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Structured Thoughts

News for the financial services community.

Section 23A Issues

Yesterday, U.S. Senator Chris Dodd, Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, released draft financial reform legislation (the "Dodd Bill"). The purpose of this memorandum is to review its proposed changes to Section 23A ("Section 23A") of the Federal Reserve Act (the "Act").

Current Law

Section 23A limits certain transactions ("covered transactions") between banks and affiliates to those in an aggregate amount less than 10% (as to any single affiliate) or 20% (as to all transactions with affiliates in the aggregate) of the capital stock and surplus of the bank. Covered transactions currently include:

- loans or extensions of credit to affiliates;
- purchases of assets from affiliates;
- acceptance of securities or debt obligations of affiliates as collateral for a loan to any person; and
- issuances of a guarantee, acceptance, letter of credit, etc., on behalf of an affiliate.

The statute also sets collateral requirements for loans, extensions of credit, and other "loan-like" transactions with affiliates ranging from 100% to 130% of the amount of the loan and forbids the use of "low-quality assets" as collateral in these transactions.

Proposed Changes

Covered Transactions. The Dodd Bill adds the following to the definition of "covered transactions":

- transactions with affiliates that involve the borrowing or lending of securities, to the extent they cause the member bank to have credit exposure to the affiliate; and
- derivative transactions with affiliates, to the extent they cause the member bank to have credit exposure to the affiliate.[1]

[1] Credit derivative transactions already are subject to certain limitations, but this extends to all derivatives.

Under the proposed bill, Section 23A's currently applicable collateral requirements would also apply to these new types of covered transactions.

Exemptions. The Board of the Federal Reserve (the "Board") may still exempt transactions from these requirements, but only by regulation, not by order, and its ability to do so is subject to veto by the Chairperson of the FDIC. The Comptroller of the Currency may exempt national banks and the FDIC may exempt state banks. Both are also subject to veto by the Chair of the FDIC.

Amounts of Covered Transactions. The statute gives the Board the ability to issue regulations or interpretations with respect to netting agreements and how such agreements may be taken into account in determining the amount of a covered transaction or whether it is adequately secured.

Comparison with House Bill

The U.S. House of Representatives passed its own version of a financial reform bill (the "House Bill") late last year.[2] Its proposed changes to Section 23A are similar to those contained in the Dodd Bill, with a few notable exceptions.

First, the House Bill includes in the definition of "covered transactions" not only derivative transactions that cause current exposure to the credit risk of the affiliate, but also those that pose "*potential future*" credit risk.

Second, rather than permit the Board (or, in the case of national or state banks, the Comptroller of the Currency and the FDIC, respectively) to exempt a transaction or institution from the requirements of Section 23A (subject to the later objection of the FDIC), the House Bill would require the concurrence of the Chairperson of the FDIC prior to granting the exemption. However, the Board may exempt a transaction by order (as is the case under current law), not merely by regulation.

Third, the House Bill does not permit the Board to consider netting agreements in evaluating the amount of a transaction or collateral securing an obligation.

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UK FSA Initiatives Relating to Retail Investment Products

Since 2006, the FSA has been engaged in a wide-ranging review of the retail investment market, through public consultations and expert studies, with a view to strengthening investor protection. The FSA's review took on added importance with the outbreak of the financial crisis and has resulted in a series of initiatives and proposals to amend current regulatory requirements, particularly for the product providers and distributors when selling investment products to retail investors.

We describe below the key FSA initiatives concerning retail investment products.

[2] H.R. 4173.

The Retail Distribution Review ("RDR")

In June 2006, FSA launched the RDR,[3] which led to the publication of its discussion paper (DP07/1) on "A review of retail distribution"[4] one year later.

FSA consultation paper (CP09/18): Distribution of retail investments: delivering the Retail Distribution Review (25th June 2009)[5]

Based on the pre-consultation feedback to DP07/1, on 25th June 2009, FSA published its proposals to implement the RDR, in CP09/18, including a draft statutory instrument (Retail Distribution Review Instrument 2010) amending the FSA Handbook. This constituted a package of proposed regulatory amendments to address "persistent problems" observed in the retail investment market and invited comments from market participants until 30th October 2009.

