Ulster Bank

Submission by

Ulster Bank Group

to the

Business Regulation Forum

May 2006

1. Introduction:

Ulster Bank Group ("UBG") is pleased to make a submission to the Business Regulation Forum on the reduction of the burden of regulation on business. UBG believes that this is a key issue that needs to be addressed in the context of removing unnecessary costs and burdensome procedures for businesses operating in a competitive and high cost environment.

UBG recognises that regulation is a necessary feature of any modern economy. However the central tenets underlying effective regulation should be to ensure that:

1. regulation is both proportionate and measured;
2. regulatory intervention in a market must have a clearly identified rationale;
3. the benefits resulting from regulatory action must be capable of objective assessment and outweigh any administrative or cost burdens involved;
4. regulatory intervention is actually required and necessary in particular circumstances, and
5. the actions, processes and procedures of regulatory authorities are kept under regular review and assessed to ensure that they accord with the principles set down in the Better Regulation White Paper.

UBG welcomes the focus by Government on the burden of regulation on business and the establishment of the Business Regulation Forum to examine regulatory issues as they impact on business, consumers and competitiveness.

UBG recognises the significant developments that have taken place in the regulation of the financial services industry in recent years and considers that it is opportune for the Business Regulation Forum to review, at this juncture, how the new regulatory structures have performed.

To assist the Forum in this process, UBG believes that some aspects of the present regulatory environment for the financial services industry could be improved to better achieve more effective regulation. In particular, UBG believes that the current regulatory environment has features which:

- add to the regulatory burden and cost for business, without adding value to the customer;
- are confusing, unclear and open to misinterpretation;
- are inconsistent and contradictory where some aspects of regulatory intervention contradict other pieces or stated objectives of regulation;
- disregard the input of the financial services sector in consultative processes concerning the transposition of EU measures.

UBG also believes that there are some areas where the current regulatory environment places the Irish financial services industry at a competitive disadvantage in a European context, with negative consequences for consumers. In particular, UBG believes that the current provisions of Section 149 of the Consumer Credit Act contain an unnecessary layer of regulation which operates to stifle innovation and competition in the market for financial services in Ireland.

This submission is not exhaustive in terms of detailing all aspects of regulation that Ulster Bank believes should be improved upon. However, it does highlight some key aspects of the current regulatory environment that should be examined.

UBG would welcome the opportunity to discuss our submission in greater detail with the Business Regulation Forum.

2. Ulster Bank Group

UBG is a wholly-owned subsidiary of the Royal Bank of Scotland Group ("RBS"), the 3rd largest bank in Europe and the 8th largest in the world by market capitalisation, operating in the UK, continental Europe, the US and Asia Pacific.[1]

UBG offers retail, business and corporate banking services across the island of Ireland, principally through Ulster Bank Ireland Limited and First Active plc in the Republic of Ireland, and Ulster Bank Limited in Northern Ireland. Founded there in 1836, UBG is headquartered in Belfast. The Group has substantially invested in and grown its business across the island of Ireland and the majority of UBG's assets and earnings are now attributable to the Republic of Ireland.

In line with the RBS business model, UBG operates under a separate, local management team and is independently regulated by the Irish Financial Services Regulatory Authority ("Financial Regulator") in the Republic of Ireland and the Financial Services Authority ("FSA") in Northern Ireland.

Across the island of Ireland, UBG employs over 5,400 staff and serves more than 1.6m business and personal customers across more than 300 outlets.

Financial services provided by UBG include:
- Retail banking through Ulster Bank branches;
- Mortgage and investment product sales through First Active's mortgage and investment stores;
- Business banking through dedicated Business Centres;
- Over 1,000 ATMs including over 500 in-store ATMs operated by Easycash which are available to customers of all banks and building societies;
- Direct banking incorporating postal, telephone and internet delivery channels;
- Wealth management activities, insurance and pensions;
- Domestic and international corporate banking;
- Invoice discounting;
- Treasury and derivative products;
- Specialised finance; and
- Inward investment services.

3. UBG's Corporate Philosophy

Ulster Bank is a highly customer-focused organisation, offering quality products and services and providing intense competition to its competitors and choice to Irish consumers. Dealing honestly and openly with customers is an integral part of its business philosophy – this is demonstrated through transparency in it's product and service offerings. The Bank seeks to distinguish itself through the quality of its service and relationship with its customers and consistently promotes a culture of integrity, probity and high standards in its dealings with all stakeholders, including customers, staff and the wider community.

