definitions.

## **3.2 UK practice**

### **3.2.1 Current FSA publication of complaints data**

The FSA is unusual by international standards in publishing regulated firms' own data on the complaints they have received. Most regulators and dispute resolution organisations in other countries publish information on the complaints which have been made to them.

Using firms' data submitted to it, the FSA currently reports in a format that falls into Level 2. That is, it provides aggregated not firm-level data but breaks this down to some extent by firm type, nature of complaint, timeliness in handling, and outcome.

All firms are required to file a complaints return with the FSA on a six monthly basis. Using these data, in September 2009 the FSA published an aggregated summary of complaints covering the period 2006 to 2008, and figures for the first six months of 2009 in October 2009.

The reports cover:

- The volume of complaints firms received, by product type and cause of the complaint, e.g. delays and misleading advice
- How firms handled complaints, including the speed of complaints-handling (proportion resolved within 8 weeks) and the proportion of complaints upheld by firms.

The FSA reports on a comprehensive range of product and firm types. The product groups are Banking & Loans; General Insurance & Pure Protection; Home Finance; Investments; Life & Pensions and Other.

The firm types are: Banks; Building Societies; General Insurance Intermediaries; Investment Manager; Life Insurer; Mortgage; Other Insurer; Personal Investment; Professional Firms; Securities & Futures; and Others.

The FSA uses the data to manage the risk that firms treat customers with complaints unfairly. The complaints data provided by firms is used to identify instances where a firm might be an outlier in the volumes of complaints being received, their processing and the outcome. The data can also highlight a potential failure by a firm to comply with the FSA's complaint handling rules. The FSA also uses complaints data to support the identification of emerging trends across a number of firms within a sector. This identifies issues with the potential to affect a large number of consumers which need to be addressed.

### **3.2.2 FSA's future plans**

The FSA is to expand the information it publishes on complaints and to move to Level 4 reporting (Firm-level data with context information). Again, the data used will be complaints made to the firms themselves.

As of the end of August 2010, firms that report 500 or more complaints over a six-month period must also publish a summary of their own figures, showing how many complaints were received, how many were closed, the proportion that were upheld and the proportion closed within 8 weeks. Firms will need to present this information by five product areas: banking, home finance, general insurance and pure protection, life and pensions, and investments.

The FSA will then use this information to publish a consolidated list of complaints data covering all affected firms twice a year. The arrangement will then continue to operate every six months.

The FSA is permitting firms some latitude as to how they put their complaints data into context in order to reduce the risk of consumers assuming that larger firms treat their customers less well than smaller firms because they show a higher number of complaints. The original proposal was for a set of mandatory “contextualisation metrics” for each product or service category, such as the number of complaints per 1,000 bank accounts, or, for general insurance, per £1 million of annual premium growth income. Under the finalised rules, these will only be advisory. Firms will be able to use alternative metrics if they think the recommended ones do not accurately reflect the scale of their business. This may make information from different firms less directly comparable, but the FSA concluded it would not be helpful to require firms to publish information that did not accurately reflect their own circumstances.

### **3.2.3 Financial Ombudsman Service**

The **Financial Ombudsman Service (FOS)** published data on the number of complaints it receives. This is in the format of total number of complaints per firm broken down by broad product area (banking and credit; mortgages and home finance; general insurance; investments; and life and pensions and decumulation). It also shows the proportion of complaints found in favour of the consumer and compares that with the average for all firms but does not provide other context data (i.e. Level 3).

### 3.3 International overview and comparison with FSA

In the countries reviewed, regulators, ombudsmen and self-regulatory organisations rarely publish firms' own data on the number and type of complaints received; they rely instead on publishing information on the number of complaints having reached them.

It is also only a minority of organisations that release information at firm level (i.e. Levels 3 and 4) as Table 2 demonstrates in recording the number of organisations reviewed that disclosed information in different formats.

**Table 2 Disclosure of complaints data in different formats**

|   | <b>Regulator/<br/>Ombudsman's<br/>data</b> | <b>Firms' own<br/>data</b> | <b>Total</b> |
|---|--|----------------------------|--------------|
| Level 4<br>(Complaints received, by firm<br>with context data)  | 3  | 1                          | 4            |
| Level 3<br>(Complaints received, by firm)   | 2  | 0                          | 2            |
| Level 2<br>(Total complaints received;<br>broken down by one or more<br>of firm type/ issue/ outcome) | 19   | 1                          | 20           |
| Level 1<br>(Total complaints received)  | 9  | 0                          | 9            |
| <b>Total</b>  | <b>33</b>                                  | <b>2</b>                   | <b>35</b>    |

On this basis of this categorisation the present FSA disclosure arrangements (Level 2) are broadly in line with international practice although with the difference, of course, that they are based on firms' data. The forthcoming move (to Level 4) will put the FSA among the most transparent of regulators on this issue, especially since three of the four current Level 4 examples relate only to the insurance sub-sector. However, it should also be noted that the four international Level 4 examples all use standardised context information. By contrast, the FSA intends to allow firms to use their own context measures if they wish. This may well make the information difficult, or impossible, to compare and so preclude the calculation of 'league tables'.

### **3.4 Australia**

#### **3.4.1 Use of firms' own data**

Australia is unusual in that it has examples of firms' own data being collated and published.

The most striking example<sup>9</sup> is the approach which was followed by the **Insurance Ombudsman Service (IOS)**.<sup>10</sup> The IOS produced a report which showed for each firm:

- Number of policies in force
- Number of claims received
- Number of complaints received
- Number of those complaints referred to IOS
- Proportion of those complaints found in favour of the consumer

The **Financial Ombudsman Service (FOS)** ceased publication of these data which resulted in protests from consumer groups. They have, however, committed to reintroducing the information on their website.

Another, more limited, example is the EFT<sup>11</sup> Code report. This report was produced by the **Australian Securities and Investments Commission (ASIC)** and provided data on the number of disputes logged by banks, building societies, etc. themselves. Information was not published at individual firm level but, instead, by organisation category. Contextual information was also provided in the form of calculations of, for example, number of disputes per one million transactions.

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<sup>9</sup> A sample report can be found in Appendix B, section 5

<sup>10</sup> The Insurance Ombudsman Service has now been absorbed in to the Financial Ombudsman Service

<sup>11</sup> Electronic Funds Transfer



### **3.4.2 Regulator/Ombudsman's data**

The **Banking and Financial Services Ombudsman (BFSO)** which is now absorbed into the FOS used to publish data by firm (Level 3) on the number of disputes it handled. Details included in its Annual Report <sup>12</sup> were:

- At aggregated level:
  - ◆ Number of new cases
  - ◆ Number of closed cases
  - ◆ Number of cases subject to depth investigation, of which
    - Settlement facilitated
    - Conciliation Conference held
    - Finding issued
    - Proportion resulting in financial compensation
  - ◆ Time taken to resolve cases
    - Proportion of cases resolved 'early'
  - ◆ Potential systemic issues
  - ◆ Proportion of disputes by product category
  - ◆ Proportion of disputes by problem category
- Dispute resolution statistics at identified member level:
  - Number of disputes closed in the year
  - Proportion of disputes settled 'early' (i.e. without detailed investigation by the Ombudsman)
  - Median number of days taken to settle 'early' disputes

Contextual information was not provided but caveats noted with regard to the individual member level data were:

- ◆ Members have very different market shares
- ◆ Some figures will include complaints lodged against holding or other group companies
- ◆ Some members may only have joined the scheme part way through a reporting period

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<sup>12</sup> See Banking and Financial Services Ombudsman 2006–2007 Annual Report

The new, combined Ombudsman (**FOS**) currently only releases complaints data at Level 2; that is by topic and type of firm. However, it has new Terms of Reference which came in to effect on 1<sup>st</sup> January 2010 that require firm-level reporting. These Terms of Reference, drafted by ASIC, include in section 12.2 that:

- ♦ FOS must produce a report at least every twelve months for publication and provision to ASIC, the financial services providers and the public. This report must be a comprehensive summary and analysis of the data collected. Amongst other things, it will include the following statistical information about each Financial Services Provider:
  - a) the number of Disputes referred to FOS;
  - b) the number of Disputes closed; and
  - c) the outcome of those Disputes

The other external dispute resolution service authorised by ASIC is the **Credit Ombudsman Services Limited (COSL)**. This provides details in its Annual Report on the number of complaints received by type/ topic by organisation type (Level 2). It does not, however, provide breakdowns by individual member.

### **3.5 Canada**

None of the organisations reviewed in Canada required the publication of firms' own data; nor did any of them report at individual firm level on complaints they received themselves.

Each of the **Financial Consumer Agency of Canada (FCAC)**, the **Ombudsman for Banking Services and Investments (OBSI)**, and the two self-regulatory organisations, the **Investment Industry Regulatory Organization of Canada (IIROC)** and the **Mutual Funds Dealers Association (MFDA)** reports on numbers of complaints by topic and/ or type of firm (i.e. Level 2).

### **3.6 France**

The situation in France is similar to that in Canada. No instances were found of firms' own complaints data being published. Also, publication of data on complaints received by regulators or ombudsmen services or self-regulatory organisations was typically at Level 2 or, occasionally, Level 1; there were no instances of publication of firm-level data.

The organisations reviewed that published aggregated data with some level of analysis by type of complaint, or firm, or product area (i.e. Level 2) were **Autorité de Contrôle des Assurances et des Mutuelles (ACAM)**, **Authorité des Marchés Financières (AMF)**, **Federation Bancaire Francaise (FBF)** and **Fédération Française des Sociétés d'Assurance (FFSA)**.

One other insurance self-regulatory organisation published information only on the total number of complaints it received (Level 1). This was the **Groupement des Entreprises Mutuelles d'Assurance (GEMA)**.

### **3.7 Germany**

The German regulator, **Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)** publishes data on the complaints it receives at firm level and with context information (Level 4). However, it only provides this level of detail for the insurance sector.

BaFin gives a high level of prominence to these data, including a detailed table as an Appendix to its Annual Report.<sup>13</sup> This lists, for each firm, the number of policies it has in force and the number of complaints received by BaFin about that firm. BaFin itself provides an alphabetical list and does not offer a 'league table'; however, these data are used by industry commentators to produce league tables based on, for example, number of complaints per 100,000 policies.

The public banks Ombudsman, **Der Ombudsmann der Öffentlichen Banken (DOOB)** provides Level 2 information, detailing the number of complaints received, broken-down by topic and outcome.

### **3.8 Japan**

The Japanese **Financial Services Agency (FSA)** operates a Counselling Department which handles consumer enquiries and complaints. It provides quarterly Level 2 data on complaints received, giving break-downs by topic/product area (banking, insurance, etc.), firm type, and subject matter. It also publishes anonymised case studies with advice as to the implications for consumers facing similar circumstances. It does not provide information on the number of complaints received about individual firms.

The **Japan Securities Dealers Association (JSDA)** is a self-regulatory organisation that operates an in-house securities mediation and consultation centre. Its Annual Report records only the number of complaints received by broad category and also the number of dispute resolution cases and the proportion of those where a settlement was reached. No firm level information is provided.

The **Japan Securities Investment Advisers Association (JSIAA)** is also a self-regulatory organisation. It provides a quarterly statistical release but this provides only the number of complaints received and the distribution of those between member and non-member firms, so effectively Level 1 information.

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<sup>13</sup> See the example in Volume 2, section 4.

### 3.9 Sweden

**Finansinspektionen (FI)** is the Swedish Financial Supervisory Authority, or regulator. As such, it does not handle dispute resolution for individual consumer complaints which are the responsibility of **Allmänna reklamationsnämnden (ARN)**. However, it releases information on the number of complaints it receives. This is provided at individual firm-level and includes a top-line breakdown for each firm by issue/ nature of complaint. All regulated sectors are included (i.e. Banks, Insurance, Securities, etc.). Context information is not provided (i.e. the information provided is Level 3).

**ARN**<sup>14</sup> is a public authority that functions roughly like a court. Its main task is to try disputes between consumers and business operators. It covers all sectors, not only finance, and reports on the total number of complaints received. The report is broken-down by sector (including separate figures for banking, insurance and brokers) and also shows the proportion of cases found in favour of the consumer (i.e. Level 2).

### 3.10 United States

Most of the organisations reviewed in the United States disclosed complaints statistics at either Level 1 or Level 2.

Those providing data only on the number of complaints received (Level 1) were self-regulatory organisations, **the Financial Industry Regulatory Authority (FINRA) and the National Futures Association (NFA)** and regulators **the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA)**. Examples were also found of **state banking commissioners** also reporting at this level.

Some regulators, however, reported at Level 2 by breaking down the total number of complaints received either by type of firm or topic, or both. These were **the Securities and Exchange Commission (SEC); the Federal Reserve (Fed); Commodity Futures Trading Commission (CFTC); Federal Deposit Insurance Corporation (FDIC); and the Federal Trade Commission (FTC)**.

The most detailed disclosure was found in the insurance sector which currently is regulated at state rather than federal level. An example of Level 4 disclosure was found from the co-ordinating body for state insurance commissioners, the **National Association of Insurance Commissioners (NAIC)**.

The NAIC collates data from nearly all the states and combines this into an on-line database. The database records the number of complaints upheld for each insurer by each major line of business. It then relates the number of complaints to the firm's market share based on premium income. Finally, it calculates the ratio of complaints to premiums for all companies and presents this as an index value against the ratio of the median firm. Detailed information is also available for each company identifying the different complaint codes/ reasons and the outcome of the complaint.

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<sup>14</sup> National Board for Consumer Complaints

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The database is available in interactive format on the NAIC website and is fully searchable by consumers.<sup>15</sup>

At individual state level an example was reviewed of a highly comprehensive Level 4 disclosure report. This was the *Consumer Guide to Oregon Insurance Complaints* which is produced annually by the state insurance commissioners, the **Oregon Department of Consumer and Business Services: Insurance Division**.<sup>16</sup> The report details, for each firm covered and by line of business:

- Total premiums
- Total number of complaints
- Total number of confirmed complaints<sup>17</sup>
- Complaint index, derived by comparing the firm's share of premiums with its share of confirmed complaints
- Rank order based on complaint index

A more detailed second volume provides full break-downs on the complaints for each firm. This provides, for firm by line of business:

- Number of complaints received, by reason
- The number and proportion of cases in which different actions/ outcomes resulted (e.g. Additional payment; compromised settlement; company position upheld) for each complaint reason

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<sup>15</sup> See Appendix B, section 1 for an example.

<sup>16</sup> Extracts from this comprehensive, two volume report are at Appendix B, sections 2 and 3.

<sup>17</sup> Confirmed complaints are those where the insurer took action in response or where the insurer and consumer could not reach agreement

## **4 DISCLOSURE OF FIRMS ENTERING ENFORCEMENT**

### **4.1 Background**

Investigation of this topic focused on:

- *Is information made available about firms against whom complaints have been received or who are entering enforcement procedures?*
- *What are the legal or other factors supporting or militating against greater transparency in this area?*

The issue as to when or indeed, whether, firms subject to enforcement processes should be identified is controversial. Those in favour of transparency emphasise the significant incentive to compliance that early and consistent transparency can provide. They also stress the often very long timescales involved in enforcement procedures which may mean that consumers are only made aware of problems with a specific firm long after the event, even if the company's 'guilt' was established well before completion of the process. Some observers draw a comparison with judicial processes, where a respondent will be named at the commencement of proceedings.

Those opposed to identification on commencement of enforcement argue that the result may be disproportionate and potentially result in unfair reputational damage to firms. They also argue that a blanket policy of transparency is likely to result in lesser co-operation from the industry and will also remove an important 'plea bargaining' option for regulators.

In practice, it appears rare for regulators, across the countries reviewed, to identify firms entering enforcement. Indeed, the debate is typically focused more on whether firms will be named on **completion** of enforcement action even when sanctions have been imposed. Nor did evidence emerge of movement towards earlier disclosure which, in any case, was often precluded by clear, legal restrictions on such behaviour by regulators.

### **4.2 UK practice**

#### **4.2.1 FSA**

Under the Financial Services and Markets Act 2000 (FSMA), the **FSA** has an extensive range of disciplinary, criminal and civil powers to take action against regulated and non-regulated firms and individuals who are failing or have failed to meet the standards they require.

Under FSMA, the FSA is legally required to follow a prescribed enforcement procedure. In addition, they are required to comply with the Human Rights Act 1998.

The FSA has powers, where appropriate, to implement either civil or criminal court proceedings. In such cases disclosure occurs in the normal manner for court cases.

Otherwise, the FSA do not normally comment on whether they are investigating an issue or firm but are required to make information public, if appropriate, when they issue a Final Notice. However, cases will not necessarily reach the stage of a Final Notice. Other outcomes can be:

- Closure, where the FSA concludes there is no case to answer
- Settlement, where the FSA and the firm reach an agreement as to one or more of culpability, future action by the firm and sanction
- Private warning, which is not publicised

Once the FSA issues a Decision Notice, stating that it intends to issue a Final Notice, the firm may appeal to the, separate, Financial Services and Markets Tribunal. This will put a halt to the issue (and therefore potential publication) of a Final Notice but the appeal will itself typically be held in public. As an indication of the relative frequency of different outcomes, in 2008/09, 22 cases were referred to the Tribunal, 43 private warnings were issued, 71 cases were completed via Settlement and 186 Final Notices were published.

#### 4.2.2 The Financial Services Consumer Panel's proposals

The Panel sponsored a Lords amendment to the Financial Services Bill. This would have amended FSMA to allow the FSA to name firms well ahead of the outcome of any enforcement action including, in certain circumstances, at the commencement of the disciplinary process. This is in practice at the stage where a warning notice is issued and will follow some supervisory intervention and enforcement action.<sup>18</sup>

### 4.3 International overview and comparison with FSA

International practice is for limited transparency in the area of enforcement and current FSA arrangements are not out of line.

As shown in Table 3, most organisations do not release any information before completion of their own enforcement process:

**Table 3 Stage at which enforcement proceedings are publicised**

| Entering enforcement process | Hearing announced <sup>19</sup> | Decision reached but sanction not yet determined | Completion <sup>20</sup> |
|------------------------------|---------------------------------|--|--------------------------|
| 0                            | 6                               | 1  | 16                       |

There is also a wide range in the practice of those organisations releasing information on completion. What is released varies in two dimensions. Firstly, there is the question of whether or not information is released in all cases. Most organisations operate some 'informal' enforcement which remains confidential. However, even with formal sanctions some regulators will release details only of selected cases or will do so whilst keeping confidential the identity of the firms or, more frequently, individuals involved. Secondly, is the issue of how much information is provided at that stage? The most transparent practice, often found in the US, is to provide links to all relevant documentation; in other examples, however, only brief details are provided.

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<sup>18</sup> See note 7 above.

<sup>19</sup> Three of these organisations, AMF, OTS and SEC, only release information at this stage in rare cases and so are also included in the 'on completion' column

<sup>20</sup> Some of these organisations will release information on completion of their own process but in advance of an appeals process

The one example where information may be put into the public domain when a decision has been reached but sanctions not yet finalised is the **SESC** section of the FSA in Japan. However, this may be an accident of timing since their reporting includes cases released when they are fully completed (i.e. sanctions determined) alongside those where culpability has been identified but sanctions not yet fixed.

There is also a range of behaviour regarding releasing information about forthcoming hearings. **AMF** will only do so if the respondent chooses a public hearing and **OTS** only in rare contested hearings. The **SEC** typically announces it has reached agreement with the respondent at the same time as announcing that a hearing was to be held so that is, effectively, completion of the process. The remaining three examples are all from Canada (**IIROC**, **FSCO**, **BCSC**) and these are the 'most transparent' examples found in terms of when in the process information is released and available to consumers.

#### **4.4 Australia**

**ASIC** does not name companies against which it has received complaints or against whom it is commencing enforcement investigations or activities.

It does, however, provide copies of enforceable undertakings and detailed press releases on completed enforcement activity. The press releases tend to be comprehensive and often contain significantly negative information regarding the firm concerned.

**The Australian Prudential Regulation Authority (APRA)** follows a similar practice in terms of providing no information before completion on firms that are the subject of enforcement activity. It also keeps the identity of individuals confidential in cases it features in its Annual Report.

#### **4.5 Canada**

**FCAC** only publicises Commissioner's Decisions, which may be issued on completion of the compliance and enforcement process. They also note in their latest Annual Report that they have only recently released detailed information at this stage: *'We made a significant improvement to how we publicly report the Commissioner's Decisions on compliance investigations. In the past, only a summary had been provided on FCAC's website. In 2008–2009, we began posting the full text of the Commissioner's Decisions (with minimal edits to protect confidential information) to be more transparent about the context and rationale behind them'*<sup>21</sup> Moreover, it is rare for FCAC enforcement activity to reach the stage of a Commissioner's Decision. There was only one such Decision in 2008-09 with the great majority of enforcement activity resulting in non-publicised Action Plans and Compliance Agreements.

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<sup>21</sup> Financial Consumer Agency of Canada Annual Report 2008-09, p.10



The **Financial Services Commission of Ontario (FSCO)** launched a new online tool in January 2008 to deliver information on its oversight role to financial services providers and consumers. Accessible through FSCO's website, Monitoring and Enforcement Online replaced a former paper quarterly bulletin. The web feature tabulates statistics on FSCO's monitoring and enforcement activities and lists enforcement actions including investigations, prosecutions, hearing decisions, awards and orders. Consumers can use Monitoring and Enforcement Online to check on enforcement actions against industry participants with whom they may be doing business. Those subject to enforcement investigation have the right, if they wish, to request a hearing and, where they do so, that fact and the date of the hearing is released in advance on the website. However, details are not provided of the nature of the complaint.

The **British Columbia Securities Commission (BCSC)** operates a relatively transparent investigation and enforcement process. If BCSC decides to launch an investigation, it and interviews related to it are confidential until and unless a notice of hearing is issued and firms are not permitted to disclose any information about their case, other than to their lawyer. Similarly, BCSC's staff keeps investigations confidential. Cases can be settled without a hearing which will require agreement to a statement of facts, including an admission of wrongdoing and the Commission will publish details of the settlement on its website.

If the Commission decides not to settle and to pursue a case it issues a notice of hearing. This contains the penalties sought and the allegations of conduct that contravenes the Securities Act or that is contrary to the public interest. Once a notice of hearing has been issued, the matter is no longer confidential. Anyone can see the documents filed in the case and can attend the hearing. The Commission publishes notices of hearing on its website. It does not publish hearing transcripts, evidence, and arguments on its website. However, it does make these available for viewing at its offices.

The Commission may also issue a public Temporary Order prior to a hearing, preventing the firm/ individual from trading until the matter is settled. It will do so if it believes there is a potential risk to consumers in allowing the firm/ individual to continue their activities.