The proposals will impact on all FSA-regulated firms involved in providing or distributing retail investment products and services, including unregulated collective investment schemes ("CIS"), investment trusts, and structured investment products as well as traditional packaged products.

Broadly, CP09/18 covered three areas of change perceived to be necessary to improve the quality of advice and investor confidence in the retail investment market:

- *Providing investors with a clear description of advice services:* Investment firms will be required to clearly describe their investment advice services to investors as either (i) "independent advice" (i.e., where they genuinely make recommendations based on comprehensive and fair analysis of the clients' needs) or (ii) "restricted advice" (e.g. where advice is given on a limited range of products only).
- *Ending the potential for commission bias:* A ban is proposed in relation to product provider commission being paid to investment advisers, to prevent them from automatically recommending products that pay commission.
- *Raising professional standards for investment advisers:* The minimum qualification for retail investment advisers will be raised and a professional standards board will enforce a higher set of ethical standards.

FSA consultation paper (CP09/31): Delivering the Retail Distribution: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice (16th December 2009)[6]

On 16th December 2009, the FSA published its second, related consultation paper (CP09/31), where comments were invited by 16th March 2010[7].

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[3] *See* FSA press release: FSA announces further work on the future of retail distribution (15th June 2006), http://www.fsa.gov.uk/pages/Library/Communication/PR/2006/056.shtml.

[4] FSA DP07/1: A review of retail distribution (27th June 2007), http://www.fsa.gov.uk/pubs/discussion/dp07_01.pdf.

[5] FSA CP09/18: Distribution of retail investments: delivering the Retail Distribution Review (RDR) (25th June 2009), http://www.fsa.gov.uk/pubs/cp/cp09_18.pdf (comments deadline: 30th October 2009). *See also* the related Retail Distribution Review: Frequently asked questions, http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/library/rdr_faqs.shtml and the FSA factsheets on Adviser charging, Professional standards and Independent and Restricted advice available at http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/library/rdr.shtml.

[6] FSA CP09/31: Delivering the Retail Distribution: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice (16th December 2009), http://www.fsa.gov.uk/pubs/cp/cp09_31.pdf (comments deadline: 16th March 2010). *See also* the related FSA Factsheet on Professionalism, http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/pdf/FS055_rdr_pr.pdf and Information for smaller firms on Delivering the RDR, http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/library/del_rdr.shtml.

[7] FSA CP09/31: Delivering the Retail Distribution: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice (16th December 2009), http://www.fsa.gov.uk/pubs/cp/cp09_31.pdf (comments deadline: 16th March 2010). *See also* the related FSA Factsheet on Professionalism, http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/pdf/FS055_rdr_pr.pdf and Information for smaller firms on Delivering the RDR, http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/library/del_rdr.shtml.

CP09/31 is a follow-up to CP09/18 and clarifies for investment advisers what is required of them to meet the new, higher standards of professional qualifications and ethics. It also contains proposals on consultancy charging (referred to as "arranger charging" in CP09/18) in the corporate pensions market, in line with the main RDR adviser charging rules, and the applicability of RDR to pure protection advice.

The FSA has stated that in the third quarter of 2010 it intends to make a final decision on the governance of professional standards. Firms will be expected to implement the final rules by 31st December 2012.

The Treating Customers Fairly ("TCF") Initiative

The FSA's TCF initiative dates back as far as June 2001, but the outbreak of the financial crisis served to heighten its importance. The TCF initiative is aimed at improving protection for the investors ("consumers") of retail investment products through a focus on:

- capable and confident investors;
- simple and understandable information for, and used by, investors;
- well-managed and adequately-capitalised firms which treat their customers fairly; and
- risk-based and proportionate regulation.

