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Eve Engledow
FSMA secondary legislation consultation responses
Financial Stability and Regulatory Policy Team
Room 4/23
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Ms Engledow

Financial Services and Markets Act year two review

Background

MBNA was founded in the U.S. in 1982 and, since then, has grown from being a small regional credit card issuer to being the largest independent credit card issuer in the world. The company maintains its international headquarters in Wilmington, Delaware and has operations throughout the United States and in Canada, Ireland, Spain, and the United Kingdom. The same management team that founded the company in 1982 runs MBNA today.

MBNA Europe Bank is a wholly owned subsidiary of MBNA America Bank, N.A., itself owned by MBNA Corporation. MBNA Corporation was organised in 1991 and is a registered U.S. bank holding company.

MBNA Europe Bank opened for business in October 1993 and now employs over 5,000 people, most of them in the UK.

Financial Education or Financial Advice?

MBNA Europe Bank Limited is committed to the provision of free and independent financial education and information for the People of the company. The objective of the financial education is to help the People achieve financial stability through improved financial literacy and capability. The education covers a wide variety of topics from the occupational pension plan, savings, and mortgages to spending plans and debt advice.

When establishing regulations for financial services, it will be important to distinguish between 1) the provision of financial education and information (also called generic advice by some) and 2) financial advice. Although financial educators should be competent and knowledgeable, there is no need for them to be regulated, provided that they do not recommend specific products or providers. The development of a recognised accreditation process for financial educators could help define acceptable boundaries within which such education could be delivered.

Promotion of Pension Schemes by Employers

MBNA Europe Bank Limited offers a non-contributory money purchase occupational pension plan to its employees in the UK. Although “the promotion of occupational schemes ... falls outside FSMA regulation”, and is therefore technically not covered by this consultation process, we should like to share some observations regarding the promotion of pension plans.

MBNA’s experience over the past 10 years has demonstrated that:

- It is difficult to make people interested in their pensions.
- Only a small minority of members will attend voluntary presentations on pensions.
- Apathy and ignorance are the two primary reasons that members do not make AVC’s.
- Affordability is cited by a minority of members as a reason for not making AVC’s.
- Only by committing a dedicated resource to the promotion of the occupational pension plan can an acceptable participation and contribution rate be achieved.
- Although “the promotion of occupational schemes ... falls outside FSMA regulation”, fear of breaching regulations can prevent an authorised pension administrator from answering questions from members during a “pensions awareness event”.

MBNA would therefore support regulations which permit employers to actively promote pensions for their employees.

Question 10

Yes, Both real time and non-real time promotions by employers should be exempted. To exempt only one type of promotion would tend to force all the effort down that channel. As a result of this employees would be deprived of information of the other type. Although there may be “a gap in consumer protection”, the risk should be acceptable if there is no financial reason for an employer to exploit the gap.

Question 11

Yes the exemptions should be subject to conditions. Reasoned conditions should give reassurance and protection to both the employee and the employer.

Question 12

The outlined conditions appear to be too restrictive.

As many employers do not make contributions to their employees' pension schemes, a large number of employers would be excluded from promoting a pension scheme.

Restricting the exemption to only "group personal pension schemes and stakeholder pension schemes" may be too restrictive. Employers should be able to promote other benefits such as share incentive plans and share save schemes where there is "no direct commercial benefit to its business".

The clarity of the regulations could be enhanced by clarifying what is permitted, as well what is prohibited.

Question 13

Provided that the wording of the suggested conditions is clear, these conditions should be sufficient. We are not aware of any additional conditions which are required.

Question 14

Employers need the ability to set scheme wide rules, e.g. default funds or lifestyle strategies, without worrying about being charged with giving advice. Employers would want to avoid giving individual advice, not only to keep within the regulations, but also to avoid at a future time charges of mis-selling by the employee. The employer must look to satisfy both the regulator and the employee.

Question 15

When the employer makes a contribution to the employee's plan (either outright or matching), there is a clear basis for recommending that scheme. If there is no clear basis for recommending the scheme (e.g. no financial contribution by the employer), employers should avoid giving advice or making specific promotions. In either case the employer should be able to explain and educate about the scheme.

Question 16

We are not familiar enough regarding article 53 RAO to answer this question.

Question 17

It would be difficult to draw a line between making "unfavourable comparisons" and "explaining differences". Such a prohibition would not be viable.

Question 18

There should not be restrictions on which employer's representatives can promote the employer's pension scheme, but once again a recognised accreditation process would be beneficial in making sure that the designated representatives were competent and knowledgeable. No representatives should be forced or coerced into promoting the employers pension schemes against their will, nor to make statements which they believe to be untrue.

If you should require clarification or expansion of any of the views or responses expressed above, please do not hesitate to contact me.

Yours sincerely

Harper Wright
Vice President
Financial Education Service