**OBSI** is an ombudsman not a regulator. It does not publicise the names of firms entering its dispute resolution process. However, it provides an interesting example of some of the issues concerning disclosure. Nominally, OBSI's decisions are not binding on the consumer or the firm. However, it adopts a different approach to disclosure depending on whether or not the firm accepts its recommendations. Firms that accept its 'recommendations' are not named. Those that do not are named and details of the case and OBSI's rejected recommendations are publicised. Industry commentators have claimed that this potential sanction effectively means that OBSI's decisions are binding on firms as they cannot risk the reputational damage associated with being 'named and shamed'. It is also claimed that this approach is greatly resented by the industry in Canada and has, as a consequence, lessened its willingness to co-operate with OBSI.

**IROC** is the self-regulatory organisation for securities dealers. If an investigation finds sufficient evidence of a regulatory breach, the matter is referred to the enforcement department. Enforcement management may recommend that the file be closed with no further action taken, the opening of a formal investigation, the issuance of a cautionary letter, referral to another agency with the proper jurisdiction, or, if appropriate, for consideration of formal disciplinary action via a public hearing.

A pre-hearing conference may be held which is 'privileged' and confidential, and at which it may be explored if a settlement can be reached without holding a contested hearing. However, even if agreement is reached a settlement hearing will be held to ensure that the Panel endorses the decision reached.

IROC generally will not make any public comments regarding investigative matters until the issuing of a Notice to the Public regarding the date and location of a Hearing. The Notice to the Public regarding a Disciplinary Contested Hearing or a Settlement Hearing is issued via Media Release and is also posted on the website. It contains the outline of the case to be decided by the Panel. Hearings are generally open to the public.

Consequently, the IROC procedure means that information about contested disciplinary action against firms can be placed in the public domain prior to decision or, of course, appeal.

#### **4.6 France**

The **AMF** Enforcement Committee typically maintains confidentiality throughout its investigation and hearing processes. One exception to this is the right of the respondent to request a hearing in public but even then the Committee may decline that request for the sake of public order or if a public hearing would compromise business secrecy or any other legally-protected secret.

The Committee is permitted to publicise its decisions in any publication it chooses but is not obliged to do so. As part of its Better Governance initiative, AMF has recently enhanced the web pages devoted to Enforcement Committee decisions which can now be sorted by date or subject. There are six subject categories, insider trading, price manipulation, disclosure requirements, special disclosure requirements, takeover bids, and ISPs, savings products and market infrastructure. However, where individuals have been sanctioned their identity may still be kept confidential. The AMF also now produces an annual 'annotated summary' of its enforcement activities but this only contains information on completed actions.

The AMF explains why investigations are kept confidential as follows: '*The AMF is bound by professional secrecy and the principle of presumption of innocence. It must therefore remain silent about ongoing inspections and investigations so that it can proceed with its enquiries without casting suspicion – which may prove unwarranted – on any natural or legal person*'.<sup>22</sup>

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<sup>22</sup> Autorité des marchés financiers: an independent public authority tasked with investor protection, p. 8

Both **ACAM** and the **Commission Bancaire (CB)** do not release information on enforcement until the process is completed and may choose not to do so at all.

#### **4.7 Germany**

One area of **BaFin's** responsibility is to monitor the legality and accuracy of corporate documents. In this area, BaFin reports examples of inaccuracies and requires the companies concerned to correct them. In one recent case a company challenged in court BaFin's decision to publicise an error, but lost. The Higher Regional Court stressed that the legislature deliberately wished to use the negative impact the publication of errors would have to achieve the objectives of the enforcement process. Specifically, it stated, '*an undertaking must accept in particular the fact that its share price may suffer as a result of such publication. Furthermore, the avoidance of possible damage to an undertaking's reputation does not count as a legitimate company interest*'.

Despite this approach in the case of corporate publications, generally BaFin does not publicise its enforcement activities before its own procedures are completed. In its Annual Report it details completed judicial cases but with the names of individuals (not firms) withheld.

#### **4.8 Japan**

The Japanese **FSA** has at its disposal a number of regulatory sanctions. These include the issuing of Business Improvement orders and Business Suspension orders.

The issuing of both types of order can be made public on completion of the enforcement process and a firm may, for example, be required to agree to a business improvement plan and also to a suspension of activity for a small number of days. These types of sanctions are used in cases of quite minor infractions which, in several of the other countries reviewed, would have resulted in only an informal (and confidential) warning. To that extent the approach in Japan is more transparent although still restricted to the period after the enforcement process.

The Annual Report of **SESC** provides details of completed investigations which have resulted in the recommendation of the imposition of sanctions even when, in some cases, the nature of the final sanction has not been decided and so the enforcement process is not complete.

#### **4.9 Sweden**

**FI** provides full details of its enforcement decisions but only on completion of the process.

#### **4.10 United States**

Most of the organisations reviewed in the US only release information on enforcement when the process is complete. Exceptions to this were found, however, with the **OTS**, **SEC** and **CFTC**.

In the case of the **OTS**, a notice of hearing will be released, naming the organisation under investigation. However, this only occurs in (rare) contested actions; otherwise, the identity of an organisation in enforcement is only revealed on completion of the process.

All **SEC** investigations are conducted privately. Following an investigation, SEC staff present their findings to the Commission for its review. The Commission can authorize the staff to file a case in federal court or bring an administrative action, or both. In many cases, the Commission and the party charged decide to settle a matter without trial. Consequently, although the SEC is required to announce that proceedings have commenced in the case of organisations against whom it has decided to launch public administration proceedings in the great majority of cases this announcement is combined with a statement that the Commission has reached agreement on sanctions, etc. with the organisation concerned. Therefore, effectively, it represents completion of the process. More generally, the SEC is legally not permitted to disclose the identity of organisations or individuals being investigated unless they are made a matter of public record in administrative or court proceedings.

The **CFTC** provides Case Status Reports but only on cases where it has launched formal legal proceedings.

There is a variety of behaviours among the organisations that only release the identity of organisations in enforcement on completion of the process. The **Fed**, **NFA** and **OTS** (in uncontested cases) release full information and documentation whereas the **NCUA** and **OCC** may keep the identity of sanctioned organisations confidential. The **FDIC** announces when it has issued enforcement orders.

Finally, some US regulators will often keep 'informal' enforcement activity confidential in the case of less serious infringements. Examples of organisations doing so are **OCC**, **NCUA** and **state banking regulators**.

## 5 RESPONSE RATES ON FREEDOM OF INFORMATION REQUESTS

### 5.1 Background

Information on this topic covers the response rates (proportion of applications granted and time taken) by Regulators to such requests. On this subject it emerged that practice is influenced essentially by the legislation and general behaviour in the country concerned, rather than the policy of the individual organisation. Thus, there was generally little variation in the broad approach adopted between organisations in the same country.

### 5.2 UK practice

The **FSA** publishes information on its FOIA responsiveness in the Annual Report (Table 4).

**Table 4 Data on FSA Freedom of Information requests**

|                                       | <b>FSA</b>                 |
|---------------------------------------|----------------------------|
| Number of requests received in a year | 333                        |
| Granted in full                       | 20%                        |
| Granted in part                       | 27%                        |
| Refused                               | 53%                        |
| Response times                        | 90% within 20 working days |

Additionally, the FSA reproduces on its website some items which have been released under the FOIA and which it believes are of wider interest and/ or may be requested again.

### 5.3 International overview and comparison with FSA

The countries reviewed fell broadly into three categories in terms of transparency regarding their freedom of information responsiveness:

- Little or no information specifically on freedom of information activities was provided in Canada, France or Japan<sup>23</sup>
- Some information was available in Germany, covering number of requests, proportions granted, and response times. The FSA's practice also falls into this category
- Very extensive data were provided in Australia and, particularly, the USA

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<sup>23</sup> Only a limited search was undertaken of web pages and documents in Japanese

In Sweden, FI does not report specifically on its responsiveness to information requests. However, the public's right to access documents is long-standing and comprehensive.

In Australia, Germany, UK and the US figures are available on the proportion of requests which were refused. This is not necessarily an indication of relative transparency since, obviously, the nature of documents held and requests made is likely to be very different in each case. Nevertheless, something of a pattern emerged:

- A very high refusal rate in Germany (almost 90%)
- Slightly more than half refused by the FSA
- Around one third declined in Australia
- In the US, just under one-third for the SEC but less than ten per cent by three other organisations

#### **5.4 Australia**

Australia has had Freedom of Information legislation since 1982. Consequently, it is well established and detailed data are released on how government agencies have responded to requests.

ASIC does not provide information on its own website and APRA gives only brief information in its Annual Report. Neither organisation provides an area on its website providing access to items already released following requests. However, both agencies are included in an extremely wide-ranging government report that covers all relevant ministries and agencies.<sup>24</sup>

The report provides information on:

- the number of requests made;
- the number of decisions granting, partially granting or refusing access;
- the number and outcome of applications for internal review;
- the number and outcome of requests to amend personal records;
- the number and outcome of applications to the Administrative Appeals Tribunal;
- response times; and
- fees and charges collected

Table 5 summarises the data for APRA and ASIC.

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<sup>24</sup> See Freedom of Information Act Annual Report 2008-09

**Table 5 Data on APRA and ASIC Freedom of Information requests**

|                                       | <b>APRA</b>                 | <b>ASIC</b>                 |
|---------------------------------------|-----------------------------|-----------------------------|
| Number of requests received in a year | 20                          | 76                          |
| Granted in full                       | 10%                         | 26%                         |
| Granted in part                       | 55%                         | 37%                         |
| Refused                               | 35%                         | 37%                         |
| Response time                         | Median in 0 - 30 days range | Median in 0 – 30 days range |

## 5.5 Canada

Canada introduced its Access to Information Act in 1983. Also, each province or territory has its own legislation. However, despite this there is criticism in the country regarding the performance of many organisations in meeting obligations under the legislation.<sup>25</sup> Once recent change (2008) has been the abandonment of the Coordination of Access to Information Requests System, also known as CAIRS, which was a web database of freedom of information requests made to the federal government. It was created in 1989 to track requests internally, and eventually allowed for public access to previously filed requests, previously released documents, and then current requests.

Neither **FCAC** nor **OSFI** provide information on their Access to Information Act performance on their web-site or in their Annual Report. FCAC does, however, provide some 'proactive' publication. These are data that it would only have an obligation to publish in response to an Access to Information Act request covering:

- Travel and Hospitality Expenses
- Contracts
- Grants and Contributions

## 5.6 France

French freedom of information regulations were introduced in 1978 via Loi n°78-753 du 17 juillet 1978. Refusals to release documents can be appealed to Commission d'Accès aux Documents Administratifs (CADA). However, this does not have the power to force release and so applicants may be forced to go to the Administrative Courts. Delays here can be very significant, up to ten years.

Neither **ACAM** nor **AMF** provide information on their web-site or Annual Report regarding their responses to information requests.

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<sup>25</sup> See a report sponsored by Canadian newspapers ([www3.telus.net/index100/foi](http://www3.telus.net/index100/foi)) Fallen Behind: Canada's Access to Information Act in the World Context)

## 5.7 Germany

German freedom of information legislation was only implemented in 2005.

**BaFin** provides information in its Annual Report on its responsiveness to requests broken down by market area (i.e. banking, insurance, etc.). The information provided includes:

- Number of requests
- Number granted in full
- Number granted in part
- Number refused
- Number of appeals

Information is not provided on response times. BaFin rejects a high proportion of the requests made to them, as shown in Table 6:

**Table 6 Data on BaFin Freedom of Information requests**

|                                       | <b>BaFin</b> |
|---------------------------------------|--------------|
| Number of requests received in a year | 407          |
| Granted in full                       | 5%           |
| Granted in part                       | 6%           |
| Refused                               | 89%          |

## 5.8 Japan

Japanese freedom of information legislation dates from 2001. No information on the performance of the **FSA** in this area was found in the English language pages of its website or in its English language Annual Report.

## 5.9 Sweden

Sweden has the most long-standing freedom of information legislation of all countries, dating back to 1766. Access rights are extremely wide-ranging. In principle all individuals have the right to read official documents held by public authorities in Sweden. This is regulated by the Principle of Public Access. This operates in various ways:

- Everyone is allowed to read public documents held by public authorities (public access to official documents)
- Civil servants and others who work in the central government sector or for local authorities have the right to tell outsiders what they know (freedom of expression for civil servants and others)
- Civil servants also enjoy special freedoms to provide information to the mass media (freedom to publish for civil servants and others)
- Court proceedings are open to the public, as are meetings of legislative assemblies



As a consequence of this wide-ranging openness, Sweden has been unable to join the IOSCO 'Multilateral Memorandum of Understanding' (MMoU) as it cannot keep confidential information received from regulators in other countries.

As the right to access is so entrenched, **FI** does not report on numbers of requests or its responses to them.

## **5.10 United States**

The most extensive release of data on freedom of information performance is to be found in the United States. The Freedom of Information Act (FOIA) was implemented in 1967 and subsequently amended in 1996 by the Electronic Freedom of Information Act Amendments. However, FOIA is not applicable to state and local government records which instead fall under the jurisdiction of the relevant State's public records law

The US regulatory agencies generally complete a highly detailed standard format annual declaration regarding their FOIA performance. This return covers:

- Number of requests pending at start of the year; number received in the year; number completed in the year; number pending at the end of the year
- Number of full grants; number of partial grants; number of full denials based on exemptions; number of denials based on reasons other than exemptions; number of times each specific exemption applied; breakdown of reasons for denials not based on exemptions
- Number of appeals pending at start of year; number of appeals received in year; number of appeals completed in the year; number of appeals pending at the end of the year
- Number of successful appeals; number of partially successful appeals; number of unsuccessful appeals based on exemptions ; number of unsuccessful appeals by individual exemption; number of unsuccessful appeals based on reasons other than exemptions; breakdown of other reasons for unsuccessful appeals
- Median, average, lowest and highest length of time for appeals; ten oldest pending appeals and number of days for each
- Median, average, lowest and highest length of time for handling applications, segmented between simple, complex and expedited requests; response times for completed requests in 20 day increments; ten oldest pending requests and number of days each has been outstanding
- Details of FOIA staffing, costs, fees received and fees as a percentage of costs

Examples of organisations using this format of return are **SEC, CFTC, the Fed, FDIC, OCC** and **NCUA**.<sup>26</sup> Specimen results are:

**Table 7 Data on selected US Freedom of Information requests**

|   | <b>SEC</b> | <b>NCUA</b> | <b>FTC</b> | <b>Federal Reserve</b> |
|---|------------|-------------|------------|------------------------|
| Number of requests received in a year           | 7878       | 193         | 1477       | 1015                   |
| Granted in full                                 | 55%        | 40%         | 62%        | 77%                    |
| Granted in part                                 | 16%        | 55%         | 36%        | 15%                    |
| Refused   | 29%        | 5%          | 2%         | 8%                     |
| Response time - Median time for simple requests | 39 days    | 9 days      | 3 days     | 2 days                 |

In addition to comprehensive performance reporting, there are several other examples of transparency from the US in the area of FOIA.

The **CFTC** publishes on its website some material which has been released as a result of an FOIA request which it believes is likely to be the subject of further requests. It similarly provides an index of other material which has already been released and will be released on request to others. **OTS** also reproduces the information previously released in response to FOIA requests where it feels there is public interest in the topic covered.

The **OCC** announced in its 2009 Annual Report: *'In a major step toward greater openness and access, the OCC completed a project to automate the way it receives, tracks, processes, and releases information under the Freedom of Information and Privacy acts. In the interests of greater transparency, the OCC began making an increasing number of documents available online. These include document collections that were formerly available only in hard copy and only on-site at the OCC's Washington headquarters'*.

The **FTC** operates an FOIA Electronic Reading Room. Their website states *'The FOIA Office at the Federal Trade Commission often receives repeated requests for specific FTC documents and company records. The E-FOIA Amendments of 1996 mandate that these frequently requested materials be included in the 'reading room' because they are likely to be subject to subsequent requests. For this reason, we have compiled a list of frequently requested records which are linked to responsive documents and explanatory letters previously sent by the FOIA Office in response to actual FOIA requests. The response letters disclose the number and types of records we released, and explain the exemptions that apply to any redacted or withheld documents. Along with the response letters, we have included copies of the information that we sent to the requesters. In most cases, the information includes consumer complaints submitted to the FTC. Personal information about consumers and requesters has been redacted'*.

<sup>26</sup> See extracts from the SEC FOIA Annual Report at Appendix B, section 10.

## 6 TRANSPARENCY OF REGULATORS' GOVERNANCE PROCEDURES

### 6.1 Background

The Panel's priorities for investigation in this area were:

- *How transparent are other Regulators regarding their own governance processes?*
- *Specifically, are Board minutes and/ or documents publically available and, if so, with what restrictions?*

The following areas of potential transparency were reviewed:

- Publication of full or edited versions of meeting minutes
- Publication of full or summary meeting agendas
- Availability of (non-confidential) board papers
- Holding open board meetings
- Holding annual or more frequent public meetings
- Publishing details of the attendance record of board members
- Publishing a stakeholder survey of the regulator's performance
- Publishing an employee survey

### 6.2 UK practice

The **FSA** provides summary board minutes on its web-site and also holds an annual meeting that is open to the public. Although it does not publish an organisation-wide stakeholder survey the results of the survey conducted specifically by the Practitioner Panel is available. The attendance record of the board members is provided in the Annual Report.

**Table 8 FSA governance transparency**

| <b>Policy</b>   | <b>Implemented?</b> | <b>Notes</b>   |
|---|---------------------|--|
| Board minutes published   | YES                 | Edited version   |
| Board agendas published   | NO                  |  |
| Board papers available  | NO                  |  |
| Hold open Board meetings  | NO                  |  |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | YES                 | Annual meeting   |
| Publish attendance record of Board Members  | YES                 |  |
| Publish results of stakeholder survey   | YES                 | Practitioner panel stakeholder survey                        |
| Publish results of an employee survey   | NO                  | But minutes of staff committee are available on the web-site |

### 6.3 International overview and comparison with FSA

The FSA emerges as above average, although not the leader, on transparency of governance. On the specific issue of publishing board minutes, the FSA does provide some information, albeit via an anodyne summary. This puts it ahead of regulators in Australia, Canada, France, Germany and Japan where minutes do not appear to be published at all.

However, FI in Sweden provides more detailed feedback as do regulators in the US.

More generally, the real leaders in transparency are in the US. There, due largely to the requirements of legislation, individuals enjoy far more comprehensive access to board (or equivalent) agendas, papers, meetings and minutes.

### 6.4 Australia

The governance practices of **ASIC** and **APRA** were reviewed. Both organisations detail the attendance record of board members in the Annual Report. In addition, APRA has made public the detailed results of its 2009 Stakeholder survey.

**Table 9 ASIC & APRA governance transparency**

| Policy  | Implemented? | Notes     |
|---|--------------|-----------|
| Board minutes published   | NO           |           |
| Board agendas published   | NO           |           |
| Board papers available  | NO           |           |
| Hold open Board meetings  | NO           |           |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO           |           |
| Publish attendance record of Board Members  | YES          |           |
| Publish results of stakeholder survey   | YES          | APRA only |
| Publish results of an employee survey   | NO           |           |

## 6.5 Canada

The review in Canada focused on **FCAC** and **OBSI**. These two organisations did not show high levels of transparency.

Access to board information was not provided. **FCAC** participated in a government-wide employee survey and reported its results. **OBSI** conducted its own stakeholder survey.

**Table 10 OBSI & FCAC governance transparency**

| <b>Policy</b>   | <b>Implemented?</b> | <b>Notes</b> |
|---|---------------------|--------------|
| Board minutes published   | NO                  |              |
| Board agendas published   | NO                  |              |
| Board papers available  | NO                  |              |
| Hold open Board meetings  | NO                  |              |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO                  |              |
| Publish attendance record of Board Members  | YES                 | OBSI         |
| Publish results of stakeholder survey   | YES                 | OBSI         |
| Publish results of an employee survey   | YES                 | FCAC         |

## 6.6 France

**AMF** and **ACAM** were reviewed regarding their governance practices. No examples of the selected transparency policies were found.

**Table 11 AMF and ACAM governance transparency**

| Policy  | Implemented? | Notes |
|---|--------------|-------|
| Board minutes published   | NO           |       |
| Board agendas published   | NO           |       |
| Board papers available  | NO           |       |
| Hold open Board meetings  | NO           |       |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO           |       |
| Publish attendance record of Board Members  | NO           |       |
| Publish results of stakeholder survey   | NO           |       |
| Publish results of an employee survey   | NO           |       |

## 6.7 Germany

The governance policies of **BaFin** were reviewed. No examples of the selected transparency policies were found.

**Table 12 BaFin governance transparency**

| Policy  | Implemented? | Notes |
|---|--------------|-------|
| Board minutes published   | NO           |       |
| Board agendas published   | NO           |       |
| Board papers available  | NO           |       |
| Hold open Board meetings  | NO           |       |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO           |       |
| Publish attendance record of Board Members  | NO           |       |
| Publish results of stakeholder survey   | NO           |       |
| Publish results of an employee survey   | NO           |       |

## 6.8 Japan

The governance policies of the FSA were reviewed. No examples of the selected transparency policies were found.

**Table 13 FSA governance transparency**

| <b>Policy</b>   | <b>Implemented?</b> | <b>Notes</b> |
|---|---------------------|--------------|
| Board minutes published   | NO                  |              |
| Board agendas published   | NO                  |              |
| Board papers available  | NO                  |              |
| Hold open Board meetings  | NO                  |              |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO                  |              |
| Publish attendance record of Board Members  | NO                  |              |
| Publish results of stakeholder survey   | NO                  |              |
| Publish results of an employee survey   | NO                  |              |

## 6.9 Sweden

The governance policies of FI were reviewed. Agendas and quite detailed minutes of board meetings are published.<sup>27</sup>

**Table 14 FI governance transparency**

| <b>Policy</b>   | <b>Implemented?</b> | <b>Notes</b>  |
|---|---------------------|---|
| Board minutes published   | YES                 |   |
| Board agendas published   | YES                 |   |
| Board papers available  | NO                  |   |
| Hold open Board meetings  | NO                  |   |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO                  |   |
| Publish attendance record of Board Members  | NO                  |   |
| Publish results of stakeholder survey   | NO                  |   |
| Publish results of an employee survey   | YES                 | FI publishes the full results of its annual employee survey |

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<sup>27</sup> See Appendix B, sections 12 and 13 for an example of minutes in Swedish and translated via Google Translates



## 6.10 United States

Regulators in the US emerged as the most transparent in terms of how much they revealed concerning their own governance. Examples in the table below are drawn from the SEC and NCUA.

A key reason for the openness of US regulators is the impact of various state and federal so-called 'Government in the Sunshine Acts'. These were in part a reaction to the events of Watergate and they mandate considerable transparency of the activities of all types of government agencies, including regulators.

Whilst the 'Sunshine' Acts still permit some meetings and topics to be confidential the holding of private sessions must be announced as must the reason which permits them to be held behind closed doors.

