Association of Foreign Exchange
and Payment Companies

Treating Customers Fairly

November 2015

As API's, AFEP's members are not technically caught by the FCA's treating customers fairly ("TCF") requirements but we believe that the values embedded within these requirements should remain central to the industry. AFEP has therefore adopted these values into its guiding principles to which all member firms subscribe:

- We will treat our customers fairly and act morally and ethically in our dealings with all classes of customers, suppliers and other stakeholders.

A. What do we mean by TCF?

There are six TCF outcomes identified by the FCA. All of these are relevant to our industry in some form.

• Outcome 1: Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.

• Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.

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

• Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances. Under no circumstances should advice be given in relation to predicted market movements.

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

• Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

These outcomes should be considered throughout the product lifecycle, namely:

- product Design;
- promotional/Marketing practices;
- the Sales process;
- information and customer support after the point of sale; and
- complaint Handling.

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B. The outcomes

a. Culture (outcome 1)

Embedding TCF in the corporate culture is considered essential. We expect all member firms to have the fair treatment of customers at the heart of their business. While culture can be difficult to measure, a first step is to implement a policy which underpins this value. Clearly having a written policy means nothing unless there is evidence to support that it is working in practice. Stephen Green, the former group chairman of HSBC, said “Part of the responsibility of top management is to ensure that the culture of the organisation reinforces the ethical behaviour that is a prerequisite of our industry. The example set by the people at the top will always have a huge influence on how the rest of the organisation behaves.” At its most basic, corporate culture expresses itself in staff behaviour and the way a business is run. Staff are particularly sensitive to management style. Some practical ways of demonstrating that the TCF culture is operating in practice include:

1. ensuring customer measures are included in the management information presented to the board / senior management. This could include complaints data, persistency rates, close out percentages, customer feedback results etc.;
2. annually reviewing the policy and considering whether there may be any gaps that have arisen; and
3. adopting TCF as a standing item on the board’s rolling agenda (whether this be annual, biannual or quarterly).
4. Incorporating a balanced scorecard for remuneration packages which are based on the achievement of sales targets but also measures to reward treating clients.

b. Product / Service Design and marketing (outcome 2)

Products should be designed to meet the needs of specific customer groups and the features should be adapted to meet the needs of such customer sets. Consideration could include:

1. Is it reasonable to assume that the features of the product can be understood by a retail consumer (“man on the street”) or should it only be sold to non-consumers?
2. Are there particular features which should be highlighted to ensure that the customer is fully aware of the risks and benefits of the product (e.g. margin call)?
3. Is there a risk that it will not meet the needs or expectations of the customer (e.g. purchase of a fixed date forward when the customer’s requirement date may not be fixed or their need for the bought currency may not transpire)?
4. Is there any customer group that this product would not be suitable for?
5. Are all marketing materials relating to the product clear, fair and not misleading?
6. Are all claims made in marketing or promotional material supported by evidence?

Examples of good practice:

- Ensuring there is a “customer voice” to represent the point of view of customers during the product design stage.
- Using customer research and feedback to assist with the design and enhancement of products.
- Review of product design post launch and periodically thereafter to ensure it continues to meet the needs of the customer.

c. Customer information (outcome 3)

It is essential that customer information is clear, fair and not misleading. AFEP expectations in respect of customer information are in line with the Conduct of Business rules in the PSRs. Information must be given to customers at the right time and in the right format to ensure that they fully understand the product they are purchasing, how it functions and any risks or limitations. All choices available to the customer must be provided, with clear explanations to enable the customer to make an informed decision.

Examples of good practice:

- Asking a member of the general public to review product information to ensure it is easily understood and meets its aims.
- Reviewing existing written information to eliminate jargon.
- Using feedback from clients to enhance information provided.
- Fully trained sales staff / dealers and consideration of the use of tests to ensure that they fully understand the products on offer and can communicate to customers clearly.
- Monitoring the calls of sales staff / dealers with clients to ensure that any areas of weakness are identified and addressed.
- Online training webinars for clients on the key aspects of commercial foreign exchange contracts and payment services.