[1] Datastream, 26.05.2006

4. UBG Observations on clarity issues in the regulatory environment in Ireland

Ulster Bank Ireland Limited and First Active plc are both licensed credit institutions under the supervision of the Financial Regulator. In addition, due to them being subsidiary companies of a UK credit institution, both are subject to consolidated supervision by the UK's Financial Services Authority.

UBG believes that it is a central tenet of any regulatory environment that regulatory instruments and actions should be clear, precise and capable of effective interpretation. There are a number of specific areas where UBG believes that Irish legislation with a regulatory purpose departs from such requirements and needs to be clarified or better defined. Some specific examples of where this problem arises are identified below.

i. Methods of Calculation of interest rates:

- Compound Annual Rate (CAR):

Problem:
Neither primary legislation nor the IFSRA Code of Conduct provides guidance for calculating the CAR on deposits (in the UK, guidance is provided by the British Bankers' Association[2]).

Effect:
The absence of a uniformed approach creates the potential for inconsistent comparisons in advertising and information documents. This is confusing for both consumers and the financial services industry.

Possible Solution:
A regulatory or legislative definition for the calculation of CAR in a variety of circumstances should be provided, with supporting regulatory guidance if necessary.

- Annual Percentage Rate (APR):

Problem:
There is no clear direction as to what constitutes a "typical APR" for advertising purposes on credit products (other than an outdated Director of Consumer Affairs Direction from 1996 in respect of mortgage advertising, whose status is now unclear). This is also at odds with the UK position, where significant legislative and regulatory guidance on calculation of APRs for advertising purposes is available.

Effect:
Similarly to CAR, the potential of differing interpretations of what should be a constant may incorrectly result in some providers appearing more competitive and consequently consumers being misled as to the cost of particular products for comparative purposes.

Possible Solution:
An updated legislative definition for the calculation of APR in a variety of circumstances (including typical APRs for advertising purposes) should be provided in the Consumer Credit Act, with supporting regulatory guidance if necessary.

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[2] BBA Code of Conduct for the Advertising of Interest Bearing Accounts – Guidance for Banks and Building Societies (April 2003) http://www.bankingcode.org.uk/wpdocs/cciba.doc

ii. Concept of Introducing Business:

- Mortgage Intermediary (Consumer Credit Act - CCA):

Problem:
The definition of "mortgage intermediary" in the CCA raises the concept of "introducing" business[3]. However, this is not defined in the legislation nor has there been guidance from the Regulator or Department of Finance.

Effect:
There is significant uncertainty in distinguishing between regulated and non-regulated activity and this has significant issues for consumers and raises uncertainty in the financial services sector. It creates particular difficulty in respect of planning for new business opportunities, particularly in the areas of advertising and referrals, as the authorisation process is long and complicated. Furthermore, this may not even be necessary if the relevant activity is not introducing which the regulator (or a court) would deem requires authorisation. This is also at odds with the UK position, where significant legislative and regulatory guidance on what constitutes regulated introducing is available.

Possible Solution:
Either a legislative amendment should be made clarifying what activity does and does not constitute regulated introducing (particularly in respect of referrals and advertising) for the purpose of the definition of mortgage intermediaries, or alternatively, extensive regulatory guidance should be provided on the matter so that regulated entities (and other affected parties) are not prejudiced in their interpretation of an ambiguous law.

- Insurance Mediation Regulations:

Problem:
The definition of "insurance mediation" in the Insurance Mediation Regulations introduces the concept of "introducing" insurance business but the term is not defined in the legislation[4] and there has been no guidance from the Regulator or Department of Finance as to what constitutes regulated introducing activity for insurance business.

Effect:
Consequently, there is significant uncertainty in distinguishing between regulated and non-regulated activity. Similar effects arise as per mortgage introducing as outlined above.

Possible Solution:
As per mortgage introducing, either a legislative amendment should be made clarifying what activity does and does not constitute regulated introducing (particularly in respect of referrals and advertising) for the purpose of the definition of insurance mediation, or alternatively,

[3] The definition of "mortgage intermediary" in section 2 of the Consumer Credit Act, 1995, was amended by Part 12 of Schedule 3 to the Central Bank and Financial Services Authority of Ireland Act, 2004 to include "a person (other than a mortgage lender or credit institution) who, in return for commission or some other form of consideration ... introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with such a loan".