**Table 15 Examples of US regulators' governance transparency**

| Policy  | Implemented? | Notes                               |
|---|--------------|-------------------------------------|
| Board minutes published   | YES          |                                     |
| Board agendas published   | YES          | May extend to full transcripts      |
| Board papers available  | YES          | Sometimes in advance of the meeting |
| Hold open Board meetings  | YES          | Can be web-cast                     |
| Hold annual or more frequent public meetings where the organisation's performance can be questioned | NO           |                                     |
| Publish attendance record of Board Members  | YES          |                                     |
| Publish results of stakeholder survey   | YES          |                                     |
| Publish results of an employee survey   | YES          |                                     |

Appendix B, sections 11 (NCUA) and 12 (SEC) provides copies of information on meetings made available on the web. The NCUA provides:

- A meeting schedule, including notification of closed meetings
- A bulletin detailing the key decisions taken
- Pre-advice of the draft decisions to be considered at the next meeting
- Copies of non-confidential) board papers, available from 30 minutes prior to the meeting until 30 days after

The SEC provides a full list of its meetings, including agendas. Where meetings are to be closed the reason is cited. Links are also provided to live webcasts and also to an archive of earlier meeting webcasts.

## 7 DISCLOSURE OF COMPLAINTS DATA ABOUT FINANCIAL PROMOTIONS

### 7.1 Background

The Panel wished to understand how regulators internationally handle complaints relating specifically to promotional campaigns for financial products and what steps they take to enforce compliance with the appropriate rules or guidelines.

One specific area of interest was whether any regulators had established a public register of complaints about financial promotions or if this had been considered.

### 7.2 UK practice

The FSA takes considerable interest in the area of financial promotions. It requests consumers to contact it with copies of advertisements that they feel are unfair or misleading, although it warns that 'for legal reasons' it cannot reveal what action it may have taken as a result. It has also tracked the incidence of non-compliant campaigns via regular thematic research.

However, there is a difference of opinion between the FSA and the Panel as to the type of approach that should be adopted to maximise compliance with financial promotions. The Panel has suggested that the FSA should consider producing a register of non-compliant promotions with the dual purpose of clarifying practices about which it had concerns and serving as a deterrent. The FSA's comments on this approach were:

*During the informal consultation in 2007, we requested views on the use of a public register, which would disclose the details of firms that have amended or withdrawn a financial promotion at our request.*

*In favour of publishing the Register is the possibility that it would raise industry standards by clarifying our expectations and consumers would have better information on which to make their buying decisions. A Register would also make much more visible what the FSA does to reduce risk in the area of financial promotion, and so could contribute to our confidence objective.*

*Against publication is the possibility that the Register would result in reputational damage to firms that was disproportionate and so unfair. If this were the case, or if firms thought it might be, a significant potential downside would be that firms would be less willing to make changes to their promotions for fear of appearing on the Register. We are, in practice, very dependent on the cooperation of firms to make changes or withdrawals quickly to minimise risks to consumers, and this was a significant factor in our thinking. We were also conscious that a Register that accumulated some 400 entries every year (based on current levels of FSA activity), and where we were constrained in what we could say, would be less useful to consumers as an educational tool than a smaller number that focused on the worst cases. The existence of the Register could also be a disincentive to innovation in financial promotions if firms became more cautious about their interpretation of FSA requirements.*

*For the reasons outlined above, and given the benefits that are achievable by using the alternative tools, we do not consider that the additional benefits of a public Register are sufficient to justify the significant downsides.*

### 7.3 International overview and comparison with FSA

There is considerable diversity in the methods used by regulators internationally to enforce compliance of financial promotions. These range from purely reactive to very proactive approaches. However, it is noticeable that transparency per se forms only one part of the methods used to seek to protect consumers in this area. Also, no examples were found of the use of a register of the type advocated by the Panel.

Examples of the range of approaches adopted are:

**Table 16 Examples of approaches to financial promotions enforcement**

| <b>Approach</b>  | <b>Selected regulators adopting</b>              | <b>Comments</b>   |
|--|--|---|
| Reactive – inspection complaint driven reviews                         | <i>CFTC; SESC; AMF</i>                           | Action may be taken in private or disclosed via anonymised or identified press release              |
| Wider regulation scope   | <i>BdF</i>                                       | Licensing and monitoring of marketing organisations working on behalf of regulated financial firms  |
| Advise on common errors  | <i>SEC; ASIC</i>                                 | Issue ‘no action’ letters or highlight systemic problems to industry associations                   |
| Direct advice to consumers on ‘pitfalls’ to look out for in promotions | <i>FTC</i>                                       | Highlight potentially misleading inclusions and omissions from financial product advertisements     |
| Post-clearance or pre-clearance of specific adverts                    | <i>Insurance commissioners, NFA, FINRA, CFPA</i> | May be required for all advertisers or new advertisers and for all promotions or ‘higher risk’ ones |
| Field testing/ Research  | <i>CFPA, AMF/ACAM FCAC</i>                       | Giving immunity for field-testing different approaches. Joint research with the industry            |

### 7.4 Australia

ASIC investigates financial promotions both proactively and in response to complaints. It frequently publicises its objections and the enforcement action it has taken.

In addition, it provides guides and policy statements regarding advertising, including:

- Guide on the use of past performance in promotional material
- Policy Statement 170 - Prospective financial information
- Advertising guidelines for the issuers of unlisted debentures

ASIC recently summarised its activities in respect of advertising while giving evidence to a Parliamentary Committee:<sup>28</sup>

- ◆ *Over the last year, ASIC's Deposit Takers and Insurers team (DTI) has taken action 15 times in relation to advertising and marketing material for financial products including bank accounts, insurance and credit. Outcomes from this action include entities withdrawing their advertising, changing their advertising to comply with the law or in some cases taking other steps to address ASIC's concerns. For example, in 2009, ASIC raised concerns with Westpac Banking Corporation that some advertising for the Westpac Choice account was misleading, or likely to mislead, because it gave the impression that the promoted offer of no monthly fees would apply to all customers. In fact, the offer only applied to new customers. Westpac took a number of steps to address ASIC's concerns including making their offer available to all customers.*
- ◆ *Over the last 12 months, DTI has also undertaken targeted monitoring of advertising for financial products such as bank accounts. In one case, this monitoring identified advertising concerns that were widespread across industry and a broader approach was adopted by ASIC to address these concerns, including writing to relevant peak industry bodies to distribute our concerns to their members.*
- ◆ *As a part of its forward program ..... ASIC is committed to thematic reviews of advertising, including reviewing seminars. The program includes a campaign targeted at CFD and other over-the-counter derivatives. ASIC officers will be attending CFD seminars as part of a project directed at reviewing the way CFDs are advertised and sold to retail investors and comparing this information with complaints data. ASIC also has several enforcement matters and compliance projects focused on unacceptable conduct in the promotion of various products and trading systems.*

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<sup>28</sup> See Parliamentary Joint Committee on Corporations and Financial Services 24<sup>th</sup> June 2009 ([http://www.aph.gov.au/senate/committee/corporations\\_ctte/fps/report/e03.htm](http://www.aph.gov.au/senate/committee/corporations_ctte/fps/report/e03.htm))

ASIC regularly, and promptly, issues press releases where it has taken up issues of misleading advertising and obtained commitments for withdrawal or changes. These provide details of the reasons for ASIC's objections and the actions agreed. For example:<sup>29</sup>

- ♦ *The Australian Securities and Investments Commission (ASIC) today accepted an enforceable undertaking from Industry Fund Services Pty Ltd (IFS) in relation to its super choice advertising campaigns 'Compare the pair' and 'A lifetime of difference'.*

*'ASIC was concerned that consumers might have been confused by the advertisements as previously published, and is pleased that IFS has changed its advertising in response to our concerns', Mr Jeremy Cooper, Deputy Chairman of ASIC, said.*

*IFS has, without accepting ASIC's views, undertaken to refrain from:*

- *using projections of retirement payouts or future fund balances applying comparisons of current or past fees or average fees, unless these projections were properly qualified, and*
- *representing that the only relevant factor for comparisons of different super funds, in the context of projections of retirement payouts or future fund balances, is the fees charged by the operator of the fund.*

*On 27 May 2005, IFS suspended its advertising campaign, which involved both television and print media, pending the outcome of discussions with ASIC.*

*'All advertising about choice of superannuation funds must be clear, accurate and unambiguous, with the correct level of detail set out for consumers. This is particularly important with the introduction of Super Choice on 1 July', said Mr Cooper.*

*'ASIC will continue to work cooperatively with the superannuation industry to ensure that any concerns are resolved quickly and in the interests of better information for consumers. We certainly don't want to stop funds from explaining the benefits of their products to consumers, provided they don't go too far', he said.*

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<sup>29</sup> See ASIC press release 05-148 (<http://www.asic.gov.au/asic/asic.nsf/byheadline/05-148+Industry+fund+services+agrees+to+change+advertising?openDocument>)

## 7.5 Canada

The Financial Consumer Agency of Canada (FCAC) adopted an interesting, proactive approach in the area of financial promotions by commissioning joint research with the industry. In an effort to improve credit card disclosure for consumers, it worked with MasterCard Worldwide (MasterCard) to create a new model credit card application form designed to help Canadian consumers better understand the content of the forms they were signing. Once the model was finalized in 2008, FCAC and MasterCard commissioned Les Études de Marché Créatec+ to conduct focus group testing to help determine how well consumers with average literacy skills could understand the plain language credit card application form.<sup>30</sup>

## 7.6 France

Regulators have been active in France with regard to financial promotions. In 2003, laws on financial promotions were tightened, and extended in coverage, to include a requirement for direct marketers working on behalf of the sector to be registered and licensed with the Banque de France.

In addition, the most recent reorganisation of the structure of regulation has been partly stimulated by concerns about the impact of misleading financial promotions for collective investment schemes.

As part of the new structure the AMF has expanded its resources to increase its monitoring capabilities. A key initiative is the plan to establish a 'Joint Saving and Investment Product Observatory' in collaboration with the newly-formed ACP.<sup>31</sup> The AMF explains '*by centralising research and analyses conducted within the AMF and externally, the observatory will monitor marketing of financial products to non-professional investors, communication/advertising activities by distributors of financial products, and household financial investment trends*'. The AMF also intends to use its increased headcount in part to '*bolster supervision of advertising literature and the means used to market retail products*'.

The ACP confirms this approach '*The Ordinance introduces an innovative means of coordination between the ACP and the AMF, called the Pôle Commun (the Joint Unit). The Joint Unit will implement joint supervision of the marketing conditions of financial products and compliance by the regulated entities with their obligations towards their clients, borrowers, insured persons, members and beneficiaries. The Joint Unit will notably operate a common monitoring of advertising campaigns and create a single point of contact for client queries*'.

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<sup>30</sup> See Appendix B, section 9 for an extract.

<sup>31</sup> See Appendix B, section 8

## 7.7 Germany

BaFin aims to work on a collaborative basis with the industry in respect of promotional campaigns. Its 2008 Annual Report highlighted the actions it had taken in the light of new advertising regulations having been introduced *'Since institutions needed information on the new advertising regulations in the year under review, BaFin discussed the new guidelines with companies, lawyers and representatives from academia in a workshop. BaFin has included the findings from the workshop in its administrative practice. It is planning a supervisory memorandum for 2009 which is designed to provide the institutions with information on interpreting the advertising provisions.*

*If advertising is directed at private customers, the possible benefits of an investment may only be stressed if attention is drawn to possible risks at the same time. The company placing the advertisement may not use incomprehensible wording for important statements or warnings and may not weaken them; comparisons within an advertisement must be meaningful and balanced. Advertisements referring to changes in the gross value of a financial instrument must also include details of the impact of commission, charges and other fees'.<sup>32</sup>*

## 7.8 Japan

The FSA's approach to advertising problems, identified via complaints or supervision, is initially to look for, and monitor, voluntary improvement. The relevant regulation states *'they shall identify and keep track of the status of voluntary improvement made by the business operator by holding in-depth hearings and, when necessary, requiring the submission of reports based on Article 56-2 (1) of the FIEA. When the Financial Instruments Business Operator is deemed to have a serious problem from the viewpoint of protecting public interests and investors, the supervisors shall take actions such as issuing an order for business improvement based on Article 51 of the FIEA. When the Financial Instruments Business Operator is deemed to have committed a serious and malicious violation of law, the supervisors shall consider necessary actions, including the issuance of an order for business suspension based on Article 52 (1) of the FIEA'*

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<sup>32</sup> See BaFin Annual Report 2008 (English version)

## *Transparency as a regulatory tool*

The guidance to supervisors includes a wide-ranging list of potential problems with advertisements which would rule them unacceptable. Examples include:

*'A. Whether the letters used in the advertisement, etc., to indicate some items are not too inconspicuous in terms of size, shape and colour compared with the letters used for other items. In particular, whether the letters used to indicate benchmarks whose movements could cause losses, such as interest rates and prices, the risk of losses and the reasons for them, the risk of the loss amount exceeding the principal amount, and the direct cause thereof, are not markedly different in size from the largest letters used in the same advertisement, etc.*

*B. Whether the advertisement, etc., avoids placing too much emphasis on the advantages of the financial instruments and indicating its disadvantages in an inconspicuous manner.*

*C. In the case of an advertisement shown on displays of electric devices, whether sufficient display time is secured for users to read and understand all necessary items'*

The SESC, in its Annual Report, details examples of promotional campaigns that do not meet the regulations and the sanctions they have applied. As an example:

### *(i) Posting of information extremely different from facts*

*Financial Leader K.K. (the "Company") was registered as an investment advisory company on August 25, 2004. After this, the Company created and disclosed three types of websites sequentially which were respectively named "Golden Portfolio," "Institute for Investment Research to Win," and "Institute for Powered Investment." On these websites, the Company posted advertisements of its investment advisory business, and some other tips such as a "line-up of stocks introduced by the Company in the past," together with "recommended stocks" and "recommended dates for buying". According to the Company, these stocks (hereinafter "featured stocks") constituted part of the stocks recommended by the Company to the customers having investment advisory agreements with the Company.*

*In the inspection on this occasion, the SESC verified the record of investment advice on featured stocks as of December 4, 2006. As a result, the 68 cases (for 62 stocks) posted on "Golden Portfolio" were found to include 34 cases (for 31 stocks) for which the Company had no advisory experience, and 12 cases (for 12 stocks) for which the Company had given no advice on the recommendable dates for buying posted on this website; the 68 cases (for 62 stocks) posted on "Institute for Investment Research to Win" were found to include 34 cases (for 31 stocks) for which the Company had no advisory experience, and 13 cases (for 12 stocks) for which the Company had given no advice on the recommendable dates for buying posted on this website; and the 56 cases (for 51 stocks) posted on "Institute for Powered Investment" were found to include 34 cases (for 31 stocks) for which the Company had no advisory experience, and 12 cases (for 12 stocks) for which the Company had given no advice on the recommendable dates for buying posted on this website.*

*In this way, the Company was determined as having represented such information about its advisory service extremely different from facts.*

### *(ii) E-mailing of information extremely different from facts*

*On August 25, 2004 and later, the Company sent the same e-mail message to a large number of customers having investment advisory agreements with the*



*Company. In this e-mail message, the Company described the record of its advisory service and introduced some successful cases where tremendous profits, such as “a gain of 86.1 million yen in the case of maximum profit,” had been obtained, in order to solicit these customers to switch to an investment advisory agreement with more expensive advisory fees. This solicitation was accompanied by the following catchphrases which, the Company said, has contributed to the aforesaid successful cases: “Golden Membership: Wining Percentage of 80%, Average Growth of 170%; Diamond Membership: Wining Percentage of 95%, Average Growth of 240%” (“Golden Portfolio”), “Special Stocks and Platinum Stocks: Wining Percentage of 99%, Average Growth of 170%” (“Institute for Investment Research to Win”), “Special Membership: Wining Percentage of 80%, Average Growth of 170%; Executive Membership: Wining Percentage of 95%, Average Growth of 240%” (“Institute for Powered Investment”).*

*However, after the SESC inspected the record of the Company's advisory service described in the aforesaid e-mail message transmitted to 1,098 customers for the period from April 1, 2005 to December 1, 2006, it was found that the Company had no experience of any such advisory service and therefore the Company was determined as having represented such information about its advisory service under investment advisory agreements that was extremely different from facts.*

*- Date of recommendation: May 25, 2007*

*- Administrative disciplinary action(s):*

- (i) Suspension of all services for investment advisory business for one month*
- (ii) Order for business improvement*

## **7.9 Sweden**

In Sweden, FI has only a limited role with respect to advertising and firms are not obliged to submit their promotional materials for approval. However, the Swedish Consumer Agency (Konsumentverket) does have powers to take action against misleading advertising.

Konsumentverket provides comprehensive information on its website of promotional campaigns it has challenged including relevant court documentation detailing its objections.

## 7.10 United States

Regulators in the US have adopted a wide range of approaches to transparency in the area of promotional campaigns.

The **OCC** is essentially reactive. OCC has detailed checks on advertisements contained in its handbook which inspectors use when conducting a bank examination but it does not make public its assessment of individual advertisements.

The **Commodity Futures Trading Commission (CFTC)** implements the regulations which govern advertising by commodity pool operators (CPOs), commodity trading advisors (CTAs), and their principals. Recent amendments adopted by the CFTC: (1) restrict the use of testimonials; (2) clarify the required placement of the prescribed simulated or hypothetical performance disclaimer; and (3) explicitly include advertising through electronic media within the regulation's coverage. The Commission pursues actions involving false or misleading advertising and works aggressively to detect and stop such advertising by filing enforcement actions.

In recent years the **SEC** has highlighted failures in compliance with advertising requirements as one of the more frequent issues identified in examining firms. Inappropriate methods of calculating and displaying performance data is a particular problem. As a matter of policy, the SEC does not review specific advertisements except when conducting an examination of an investment adviser. Nor does it provide a register of examples of non-complying promotions. Instead it tends to draw attention to common errors through published no-action letters and enforcement actions. An example of the guidance given by the SEC is:

*The SEC staff has said that, if you advertise your past investment performance record, you should disclose all material facts necessary to avoid any unwarranted inference. For example, SEC staff has indicated that it may view performance data to be misleading if it:*

- *Does not disclose prominently that the results portrayed relate only to a select group of the adviser's clients, the basis on which the selection was made, and the effect of this practice on the results portrayed, if material;*
- *Does not disclose the effect of material market or economic conditions on the results portrayed (e.g., an advertisement stating that the accounts of the adviser's clients appreciated in value 25% without disclosing that the market generally appreciated 40% during the same period);*
- *Does not reflect the deduction of advisory fees, brokerage or other commissions, and any other expenses that accounts would have or actually paid;*
- *Does not disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings;*
- *Suggests or makes claims about the potential for profit without also disclosing the possibility of loss;*
- *Compares model or actual results to an index without disclosing all material facts relevant to the comparison (e.g., an advertisement that compares model results to an index without disclosing that the volatility of the index is materially different from that of the model portfolio); and*
- *Does not disclose any material conditions, objectives, or investment strategies used to obtain the results portrayed (e.g., the model portfolio contains equity stocks that are managed with a view towards capital appreciation).*

The **Federal Trade Commission's** Bureau of Consumer Protection contains a Division of Advertising Practices which has responsibility for enforcing the country's truth-in-advertising laws across all sectors. Recently, it has targeted the financial services sector as a priority area and highlighted the following activities in its 2009 Annual Report:

- *Challenging unlawful and deceptive financial services, particularly those related to sub-prime credit or lending. Examples include a settlement with CompuCredit Corporation that will bring consumers an estimated \$114 million in credits and cash refunds; six actions against businesses falsely promising foreclosure rescue; and joint actions with state enforcers against 36 credit repair operations that deceptively claimed they could remove accurate and timely negative information from consumer credit reports*

In the same report its Chairman noted '*On the consumer protection side, there can be no greater priority than addressing the credit crisis and protecting consumers in financial distress. This year, the Commission increased enforcement efforts against mortgage foreclosure "rescue" scams, bogus debt relief and credit repair schemes, unlawful debt collection operations, and deceptive credit offers to consumers in the subprime market. The FTC also initiated actions against brokers and lenders who deceptively advertised mortgages with low "teaser" rates. In addition, the FTC charged Bear Stearns Companies and EMC Mortgage Corporation with unlawful practices in servicing and collecting mortgage loans; the settlement returned \$28 million to 86,000 consumers.*'

FTC publishes guidance documents for advertisers and also advice feature articles for consumers. Examples include:

- Guide concerning the use of endorsements and testimonials <sup>33</sup>
- Deceptive Mortgage Ads: What they leave out <sup>34</sup>

The FTC also provides a briefing document on the legal bases of its enforcement approach with respect to advertising <sup>35</sup> and conducts workshops to assist businesses to abide by federal truth-in-advertising laws.

The most interventionist policies with respect to financial promotions come from some of the state insurance commissioners and from self-regulatory bodies.

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<sup>33</sup> See <http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>

<sup>34</sup> See Appendix B, section 6 (<http://www.ftc.gov/bcp/edu/pubs/articles/naps17.pdf>)

<sup>35</sup> See <http://www.ftc.gov/oia/assistance/consumerprotection/advertising/enforcement.pdf>.

**State insurance commissioners** typically require insurance companies to submit information on new products, including how much the products will cost, how the contracts will be written, and what kind of advertising will be used.