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Examples of poor practice:

- Failing to fully explain margin call at the point of sale of a forward contract.
- Failing to accurately explain the treatment and safety of customer funds.
- Failing to ensure a customer understands the potential implications of any required change in contract (e.g. needing to settle a forward contract prior to the settlement date).
- Failing to explain that a trade will become a legally binding contract at the time it is booked and that changes may not be permitted or may result in a loss to the customer.
- Failing to explain to customers which services are regulated and fall within the scope of the FOS
- An overreliance on terms and conditions resulting in a failure to give sufficient information to existing or new customers at the point of sale.
- Providing complex terms of business that use legal terminology that cannot be easily understood by the "man on the street".
- Not allowing prospective customers sufficient time to review terms of business.

d. Providing advice (outcome 4)

Spot and forward contracts are not regulated products and therefore do not fall under the FCA rules for advice. We are aware that member firms operate differently in respect of advice, with some offering an execution only service and others discussing the needs of customers and recommending suitable products. Regardless of the approach we consider it important that firms:

1. are clear on the approach and have controls in place to ensure that their sales and dealing teams are operating in accordance with policy;
2. understand, and communicate, to front line staff the difference between advising on potential products and advising on the direction in which the market may move. While there is no issue with assessing a customer's needs and helping steer them towards a product, it is not possible to predict with any certainty the direction in which the market will go and this should therefore be avoided; and
3. tailor any personal opinion to the client's individual circumstances and clearly highlight the advantages and disadvantages of the different products on offer.

e. Product performance and service (outcome 5)

Products should perform in line with customers' expectations. Customers should also receive a level of service which both meets their needs and is in line with what has been promised.

Essentially, if a product has been clearly and accurately explained to a client and is appropriate for the needs of the client there should be no issue with a product performing in line with customer expectations. However, even with the best controls in place there will be instances of customers having misunderstood the product. At this point the firm should assess:

1. whether the information provided to the client was clear and provided at the right point in the sales process;
2. whether it was reasonable to expect the customer to understand (i.e. would a reasonable man in the street have understood);
3. whether there were any circumstances which should have alerted the firm that the client is potentially a vulnerable customer and therefore should have been afforded additional protection (as would be outlined in the firm's vulnerable customer policy);
4. whether, despite the literature given, there was any conflicting or incorrect information given by staff; and
5. on a balance of probabilities, if the customer genuinely misunderstood the product he was purchasing should any action be taken to improve customer communication..

The easiest way of identifying issues around product performance and service is through the monitoring of complaints. If there are trends in complaints suggesting poor service or misunderstanding of product literature these should be further investigated to understand the root cause.

f. Post Sale Barriers and Complaints (outcome 6)

It is essential that customers are aware of the potential costs and limitations involved in altering an fx contract once concluded. There are no regulatory rules to determine whether or not a contract can be rolled out or settled early but it is essential that the customer is clear of what is permitted and whether there may be any associated costs or charges. Clearly individual firms will need to assess what is contractually permissible in respect of their own terms and conditions or seek legal advice.

Changes to the contract

Should the firm agree to alter the contract in any way it must be made clear to the customer what steps are being taken to effect the change, and any changes to the risks or limitations of the product. Failure to fully inform the customer could lead to a misunderstanding for the existing or future deals. For example, if a client has a forward contract which is in the money and wants to swap it in, this may generate a profit for the fx

firm and hence there is no cost to the customer. Unless he is fully informed, the customer may reasonably expect to make changes to future contracts free of charge.

Any changes to a contract (either by a swap, or close-out etc) must be clearly communicated with the customer. It should also be noted that AFEP firms must comply with the two month notice period within the PSRs for amendments and termination of contract

Customer spreads, charges and fees

Treating customers fairly does NOT mean treating all customers the same. Product pricing is at the commercial discretion of the firm and AFEP does not seek to influence pricing decisions in any way. However, there are certain practices which would run counter to the TCF principles:

Poor practice examples:

- Applying higher fees or spreads to customers who are less aware. It is perfectly acceptable to charge different customer sets different prices. For example: reduced fees for trading larger amounts; a referring partner may have negotiated a reduced charge for a particular customer set; higher standard fees for customers who deal over the phone due to the additional service provided; or a particularly knowledgeable customer who may negotiate a discounted rate. However, it is not acceptable to increase charges above the standard rate for customers who are less knowledgeable.
- Widening spreads over time. Attracting clients in with an initial undisclosed discount and then, without their knowledge, increasing those spreads.
- Agreeing to a fixed spread but not applying it. There is no issue with renegotiating spreads with a client should the original agreement no longer be commercially viable but this must be an open and honest procedure.
- Asymmetric pricing strategies such as charging for losses but retaining profits in the event of closeouts. There should be consistency in any pricing, spreads applied and charges made on close outs whether in or out of the money. Clearly if a client reneges on a contract and fails to settle there is no requirement to pass on any profit. It has been argued that allowing customers to profit from close outs may result in a temptation for customers to deal speculatively. However, the risk of this is low given this would be a high cost method of spec trading and the firm should ensure that it understands a customer's rationale for close out and should have controls in place to monitor any clients who do this on more than an infrequent basis.