Consistent with its "principles-based" approach to regulation, the focus of TCF is also on outcomes. In July 2006, the FSA published a progress report on "Treating customers fairly – Towards fair outcomes for consumers,"[8] identifying six specific outcomes which it intended firms to achieve by 31st December 2008 and be able to demonstrate through the use of management information (in order to prove that they are consistently treating their customers fairly):

- *Consumer confidence:* Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- *Consumer financial promotions:* Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- *Product disclosure:* Consumers are provided with clear information and are kept appropriately informed before, during, and after the point of sale.
- *Advice and suitability:* Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- *Misselling:* Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.
- *Post-sale barriers:* Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim, or make a complaint.

To help firms demonstrate that they are "consistently treating their customers fairly" and to comply with the TCF, FSA published an updated version of the "Treating customers fairly (TCF): Frequently asked questions" in

[8] FSA progress report: Treating customers fairly - Towards fair outcomes for consumers (19th July 2006), http://www.fsa.gov.uk/pubs/other/tcf_towards.pdf.

February 2008[9] and an "update on the Treating Customers Fairly initiative and the December deadline" in November 2008.[10]

Proposed changes to Perimeter Guidance Manual: Guidance on Packaged Structured Investment Bonds

On 3rd April 2009, FSA launched a quarterly consultation (CP09/12)[11] on proposed amendments, *inter alia*, to the Perimeter Guidance Manual ("PERG"),[12] which forms part of the FSA Handbook and which sets out FSA's guidance on "regulated activities" and "financial promotions" under the Financial Services and Markets Act 2000 ("FSMA").

The proposals involve:

- the scope of the activity of "making arrangements with a view to transactions in investments" (amended PERG 2.7.7BG);
- the definition of a "personal pension scheme" (amended PERG 12.2); and
- guidance on what the providers of packaged structured investment bonds ("PSIBs") must do to ensure that their product does not amount to a CIS (new PERG 16).

The consultation closed for comments on 6th June 2009. The FSA will publish the new rules and the feedback in the Handbook Notice in due course.

Changes to PERG 2.7.7BG

PERG 2.7.7BG provides guidance on the scope of the activity of "making arrangements with a view to transactions in investments."

The proposed amendment to PERG 2.7.7BG is intended to clarify that such activity is not limited to the parties' own transactions but could extend to "arrangements of an ongoing nature whose purposes is to facilitate the entering into of transactions by other parties."

The amendment highlights two typical scenarios which therefore falls within the scope of the "arranging" activity, i.e., where a person provides facilities of some kind:

- to assist investors to deal with or through a particular firm (e.g., the arrangements made by introducers); or
- to facilitate the parties entering into transactions directly (e.g., multilateral trading facilities ("MTFs") or clearing & settlement facilities).

It further clarifies that the scope of such regulated activity would cover not only arrangements that are participated in by the investors but may also extend to those:

- where only product companies, with a view to their issuing investments, participate in them; and
- where the parties have already committed to the transaction through other arrangements.

[9] FSA's Treating customers fairly (TCF): Frequently asked questions (updated 28th February 2008), http://www.fsa.gov.uk/Pages/Doing/Regulated/tcf/faqs/index.shtml.
[10] FSA update on the Treating Customers Fairly initiative and the December deadline (12th November 2008), http://www.fsa.gov.uk/pubs/other/tcf_deadline.pdf.
[11] FSA CP09/12: Quarterly Consultation (No. 20) (3rd April 2009), http://www.fsa.gov.uk/pubs/cp/cp09_12.pdf (comments deadline: 6th June 2009).
[12] FSA Handbook: The Perimeter Guidance Manual (PERG), http://fsahandbook.info/FSA/html/handbook/PERG.

Changes to PERG 12.2

PERG 12.2 (under Q2) provides guidance on the definition of a "personal pension scheme" ("PPS") for the purposes of the regulated activity of "establishing, operating or winding up a personal pension scheme." PPSs usually include pension schemes that are intended to be registered with the UK Pensions Regulator and eligible for tax relief.

Proposed new PERG 16 – PSIBs

The proposed guidance (PERG 16) explains that PSIBs are "arrangements put in place to market investment products which are based on securities and have been designed to give a particular kind of return."