The **NAIC** provides model rules, for example MDL 570 Annuities Advertisements *'This regulation sets forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts'*. NAIC says about the model rules process *'Upon NAIC adoption of the Model Law, it will be a priority of the NAIC, through the collective efforts of the Members, to uniformly adopt the Model Law in a majority of states within three years after its adoption by the NAIC membership. The NAIC Members will devote significant regulator and NAIC resources to communicate, educate and support the Model Law. The NAIC staff will provide briefing materials, testimony, make state visits and answer questions. The Executive Committee shall provide quarterly updates to the NAIC Plenary on the status of adoption by states of the Model Law. The NAIC will post information on its website and issue public releases when a state adopts a Model Law'*

Individual States can require advertisers to file specific advertisements for approval. Oregon states:

*'Under ORS 742.009, sales materials for insurance products shall not be false, deceptive, or misleading. The Insurance Division uses the provisions on this Transmittal and Standards form to evaluate compliance. The director of the Department of Consumer and Business Services may require advertisements to be filed for approval prior to use. All life and annuity advertisements, regardless of format (brochure, Web site, etc.), are expected to comply. Advertisements created by producers, soliciting any feature of a particular policy or rider, may be filed or self-certified by the insurer. All of the filing requirements apply when the insurer delegates the responsibility of self-certification to the producer. The producer may not submit the advertisement to the Oregon Insurance Division (OID) directly. The OID only accepts submissions from insurers. Advertisements that remain active on our records will be archived in our system after three years. This means an insurer may continue to use these approved advertisements as long as they continue to meet the requirements and comply with the advertising mandates. Archiving allows the division to manage records without imposing additional filing requirements on insurers'*

Filing can be either for pre-approval or on the basis of self-certification. The Oregon form provides a checklist to confirm that each specific advertisement meets all legal and regulatory requirements.<sup>36</sup>

**FINRA** Rule 2210 requires any firm that has not previously filed advertisements with FINRA to file all of its advertisements at least 10 days prior to first use; this filing requirement continues for one year from the first submission. The full FINRA filing requirements are summarised as follows:

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<sup>36</sup> See Appendix B, section 7 (<http://www.cbs.state.or.us/external/ins/docs/serff/3308.pdf>)

**Table 17 Summary of NASD Conduct Rules 2210(c) and 2220(c)  
Filing Requirements for Advertising and Sales Literature**

| Who                          | What   | When   | Conduct Rule         |
|------------------------------|--|--|----------------------|
| Members who have never filed | All advertisements   | 10 days prior to first use for one year dating from the first submission                       | <b>2210(c)(5)(A)</b> |
| All members                  | Options communications used prior to the delivery of the Options Disclosure Document   | 10 days prior to first use; wait for FINRA staff approval                                      | <b>2220(c)(1)</b>    |
| All members                  | Sales literature that contains bond mutual fund volatility ratings   | 10 days prior to first use; wait for FINRA staff approval                                      | <b>2210(c)(3)</b>    |
| All members                  | CMO advertisements   | 10 days prior to first use; cannot use until changes required by the Department have been made | <b>2210(c)(4)(B)</b> |
| All members                  | Investment company advertisements or sales literature that use rankings or performance comparison information that is not generally published or is created by the investment company, its underwriter or affiliate, must be filed with corroborating data | 10 days prior to first use; cannot use until changes required by the Department have been made | <b>2210(c)(4)(A)</b> |
| All members                  | Investment company advertisements and sales literature   | Within 10 days of first use  | <b>2210(c)(2)(A)</b> |
| All members                  | Public direct participation program advertisements and sales literature  | Within 10 days of first use  | <b>2210(c)(2)(A)</b> |
| All members                  | Security Futures advertisements.   | 10 days prior to first use; cannot use until changes required by the Department have been made | <b>2210(c)(4)(C)</b> |
| All members                  | Final version of TV and Video advertisements   | Within 10 days of first use or broadcast   | <b>2210(c)(6)</b>    |
| All members                  | Certain 529 Plans advertisements and sales literature offering registered investment company products  | Within 10 days of first use  | <b>2210(c)(2)(A)</b> |
| All members                  | Government securities advertisements   | Within 10 days of first use  | <b>2210(c)(1)</b>    |
| All members                  | Investment analysis tool, report templates, and sales literature and advertisements.   | Within 10 days of first use  | <b>IM-2210-6(a)</b>  |

"Advertisements" are communications with the public that appear in media (e.g., newspaper, radio, television, web sites) whereas "sales literature" is directed to a specific audience or group (e.g., mailers, brochures, and password protected web sites). For complete definitions see NASD Conduct Rule 2210(a).

The **NFA** requires members to submit all radio or television advertisements that make any specific recommendations or refer to or describe the extent of any profit obtained in the past or that can be achieved in the future to NFA's promotional material review team for its review and approval at least 10 days prior to first use.

Members are also prohibited from using promotional material that contains: claims regarding seasonal trades; claims regarding historical price moves; claims regarding price movements that are characterized as conservative estimates when in fact such price movements would be dramatic; claims using certain pricing data for a product different from the one being marketed in the promotional material; claims containing profit projections; claims containing "cherry picked" trades; and claims regarding mathematical examples of leverage as a means of suggesting that prospective customers are likely to earn large profits from trading.

Members are also required to maintain a record of all advertisements used.

NFA publishes a detailed guide for members to compliance requirements with its Rule 2-29 Communications with the Public and Promotional Material.<sup>37</sup>

The new **CFPA** is intended to have the authority to review not only consumer lending practices, but also fraud and deceptive advertising, to determine and establish rules governing whether or not marketing practices and advertising are misleading, or if consumer financial products and services are being advertised and marketed fairly to consumers.

The administration's proposals include the following:<sup>38</sup>

*'We propose a new proactive approach to disclosure. The CFPA will be authorized to require that all disclosures and other communications with consumers be reasonable: balanced in their presentation of benefits, and clear and conspicuous in their identification of costs, penalties, and risks.'*

*We propose the following initiatives to improve the transparency of consumer product and service disclosures.*

*Make all mandatory disclosure forms clear, simple, and concise, and test them regularly.*

*Mandatory disclosure forms should be clear, simple, and concise. This means the CFPA should make judgments about which risks and costs should be highlighted and which need not be. Consumers should verify their ability to understand and use disclosure forms with qualitative and statistical tests.*

*A regulator is typically limited to testing disclosures in a "laboratory" environment. A product provider, however, has the capacity to test disclosures in the field, which can produce more robust and relevant results. For example, a credit card provider can try two different methods to disclose the same product risk and determine which was more effective by surveying consumers and evaluating their behaviors. We propose that the CFPA should be authorized to establish standards and procedures, including appropriate immunity from liability, for providers to conduct field tests of disclosures.*

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<sup>37</sup> See <http://www.nfa.futures.org/NFA-compliance/publication-library/compliance-rule-2-29.pdf>

<sup>38</sup> See Financial Regulatory Reform: A New Foundation – Department of Treasury ([http://www.financialstability.gov/docs/regs/FinalReport\\_web.pdf](http://www.financialstability.gov/docs/regs/FinalReport_web.pdf))

Require that disclosures and other communications with consumers be reasonable.

Disclosure mandates for consumer credit and other financial products are typically very technical and detailed. This approach lets the regulator determine which information must be emphasized and helps ensure that disclosures are standard and comparable. Flaws in this approach, however, were made clear by the spread of new and complex credit card plans and mortgages that preceded the credit crisis. The growth in the types of risks stemming from these products far outpaced the ability of disclosure regulations to keep up. Indeed, a regulator must take time to update mandatory disclosures because of the need for consumer testing and public input, and it is unduly burdensome to require the entire industry to update its disclosures too frequently. In addition to detailed rules, we propose a principles-based approach to disclosure.

We propose a regime strict enough to keep disclosures standard throughout the marketplace, yet flexible enough to adapt to new products. Our proposed legislation authorizes the CFPB to impose a duty on providers and intermediaries to require that communications with the consumer are reasonable, not merely technically compliant and non-deceptive.

Reasonableness includes balance in the presentation of risks and benefits, as well as clarity and conspicuousness in the description of significant product costs and risks. This is a higher standard than merely refraining from deception. Moreover, reasonableness does not mean a litany of every conceivable risk, which effectively obscures significant risks. It means identifying conspicuously the more significant risks. It means providing consumers with disclosures that help them to understand the consequences of their financial decisions.

The CFPB should be authorized to apply the duty of reasonableness to communications with or to the consumer, as appropriate, including marketing materials and solicitations. The CFPB should determine the appropriate scope of this duty. A provider or intermediary should be subject to administrative action, but not civil liability, if its communications violate this duty.

The CFPB also should be authorized to apply the duty of reasonableness to mandatory disclosures. The regulator typically sets requirements for disclosure for mainstream products and services. If a new product emerges that the regulator did not anticipate, the mandatory disclosure may not adequately disclose a major risk of the product. A deficient but compliant mandatory disclosure may lull the consumer into a false sense of security, undermining the very purpose of a disclosure mandate. It is not fair or efficient to make the consumer bear the cost of disclosures that are out of date. Nor is it reasonable to expect that the regulator will have the capacity to update disclosures on a real-time basis. Therefore, we propose that providers should share with the regulator the burden of updating mandatory disclosures when they introduce new products.

The CFPB should be authorized to implement a process under which a provider, acting reasonably and in good faith, could obtain the equivalent of a “no action” letter for disclosure and other communications for a new product. For example, the CFPB could adopt a procedure under which a provider petitions the CFPB for a determination that its product’s risks were adequately disclosed by the mandatory model disclosure or marketing materials. The CFPB could approve use of the mandatory model or marketing materials, or provide a waiver, admissible in court to defend against a claim, for varying the model disclosure. As a further example, if the CFPB failed to respond in a timely fashion, the provider could proceed to market without fear of administrative sanction on that basis. The provider could potentially shorten the mandatory waiting period if it submitted empirical evidence, according to prescribed standards, that its marketing materials and the mandatory disclosure adequately disclosed relevant risks. The CFPB should have authority to adapt and

## *Transparency as a regulatory tool*

*adjust its standards and procedures to seek to maximize the benefits of product innovation while minimizing the costs.*

### *Harness technology to make disclosures more dynamic and relevant to the individual consumer.*

*Disclosure rules today assume disclosures are on paper and follow a prescribed content, format, and timing; the consumer has no ability to adapt content, timing, or format to her needs. The CFPB should harness technology to make disclosures more dynamic and adaptable to the needs of the individual consumer. New technology can be costly, and the CFPB should consider those costs, but it should also consider that spinoff benefits from new technology can be hard to quantify and could be substantial.*

*Disclosures should show consumers the consequences of their financial decisions. For example, the recently enacted Credit CARD Act of 2009 requires issuers to show the total cost and time for repayment if a consumer paid only the minimum due each month, and it further requires issuers to show the amount a consumer would have to pay in order to pay off the balance in three years. Technology enhances the ability to tailor this disclosure, and an internet calculator would permit the consumer to select a different period, or input a payment amount above the minimum. Such calculators are common on the internet. The CFPB should mandate a calculator disclosure in circumstances where the CFPB determines the benefits to consumers outweigh the costs. It should also mandate or encourage calculator disclosures for mortgages to assist with comparison shopping. For example, a calculator that shows the costs of a mortgage based on the consumer's expectations for how long she will stay in the home may reveal a more significant difference between two products than appears on standard paper disclosures.*

*Technology can also help consumers better manage their use of credit by providing information and options at the most relevant times to them. For example, the CFPB should have authority, after considering the costs and benefits of such a measure, to require issuers to warn consumers who use a debit card at the point of sale or ATM machines that doing so would overdraw their account. The CFPB should also promote adoption of innovations in point-of-sale technology, such as allowing consumers who use a credit card to choose a payment plan for the purchase'.*



## 7.11 IOSCO

IOSCO has specifically reviewed the presentation of performance data in promotions for collective investments, and enforcement behaviour in that area. In 2002 its Technical Committee reviewed international enforcement practice in this area:

*To promote compliance with PPS (Performance Presentation Standards), the Regulator may employ various means. For instance, the Regulator (or SRO) may review the contents of specific advertisements prior to their use to ensure that they contain no false or misleading statements and otherwise comply with PPS. In one SC5<sup>39</sup> jurisdiction (Spain), a special industry group undertakes to prevent the use of misleading statements or omissions in advertisements, and is empowered to revise or stop any new or ongoing advertising campaign. Regulators also may be able to inspect any CIS to determine whether the CIS has calculated correctly and actually achieved the performance that it advertises. For instance, in at least one SC5 jurisdiction (United States), CIS are required to maintain records supporting their performance claims, and the Regulator's staff reviews this information during their inspections of CIS. Regulators also may rely on investor complaints about advertisements, and Regulators may review advertisements that appear in various media to determine whether the advertisements comply with PPS or are fraudulent or misleading. Generally, in SC5 jurisdictions, the CIS operator is most likely to be held responsible for the accuracy of the contents of advertisements.*

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<sup>39</sup> IOSCO surveyed the then members of its Technical Committee Standing Committee on Investment Management, otherwise known as SC5.

## **8 CONCLUSIONS: COMPARING FSA PRACTICE ON TRANSPARENCY WITH INTERNATIONAL PRACTICE**

This section briefly summarises in one location the project findings specifically regarding how current FSA practice on transparency compares with the international organisations studied.

### **8.1 Disclosure of complaints data**

- The FSA was unusual in requiring firms to provide and publish their own data; most regulators release only data on complaints they have received and handled themselves
- Typically, the FSA's international peers only release aggregated data and do not provide context information about individual firms. Consequently, the FSA's arrangements to do this place them at the more transparent end of the spectrum
- Nevertheless, international examples were found that provide considerably more detail and analysis than will be provided by the FSA, meaning that there is still scope to consider greater transparency.
- Also the FSA's decision not to insist on directly comparable context data may be a weakness in terms of how helpful the information it publishes may be to consumers

### **8.2 Disclosure of firms entering enforcement**

- The regulators reviewed generally did not disclose information on firms entering their enforcement procedures; indeed, in some cases information was not released, or was anonymised, even on completion of formal processes leading to sanctions. Informal enforcement related to minor infractions is, by its nature, confidential
- A limited number of instances of information being released before the end of enforcement processes were found. Some organisations in Canada provide details ahead of formal hearings which, in some cases, are held in public. However, even where the identity of firms involved is released prior to 'judgement' such an approach is not taken in all cases and, indeed, is often the exception
- It is more common, however, to release details of those sanctioned once the regulator's own processes are complete but before the respondent has decided whether to appeal
- As a result, the present FSA arrangements are not out of line with those of their international peers
- Nor is their evidence of a movement among the regulators studied to seek earlier disclosure of enforcement proceedings. In some instances this reflects legal restrictions but it is also recognised that a policy of early release, before all processes are exhausted, is likely to result in less co-operation from the industry and may, therefore, be counter-productive

### **8.3 Response rates on freedom of information requests**

- Differences in behaviour on this topic essentially reflected the legislation and general practice in the countries concerned, rather than different policy choices by individual organisations.
- Nevertheless, current FSA practice placed it broadly in the middle of the pack.
- There was very little disclosure of responsiveness on this topic from organisations in Canada, France, and Japan. Consequently, the FSA is ahead of these examples since it provides feedback on its performance and also provides access on its web-site to some previously released documents
- The level of information on responsiveness to requests released by BaFin in Germany is similar to that of the FSA
- However, considerably more detailed feedback is available in Australia and, particularly, the US where a highly comprehensive standard-format report is used by the federal agencies.
- Turning to the issue of how willing organisations are to release information, refusal rates were easily highest in Germany (BaFin), followed by the FSA and then the Australian regulators. Refusal rates, typically, were much lower in the US

### **8.4 The transparency of regulators' governance procedures**

- The FSA emerges as above average, but certainly not the leader, in terms of the transparency of its governance processes. It provides somewhat anodyne summaries of its board minutes and details the attendance record of board members
- The only other countries where board minutes are released are Sweden, and the US. In both these cases the level of detail provided appears to be greater, and more insightful, than that provided by the FSA, especially in the US
- Easily the most extensive initiatives in transparent governance are from the US, largely under the influence of the many so-called 'Government in the Sunshine Acts' at state and federal level. Examples include the prior release of board agendas and non-confidential board papers and the holding of open board/ commission meetings including the live and archived web-casting of such meetings
- Consequently, international practice suggests that there is plenty of scope for greater transparency by the FSA in this area

## **8.5 Disclosure of complaints data about financial promotions**

- Considerable diversity emerged in the methods used by regulators internationally to enforce compliance of financial promotions. Also, it was noticeable that transparency per se forms only one part of the methods used to protect consumers in this area
- Consequently, international examples suggest that there are many initiatives that the FSA could consider adding to its present activity in this area
- The most proactive methods used to enforce compliance were found in the US. Interesting examples included requiring either pre-clearance and/ or detailed self-certification of advertisements; either in all cases or in those deemed to represent the greatest potential risk to consumers.
- There are also examples of very different approaches to rule-making. Some organisations have highly detailed codes or rule books spelling out what information may be presented; others, meanwhile, rely on broad principles-based regulation

## APPENDIX A: ORGANISATIONS REVIEWED

The following organisations were reviewed; however, not all transparency topics were relevant or covered in every case.

| <i>Australia</i>    |   |   |
|---------------------|---|---|
| <b>Organisation</b> | <b>Role</b>                                       | <b>Notes</b>  |
| APRA                | Regulator   | <i>Australian Prudential Regulation Authority</i><br>Prudential regulation of any entity that needed to be prudentially regulated   |
| ASIC                | Financial services regulator                      | <i>Australian Securities and Investments Commission</i><br>Corporate, market and financial services regulator   |
| B&FS Ombudsman      | Ombudsman   | <i>Banking &amp; Financial Services Ombudsman</i><br>Absorbed by the Financial Ombudsman Service in 2008  |
| COSL                | Ombudsman   | <i>Credit Ombudsmen Service Limited</i><br>Alternative external dispute resolution service alongside FOS  |
| EFT Code            | Part of banking regulations – not an organisation | <i>Electronic Funds Transfer Code</i><br>ASIC used to produce annual reports on compliance with the (voluntary) Code based on self-assessment and provision of dispute statistics   |
| FOS                 | Ombudsman   | <i>Financial Ombudsman Service</i><br>Formed in 2008 as an authorised External Dispute Resolution service via merger of Banking & Financial Services Ombudsman, the Financial Industry Complaints Service and the Insurance Ombudsman Service. It was later joined by Insurance Brokers Disputes Limited and Credit Union Dispute Resolution Centre Pty Limited |
| IBDR                | Ombudsman   | <i>Insurance Brokers Disputes Limited</i><br>Became part of Financial Ombudsman Service in 2008   |
| IOS                 | Ombudsman   | <i>Insurance Ombudsman Service</i><br>Became part of Financial Ombudsman Service in 2008  |

| <b>Canada</b>       |                               |  |
|---------------------|-------------------------------|--|
| <b>Organisation</b> | <b>Role</b>                   | <b>Notes</b>   |
| BCSC                | Provincial regulator          | <i>British Columbia Securities Commission</i><br>Regulatory agency overseeing securities dealers in British Columbia   |
| FCAC                | Consumer protection regulator | <i>Financial Consumer Agency of Canada</i><br>Provides information about financial products and monitors the compliance of federally incorporated financial institutions with consumer protection laws                                 |
| FSCO                | Provincial regulator          | <i>Financial Services Commission of Ontario</i><br>Regulatory agency overseeing pension plans, insurance, credit unions, caisses populaires, mortgage brokers, co-operative corporations, and loan and trust companies in Ontario      |
| IIROC               | Self-regulatory organisation  | <i>Investment Industry Regulatory Organization of Canada</i><br>Formed in 2008 by the merger of the Investment Dealers Association of Canada and Market Regulation Services. Regulates the conduct of all investment dealers in Canada |
| MFDA                | Self-regulatory organisation  | <i>Mutual Funds Dealers Association</i><br>Regulates the sale of mutual funds  |
| OBSI                | Ombudsman                     | <i>Ombudsman for Banking Services and Investments</i>  |

| <b>France</b>       |  |   |
|---------------------|--|---|
| <b>Organisation</b> | <b>Role</b>                            | <b>Notes</b>  |
| ACAM                | Insurance regulator                    | <i>Autorité de Contrôle des Assurances et des Mutuelles</i><br>Absorbed this year in to the new ACP   |
| ACP                 | New French prudential regulator        | <i>Autorité de contrôle prudential</i><br>The ACP is the result of the 2010 merger of four regulators which formerly supervised the French banking, financial services and insurance industries |
| AMF                 | Securities regulator                   | <i>Autorité des Marchés Financières</i><br>Regulates the securities market, including the unit trusts and mutual funds markets  |
| BdF                 | Central bank                           | <i>Banque de France</i>   |
| CB                  | Banking and investment regulator       | <i>Commission Bancaire</i><br>Previously the main supervisory body for credit institutions and investment firms. Absorbed this year in to the new ACP   |
| FBF                 | Banking Self-Regulatory Organisation   | <i>Federation Bancaire Francaise</i><br>Offers an in-house Ombudsman service  |
| FFSA                | Insurance Self-regulation organisation | <i>Fédération Française des Sociétés d'Assurance</i><br>Became part of Association Française des Assureurs in 2007  |
| GEMA                | Insurance self-regulation organisation | <i>Groupement des Entreprises Mutuelles d'Assurance</i><br>Became part of Association Française des Assureurs in 2007   |

| <b>Germany</b>      |   |  |
|---------------------|---|--|
| <b>Organisation</b> | <b>Role</b>                               | <b>Notes</b>   |
| BaFin               | Financial services regulator              | <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i><br>BaFin was created by the merger the Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen (BAKred)), the Federal Supervisory Office for Securities Trading (Bundesaufsichtsamt für den Wertpapierhandel (BAWe)), and the Federal Insurance Supervisory Office (Bundesaufsichtsamt für das Versicherungswesen (BAV)) |
| DOOB                | Banking Ombudsman                         | <i>Der Ombudsmann der Öffentlichen Banken</i><br>Ombudsman service for the public banks  |
| <b>Japan</b>        |   |  |
| <b>Organisation</b> | <b>Role</b>                               | <b>Notes</b>   |
| FSA                 | Financial sector regulator                | <i>Financial Services Agency</i><br>Responsible for overseeing banking, securities and exchange, and insurance   |
| JSDA                | Self-regulatory organisation              | <i>Japan Securities Dealers Association</i><br>Operates an in-house securities mediation and consultation centre   |
| JSIAA               | Self-regulatory organisation              | <i>Japan Securities Investment Advisers Association</i>  |
| SESC                | Securities regulations enforcement agency | <i>Securities and Exchange Surveillance Commission</i><br>Part of the FSA but acts as a market watchdog independent from supervisory divisions of the FSA  |



| <b>Sweden</b>       |                               |   |
|---------------------|-------------------------------|---|
| <b>Organisation</b> | <b>Role</b>                   | <b>Notes</b>  |
| ARN                 | Ombudsman                     | <i>Allmänna reklamationsnämnden (National Board for Consumer Complaints)</i>                                  |
| FI                  | Financial sector regulator    | <i>Finansinspektionen</i><br>Regulates all companies operating in Swedish financial markets                   |
| Konsumentverket     | Consumer protection regulator | <i>Swedish Consumer Agency</i><br>The agency whose task is to safeguard consumer interests across all sectors |

| <b>United States</b> |   |  |
|----------------------|---|--|
| <b>Organisation</b>  | <b>Role</b>                             | <b>Notes</b>   |
| CFPA                 | Proposed consumer protection regulator  | <i>Consumer Financial Protection Agency</i><br>Planned new body to have responsibility for consumer protection and complaint handling in the financial sector. Not yet established.            |
| CFTC                 | Regulator for commodity futures markets | <i>Commodity Futures Trading Commission</i>  |
| FDIC                 | Banking regulator                       | <i>Federal Deposit Insurance Corporation</i><br>Primary federal regulator for state-chartered banks that are not members of the Federal Reserve System   |
| Fed                  | Banking regulator                       | <i>The Federal Reserve</i><br>Central bank and federal banking regulator   |
| FINRA                | Securities self-regulation organisation | <i>Financial Industry Regulatory Authority</i><br>Formed in 2007 through merger of the National Association of Securities Dealers and the regulation activities of the New York Stock Exchange |
| FTC                  |   | <i>Federal Trade Commission</i><br>Regulator responsible for promotion of "consumer protection" across all sectors and the elimination and prevention of "anti-competitive" behaviour          |
| NAIC                 | Association of State Regulators         | <i>National Association of Insurance Commissioners</i><br>Co-ordinating body for state level insurance regulators  |
| NCUA                 | Credit Union regulator                  | <i>National Credit Union Administration</i>  |
| NFA                  | Self-regulatory organisation            | <i>National Futures Association</i><br>Membership is obligatory to be allowed to trade in the futures markets  |

*Transparency as a regulatory tool*

| <b>Organisation</b>           | <b>Role</b>              | <b>Notes</b>  |
|-------------------------------|--------------------------|---|
| OCC                           | Banking regulator        | <i>Office of the Comptroller of the Currency</i><br>Charters and supervises national banks  |
| OTS                           | Savings bodies regulator | <i>Office of Thrift Supervision</i><br>An office within the Department of the Treasury responsible for supervising savings associations and their holding companies |
| SEC                           | Securities regulator     | <i>Securities and Exchange Commission</i><br>Holds primary responsibility for regulating the securities industry  |
| State banking commissioners   | Regulators               | Individual state organisations<br>Regulate non-federal banks. Co-ordinated through Conference of State Banking Supervisors  |
| State insurance commissioners | Regulators               | Individual state organisations<br>Currently insurance regulation occurs at state not federal level. Co-ordinated through NAIC                                       |

## APPENDIX B: EXAMPLES OF DOCUMENTS REFERENCED

### B.1 EXAMPLE OF OUTPUT FROM NAIC DATABASE SEARCH

Other Reports: [Financial Information](#) [Licensing](#) [Complaints](#)

[Company Search Help](#)

#### ZURICH AMER INS CO COMPLAINT RATIO REPORT

Below is the Complaint Ratio Report for Zurich Amer Ins Co. Please refer to the [Help](#) for a description of how this report is created. In addition, you can click on each parameter to see a description of how the parameter is calculated for use in the Complaint Ratio Report. Please note that "Total Complaints" include only those complaints in which the final resolution by the respective state upheld the consumer's complaint position. Please refer to the [Help](#) for a description of these excluded complaints.

| Complaint Ratios for Year 2009                     | Score       |
|--|-------------|
| <a href="#">National Median Complaint Ratio</a>    | 1.00        |
| <a href="#">Zurich Amer Ins Co Complaint Ratio</a> | <b>0.77</b> |

The Complaint Ratio Score for Zurich Amer Ins Co has been calculated to be **0.77** for the policy type Commercial Auto for the year 2009. In the graph below, this score is shown as a **red** arrow in relation to the National Median Complaint Ratio Score for Commercial Auto for the year 2009.