[4] "introducing" is not explicitly referred to in the E.C. (Insurance Mediation) Regulations 2005, but Regulation 3(3) states "If a word or expression that is not defined in this Regulation is used in these Regulations and is also used in the Insurance Mediation Directive, the word or expression has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Directive.". The Insurance Mediation Directive (Directive 2002/92/EC) defines "insurance mediation" as "the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim".

extensive regulatory guidance should be provided on the matter so that regulated entities (and other affected parties) are not prejudiced in their interpretation of an ambiguous law.

iii. Investment Intermediaries Act (IIA):

Problem:
The definitions of "tied insurance agent", "insurance agent" and "insurance intermediary" under the IIA are not always clearly linked to the definition of an investment business firm or investment intermediary. This is inconsistent with the general regulatory framework under the IIA for insurance intermediaries, whereby insurance intermediaries are assumed to be synonymous with investment business firms.

Effect:
The relevant application of the rules when conducting certain insurance mediation activity is not clear.

Possible Solution:
The relevant legislative provisions should be amended and clarified so that the application of the rules is clear.

iv. CCA: distinction between "Advertisement" and "Information Document" required:

Problem:
There is no clear distinction between what constitutes an "advertisement" and an "information document" under the CCA.

Effect:
In order to avoid allegations of non-compliance and possible enforcement action, this ambiguity often leads to significant small text and warning statements being included in advertising, whereas this may not have been the intention of the legislation. The inclusion of text in an advertisement that may not be necessary can be confusing for consumers and may distract from the main material issues that need to be covered in such advertising.

Possible Solution:
A clear distinction should be drawn in the legislation between information required in advertising and the information currently required in information documents. A potential distinction could be between information provision which calls for further action before a customer can commit to agreement (which could be deemed an advertisement) and necessary pre-contractual information (which would have to be provided to a customer in advance of them applying for / agreeing to the loan) – something analogous to the requirements of the Distance Marketing Regulations would suffice.

v. Outsourcing:

Problem:
The regulatory rules in relation to outsourcing of services in credit institutions are not clear (different instructions exist across different regulated entities in respect of what can and cannot be outsourced, how it can be done, and whether regulatory approval is required) and the relevant legislative requirements do not sufficiently cater for outsourcing to be properly managed in a practical, legal and compliant way (various approaches are taken to excluding certain persons from having to obtain separate authorisation to conduct regulated activity in different contexts, however no single approach is taken).

Effect:
When looking at a potential outsourcing situation, the lack of legislative or regulatory clarity on what is acceptable outsourcing creates difficulty in establishing which approach to take for any given situation[5].

Possible Solution:
A clear legislative regime for what constitutes acceptable outsourcing of regulated activity, buttressed by a straightforward process for obtaining regulatory approval of same where necessary, would be of most use here. It is noted that the Financial Regulator has stated in its Strategic Plan for 2006[6] that it intends to "develop a process for the examination of applications for outsourcing by fund management companies" in 2006 / 2007. However, the development of such a process for all regulated entities may be of greater assistance.

vi. Unsolicited financial services and the Distance Marketing Regulations:

Problem:
Regulation 19 of the Distance Marketing Regulations prohibits various activities by a financial services provider in the context of the provision of an "unsolicited financial service", which is defined as a "financial service supplied otherwise than at the request of the consumer, but does not include a financial service so supplied if the service is supplied under a renewal of an existing contract that is in the economic interests of the consumer". "Economic interests" are not defined.

Effect:
In the absence of guidance as to what "economic interests" may be, and without further guidance as to what would constitute a legitimate "request of a consumer", it is difficult to ascertain the legal position of changes in terms and conditions and renewals of financial services contracts generally. This affects any financial services company's ability to effectively manage their relationships with their customers on an on-going basis.

Possible Solution:
A non-legislative solution may be provided here by the provision of practical guidance to the industry by the Financial Regulator as to what they believe a legitimate request would be, or what relevant economic interests may be.