This envisages that the "packager" agrees with a third party (e.g., an investment bank) that it will market a security (e.g., a bond) issued by that bank to investors, by putting together a packaged arrangement which gives investors access to the returns generated by the security. Typically the packager would also provide the investors with other related services, such as brokerage and custody services.

By comparison, FSMA section 235 and the FSA Handbook Glossary define a CIS as:[13]

- any arrangements with respect to property of any description, including cash, the purpose or effect of which is to enable persons taking part in the arrangements (as owners or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management, or disposal of the property or sums paid out of them; and
- which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001 (SI 2001/1062).[14]

In addition, for such arrangement to be considered a CIS,

- the participants should not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
- the participants' contributions and the profits or income must be pooled, and/or the property must be managed as a whole by or on behalf of the scheme's operator.[15]

Thus, there are obvious similarities between the two concepts and, depending on their particular structure or terms, a PSIB may potentially constitute a CIS.

In this regard, the guidance clarifies that a PSIB runs the risk of being regarded as a CIS if the arrangement contains one or more of the following features:

- Its purpose is to allow the investors to participate in or receive profits or income arising from the underlying investments;
- The investors do not have day-to-day control over the underlying investments;
- The investors' money is pooled to purchase the underlying investments, e.g., the investors are given an interest in "a pool of investments as a whole" and not recorded as having been allocated or owning any particular investment; or

[13] Financial Services and Markets Act 2000, section 235, http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_1; Glossary to the FSA Handbook, http://fsahandbook.info/FSA/html/handbook/Glossary/C#G178.
[14] Financial Services and Markets Act (Collective Investment Schemes) Order 2001 (SI 2001/1062), http://www.opsi.gov.uk/si/si2001/20011062.htm. *See also*, Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, http://www.opsi.gov.uk/si/si2001/20010544.htm.
[15] Financial Services and Markets Act 2000, section 235.

- The packager bears the on-going responsibility for safeguarding and administering investments.

Conversely, features that help avoid a PSIB being categorised as a CIS involve ensuring that:

- The packaged arrangement can legitimately be analysed as an investment by the investors in the underlying investments over which they have day-to-day management control, rather than "rights under the scheme or plan," i.e., they need not actually manage the investments but must have control over their management;
- Investors' ownership rights are derived only from their rights under the underlying investments, with the exception of any safeguarding and administering of the underlying investments;
- Investors can sell their interest in the underlying investments or transfer them to a new manager free from the arrangement, i.e., they should not be restricted to selling only their interest in the arrangement as a whole;
- The packager's only tasks are to purchase the underlying investments and to arrange for their safeguarding and administering on behalf of investors;
- The packager does not grant additional rights to investors; and/or
- The packager does not retain discretion over the management of the underlying investments and the arrangement involves no other features that provide for anyone other than the investors to manage them.

Although not all of these features need to be present in a particular PSIB arrangement, the absence of any of them may point towards the arrangement being a CIS.

If both the underlying bonds and the issuer are identified to the investor at or before the time of sale, that is likely to strengthen the argument that the arrangement is not a CIS (a feature which the FSA found to be lacking in many current PSIBs).

CISs are regulated by the FSA and specific authorisation is required for "establishing, operating or winding up a collective investment scheme."[16] In addition, restrictions apply to the promotion of *unregulated* CISs (as opposed to *regulated* CISs).[17]

A packager of a PSIB which is not a CIS would still need to obtain authorisation to engage in other regulated activities, such as (i) dealing in investments as principal or agent, (ii) arranging deals in investments or (iii) safekeeping and administration of assets.[18]

Financial Promotions: White Labeling

The FSA publishes industry updates on issues or trends that it identifies through its routine monitoring of financial promotions compliance. Their aim is to capture emerging concerns and, where necessary, to clarify the FSA's expectations of firms.

On 20 July 2009, the FSA published its second Financial Promotions Industry Update on "white labelling,"[19] commenting on white labeling of investment products which fall under its Conduct of Business Sourcebook ("COBS") rules. The FSA deems white labelling to include arrangements where a product or service is offered under the brand of one company (the distributor/ intermediary) whilst another company (the producer/ provider) is actually providing it.