**Zurich Amer Ins Co (0.77)**

| Report Criteria                  |                 |
|----------------------------------|-----------------|
| Policy Type:                     | Commercial Auto |
| Complaint Year:                  | 2009            |
| Premium Year:                    | 2009            |
| Complaint Index:                 | 0.89            |
| National Median Complaint Index: | 1.16            |
| Complaint Share:                 | 0.0196          |
| Total Complaints:                | 34              |
| U.S. Market Share:               | 2.21%           |
| Total Premiums:                  | \$539,222,997   |

B.2 EXTRACTS FROM OREGON INSURANCE REPORT: PART 1



CONSUMER GUIDE TO

# Oregon Insurance Complaints

*Complaints from  
calendar year*

# 2008

Oregon Department of  
Consumer and Business Services  
Insurance Division

## Introduction

Insurance is an important issue for consumers. Most families rely on insurance to protect their health, income, cars, and homes. But for many consumers, shopping for insurance isn't easy. Insurance is complex and highly specialized. How can consumers make the best decisions about how much and what kind of insurance coverage to buy?

With the right information, consumers can make sound decisions. That's why the Oregon Insurance Division publishes the *Consumer Guide to Oregon Insurance Complaints*, an annual report of consumer complaints against insurance companies in six common lines of insurance:

- Auto (personal)
- Health
- Homeowner
- Life
- Annuities
- Long-term care

This report ranks certain insurers by their complaint records, which are based on the number of confirmed consumer complaints closed by the Insurance Division and the amount of premium dollars written by the insurers. It allows consumers to see at a glance how a company compares with its competitors.

In addition to consumer complaints, there are other factors to consider when shopping for insurance. Cost, claims-handling performance, producer (agent) service, and the financial health of an insurance company are all important.

Being an informed consumer can prevent worry and save time and money. This report will explain how to comparison shop for insurance and what to look for. We've also included tips to help you learn about a company's financial health and how to choose a reliable licensed producer (agent).

By providing fair, accurate, and useful information for consumers, this report fulfills an important part of the Insurance Division's mission to protect consumers.

## Companies included in this report

Because of space limitations, companies included in this report must have met at least one of the following three conditions during 2008:

- 1) Have at least 1 percent market share in Oregon
- 2) Have at least 10 confirmed complaints
- 3) Have its headquarters in Oregon

The amount of premium written in Oregon does not reflect the financial strength of a company or its ability to pay claims.

You can find additional information about insurance complaints, including complaint statistics for all insurers doing business in Oregon, on our Web site: [insurance.oregon.gov](http://insurance.oregon.gov). Click on "File a Complaint" in the left index.

## Total insurance complaints

During 2008, the Oregon Insurance Division closed 2,528 complaints in six common lines of insurance. The insurers listed in this report accounted for 1,871 complaints, or 74 percent of all complaints in the six lines.

The table below compares the complaints for all insurers to those for the insurers named in this report.

| Line of insurance      | Total complaints        |              | Percent |
|------------------------|-------------------------|--------------|---------|
|                        | Insurers in this report | All insurers |         |
| Auto (personal)        | 853                     | 1,131        | 75      |
| Health                 | 694                     | 847          | 82      |
| Homeowner              | 124                     | 182          | 68      |
| Life                   | 100                     | 227          | 44      |
| Annuities              | 47                      | 70           | 67      |
| Long-term care         | 53                      | 71           | 75      |
| All six selected lines | 1,871                   | 2,528        | 74      |

## Total insurance premiums

Insurance premiums in Oregon in 2008 totaled \$15 billion in six common lines of insurance. The insurers listed in this report accounted for nearly \$13 billion, or 84 percent of premiums in 2008.

The table below compares the premiums written by all insurers to premiums written by the insurers named in this report.

| Line of insurance      | Total premiums in billions of dollars |              | Percent |
|------------------------|---------------------------------------|--------------|---------|
|                        | Insurers in this report               | All insurers |         |
| Auto (personal)        | 1.69                                  | 2.27         | 74      |
| Health                 | 8.02                                  | 8.96         | 90      |
| Homeowner              | 0.48                                  | 0.57         | 84      |
| Life                   | 0.74                                  | 1.10         | 67      |
| Annuities              | 1.95                                  | 2.46         | 79      |
| Long-term care         | 0.11                                  | 0.12         | 92      |
| All six selected lines | 12.99                                 | 15.49        | 84      |

## How to use this report

The *Consumer Guide to Oregon Insurance Complaints* is an annual report of consumer complaints against major insurers in six types (or lines) of insurance:

- Auto (personal)
- Health
- Homeowner
- Life
- Annuities
- Long-term care

The guide includes the following information for calendar year 2008 for the major insurance companies doing business in Oregon:

- Premiums written in Oregon
- Total consumer complaints closed by the Insurance Division
- Confirmed complaints

A “confirmed complaint” is a complaint in which an insurance company provided some kind of relief to a consumer or took some other action after a complaint was filed with the Insurance Division. Examples include complaints in which an insurer took any of the following actions:

- Made an additional payment or a refund to a consumer
- Issued or restored an insurance policy
- Extended insurance coverage
- Reopened or settled a claim
- Provided some other kind of relief (for example, responded to a consumer’s inquiries)

Complaints in which the consumer and insurer couldn’t agree on the facts of the case also are counted as confirmed complaints.

In addition, the guide includes a “complaint index” and a ranking for each insurance company.

### How to use the complaint indexes and rankings

Consumers can use the complaint indexes and rankings to compare the complaint records of insurance companies.

Total complaints are reported in the guide because each complaint indicates a consumer had a problem with an insurer. However, only “confirmed complaints” are used in computing complaint indexes.

Examples of complaints not used in complaint indexes include the following:

- Those in which the Insurance Division found that an insurer had complied with Oregon insurance laws and rules
- Those in which the Insurance Division did not have jurisdiction (legal authority) to make a determination

A complaint index of 1.00 is average. That means the company’s share of confirmed complaints is equal to its share of business in Oregon. A complaint index of 2.00 means the company’s share of confirmed complaints is twice as large as its share of business.

**Example:** XYZ Insurance Company had 10 percent of the market for auto insurance in Oregon in 2008. It also had 10 percent of the confirmed auto insurance complaints closed that year. XYZ’s complaint index would be 1.00.

After complaint indexes are computed, insurers are ranked by their complaint records. A ranking of 1 indicates the best complaint record — or the fewest confirmed complaints in relation to the amount of premium the company wrote in Oregon in 2008. The highest numerical ranking indicates the worst complaint record — or the most confirmed complaints compared to the amount of premium written.



## Auto insurance (personal)

| Company name                                   | 2008 premium         | Total complaints | Confirmed complaints | Complaint index | 2008 ranking |
|--|----------------------|------------------|----------------------|-----------------|--------------|
| Allstate Ins. Co.                              | 75,555,933           | 88               | 64                   | 2.31            | 30           |
| Allstate Property and Casualty Ins. Co.        | 49,025,833           | 16               | 11                   | 0.61            | 11           |
| American Family Mutual Ins. Co.                | 79,497,025           | 45               | 31                   | 1.06            | 22           |
| California Casualty General Ins. Co. of Oregon | 12,464,731           | 6                | 6                    | 1.31            | 26           |
| Coast National Ins. Co.                        | 12,761,880           | 27               | 17                   | 3.63            | 32           |
| Country Mutual Ins. Co.                        | 38,839,301           | 9                | 6                    | 0.42            | 5            |
| Country Preferred Ins. Co.                     | 29,920,960           | 9                | 7                    | 0.64            | 12           |
| Farmers Ins. Co. of Oregon                     | 274,923,275          | 175              | 132                  | 1.31            | 25           |
| Financial Indemnity Co.                        | 14,268,622           | 19               | 15                   | 2.87            | 31           |
| GEICO General Ins. Co.                         | 51,571,681           | 32               | 26                   | 1.38            | 27           |
| GEICO Indemnity Co.                            | 20,570,839           | 15               | 15                   | 1.99            | 28           |
| Hartford Ins. Co. of the Midwest               | 13,491,942           | 30               | 23                   | 4.65            | 33           |
| Liberty Mutual Fire Ins. Co.                   | 33,199,553           | 14               | 10                   | 0.82            | 16           |
| Liberty Northwest Ins. Corporation             | 16,048,810           | 9                | 7                    | 1.19            | 23           |
| Metropolitan Property and Casualty Ins. Co.    | 14,954,862           | 16               | 12                   | 2.19            | 29           |
| Mid-Century Ins. Co.                           | 52,752,733           | 22               | 20                   | 1.03            | 20           |
| Mutual of Enumclaw Ins. Co.                    | 28,684,745           | 9                | 9                    | 0.86            | 17           |
| Nationwide Ins. Co. of America                 | 37,329,488           | 10               | 7                    | 0.51            | 8            |
| North Pacific Ins. Co.                         | 29,192,304           | 2                | 2                    | 0.19            | 3            |
| Northwestern Pacific Indemnity Co.             | 2,299,733            | 1                | 1                    | 1.19            | 24           |
| Oregon Automobile Ins. Co.                     | 5,825,565            | 1                | 1                    | 0.47            | 7            |
| Oregon Mutual Ins. Co.                         | 20,564,109           | 6                | 4                    | 0.53            | 9            |
| Progressive Classic Ins. Co.                   | 74,917,077           | 25               | 21                   | 0.76            | 15           |
| Progressive Direct Ins. Co.                    | 771,903              | 20               | 12                   | 42.41           | 34           |
| Progressive Universal Ins. Co.                 | 74,990,367           | 38               | 26                   | 0.95            | 19           |
| Property and Casualty Ins. Co. of Hartford     | 23,610,011           | 10               | 8                    | 0.92            | 18           |
| Safeco Ins. Co. of Oregon                      | 135,752,256          | 72               | 52                   | 1.04            | 21           |
| State Farm Fire and Casualty Co.               | 28,969,301           | 1                | 1                    | 0.09            | 2            |
| State Farm Mutual Automobile Ins. Co.          | 353,716,756          | 103              | 71                   | 0.55            | 10           |
| Sublimity Ins. Co.                             | 5,157,679            | 1                | 0                    | 0.00            | 1            |
| United Services Automobile Association         | 27,601,414           | 12               | 7                    | 0.69            | 13           |
| USAA Casualty Ins. Co.                         | 29,682,128           | 5                | 5                    | 0.46            | 6            |
| Valley Property and Casualty Ins. Co.          | 14,792,262           | 2                | 2                    | 0.37            | 4            |
| Western Protectors Ins. Co.                    | 7,416,560            | 3                | 2                    | 0.74            | 14           |
| <b>Total for this table</b>                    | <b>1,691,121,638</b> | <b>853</b>       | <b>633</b>           |                 |              |
| <b>Total for auto</b>                          | <b>2,266,797,592</b> | <b>1,131</b>     | <b>831</b>           |                 |              |

## Life insurance

Besides providing a death benefit, life insurance can be used for estate planning, charitable giving, or even to fund a business transfer. Life insurance can offer important tax benefits.

There are two basic types of life insurance: term and cash value. Term insurance is the most affordable and allows most people to buy the greatest protection for the lowest premium. It offers a death benefit if the policyholder should die during the

specified period of time. Whole life, variable life, and universal life insurance are examples of policies that accumulate cash value over time. These types of policies combine a death benefit with some type of savings or investment plan.

If you have questions about life insurance, the Insurance Division can help. Call the Consumer Advocacy Unit, 503-947-7984 or 888-877-4894 (toll-free).

| Company name                               | 2008 premium         | Total complaints | Confirmed complaints | Complaint index | 2008 ranking |
|--|----------------------|------------------|----------------------|-----------------|--------------|
| American General Life Ins. Co.             | 22,794,785           | 5                | 3                    | 0.95            | 19           |
| Country Life Ins. Co.                      | 14,243,403           | 3                | 3                    | 1.53            | 27           |
| Farmers New World Life Ins. Co.            | 23,494,612           | 6                | 5                    | 1.54            | 28           |
| Genworth Life and Annuity Ins. Co.         | 16,468,423           | 6                | 5                    | 2.20            | 31           |
| Great-West Life and Annuity Ins. Co.       | 14,334,857           | 1                | 0                    | 0.00            | 5            |
| Guardian Life Ins. Co. of America (The)    | 18,165,290           | 1                | 1                    | 0.40            | 12           |
| Hartford Life and Annuity Ins. Co.         | 15,422,316           | 2                | 2                    | 0.94            | 18           |
| John Hancock Life Ins. Co. (U.S.A.)        | 28,761,570           | 0                | 0                    | 0.00            | 1            |
| John Hancock Variable Life Ins. Co.        | 13,910,567           | 0                | 0                    | 0.00            | 6            |
| Lincoln Benefit Life Co.                   | 17,192,969           | 4                | 3                    | 1.27            | 23           |
| Lincoln National Life Ins. Co. (The)       | 38,186,408           | 12               | 7                    | 1.33            | 25           |
| Massachusetts Mutual Life Ins. Co.         | 18,611,175           | 1                | 0                    | 0.00            | 3            |
| Metropolitan Life Ins. Co.                 | 38,872,960           | 7                | 5                    | 0.93            | 17           |
| Minnesota Life Ins. Co.                    | 16,860,680           | 3                | 3                    | 1.29            | 24           |
| New York Life Ins. and Annuity Corp.       | 15,620,124           | 1                | 1                    | 0.46            | 13           |
| New York Life Ins. Co.                     | 37,462,337           | 5                | 3                    | 0.58            | 15           |
| Northwestern Mutual Life Ins. Co.          | 82,338,699           | 5                | 4                    | 0.35            | 11           |
| Pacific Life Ins. Co.                      | 28,620,851           | 0                | 0                    | 0.00            | 2            |
| Primerica Life Ins. Co.                    | 13,973,566           | 3                | 3                    | 1.56            | 29           |
| Principal Life Ins. Co.                    | 11,212,645           | 0                | 0                    | 0.00            | 9            |
| Prudential Ins. Co. of America             | 27,076,346           | 6                | 5                    | 1.34            | 26           |
| Regence Life and Health Ins. Co.           | 11,908,246           | 0                | 0                    | 0.00            | 8            |
| Reliastar Life Ins. Co.                    | 11,965,011           | 2                | 2                    | 1.21            | 22           |
| Riversource Life Ins. Co.                  | 15,935,616           | 0                | 0                    | 0.00            | 4            |
| Standard Ins. Co.                          | 45,517,871           | 9                | 5                    | 0.80            | 16           |
| State Farm Life Ins. Co.                   | 44,518,496           | 7                | 6                    | 0.98            | 20           |
| Thrivent Financial For Lutherans           | 12,916,086           | 1                | 0                    | 0.00            | 7            |
| Transamerica Life Ins. Co.                 | 18,569,305           | 3                | 3                    | 1.17            | 21           |
| United of Omaha Life Ins. Co.              | 11,049,251           | 4                | 3                    | 1.97            | 30           |
| UNUM Life Ins. Co. of America              | 22,715,884           | 1                | 1                    | 0.32            | 10           |
| Western Reserve Life Assurance Co. of Ohio | 27,227,098           | 2                | 2                    | 0.53            | 14           |
| <b>Total for this table</b>                | <b>735,947,447</b>   | <b>100</b>       | <b>75</b>            |                 |              |
| <b>Total for life</b>                      | <b>1,102,554,991</b> | <b>227</b>       | <b>152</b>           |                 |              |

## B.3 EXTRACTS FROM OREGON INSURANCE REPORT: PART 2

### How to use this report

This report includes:

- Summary tables showing the total number of consumer complaints closed by the Insurance Division during the calendar year.
- Summary tables showing the total number of consumer complaints closed by the Insurance Division during the calendar year by line of insurance.
- Individual insurance company complaint tables during the calendar year.

Both the summary and individual company tables break down the reasons for complaints and indicate how they were resolved.

Each table shows the reason for a complaint in the left hand column and the disposition of the complaint (how it was resolved) across the top. Totals are shown in the right-hand column and across the bottom.

The “NMBR” column shows the number of complaints closed by disposition.

The “PCT” column shows the percentage of complaints closed by disposition.

### Sample table

Table 1 shows how the six complaints against Company A were resolved. Table 2 explains how to read Table 1.

Table 1

| Company A                       | DISPOSITION   |     |                       |     |                         |     |              |     | TOTAL |     |
|---------------------------------|---------------|-----|-----------------------|-----|-------------------------|-----|--------------|-----|-------|-----|
|                                 | CLAIM SETTLED |     | COMPANY IN COMPLIANCE |     | COMPANY POSITION UPHELD |     | OTHER RELIEF |     |       |     |
|                                 | NMBR          | PCT | NMBR                  | PCT | NMBR                    | PCT | NMBR         | PCT | NMBR  | PCT |
| REASON                          |               |     |                       |     |                         |     |              |     |       |     |
| DELAYS                          | 2             | 67  |                       |     |                         |     | 1            | 33  | 3     | 100 |
| UNSATISFACTORY SETTLEMENT/OFFER |               |     |                       |     | 1                       | 100 |              |     | 1     | 100 |
| DENIAL OF CLAIM                 |               |     | 1                     | 100 |                         |     |              |     | 1     | 100 |
| PREMIUM NOTICE/BILLING          | 1             | 100 |                       |     |                         |     |              |     | 1     | 100 |
| TOTAL                           | 3             | 50  | 1                     | 17  | 1                       | 17  | 1            | 17  | 6     | 100 |

Table 2

| Reason                          | Disposition                        | NMBR | PCT |
|---------------------------------|------------------------------------|------|-----|
| Delays                          | Claim settled <sup>1</sup>         | 2    | 67  |
|                                 | Other relief <sup>2</sup>          | 1    | 33  |
| Unsatisfactory settlement/offer | Company upheld <sup>3</sup>        | 1    | 100 |
| Denial of claim                 | Company in compliance <sup>4</sup> | 1    | 100 |
| Premium notice/billing          | Claim settled <sup>1</sup>         | 1    | 100 |

<sup>1</sup> The insurance company settled the claim after a complaint was filed.

<sup>2</sup> The consumer received some other form of relief after a complaint was filed.

<sup>3</sup> The insurance company’s settlement/offer was upheld by the Insurance Division.

<sup>4</sup> The Insurance Division found that the company was complying with Oregon insurance laws and rules.

TOTAL COMPLAINTS CLOSED IN OREGON DURING 2008 AGAINST ALL COMPANIES IN EACH LINE, BY COMPLAINT REASON AND DISPOSITION, WITH PERCENTAGES BY DISPOSITION

| PERSONAL AUTO                   | DISPOSITION         |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
|---------------------------------|---------------------|-----|---------------------|-----|---------------------|-----|--------------------------|-----|--------------------|-----|--------|-----|-------------------------------|-----|
|                                 | POLICY NOT IN FORCE |     | POLICY ISSUED/RSTRD |     | ADVISED COMPLAINANT |     | COMPROMISED STLMNT/RSLTN |     | ADDITIONAL PAYMENT |     | REFUND |     | ENTERED ARBITRATION/MEDIATION |     |
|                                 | NMBR                | PCT | NMBR                | PCT | NMBR                | PCT | NMBR                     | PCT | NMBR               | PCT | NMBR   | PCT | NMBR                          | PCT |
| REASON                          |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| PREMIUM & RATING                |                     |     |                     |     | 9                   | 10  | 2                        | 2   | 1                  | 1   | 15     | 16  |                               |     |
| REFUSAL TO INSURE               |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| CANCELLATION                    |                     |     | 3                   | 8   | 4                   | 11  | 2                        | 5   |                    |     | 5      | 13  |                               |     |
| NONRENEWAL                      |                     |     | 1                   | 17  | 1                   | 17  |                          |     |                    |     |        |     |                               |     |
| CREDIT REPORTING                |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| DELAYS                          |                     |     |                     |     | 21                  | 10  | 4                        | 2   | 9                  | 4   |        |     |                               |     |
| UNFAIR DISCRIMINATION           |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| RATE CLASSIFICATION             |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| SURCHARGE                       |                     |     |                     |     | 1                   | 11  |                          |     |                    |     | 2      | 22  |                               |     |
| ENDORSEMENT/RIDER               |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| CREDIT SCORING                  |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| CLUE REPORTS                    |                     |     |                     |     | 2                   | 33  |                          |     |                    |     |        |     |                               |     |
| OTHER: UNDERWRITING             |                     |     |                     |     |                     |     |                          |     |                    |     | 2      | 50  |                               |     |
| AGENT HANDLING                  |                     |     |                     |     | 6                   | 30  |                          |     |                    |     | 1      | 5   |                               |     |
| FIDUCIARY/THEFT                 |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| MISREPRESENTATION               |                     |     |                     |     |                     |     |                          |     |                    |     | 1      | 100 |                               |     |
| POLICY DELIVERY                 |                     |     |                     |     | 1                   | 25  |                          |     |                    |     |        |     |                               |     |
| HIGH PRESSURE TACTICS           |                     |     |                     |     |                     |     |                          |     |                    |     | 1      | 100 |                               |     |
| OTHER MRKNG & SALES             |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| ADVERSE BENEFIT DETERMINATION   |                     |     |                     |     |                     |     |                          |     | 1                  | 50  |        |     |                               |     |
| ADJUSTER HANDLING               |                     |     |                     |     | 10                  | 18  | 1                        | 2   | 4                  | 7   | 2      | 4   |                               |     |
| PROMPT PAY                      |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| UNSATISFACTORY SETTLEMENT/OFFER |                     |     |                     |     | 17                  | 7   | 16                       | 6   | 29                 | 12  |        |     |                               |     |
| PRE-EXISTING CONDITION          |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |
| MEDICAL NECESSITY               |                     |     |                     |     |                     |     |                          |     |                    |     |        |     |                               |     |

(Continued)

SOURCE: RESEARCH AND ANALYSIS SECTION, INFORMATION MANAGEMENT DIVISION, OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

**NUMBER OF COMPLAINTS IN OREGON AGAINST INSURANCE COMPANIES,  
BY COMPLAINT REASON AND DISPOSITION, WITH PERCENTAGES  
BY DISPOSITION, FOR COMPLAINTS CLOSED DURING 2008**

| ACE AMERICAN INSURANCE<br>COMPANY | DISPOSITION |     |                  |     |                     |     | TOTAL |     |
|-----------------------------------|-------------|-----|------------------|-----|---------------------|-----|-------|-----|
|                                   | REFUND      |     | CLAIM<br>SETTLED |     | QUESTION<br>OF FACT |     |       |     |
|                                   | NMBR        | PCT | NMBR             | PCT | NMBR                | PCT | NMBR  | PCT |
| REASON                            |             |     |                  |     |                     |     |       |     |
| DELAYS                            |             |     | 2                | 67  | 1                   | 33  | 3     | 100 |
| COMPARATIVE NEGLIGENCE            |             |     | 1                | 100 |                     |     | 1     | 100 |
| PREMIUM NOTICE BILLING            | 1           | 100 |                  |     |                     |     | 1     | 100 |
| TOTAL                             | 1           | 20  | 3                | 60  | 1                   | 20  | 5     | 100 |

SOURCE: RESEARCH AND ANALYSIS SECTION, INFORMATION MANAGEMENT DIVISION, OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

## B.4 EXTRACT FROM BaFin ANNUAL REPORT

### 3.2 Life insurance

| Reg. no. | Name of insurance undertaking | No. of life insurance policies 2007 | Complaints |
|----------|-------------------------------|-------------------------------------|------------|
| 1001     | AACHENMÜNCHENER LEB.          | 5,444,373                           | 176        |
| 1006     | ALLIANZ LEBEN                 | 10,338,178                          | 374        |
| 1007     | ALTE LEIPZIGER LEBEN          | 998,353                             | 57         |
| 1035     | ARAG LEBEN                    | 361,012                             | 15         |
| 1181     | ASPECTA LEBEN                 | 729,179                             | 157        |
| 1303     | ASSTEL LEBEN                  | 368,137                             | 43         |
| 1020     | AXA LEBEN                     | 2,016,708                           | 130        |
| 1011     | BARMENIA LEBEN                | 246,780                             | 19         |
| 1012     | BASLER LEBEN                  | 180,256                             | 12         |
| 1013     | BAYER. BEAMTEN LEBEN          | 375,201                             | 22         |
| 1015     | BAYERN-VERS.                  | 1,687,650                           | 54         |
| 1132     | CIV LEBEN                     | 1,905,152                           | 54         |
| 1122     | CONCORDIA LEBEN               | 148,423                             | 8          |
| 1021     | CONDOR LEBEN                  | 210,695                             | 9          |
| 1078     | CONTINENTALE LEBEN            | 649,153                             | 28         |
| 1022     | COSMOS LEBEN                  | 1,345,227                           | 51         |
| 1146     | DBV-WINTERTHUR LEBEN          | 2,245,976                           | 100        |
| 1023     | DEBEKA LEBEN                  | 3,220,679                           | 27         |
| 1017     | DELTA LLOYD LEBEN             | 630,088                             | 46         |
| 1136     | DEVK ALLG. LEBEN              | 661,197                             | 22         |
| 1025     | DEVK DT. EISENBAHN LV         | 804,895                             | 8          |
| 1113     | DIALOG LEBEN                  | 234,878                             | 1          |
| 1110     | DIREKTE LEBEN                 | 142,227                             | 2          |
| 1180     | DT. ÄRZTEVERSICHERUNG         | 206,495                             | 15         |
| 1148     | DT. LEBENSVERS.               | 289,092                             | 2          |
| 1028     | DT. RING LEBEN                | 970,669                             | 55         |
| 1107     | EUROPA LEBEN                  | 439,758                             | 4          |
| 1310     | FAMILIENFÜRSORGE LV           | 293,773                             | 10         |
| 1175     | FAMILIENSCHUTZ LEBEN          | 152,821                             | 12         |
| 1162     | FORTIS DEUTSCHLAND            | 44,138                              | 4          |
| 1063     | GENERALI LV (ex.)             | 1,321,140                           | 72         |
| 1108     | GOTHAER LEBEN AG              | 1,251,939                           | 79         |
| 1040     | HAMBURGER LV AG               | n.a.                                | 2          |
| 1184     | HAMB. MANNHEIMER LV           | 6,256,298                           | 211        |
| 1312     | HANNOVERSCHE LV AG            | 809,384                             | 69         |
| 1114     | HANSEMERKUR LEBEN             | 218,942                             | 10         |
| 1192     | HANSEMERKUR24 LV AG           | 1,181                               | 0          |
| 1033     | HDI-GERLING LEBEN             | 2,130,342                           | 256        |
| 1158     | HEIDELBERGER LV               | 479,198                             | 30         |
| 1137     | HELVETIA LEBEN                | 124,430                             | 9          |
| 1055     | HUK-COBURG LEBEN              | 733,486                             | 40         |
| 1047     | IDEAL LEBEN                   | 543,364                             | 14         |
| 1048     | IDUNA VEREINIGTE LV           | 2,240,089                           | 85         |
| 1097     | INTER LEBEN                   | 195,442                             | 9          |
| 1330     | INTER LEBENSVERS. AG          | n.a.                                | 5          |
| 1119     | INTERRISK LEBENSVERS.         | 85,922                              | 4          |
| 1128     | ITZEHOER LEBEN                | 62,721                              | 2          |
| 1045     | KARLSRUHER LV AG              | 128,012                             | 12         |

## B.5 EXTRACT FROM IOS ANNUAL REVIEW 2008

Table 11: Summary of Insurers' Annual Returns 2007<sup>1</sup>

| Insurer                           | Total Policies    | Total Claims     | % Claims to Policies | Number of Disputes | % IDR Disputes to Claims | Number of Referrals to IOS | % IDR Disputes Referred to IOS | In Favour of Consumer | % IOS Referrals in Consumer Favour |
|-----------------------------------|-------------------|------------------|----------------------|--------------------|--------------------------|----------------------------|--------------------------------|-----------------------|------------------------------------|
| IAL (NRMA, SGIC, SGIO)            | 4,060,410         | 427,460          | 10.5%                | 5,454              | 1.3%                     | 234                        | 4.3%                           | 55                    | 23.5%                              |
| AAMI                              | 3,900,234         | 390,744          | 10.0%                | 1,502              | 0.4%                     | 255                        | 17.0%                          | 59                    | 23.1%                              |
| ALLIANZ **                        | 3,704,846         | 256,289          | 6.9%                 | 1,708              | 0.7%                     | 200                        | 11.7%                          | 51                    | 25.5%                              |
| QBE (TRAVEL, WESTERN QBE)         | 2,050,656         | 223,128          | 10.9%                | 734                | 0.3%                     | 110                        | 15.0%                          | 28                    | 25.5%                              |
| GIO                               | 1,839,324         | 206,987          | 11.3%                | 1,380              | 0.7%                     | 224                        | 16.2%                          | 59                    | 26.3%                              |
| AAI                               | 1,679,207         | 156,590          | 9.3%                 | 522                | 0.3%                     | 76                         | 14.6%                          | 28                    | 36.8%                              |
| IMA (RACV)                        | 1,578,361         | 144,345          | 9.1%                 | 2,051              | 1.4%                     | 72                         | 3.5%                           | 19                    | 26.4%                              |
| CGU                               | 1,528,527         | 303,056          | 19.8%                | 541                | 0.2%                     | 98                         | 18.1%                          | 21                    | 21.4%                              |
| SUNCORP                           | 1,499,610         | 204,643          | 13.6%                | 932                | 0.5%                     | 114                        | 12.2%                          | 25                    | 21.9%                              |
| VERO                              | 1,229,933         | 89,078           | 7.2%                 | 636                | 0.7%                     | 100                        | 15.7%                          | 17                    | 17.0%                              |
| RACQI                             | 1,099,130         | 105,858          | 9.6%                 | 269                | 0.3%                     | 77                         | 28.6%                          | 20                    | 26.0%                              |
| WESTPAC                           | 902,613           | 32,697           | 3.6%                 | 136                | 0.4%                     | 24                         | 17.6%                          | 2                     | 8.3%                               |
| COMMONWEALTH                      | 817,400           | 55,131           | 6.7%                 | 536                | 1.0%                     | 87                         | 16.2%                          | 28                    | 32.2%                              |
| RAC                               | 663,141           | 91,674           | 13.8%                | 97                 | 0.1%                     | 9                          | 9.3%                           | 3                     | 33.3%                              |
| WESFARMERS                        | 491,452           | 29,352           | 6.0%                 | 23                 | 0.1%                     | 3                          | 13.0%                          | 2                     | 66.7%                              |
| AMERICAN HOME*                    | 406,575           | 85,024           | 20.9%                | 276                | 0.3%                     | 73                         | 26.4%                          | 19                    | 26.0%                              |
| RAA                               | 394,427           | 32,179           | 8.2%                 | 93                 | 0.3%                     | 22                         | 23.7%                          | 6                     | 27.3%                              |
| ELDERS                            | 353,901           | 38,627           | 10.9%                | 208                | 0.5%                     | 58                         | 27.9%                          | 29                    | 50.0%                              |
| AUTO & GENERAL                    | 347,481           | 32,564           | 9.4%                 | 224                | 0.7%                     | 39                         | 17.4%                          | 8                     | 20.5%                              |
| SWANN INSURANCE                   | 328,273           | 31,334           | 9.5%                 | 171                | 0.5%                     | 15                         | 8.8%                           | 5                     | 33.3%                              |
| COMBINED                          | 269,554           | 24,729           | 9.2%                 | 32                 | 0.1%                     | 11                         | 34.4%                          | 6                     | 54.5%                              |
| HBF                               | 262,071           | 36,576           | 14.0%                | 56                 | 0.2%                     | 7                          | 12.5%                          | 2                     | 28.6%                              |
| CALLIDEN (AUST. UNITY, ARGIS)     | 243,905           | 11,974           | 4.9%                 | 46                 | 0.4%                     | 17                         | 37.0%                          | 6                     | 35.3%                              |
| CUMIS (CUNA Mutual)               | 215,739           | 20,656           | 9.6%                 | 28                 | 0.1%                     | 9                          | 32.1%                          | 5                     | 55.6%                              |
| RACT                              | 210,990           | 21,282           | 10.1%                | 6                  | 0.0%                     | 2                          | 33.3%                          | 2                     | 100.0%                             |
| ING                               | 202,338           | 738              | 0.4%                 | 6                  | 0.8%                     | 1                          | 16.7%                          | 0                     | 0.0%                               |
| ANSVAR                            | 128,919           | 9,863            | 7.7%                 | 3                  | 0.0%                     | 3                          | 100.0%                         | 1                     | 33.3%                              |
| LUMLEY*                           | 100,470           | 17,077           | 17.0%                | 15                 | 0.1%                     | 13                         | 86.7%                          | 4                     | 30.8%                              |
| MUTUAL COMMUNITY                  | 96,006            | 12,790           | 13.3%                | 24                 | 0.2%                     | 6                          | 25.0%                          | 1                     | 16.7%                              |
| LLOYD'S                           | 91,858            | 10,127           | 11.0%                | 67                 | 0.7%                     | 15                         | 22.4%                          | 9                     | 60.0%                              |
| GE (HALLMARK)                     | 90,000            | 3,657            | 4.1%                 | 16                 | 0.4%                     | 1                          | 6.3%                           | 1                     | 100.0%                             |
| DEFENCE                           | 82,993            | 10,814           | 13.0%                | 14                 | 0.1%                     | 2                          | 14.3%                          | 0                     | 0.0%                               |
| TIO                               | 71,348            | 7,478            | 10.5%                | 1                  | 0.0%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| ZURICH*(ASSOC MARINE)             | 51,764            | 20,888           | 40.4%                | 113                | 0.5%                     | 33                         | 29.2%                          | 1                     | 3.0%                               |
| AIOI                              | 48,065            | 3,934            | 8.2%                 | 10                 | 0.3%                     | 1                          | 10.0%                          | 1                     | 100.0%                             |
| ST ANDREW'S                       | 39,768            | 1,087            | 2.7%                 | 11                 | 1.0%                     | 3                          | 27.3%                          | 0                     | 0.0%                               |
| GUILD                             | 34,468            | 4,429            | 12.8%                | 9                  | 0.2%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| MTA                               | 30,150            | 593              | 2.0%                 | 3                  | 0.5%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| VIRGINIA                          | 29,714            | 6,443            | 21.7%                | 9                  | 0.1%                     | 3                          | 33.3%                          | 1                     | 33.3%                              |
| CATHOLIC                          | 26,380            | 1,523            | 5.8%                 | 3                  | 0.2%                     | 1                          | 33.3%                          | 0                     | 0.0%                               |
| FORTRON                           | 23,651            | 2,623            | 11.1%                | 5                  | 0.2%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| CHUBB*                            | 18,700            | 1,048            | 5.6%                 | 1                  | 0.1%                     | 1                          | 100.0%                         | 0                     | 0.0%                               |
| CREDICORP                         | 13,382            | 213              | 1.6%                 | 0                  | 0.0%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| TOKIO*                            | 446               | 29               | 6.5%                 | 1                  | 3.4%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| mitsui-SUMITOMO                   | 292               | 44               | 15.1%                | 1                  | 2.3%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| SOMPO                             | 214               | 19               | 8.9%                 | 0                  | 0.0%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| SUNDERLAND MARINE                 | 203               | 35               | 17.2%                | 0                  | 0.0%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| NIPPONKOA                         | 129               | 10               | 7.8%                 | 0                  | 0.0%                     | 0                          | 0.0%                           | 0                     | 0.0%                               |
| LIONHEART - IN RUNOFF             |                   |                  |                      |                    |                          | 1                          |                                | 1                     | 100.0%                             |
| ACE +                             |                   |                  |                      |                    |                          | 11                         |                                | 1                     | 9.1%                               |
| HOLLARD +                         |                   |                  |                      |                    |                          | 12                         |                                | 5                     | 41.7%                              |
| NTI***                            |                   |                  |                      |                    |                          | 1                          |                                | 0                     | 0.0%                               |
| SPORTSCOVER +                     |                   |                  |                      |                    |                          | 2                          |                                | 2                     | 100.0%                             |
| <b>TOTAL</b>                      | <b>31,259,018</b> | <b>3,167,439</b> | <b>10.1%</b>         | <b>17,973</b>      | <b>0.6%</b>              | <b>2,046</b>               | <b>11.4%</b>                   | <b>533</b>            | <b>26.1%</b>                       |
| <b>Medical Indemnity Insurers</b> |                   |                  |                      |                    |                          |                            |                                |                       |                                    |
| AVANT                             |                   |                  |                      |                    |                          | 2                          |                                | 1                     | 50.0%                              |
| <b>GRAND TOTAL</b>                |                   |                  |                      |                    |                          |                            | <b>2048</b>                    |                       | <b>534</b>                         |

\* High claims incidence is due to product mix which include group policies for travel, group personal accident or motor fleet contracts ie one policy covering many persons or vehicles

\*\* Figures include Club Marine and Mondial Assistance

\*\*\* NTI are unable to provide policy and claims details as their contracts are Trucks and fleets which may contain a directors car or utility but cannot be identified for statistical purposes

+ Not Code members - no statistics provided

++ Statistics not provided

<sup>1</sup> Please note these statistics are for personal lines contracts only



## B.6. FTC ADVERTISING WARNING FOR CONSUMERS

### Deceptive Mortgage Ads: What They Leave Out

(NAPS)—When shopping for a mortgage to buy a home or refinance an existing loan, you may see or hear ads with offers of low rates or payments.

While some of the offers can seem tempting, some are terribly flawed: They don't disclose the true terms of the deal as the law requires.

The Federal Trade Commission, the nation's consumer protection agency, wants you to know the buzzwords that should trigger follow-up questions, as well as information to insist on.

#### What the Ads Say

**A Low "Fixed" Rate:** Ads that tout a "fixed" rate may not tell you how long it will be "fixed." The rate may be fixed for an introductory period only, and that can be as short as 30 days.

**Very Low Rates:** Are the ads talking about a "payment" rate or the interest rate? The interest rate is the rate used to calculate the amount of interest you will owe the lender each month. The payment rate is the rate used to calculate the amount of the payment you are obligated to make each month. Some offers advertise a low payment rate without telling you that it applies only during an introductory period. If the payment rate is less than the interest rate, you won't cover the interest due. This is called "negative amortization." It means that your loan balance is actually increasing and the lender is adding the unpaid interest to the balance you owe.

**Very Low Payment Amounts:** Ads quoting a very low payment amount may be an interest-only (I/O) loan, where you pay only the amount of interest accrued each month. Eventually, you will have to pay off the principal—or you may end up owing a lump sum due at the end of the loan.

**Loan Amount \$300,000—Pay Only \$900 Per Month!** Ads with



#### Beware of ads that promise very low mortgage payments.

"teaser" short-term rates or payments such as these don't often disclose that a rate or payment is for a very short introductory period.

**Important Notice From Your Mortgage Company:** Mailers that have information about your mortgage may not be from your lender at all. Before responding to any offer, review it carefully to make sure you know who you're dealing with.

#### What the Ads Don't Say

To make an informed decision about a mortgage offer, ask the lender:

- What is the Annual Percentage Rate? The APR is the total cost of the credit expressed as a yearly interest rate.
- When and how can my rate and payments change?
- What will my monthly payment be? Can it increase?
- Does the monthly payment include an escrow amount to pay for my property taxes and homeowners insurance?
- What is the term of the loan (for example, 15 years? 30 years??)
- Will I have to pay prepayment penalties to refinance and pay off the loan early?

To learn more, visit [ftc.gov/credit](http://ftc.gov/credit) and click on Mortgages/Real Estate. For free consumer information, visit [ftc.gov](http://ftc.gov) or call, toll free, 1-877-FTC HELP (1-877-382-4357).

#### Did You Know?

To learn about recognizing deceptive mortgage ads, visit [ftc.gov/credit](http://ftc.gov/credit) and click on Mortgages/Real Estate. For free consumer information, visit [ftc.gov](http://ftc.gov) or call, toll free, 1-877-FTC HELP (1-877-382-4357); TTY: (866) 653-4261.

When shopping for a mortgage to buy a home or refinance an existing loan, you may see or hear ads with offers of low rates or payments. While some of the offers can seem tempting, some are terribly flawed: They don't disclose the true terms of the deal as the law requires. /// Deceptive Mortgage Ads: What They Leave Out



## B.7 EXTRACTS FROM OREGON ADVERTISING CLEARANCE

Department of Consumer & Business Services  
**Oregon Insurance Division – 5**  
350 Winter St.  
Salem, Oregon 97301-3883  
Phone 503-947-7983

### TRANSMITTAL AND STANDARDS FOR LIFE AND ANNUITY ADVERTISEMENTS

Date: \_\_\_\_\_ NAIC no.: \_\_\_\_\_  
(or completion date if self-certifying)  
Insurer name: \_\_\_\_\_  
Filing entity (if not insurer): \_\_\_\_\_  
If not the insurer, a letter of authorization must be included in the filing.  
Person completing this form: \_\_\_\_\_  
Title: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State ZIP  
Toll-free/collect phone no.: \_\_\_\_\_  
Fax no.: \_\_\_\_\_  
E-mail address: \_\_\_\_\_  
Requested effective date: \_\_\_\_\_  
(must be after the mailed or completed date)  
Marketing identification: \_\_\_\_\_  
Such as: (121) direct mail, (300) electronic, (122) financial institution, or General market; describe others  
Marketing Name: \_\_\_\_\_

**Department action:**  
 Disapproved as incomplete:  
\_\_\_\_\_  
 Approved;  
limitations: \_\_\_\_\_  
\_\_\_\_\_  
 Withdrawn  
 Disapproved;  
reason: \_\_\_\_\_  
\_\_\_\_\_  
Action Date: \_\_\_\_\_  
Effective date: \_\_\_\_\_  
if different from action date  
Analyst: \_\_\_\_\_  
Filing no: \_\_\_\_\_

Under ORS 742.009, sales materials for insurance products shall not be false, deceptive, or misleading. The Insurance Division uses the provisions on this Transmittal and Standards form to evaluate compliance. The director of the Department of Consumer and Business Services may require advertisements to be filed for approval prior to use. All life and annuity advertisements, regardless of format (brochure, Web site, etc.), are expected to comply.

Advertisements created by producers, soliciting any feature of a particular policy or rider, may be filed or self-certified by the insurer. All of the filing requirements apply when the insurer delegates the responsibility of self-certification to the producer. The producer may not submit the advertisement to the Oregon Insurance Division (OID) directly. The OID only accepts submissions from insurers.

Advertisements that remain active on our records will be archived in our system after three years. This means an insurer may continue to use these approved advertisements as long as they continue to meet the requirements and comply with the advertising mandates. Archiving allows the division to manage records without imposing additional filing requirements on insurers.

These filing requirements **do not** apply to the following:

1. \*Illustrations that accompany the policy at point of sale must be filed with the policy and must be submitted to the division for annual certification. (OAR 836-051-0500 to OAR 836-051-0600). See requirements on our Web site, <http://www.oregoninsurance.org/docs/serff/3602i.pdf>
2. Articles or reprints, general-information brochures, invitations to seminars, and Web sites that do not include information specific to a particular policy.
3. Annual reports, investment advisor experience and backgrounds, quarterly performance reports, or any other non-product-specific factual matters.
4. Prospectuses.
5. Materials that contain generic descriptions of types of insurance, company history, financial reports, and information to recruit producers.