[16] Financial Services and Markets Act 2000, section 19 & Schedule 2.
[17] Financial Services and Markets Act 2000, section 238.
[18] Financial Services and Markets Act 2000, section 19 & Schedule 2, http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_1.
[19] FSA Financial Promotions Industry Update: White labeling (20th July 2009), http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/pdf/white_labeling.pdf.

FSA rules require all financial promotions to be "fair, clear and not misleading" and firms are required to ensure that their white labeled promotions satisfy this requirement. In meeting this requirement for investment packaged products (as well as insurance products), promotions are required to make clear to customers, at the outset of the financial promotion (rather than any subsequent sale process), which firm they are entering into the contract with.

In addition, the FSA stated its intention to carry out a white labeling review in the final quarter of 2009, as part of its ongoing monitoring and enforcement.

LECG Report: The Regulation of Retail Investment Products

On 27th May 2009, FSA published a 160-page report on "The Regulation of Retail Investment Products: An Initial Assessment of the Impact of Recent Changes"[20] based on research it had commissioned from LECG, a global expert services firm. The purpose of the research was to determine whether the compliance costs of the regulatory changes were justified by their benefits to investors.

As part of the FSA's "proportionality" analysis, the research involved a survey of the incremental costs, together with a qualitative analysis of the change in benefits caused by recent regulatory changes.

In particular, it focused on the three recent FSA initiatives impacting on advised sales of packaged retail investment products ("PRIPs"), over a 2-year period from mid-2006 to mid-2008, as follows:

- Introduction of the new COBS;[21]
- Introduction of the TCF regime; and
- Transition of the FSA's supervisory and enforcement style to a more "outcome-focussed" approach.

In connection with the COBS and the TCF, LECG interviewed 18 firms in May to August 2008, including advisory companies and product providers, both with differing business models and scale, to learn about the changes that they had made in response as of June 2008.

<u>New COBS</u>

The new COBS took effect on 1st November 2007 and introduced three key changes, i.e.:

- Simplification of the conduct of business regime;
- Provision of a more "outcome-focused" approach; and
- Implementation of the Markets in Financial Instruments Directive ("MiFID"),[22] which came into force on 1st November 2007.

Costs: Firms experienced mainly one-off costs from reviewing the changes between the previous and current versions of COBS (indicative range of £0.00 to £0.57 per sale). A number of advisory firms made changes to their financial promotion procedures by working more closely with manufacturers and ensuring better targeting of customers.

[20] LECG Report: The Regulation of Retail Investment Products: An Initial Assessment of the Impact of Recent Changes (27th May 2009), http://www.fsa.gov.uk/pubs/other/lecg.pdf.
[21] FSA Conduct of Business Sourcebook (February 2000), http://www.fsa.gov.uk/pubs/cp/cp45.pdf.
[22] EU Markets in Financial Instruments Directive (2004/39/EC) (known as "MiFID Level 1 Directive"), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_145/l_14520040430en00010044.pdf, and EU Directive implementing MiFID as regards organisational requirements and operating conditions for investment firms and defined terms (2004/39/EC) (known as "MiFID Level 2 Directive"), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_241/l_24120060902en00260058.pdf.

Benefits: Benefits could not yet be measured as firms reported that they were waiting for the outcome of FSA's Retail Distribution Review ("RDR")[23] before effecting changes to their business strategy.

These findings were broadly consistent with FSA's interim report on the COBS post-implementation review published on 19th December 2008. [24]

TCF Initiative

Since 1st January 2009, FSA has incorporated TCF into its core supervisory processes, in which routine testing of these consumer outcomes is now an important part.

Costs: LECG found that there was a range of approaches to compliance among the firms interviewed. The indicative ranges were £3.50 to £16.54 per sale for one-off costs and £3.10 to £34.10 per sale for on-going costs. These costs were incurred on senior management oversight, training, and compliance advice and included substantial fixed costs. Therefore, the per-sale costs tended to be higher for smaller firms.