\*\*\*\*\*

**Instructions:**

***Filing for Prior Approval: Complete Section 1 and Section 3***

***Filing for Self-Certification: Complete Section 2 and Section 3***

**Section 1:**

**Filing for Prior Approval method**

*Advertisements required by the Division to be filed for prior approval.*

*Please check the applicable product and/or type of advertising below.*

- Pre-need/Funeral
- Final Expense
- Funeral Expense
- Direct mail or solicitation that is attached to an application (tear or cut off)
- Equity Indexed products. (Any equity indexed life or annuity product filing must include the advertising material at the time of policy submission.)
- Advertisements that illustrate projections, and are developed for advertising purposes. (i.e. key employee, retirement funds, etc.) (\*not to be confused with #1 above)
- Other

This filing must include the advertisement(s), a cover letter containing a filing description, a signed *Certificate of Compliance* form, this *Transmittal and Standards for Life and Annuity Advertisements* form completed and any other relevant material.

If the advertisements in this filing are replacements of previously approved advertisements, include a highlighted copy to identify the changes or differences between the advertisements.

Please see our Web site: [www.oregoninsurance.org/docs/serff/filing\\_requirements.htm](http://www.oregoninsurance.org/docs/serff/filing_requirements.htm)

**Section 2:**

**Self-certification method**

Do not send in this self-certification to the Insurance Division. Complete and retain this form with the advertisement(s). Check that each of the following items has been completed to qualify for self-certification:

- 1. Complete this form for *each* advertisement or group of advertisements developed for the same policy during the same time period.
- 2. Keep a copy of this completed form and the advertisement (s) and make them available to the Oregon Insurance Division for review upon request. Filings may be stored on disk or CD or other method.
- 3. Retain records for market conduct examination for (5) five years or as long used, whichever is longer.
- 4. All standards on this form are marked "Yes" unless *no part* of the statement applies.
- 5. List all of the form numbers, the date certified, the name and title of the person who completed the certification.

Form number(s) and title of documents:

| Form Number | Title of advertisement |
|-------------|------------------------|
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |
|             |                        |

Certified by: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**Continue to section 3**

**Section 3:**

**Complete the following standards for all advertisements required to be filed or self-certified**

Instructions:

- Each statement below must be checked “Yes”. N/A maybe used if the entire statement does not apply to the advertisement.
- If you are self-certifying and you cannot complete this section with all “Yes” answers, except for those that do not apply, the advertisement needs to be filed for prior approval.
- Applicable items marked “N/A” may result in immediate disapproval.
- If filing for prior approval, you may attach an explanation if you want additional consideration when your advertisement may not comply with all of the statement.

**Part 1: Identification**

Yes  N/A

1. The advertisements soliciting any feature of a particular policy or rider includes the form number of the policy or rider being solicited. Please provide the information below:

| Form Number<br>(if applicable, enter state specific variation) | State Filing Number | Title of approved form | Location of form # on the advertisement |
|--|---------------------|------------------------|---|
|  |                     |                        |   |
|  |                     |                        |   |
|  |                     |                        |   |

Yes  N/A

2. The advertisement has a unique identifying form number in the lower left corner on the front or back page. If the company desires, the form number may be assigned to each page on the lower left corner.

Yes  N/A

3. Each advertisement clearly identifies the type of insurance and the product name.

Yes  N/A

a) The marketing material does not identify the policy as a "plan" or "program" implying that it is something other than a policy. "Plan" or "program" may be used only for a package of information that includes document(s) other than the insurance policy. "Plan" may be used to identify several payment or benefit plans that provide options for the way the policy is issued.

Yes  N/A

b) A name used in marketing may not sound like or give the impression of being an organization, company or government office.

**Part 2: Insurer Information**

- Yes N/A  
  4. The insurer is prominently stated and any other entity identified must hold an insurance license for the line of insurance solicited and clearly identify the function performed (e.g., TPA, investment advisor).
- Yes N/A  
  5. A trade name, service mark, group company name, subsidiary name, agency/broker/producer name, or investment management name does not create the impression that a company other than the insurer has any responsibility for the financial obligation under the policy. The name of any person or business that is not insurance-licensed may not appear in solicitation materials.
- Yes N/A  
  6. Reputation or position of a parent or a subsidiary is not used in conjunction with, or instead of, the reputation or position of the issuing company.
- Yes N/A  
  7. Any reference to ranking by a rating organization includes all of the following:  
a) The name of the rating organization.  
b) The type of rating (e.g. financial strength, claims-paying ability, qualified solvency, etc.).  
c) The actual rating.  
d) The numerical ranking for the rating. If the rating is not the highest rating from the organization, the rating must be stated in comparison to the highest rating. (Example: An A+ rating from AM Best is its second-highest rating.)  
e) The rating is the most current, as of the date when completing this form.
- Yes N/A  
  8. Any inclusion of a title for a consultant complies with ORS 744.605. Producers may be referred to as customer representatives but may not describe themselves as consultants unless they are licensed as such.

**Part 3: Marketing Practices**

- Yes N/A  
  9. All testimonials are current as of the date when completing this form and genuine from those who have purchased the product or have had first-hand experience with the product. Providers of testimonials may not be employed by or serve in an official capacity with the insurer or a related entity.
- Yes N/A  
  10. The advertisement does not unfairly, incompletely or directly compare policy benefits or provisions with products of other insurers. Comparisons of investment opportunities may be generic illustrating what is best suited for certain goals but does not try to show a more favorable return.
- Yes N/A  
  11. An offering for a specific time period must include a factual advantage, e.g., life insurance rates will increase on a birthday.
- Yes N/A  
  12. If the advertising material includes a promotional offer, the promotional offer is available to all who request information about the solicited policy. ORS 746.045
- Yes N/A  
  13. Advertising materials or applications used with advertisements do not have a pre-designated beneficiary or irrevocable beneficiary that limits the election of the policyholder.

## **B.8 AMF/ ACP JOINT 'OBSERVATORY'**

**1/ ENHANCED RESOURCES: THE AMF INTRODUCES A PLAN TO RAISE ITS HEADCOUNT BY JUST UNDER 15% (AROUND 50 NEW PEOPLE) TO MEET NEW CHALLENGES**

**Focus areas:**

• **Enhance investment protection and bolster the confidence of individual investors and shareholders (16 positions)**

- **New positions are to be assigned to** the newly created Investor Relations Division. The Division will be a gateway to the AMF for retail investors. Once new and existing units are combined, the division will have around 20 staffmembers in three areas: 1/ mediation, 2/ financial literacy and education, 3/ management, support functions and consultations.

- **A Joint Saving and Investment Product Observatory** is to be set up within the Investor Relations Division in partnership with the new prudential authority. By centralising research and analyses conducted within the AMF and externally, the observatory will monitor marketing of financial products to non-professional investors, communication/advertising activities by distributors of financial products, and household financial investment trends.

## **B.9 EXTRACTS FROM FCAC JOINT RESEARCH**

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POR 466-07  
Contract # 5R000-070106/001/CY  
Award Date: March 20, 2008

### **Executive Summary**

## **Qualitative Testing of Proposed MasterCard Plain Language Application Form**

*Prepared for*  
**The Financial Consumer Agency of Canada**

**May 2008**

*Ce sommaire des résultats est également disponible en français*

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### **LES ÉTUDES DE MARCHÉ CRÉATEC +**

206 avenue des Pins East - Montreal (Québec) H2W 1P1  
Tel.: 514-844-1127 - Fax: 514-288-3194  
Email: [info@createc.ca](mailto:info@createc.ca) / Web Site: [www.createc.ca](http://www.createc.ca)

## EXECUTIVE SUMMARY

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### 1. BACKGROUND CONTEXT

- The Financial Consumer Agency of Canada (FCAC) and MasterCard Worldwide (MasterCard) have developed plain language documents in an effort to improve credit card disclosure for consumers ("Plain Language Project"). FCAC and MasterCard commissioned this study to help determine how well these proposed documents are understood by consumers with average literacy skills, i.e., who are at level 3 of the 5-level International Adult Literacy and Skills Survey (IALSS) scale<sup>1</sup>.

### 2. PURPOSE AND METHODOLOGY

- The purpose of the study was to get direct feedback from consumers with an average level of financial literacy on the proposed plain language credit card application form, to help further develop the final document.
- Overall, the document was to be assessed on four key criteria:
  - Relevance: was the information was considered useful to the reader?
  - Perceived ease of comprehension: did the document look easy to understand?
  - Motivation to read the document: did the document encourage readership and inspire confidence?
  - Comprehension: did participants feel they understood the document on the basis of language (literacy) or numbers (numeracy)?
- From April 22-30, 2008, eight two-hour focus groups were conducted in four large urban centres across Canada, with two sessions each in Montreal (French), and in Toronto, Vancouver and Halifax (English). The 52 participants were randomly recruited by Créatec on the basis of: (1) household income under \$60K, (2) high school education, with perhaps some college but no university (both of which correlate well with an average financial literacy level), (3) a bank account and a credit card (or store card), and (4) the usual work exclusions.

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<sup>1</sup> *The IALSS, released November 30, 2005, tested Canadians' literacy skills on a 1-5 point spectrum (1=least skilled, 5=highly skilled), with level 3 as the minimum skill level necessary to meet the today's challenges. The survey showed that more than half of Canadians (55%) lack the minimum numeracy skills to be able to function well in today's society, such as putting numbers in order, writing numbers as words and figures, adding, subtracting, multiplying and dividing whole numbers, checking numbers and solving simple problems.*



**B.10 EXTRACT FROM SEC FOIA REPORT**

**IV. EXEMPTION 3 STATUTES**

| A. For Initial Requests |  |  |   |
|-------------------------|--|--|---|
| Statute                 | Type of Information Withheld   | Case Citation  | Total Number of Times Relied upon by Agency |
| 41 U.S.C. § 253b(m)(1)  | Proprietary or source selecting information about ongoing Federal Procurements | <i>Hornbostel v. US Dept of the Interior</i> , 305 F. Supp. 2 <sup>nd</sup> 21,30 (D.D.C.2003) | 3   |
| B. For Appeals          |  |  |   |
| Statute                 | Type of Information Withheld   | Case Citation  | Total Number of Times Relied upon by Agency |
| 15 U.S.C. § 80a-30(c)   | Investment Company Examination   | N  | 1   |
| 15 U.S.C. § 80b-10(b)   | Investment Advisors examinations or investigations                             | N  | 1   |

**V. FOIA REQUESTS**

| A. Received, Processed and Pending FOIA Requests |   |  |   |   |
|--|---|--|---|---|
|  | Number of Requests Pending as of Start of Fiscal Year | Number of Requests Received in Fiscal Year | Number of Requests Processed in Fiscal Year | Number of Requests Pending as of End of Fiscal Year |
| HQ   | 899   | 7878                                       | 8285  | 492   |

| B.(1) Disposition of FOIA Requests – All Processed Requests |                       |   |  |  |       |
|---|-----------------------|---|--|--|-------|
|   | Number of Full Grants | Number of Partial Grants/ Partial Denials | Number of Full Denials Based on Exemptions | Number of Full Denials Based on Reasons Other than Exemptions Other - * Explain in chart below | TOTAL |
| HQ  | 1278                  | 374                                       | 544  | 6089   | 8285  |

| B.(2) Disposition of FOIA Requests – "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions" |  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
|--|--|-----------|-----|--------------------|-----|----------------------|----|--------------------------------------|------|---------------------------|-----|---------------------|-----|--------------|-------------|
| HQ   | <table border="0"> <tr> <td>Cancelled</td> <td>257</td> </tr> <tr> <td>Fee-related issues</td> <td>105</td> </tr> <tr> <td>Not an agency record</td> <td>26</td> </tr> <tr> <td>No information found (appeal rights)</td> <td>5307</td> </tr> <tr> <td>Records lost or destroyed</td> <td>118</td> </tr> <tr> <td>Referred to the web</td> <td>276</td> </tr> <tr> <td><b>Total</b></td> <td><b>6089</b></td> </tr> </table> | Cancelled | 257 | Fee-related issues | 105 | Not an agency record | 26 | No information found (appeal rights) | 5307 | Records lost or destroyed | 118 | Referred to the web | 276 | <b>Total</b> | <b>6089</b> |
| Cancelled  | 257  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| Fee-related issues   | 105  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| Not an agency record   | 26   |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| No information found (appeal rights)   | 5307   |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| Records lost or destroyed  | 118  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| Referred to the web  | 276  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |
| <b>Total</b>   | <b>6089</b>  |           |     |                    |     |                      |    |                                      |      |                           |     |                     |     |              |             |

| B.(3) Disposition of FOIA Requests – Number of Times Exemptions Applied |        |        |        |        |        |        |           |           |           |           |           |           |        |        |
|---|--------|--------|--------|--------|--------|--------|-----------|-----------|-----------|-----------|-----------|-----------|--------|--------|
|   | (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7)(A) | (b)(7)(B) | (b)(7)(C) | (b)(7)(D) | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
| HQ  | 0      | 22     | 3      | 174    | 179    | 111    | 487       | 2         | 189       | 6         | 1         | 0         | 117    | 0      |

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VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

| A. Received, Processed and Pending Administrative Appeals                                  |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|--|--|---|------------------|-------------------|-------------------|---|------------------|------------------|-------------------|--|-----------|-----------|--------|--------|
|  | Number of Appeals Pending as of Start of Fiscal Year   | Number of Appeals Received in Fiscal Year                         |                  |                   |                   | Number of Appeals Processed in Fiscal Year    |                  |                  |                   | Number of Appeals Pending as of End of Fiscal Year |           |           |        |        |
| HQ   | 45   | 247   |                  |                   |                   | 267   |                  |                  |                   | 25   |           |           |        |        |
| B. Disposition of Administrative Appeals – All Processed Appeals                           |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|  | Number Affirmed on Appeal  | Number Partially Affirmed & Partially Reversed/Remanded on Appeal |                  |                   |                   | Number Completely Reversed/Remanded on Appeal |                  |                  |                   | Number of Appeals Closed for Other* Reasons        |           | TOTAL     |        |        |
| HQ   | 156  | 13  |                  |                   |                   | 83  |                  |                  |                   | 15   |           | 267       |        |        |
| C.(1) Reasons for Denial on Appeal – Number of Times Exemptions Applied                    |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|  | (b)(1)   | (b)(2)  | (b)(3)           | (b)(4)            | (b)(5)            | (b)(6)  | (b)(7)(A)        | (b)(7)(B)        | (b)(7)(C)         | (b)(7)(D)  | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
| HQ   | 0  | 0   | 1                | 1                 | 4                 | 6   | 155              | 0                | 2                 | 0  | 0         | 0         | 1      | 0      |
| C.(2) Reasons for Denial on Appeal – Reasons Other than Exemptions -Explain in chart below |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
| HQ   | 15   |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
| C.(3) Reasons for Denial on Appeal – "Other" Reasons                                       |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|  | Description of "Other" Reasons for Denials from Chart C (2) & Number of Times Those Reasons Were Relied upon               |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
| HQ   | Moot 4<br>No information found (appeal rights) 8<br>Withdrawn 1<br>Cancelled 1<br>Referred to Another Office 1<br>Total 15 |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
| C.(4) Response Time for Administrative Appeals   |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|  | Median   | Average   | Lowest           | Highest           |                   |   |                  |                  |                   |  |           |           |        |        |
| HQ   | 12   | 33  | 1                | 315               |                   |   |                  |                  |                   |  |           |           |        |        |
| C.(5) Ten Oldest Pending Administrative Appeals  |  |   |                  |                   |                   |   |                  |                  |                   |  |           |           |        |        |
|  | 10th Oldest and Number of Days Pending   | 9th   | 8th              | 7th               | 6th               | 5th   | 4th              | 3rd              | 2nd               | Oldest Appeal and Number of Days Pending           |           |           |        |        |
| HQ   | 5/28/2009<br>127   | 5/27/2009<br>128  | 5/04/2009<br>144 | 12/23/2008<br>234 | 10/30/2008<br>270 | 10/06/2008<br>287                             | 7/01/2008<br>354 | 5/22/2008<br>381 | 11/21/2007<br>507 | 03/28/2005<br>1174                                 |           |           |        |        |

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VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

| A. Processed Requests – Response Time for All Processed Perfected Requests<br>(By median, average, lowest and highest number of days)                    |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|--|----------------|-----------------------|------------------------|----------------|-----------------------|------------------------|----------------------|-----------------------|------------------------|--------------|--------------|--------------|-----------|-------|
|  | SIMPLE         |                       |                        |                | COMPLEX               |                        |                      |                       | EXPEDITED PROCESSING   |              |              |              |           |       |
|  | Median         | Average               | Lowest                 | Highest        | Median                | Average                | Lowest               | Highest               | Median                 | Average      | Lowest       | Highest      |           |       |
| HQ   | 6              | 27                    | 1                      | 769            | 445                   | 424                    | 1                    | 941                   | 31                     | 44           | 4            | 132          |           |       |
| B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted<br>(By median, average, lowest and highest number of days) |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|  | SIMPLE         |                       |                        |                | COMPLEX               |                        |                      |                       | EXPEDITED PROCESSING   |              |              |              |           |       |
|  | Median         | Average               | Lowest                 | Highest        | Median                | Average                | Lowest               | Highest               | Median                 | Average      | Lowest       | Highest      |           |       |
| HQ   | 39             | 68                    | 1                      | 769            | 914                   | 626                    | 24                   | 941                   | 37                     | 53           | 6            | 132          |           |       |
| C. Processed Requests – Response Time in Day Increments  |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
| Simple Requests  |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|  | 1-20 Days      | 21-40 Days            | 41-60 Days             | 61-80 Days     | 81-100 Days           | 101-120 Days           | 121-140 Days         | 141-160 Days          | 161-180 Days           | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
| HQ   | 6151           | 603                   | 395                    | 308            | 152                   | 117                    | 90                   | 68                    | 46                     | 59           | 245          | 18           | 5         | 8257  |
| Complex Requests   |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|  | 1-20 Days      | 21-40 Days            | 41-60 Days             | 61-80 Days     | 81-100 Days           | 101-120 Days           | 121-140 Days         | 141-160 Days          | 161-180 Days           | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
| HQ   | 3              | 1                     | 1                      | 0              | 0                     | 0                      | 1                    | 0                     | 0                      | 0            | 0            | 2            | 10        | 18    |
| Requests Granted Expedited Processing  |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|  | 1-20 Days      | 21-40 Days            | 41-60 Days             | 61-80 Days     | 81-100 Days           | 101-120 Days           | 121-140 Days         | 141-160 Days          | 161-180 Days           | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
| HQ   | 4              | 2                     | 1                      | 1              | 1                     | 1                      | 0                    | 0                     | 0                      | 0            | 0            | 0            | 0         | 10    |
| D. Pending Requests – All Pending Perfected Requests   |                |                       |                        |                |                       |                        |                      |                       |                        |              |              |              |           |       |
|  | SIMPLE         |                       |                        | COMPLEX        |                       |                        | EXPEDITED PROCESSING |                       |                        |              |              |              |           |       |
|  | Number Pending | Median Number of Days | Average Number of Days | Number Pending | Median Number of Days | Average Number of Days | Number Pending       | Median Number of Days | Average Number of Days |              |              |              |           |       |
| HQ   | 470            | 12                    | 31                     | 22             | 135                   | 201                    | NA                   | NA                    | NA                     |              |              |              |           |       |

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| E. Pending Requests – Ten Oldest Pending Perfected Requests |  |                   |                   |                   |                   |                   |                   |                   |                   |   |
|---|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---|
|   | 10th Oldest Request and Number of Days Pending | 9th               | 8th               | 7th               | 6th               | 5th               | 4th               | 3rd               | 2nd               | Oldest Request and Number of Days Pending |
| HQ  | 08/20/2008<br>330                              | 08/09/2008<br>331 | 06/05/2008<br>383 | 03/07/2008<br>446 | 02/04/2008<br>469 | 01/25/2008<br>475 | 07/20/2007<br>603 | 01/03/2007<br>741 | 07/12/2006<br>860 | 06/01/2006<br>888                         |

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

| A. Requests for Expedited Processing |                |               |                                     |                                      |   |
|--------------------------------------|----------------|---------------|-------------------------------------|--------------------------------------|---|
|                                      | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate | Number Adjudicated Within Ten Calendar Days |
| HQ                                   | 10             | 63            | 1                                   | 7                                    | 65  |
| B. Requests for Fee Waiver           |                |               |                                     |                                      |   |
|                                      | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |   |
| HQ                                   | 45             | 7             |                                     | 1                                    | 3   |

IX. FOIA PERSONNEL AND COSTS

| PERSONNEL                            |   |  | COSTS            |                          | TOTAL COSTS |
|--------------------------------------|---|--|------------------|--------------------------|-------------|
| Number of "Full-Time FOIA Employees" | Number of "Equivalent Full-Time FOIA employees" | Total Number of "Full-Time FOIA Staff" | Processing Costs | Litigation Related Costs |             |
| 26.25                                | 4   | 30.25                                  | \$3,053,466      | \$369,425                | \$3,422,911 |

X. FEES COLLECTED FOR PROCESSING REQUESTS

|        | Total Amount of Fees Collected | Percentage of Total Costs |
|--------|--------------------------------|---------------------------|
| TOTALS | \$54,540                       | 1.78%                     |

XI. FOIA Regulations (Including Fee Schedule)

|   |
|---|
| FOIA Regulations: 17 CFR 200.80; 17 CFR 200.83; Fee Regulation: 17 CFR 200.80(e) and Schedule: <a href="http://www.sec.gov/foia/feescha.htm">www.sec.gov/foia/feescha.htm</a> |
|---|

Transparency as a regulatory tool

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

| Backlogs of FOIA Requests and Administrative Appeals   |     |     |  |     |                              |  |     |     |   |  |  |
|--|-----|-----|--|-----|------------------------------|--|-----|-----|---|--|--|
| Number of Backlogged Requests as of End of Fiscal Year   |     |     |  |     |                              | Number of Backlogged Appeals as of End of Fiscal Year  |     |     |   |  |  |
| HQ   | 196 |     |  |     |                              |  | 21  |     |   |  |  |
| B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations   |     |     |  |     |                              |  |     |     |   |  |  |
| Number of Consultations Received from Other Agencies that were Pending at Your Agency as of <u>Start</u> of the FY                       |     |     | Number of Consultations Received from Other Agencies During the FY |     |                              | Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the FY |     |     | Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the FY |  |  |
| HQ   | 0   |     |  | 0   |                              |  | 0   |     |   | 0  |  |
| C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency                     |     |     |  |     |                              |  |     |     |   |  |  |
| 10th Oldest Consultation and Number of Days Pending  |     | 9th | 8th  | 7th | 6th                          | 5th  | 4th | 3rd | 2nd   | Oldest Consultation and Number of Days Pending |  |
| NA   |     | NA  | NA   | NA  | NA                           | NA   | NA  | NA  | NA  | NA   |  |
| D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged              |     |     |  |     |                              |  |     |     |   |  |  |
| NUMBER OF REQUESTS RECEIVED  |     |     |  |     | NUMBER OF REQUESTS PROCESSED |  |     |     |   |  |  |
| Number Received During Fiscal Year from Last Year's Annual Report  |     |     | Number Received During Fiscal Year from Current Annual Report      |     |                              | Number Processed During Fiscal Year from Last Year's Annual Report   |     |     | Number Processed During Fiscal Year from Current Annual Report  |  |  |
| 9586   |     |     | 7878   |     |                              | 15596  |     |     | 8285  |  |  |
| Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report   |     |     |  |     |                              | Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report                        |     |     |   |  |  |
| 770 <sup>1</sup>   |     |     |  |     |                              | 196  |     |     |   |  |  |
| E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged |     |     |  |     |                              |  |     |     |   |  |  |
| NUMBER OF APPEALS RECEIVED   |     |     |  |     | NUMBER OF APPEALS PROCESSED  |  |     |     |   |  |  |
| Number Received During Fiscal Year from Last Year's Annual Report  |     |     | Number Received During Fiscal Year from Current Annual Report      |     |                              | Number Processed During Fiscal Year from Last Year's Annual Report   |     |     | Number Processed During Fiscal Year from Current Annual Report  |  |  |
| 196  |     |     | 247  |     |                              | 187  |     |     | 267   |  |  |
| Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report  |     |     |  |     |                              | Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report                         |     |     |   |  |  |
| 40 <sup>2</sup>  |     |     |  |     |                              | 21   |     |     |   |  |  |

<sup>1</sup> The FOIA backlog number reported in FY 08 was erroneously reported as 899. The number of pending requests was 899; the number of backlogged requests (beyond the statutory time frame for response) was 770.

<sup>2</sup> The Appeal backlog number reported in FY 08 was erroneously reported as 45. The number of pending appeals was 45; the number of backlogged appeals was 40.

## **B.11 NCUA BOARD INFORMATION**

### Board Action Bulletins

#### A Summary of Actions Taken at NCUA Board Meetings

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##### [Open Board Meeting 02/18/2010](#)

1. Board Briefing. Interim Final Rule – Section 701.34 of NCUA's Rules and Regulations, Secondary Capital Accounts for Low-Income Credit Unions.
2. Insurance Fund Report.

##### [Closed Board Meeting 02/18/2010](#)

##### [Open Board Meeting 01/29/2010](#)

1. Withdrawal of Final Rule – Part 706 of NCUA's Rules and Regulations, Unfair or Deceptive Acts or Practices.
2. Insurance Fund Report.

##### [Closed Board Meeting 01/29/2010](#)

# Board Action Bulletin

*Prepared by the Office of Public & Congressional Affairs*

**NCUA BOARD MEETING RESULTS FOR JANUARY 29, 2010**

**National Credit Union Share Insurance Fund report**

NCUA's Chief Financial Officer reported \$78.4 million was added to NCUSIF reserves in December.

The Fund's reserve balance totaled \$758.7 million for natural person credit unions at year-end 2009.

NCUSIF reserves totaled \$278.3 million at year-end 2008.

The Temporary Corporate Credit Union Stabilization Fund (TCCUSF) reserve balance was \$5.33 billion December 31, 2009.

Year 2009 ended with an NCUSIF equity ratio of 1.24 percent, somewhat lower than projected, based on higher than expected share growth in the nation's federally insured credit unions and a higher than expected addition to loan loss reserves near year-end.

NCUSIF 2009 revenue and expense includes investment income of \$188.8 million, premium income of \$727.5 million, operating expense of \$133.3 million, and insurance loss expense of \$615.1 million.

Through December 31, 2009, NCUSIF net income was \$191.2 million.

Twenty-eight federally insured credit unions failed during 2009 with charges to reserves of \$124.4 million -- 16 involuntary liquidations (10 became purchase and assumptions) and 12 assisted mergers.

With a net increase of 80 institutions during 2009, there were 351 problem code credit unions at year-end 2009, with shares of \$41.6 billion representing 5.82 percent of total insured shares.

In comparison, 271 problem code credit unions held shares of \$16.3 billion representing 2.70 of total shares at year-end 2008.

Posing additional concern to NCUA, currently there are 1,668 code 3 credit unions, an increase of 134 from year-end 2008. These institutions represent \$98.6 billion, or 13.67 percent of total insured shares. Currently, nearly 20 percent of insured shares are held in troubled or stressed credit unions.

Chairman Debbie Matz emphasized that NCUA is diligently working to resolve the problems of code 4 and 5 credit unions and closely tracking code 3 credit unions. Striving to sustain and return these institutions to safe operating levels, supervision is being stepped-up to stem the tide of increased problems. NCUA examiners will be onsite to assist credit unions with signs of stress.

### **Redundant credit card rule amended**

The NCUA Board withdrew the portion of the Unfair or Deceptive Acts or Practices (UDAP) rule, Part 706, created to prohibit unfair and deceptive acts and practices related to consumer credit cards to prevent unnecessary confusion for credit union regulatory compliance.

Set to become effective in July 2010, the UDAP rule duplicates, overlaps, and in some provisions conflicts with the more recent Credit CARD Act of 2009 and new Regulation Z provisions, which become effective February 22, 2010.

Essentially, the Credit CARD Act of 2009 and new Regulation Z provisions limit and place requirements on the same credit card practices that were the focus of the UDAP Rule, including: limiting the ability of credit card issuers to raise interest rates, limiting fees on subprime credit cards, providing for fair allocation of payments and limiting late fees.

Under the Truth in Lending Act and Regulation Z, NCUA has enforcement authority for federal credit unions, and the Federal Trade Commission has authority for state-chartered credit unions.

Complying with an Office of Federal Register request, the withdrawal is effective July 1, 2010, the original effective date of the UDAP rule.

***Board votes are unanimous unless otherwise indicated.***

***NCUA rule changes are posted online at [www.ncua.gov](http://www.ncua.gov) under Resources/Regulations, Legal Opinions and Laws.***



## DRAFT BOARD ACTIONS TO BE CONSIDERED AT NCUA BOARD MEETINGS

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***These items will be posted at 9:00 AM on the day of the board meeting and remain on this page for 30 days.***

### **NATIONAL CREDIT UNION ADMINISTRATION**

7535-01

#### **SUNSHINE ACT; NOTICE OF AGENCY MEETING**

**TIME AND DATE:** 10:00 a.m., Thursday, February 18, 2010

**PLACE:** Board Room, 7th Floor, Room 7047

1775 Duke Street

Alexandria, VA 22314-3428

**STATUS:** Open

#### **MATTERS TO BE CONSIDERED:**

1. Board Briefing. Interim Final Rule – Section 701.34 of NCUA's Rules and Regulations, Secondary Capital Accounts for Low-Income Credit Unions. [Item 1a](#); [Item 1b](#)
2. Insurance Fund Report. [Item 2a](#); [Item 2b](#)

**RECESS:** 11:00 a.m.

**TIME AND DATE:** 11:15 a.m., Thursday, February 18, 2010

**PLACE:** Board Room, 7th Floor, Room 7047

1775 Duke Street

Alexandria, VA 22314-3428

**STATUS:** Closed

#### **MATTERS TO BE CONSIDERED:**

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).

**BOARD ACTION MEMORANDUM**

**TO:** NCUA Board **DATE:** February 12, 2010

**FROM:** Office of General Counsel **SUBJ:** Presentation regarding Interim Final Rule, Part 701 Secondary Capital

**ACTION REQUESTED:** On February 9, 2010, the Board passed by notation vote an interim final rule that amends NCUA's regulation on redemption of secondary capital ("SC") by low-income designated credit unions ("LICUs"). Although no further action is required at this time, an NCUA staff member will make an informational presentation on the changes.

**DATE ACTION REQUESTED:** N/A.

**OTHER OFFICES CONSULTED:** Office of Examination and Insurance, Office of Small Credit Union Initiatives, and all Regional Directors.

**VIEWS OF OTHER OFFICES CONSULTED:** Concur.

**BUDGET IMPACT, IF ANY:** None.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes.

**RESPONSIBLE STAFF MEMBERS:** Kevin Tuininga, Trial Attorney, Office of General Counsel.

**SUMMARY:** The interim final rule amends NCUA's regulation on redemption of SC to permit redemption of all or part of government-funded SC along with its matching SC at any time after it has been on deposit for two years, subject to the approval of the appropriate Regional Director. The effect of the amendment is to allow LICUs to redeem SC accepted under the Treasury Department's Community Development Capital Program ("CDC Program") before interest rates on the CDC Program SC escalate to nine percent over the last five years to maturity. In compliance with the CDC Program, the amendment also changes the loss distribution procedures applicable to secondary capital by making CDC Program SC senior to any required matching SC. The interim final rule is effective immediately on publication in the Federal Register and NCUA is accepting comments on the rule for 30 days.

**RECOMMENDED ACTION:** N/A.

**ATTACHMENT:** Interim final rule.

## B.12 SEC OPEN MEETINGS

### Commission Open Meetings

The Commission conducts open meetings under the provisions of the Government in the Sunshine Act. These meetings are scheduled as needed to consider various regulatory and administrative items. The meeting dates and topics are announced ahead of time in the [SEC News Digest](#). Please remember that the agenda for any meeting may change and may not be final until the day of the open meeting. The final agenda of the meeting will be posted to this page when it becomes available.

### Webcast Links and Software

Live links will be added approximately 5-10 minutes prior to the start of the webcast; refresh your browser if you don't see the links.

Viewing live or archive webcasts requires free Windows Media Player or RealPlayer software, which can be downloaded from the following links:

- [Download Windows Media Player](#) (select Downloads)
- [Download RealPlayer](#)

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### Open Meeting Archives

#### 2010 Meetings

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##### **Wednesday, February 24, 2010**

- [Sunshine Act Notice](#)
- [Agenda](#)
- [Webcast Archives](#)

##### **CANCELLED: Monday, February 8, 2010**

*(Oral Argument)*

- [Sunshine Act Notice](#)
- [Agenda](#)

##### **Wednesday, January 27, 2010**

- [Sunshine Act Notice](#)
- [Agenda](#)
- [Webcast Archives](#)

##### **Wednesday, January 13, 2010**

- [Sunshine Act Notice](#)
- [Agenda](#)
- [Webcast Archives](#)

## B.13 FI MINUTES

### PROTOKOLL



2010:1

Protokoll vid sammanträde med Finansinspektionens styrelse  
hos Finansinspektionen, Brunnsgatan 3, Stockholm  
fredagen den 29 januari 2010.

Närvarande:

#### Ledamöter

*Bengt Westerberg, ordförande*  
*Kathrin Flossing*  
*Anna-Karin Celsing (från 3 b §)*  
*Birgitta Johansson Hedberg*  
*Lennart Nilsson*  
*Lars Nyberg (till och med 12 §)*  
*Gustaf Sjöberg*  
*Martin Andersson, generaldirektör*

#### Personalrepresentanter

*Magnus Bergman (4-18 §§)*

#### Finansinspektionen

*Torkel Agner (8 §)*  
*Patrick Bailey (4 §)*  
*Charlotta Carlberg (1-3 c och 12-14 §§)*  
*Uldis Cerps (11 §)*  
*Lars Frisell (3-11 §§)*  
*Per Gustafsson (11 §)*  
*Jonatan Holst (1 - 11 §§)*  
*Hanna Lindström (5 §)*  
*Christina Ohlén (14 och 15 §§)*  
*Sofia Sjöqvist (4 §)*  
*Helena Svedin (6 och 7 §§)*  
*Anna Söderström (6 och 7 §§)*  
*Johan Terfelt (14 och 15 §§)*  
*Lennart Torstensson (12 §)*

#### Protokollförare

*Per Håkansson*

- 1 § Ordföranden förklarade sammanträdet öppnat. Det noterades att ärendena skulle behandlas i den ordning som framgår av protokollet.
- 2 § Ordföranden anmälde protokoll 2009:12. Styrelsen beslutade lägga protokollet till handlingarna.
- 3 § Generaldirektören informerade om aktuella tillsynsfrågor enligt *bilaga 1*.
- 4 § Internrevisionschefen Patrick Bailey redogjorde tillsammans med Sofia Sjöqvist för sin syn på internrevisionens uppdrag och inriktning. Han angav att han ämnade lägga fram förslag till internrevisionspolicy för styrelsen i februari och en internrevisionsplan i mars.
- 5 § Hanna Lindström föredrog förslag till Finansinspektionens föreskrifter om kvartalsstatistik för vissa värdepappersbolag.
- Styrelsen beslutade i enlighet med *bilaga 2*.
- Denna paragraf förklarades omedelbart justerad.
- 6 § Anna Söderström redogjorde för arbetet med en översyn av Finansinspektionens styrdokument och för den struktur som innebär att styrelsen ska besluta om övergripande policyer. Styrelsen kommer efterhand föreslås fatta beslut om arbetsgivarpolicy, arbetsmiljöpolicy, kommunikationspolicy, säkerhetspolicy och miljöpolicy. De övergripande policyerna kommer att specificeras och kompletteras genom regler och riktlinjer som beslutas av generaldirektören eller efter dennes delegation.
- 7 § Helen Svedin föredrog förslag till miljöpolicy.
- Styrelsen beslutade, med upphävande av den miljöpolicy som beslutats den 13 februari 2009, i enlighet med *bilaga 3*.
- Denna paragraf justerades omedelbart.
- 8 § Torgel Agner redogjorde för resultatet av FI:s ledningsgrupps övergripande riskanalys och för hur arbetet bakom riskanalysen bedrivits. Han anmälde att det fanns fyra risker som enligt ledningsgruppens mening måste hanteras och för de åtgärder som vidtagits och planeras (risken för att FI fattar felaktiga beslut i den operativa tillsynen, risken för att FI inte fattar beslut i den operativa tillsynen, risken för att känsligt material rörande operativ tillsyn läcker ut och risken för att känsligt material rörande tillståndsgivning läcker ut).
- 9 § Per Håkansson informerade om att Finansinspektionen i enlighet med regleringsbrevet den 21 december 2009 lämnat en rapport till regeringen om ersättningspolicy inom finanstjänstesektorn.
- 10 § Per Håkansson redogjorde för den rapport som Finansinspektionen offentliggjort den 26 januari 2010 om ersättningssystemen i finanssektorn och för de huvudsakliga slutsatser som kan dras av rapporten.

- 11 § Per Gustafsson presenterade de preliminära resultaten av den undersökning av kreditinstitutens kreditgivning inom bolånesektorn som kommer att offentliggöras i en rapport i mitten av februari 2010.
- Styrelsen diskuterade – med beaktande av att resultaten är preliminära - efter en inledning av generaldirektören vilka slutsatser som skulle kunna dras av rapporten. Styrelsen önskade att vid sammanträdet den 15 februari 2010 få ta del av en analys av om det finns anledning att överväga reglering av bolånegivningen och i så fall vilka regleringsåtgärder som skulle kunna vidtas.
- 12 § Lennart Torstensson redogjorde för den tillsynsprocess som generaldirektören fastställt.
- 13 § Charlotta Carlberg redogjorde för det fortsatta arbetet med riktlinjer för särskilda avgifter och förseningsavgifter.
- 14 § Per Håkansson informerade om avgivna remissvar och inkomna remisser.
- Charlotta Carlberg redogjorde särskilt för det remitterade förslaget till ny försäkringsrörelselag och för några viktiga punkter som uppmärksammats i Finansinspektionens arbete med remissvaret.
- Christina Ohlén informerade om det konsultationssvar på EU-kommissionens dokument ”An EU Framework for Cross-Border Crisis Management in the Banking Sector” som Finansinspektionen lämnat tillsammans med Riksbanken, Finansdepartementet och Riksgäldskontoret.
- 15 § Johan Terfelt informerade om Finansinspektionens ansökan till IOSCO om att bli part till organisationens ”Multilateral Memorandum of Understanding” (MMoU) och om att IOSCO inte bifallit ansöknings eftersom det bedöms att den svenska lagstiftningen inte ger Finansinspektionen befogenhet att i vissa avseenden biträda utländska tillsynsmyndigheter. Finansinspektionen har begärt att bli upptagen på den s.k. B-lista som är avsedd för länder som inte nu uppfyller alla krav men som strävar efter att göra det i framtiden.
- Per Håkansson informerade om att Finansinspektionen avser att till regeringen föreslå att lagändringar görs som undanröjer de hinder för anslutning till MMoU:et som IOSCO pekat på.
- 16 § Per Håkansson anmälde regeringens regleringsbrev för Finansinspektionen 2010.
- 17 § Generaldirektören redogjorde för arbetet med det budgetunderlag för 2011-2013 som styrelsen ska fatta beslut om vid sammanträdet den 15 februari 2010.
- 18 § Generaldirektören informerade om de organisatoriska förändringar som han ämnar genomföra i samband med att stabschefen Peter Kvist tillträder sin anställning den 15 februari 2010.

## *Transparency as a regulatory tool*

Ordföranden tackade Magnus Bergman som inom kort slutar sin anställning vid Finansinspektionen och som därför också lämnar styrelsearbetet.

- 19 § Generaldirektören informerade styrelsen om rekryteringsarbetet avseende chefer för Marknadsavdelningen och Informationsavdelningen.
- 20 § Ordföranden förklarade sammanträdet avslutat.

Vid protokollet

Justerat

Per Håkansson

Bengt Westerberg

## **B.14 FI MINUTES TRANSLATION (Google Translate)**

### **MINUTES**

#### **2010:1**

Minutes of meeting of the Financial Supervisory Board  
of FSA, Kaivokatu 3, Stockholm  
Friday, 29 January 2010.

Currently:

#### **Members**

*Bengt Westerberg, Chairman*

*Kathrin Flossing*

*Anna-Karin Celsing (from 3 b §)*

*Birgitta Johansson Hedberg*

*Lennart Nilsson*

*Lars Nyberg (until § 12)*

*Gustaf Sjöberg*

*Martin Andersson, Director-General*

#### **Staff Representatives**

*Magnus Bergman (4-18 § §)*

#### **FSA**

*Torkel Agner (§ 8)*

*Patrick Bailey (4 §)*

*Charlotte Carlberg (1-3 C and 12-14 § §)*

*Uldis Cerps (§ 11)*

*Lars Frisell (§ § 3-11)*

*Per Gustafsson (§ 11)*

*Jonathan Holst (1 - 11 § §)*

*Hanna Lindstrom (5 §)*

*Christina Ohlén (14 and 15 § §)*

*Sofia Sjöqvist (§ 4)*

*Helen Svedin (6 and 7 § §)*

*Anna Soderstrom (6 and 7 § §)*

*Johan Terfelt (14 and 15 § §)*

*Lennart Torstensson (§ 12)*



## Protocol Drivers

Per Håkansson

1

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Page 2

1 §

The Chairman declared the meeting opened. It was noted that cases would be processed in the order shown in the minutes.

2 §

The Chairman notified the protocol 2009:12. The Board decided to add the protocol to the documents.

3 §

The Director General informed about current regulatory issues as *Annex 1*.

4 §

Head of Internal Audit Patrick Bailey introduced together with Sofia Sjöqvist its view of the internal audit mission and focus. He stated that he intended to submit proposals for internal audit policy for the Board in February and an internal audit plan in March.

5 §

Hanna Lindström preferred draft FSA regulations Quarterly statistics for some securities companies. The Board decided, in accordance with *Annex 2*. This paragraph was confirmed immediately.

6 §

Anna Soderstrom presented the work on revision of FSA governing documents and the structure that allows the Board to decide on general policies. The Board will subsequently decide on the proposed employer's policy, health and safety policy, communication policy, security policy and environmental policy. The overall policy limits will be specified and supplemented by rules and guidelines laid down by the Director General or after his mission.

7 §

Helen Svedin preferred proposals for environmental policy. The Board decided, with the repeal of the environmental policy adopted on 13 February 2009, in accordance with *Annex 3*. This section was adjusted immediately.

8 §

Torgel Agner reported on the outcome of the FI's management group's overall risk analysis and how to work behind the risk analysis conducted. He reported that there were four risks as the managing body of opinion must be handled and for the actions taken and planned (the risk of FI make the wrong decisions in the operational oversight, the risk of FI does not act in the operational supervision, the risk that sensitive material concerning

operational oversight leakage and the risk of sensitive material relating to licensing leaking).

9 §

Per Håkansson informed that the FSA in accordance with marketing message December 21, 2009 submitted a report to Government on compensation policies in the financial services sector.

10 §

Per Håkansson presented the report to FSA published January 26, 2010 on the compensation schemes in the financial sector and for the main conclusions to be drawn from the report.

2

11 §

Per Gustafsson presented the preliminary results of the investigation of credit lending in the mortgage sector, which will be published in a report in mid-February 2010.

The Board discussed - taking into account that the results are preliminary - after an introduction of Director General of the conclusions could be drawn from report. The Board requested that the meeting February 15, 2010 receive an analysis of whether there are grounds to consider the regulation of bolånegivningen and if so, what regulatory measures could be taken.

12 §

Lennart Torstensson presented the oversight process that the Director-General determined.

13 §

Charlotte Carlberg explained the further work on guidelines for special charges and late fees.

14 §

Per Håkansson informed votes remissvar and received referrals.

Charlotte Carlberg introduced especially for the referred the proposed new försäkringsrörelselag and a few important points highlighted in FSA's work with the referral response.

Christina Ohlén informed of the consultation response to European Commission paper "An EU Framework for Cross-Border Crisis Management in the Banking Sector", which left the FSA, together with the Riksbank, Ministry of Finance and National Debt.

15 §

Johan Terfelt informed about FSA application to IOSCO on the become a party to the organization's "Multilateral Memorandum of Understanding (MMoU) and that IOSCO has not granted the application because it is considered that Swedish law does not give FSA power to some respects assist foreign regulators. FSA has requested to be entered on the "B-list is intended for countries that do not now meet all requirements but who seek to do so in the future.

Per Håkansson informed that the FSA intends to Government propose that legislative amendments are made to eliminate the barriers to access to MMoU: et as IOSCO highlighted.

16 §

Per Håkansson notified the government's appropriation for the FSA 2010th

17 §  
The Director General outlined the work of the budget documents for 2011-2013 that the Board will decide at the meeting of 15 February 2010.

18 §

The Director General informed about the organizational changes he intends to implement in conjunction with the Chief of Staff Peter Kvist will assume his Service on 15 February 2010.

3

4

The Chairman thanked Magnus Bergman as soon ceases to be employed at FSA and therefore also leave the board work.

19 §

The Director General informed the Board on the recruitment for managers for Marketing and Communications department.

20 §

The Chairman declared the meeting closed.

In protocol

Adjusted

Per Håkansson

Bengt Westerberg