The TCF initiative did not alter the firms' regulatory expectations, and therefore the costs incurred were treated as "deferred" incremental costs (of increased compliance with the pre-existing TCF principles),[25] rather than fresh incremental costs of complying with new or higher regulatory requirements.

Benefits: The changes were too recent to enable LECG to make a confident assessment of the consumer benefits although some may have started to occur already (e.g., greater senior management oversight of sales).

Accordingly, FSA commissioned an internal audit review of the lessons learned from its supervision of Northern Rock from January 2005 to July 2007 and published a set of recommendations and proposals in an FSA Internal Audit Report on 26th March 2008.[26]

In addition, the Tripartite Authorities (i.e., FSA, Bank of England and HM Treasury) conducted a review of the market events between August and December 2007 and on 30th January 2008 launched a joint public consultation on strengthening the banking supervisory framework to strengthen financial stability and depositor protection.[27]

FSA then proceeded to implement the resulting recommendations in the Supervisory Enhancement Programme ("SEP") which it announced on 26th March 2008,[28] intended to be even more "outcomes-focused" and concentrating on business model risk – particularly as regards systemically important, "high-impact" firms.

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[23] *See* FSA FS08/6: Retail Distribution Review, including feedback on DP07/1 and the Interim Report (25th November 2008), http://www.fsa.gov.uk/pubs/discussion/fs08_06.pdf. *See also*, FSA Discussion Paper (DP 07/1): A review of retail distribution (27th June 2007), http://www.fsa.gov.uk/pubs/discussion/dp07_01.pdf.

[24] FSA Conduct of Business Sourcebook (COBS) Post-implementation Review: 2008 Statement on Interim Findings, http://www.fsa.gov.uk/pubs/other/COBS_review.pdf.

[25] For example, FSA first published its Discussion Paper (DP7) on Treating Customers Fairly after the Point of Sale in June 2001, http://www.fsa.gov.uk/pubs/discussion/dp7.pdf.

[26] FSA Internal Audit Report on The supervision of Northern Rock: A lessons learned review – Appendix 2: Recommendations and Actions ((26th March 2008), http://www.fsa.gov.uk/pubs/other/recommendations.pdf. The full report, published on 28th April 2008, is available at http://www.fsa.gov.uk/pubs/other/nr_report.pdf.

[27] Tripartite Authorities' Joint Consultation Paper on Financial stability and depositor protection: strengthening the framework (30th January 2008), http://www.hm-treasury.gov.uk/d/banking_stability_pu477.pdf. *See also*, 2 other related Tripartitie Authorities' Joint Consultation Papers on Financial stability and depositor protection: further consultation (1stJuly 2008), http://www.fsa.gov.uk/pubs/cp/jointcp_stability.pdf and Financial stability and depositor protection: special resolution regime (22nd July 2008), http://www.hm-treasury.gov.uk/d/consult_finstab_specialresolution220708.pdf.

[28] The FSA's Supervisory Enhancement Programme, in response to the Internal Audit Report on supervision of Northern Rock – High-Level Summary (26th March 2008), http://www.fsa.gov.uk/pubs/other/enhancement.pdf.

In addition, the Turner Review and the related FSA discussion paper (DP09/2) on "A regulatory response to the global banking crisis," both published on 18th March 2009, recommended further measures to improve upon the SEP and strengthen the FSA's supervisory processes. [29]

However, firms participating in the LECG study did not report experiencing any change in FSA's supervisory style. As a result, LECG did not find it possible to assess the impact of SEP which was produced at the tail-end of the relevant period studied.

Effect of the LECG Report

FSA will be incorporating part of the findings of the LECG Report into its COBS post-implementation review, to be published in 2010, and its ongoing supervision of TCF.

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Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

[29] Turner Review: A regulatory response to the global banking crisis (18th March 2009), http://www.fsa.gov.uk/pubs/other/turner_review.pdf and the related FSA Discussion Paper 09/2: A regulatory response to the global banking crisis (18th March 2009), http://www.fsa.gov.uk/pubs/discussion/dp09_02.pdf.