5. Overlapping / Conflicting Legislation:

UBG believes that there is significant scope for streamlining the operation of the regulatory function as it applies to the financial services sector, by addressing the multiplicity of regulators / regulations that the sector must address in the course of business. Creating a necessity for regulated businesses to deal with different regulatory authorities or different regulatory requirements in respect of the same set of issues raises compliance costs without any resultant public benefit. Various specified activities are regulated by multiple regulators and the same activity is sometimes subject to different, potentially conflicting, regulatory rules, legislative provisions and enforcement mechanisms.

This:
- raises the potential for "double jeopardy" scenarios
- creates difficulty in ensuring compliance where there are conflicts between requirements

[5] The problem is exacerbated by the lack of clarity as to what constitutes regulated introducing activity, as discussed earlier.
[6] http://www.ifsra.ie/data/pub_files/Financial%20Regulator%20Strategic%20Plan%202006.pdf

- allows for a situation where one regulator / enforcer may interpret requirements in one way and therefore deem certain activity acceptable, whereas another regulator / enforcer may interpret the same requirements (or similar / overlapping requirements) in a different way and therefore deem the same activity unacceptable.

Ideally, financial services should be subject to one set of rules with one enforcer or several sets of rules with several enforcers but with no overlap and, certainly, no conflict. Examples of some duplication in regulatory functions are set out below;

i. Advertising:

Problem:
This is a key area where legislative provisions apply in addition to other regulatory and legal requirements which are independently worded and / or are enforced separately: for example, financial services providers must adhere (*inter alia*) to:

- the IFSRA Advertising Code requirements (and may be subject to disciplinary action in respect of breaches of same by the Financial Regulator, the Financial Ombudsman, and the Courts);
- the requirements in respect of the Consumer Information Act and the Misleading Advertisement Regulations (and may be subject to disciplinary action by the Office of the Director of Consumer Affairs);
- the Ministerial Codes of Standards, Practices and prohibitions and Other Forms of Commercial Promotion in Broadcasting Services;
- the voluntary Advertising Standards Authority of Ireland Codes of Advertising Standards and Sales Promotion Practice.

An example of where this conflict gives rise to difficulties are the requirements relating to past performance warnings under Distance Marketing Regulations (where a warning is required to the effect that "historical performances are no indicators for future performances") and the IFSRA Advertising requirements (where a warning is required specifically stating "Past performance may not be a reliable guide to future performance"). These requirements are mutually exclusive, but failure to comply with both in any given scenario could give rise to enforcement action.

Possible Solution:
All advertising requirements for financial services providers should be harmonised and subject to one unified regulatory regime. Alternatively, different regulatory regimes could be responsible for different aspects of advertising requirements, but no overlap should occur between different agencies unless completely unavoidable (i.e. there is a sufficiently justifiable reason for such overlap occurring).

ii. Insurance Mediation Activity:

Problem:
Two separate regulatory regimes (under the Investment Intermediaries Act and under the Insurance Mediation Regulations) exist in respect of the same insurance mediation activity and the same providers. These regimes do not appear to interact and, in many areas, conflict. This makes it difficult for providers to ensure compliance with conflicting regimes. It leaves regulated entities and third parties open to enforcement action, and also unnecessarily complicates consumer understanding of the regulated position of the service they are receiving. It also may mean persons seeking to engage in insurance mediation activity need to go through two separate authorisation and registration processes.

Possible Solution:
The relevant requirements should be harmonised one way or the other (i.e. remove the requirements relating to insurance mediation from the Investment Intermediaries Act and amalgamate into the Insurance Mediation Regulations, or alternatively amalgamate the Regulations requirements into the Investment Intermediaries Act and repeal the Regulations.

iii. Compensation Schemes:

Problem:
There are potential / existing overlaps between the Investor Compensation and Deposit Guarantee Scheme contributions for regulated entities in respect of the provision of some specific services.

Effect:
If overlap occurs, then potentially regulated entities may need to make a "double contribution" for the same regulated activity. For example, equity-linked deposits are potentially accounted for under both Schemes (as "tracker bonds" in respect of the Investor Compensation Scheme, and "deposits" under the Deposit Compensation Scheme).

Possible Solution:
Double contributions, in the absence of a discernible and justifiable customer benefit, should be avoided by examination of the full range of products and services subject to the various compensation schemes, and amendments made to the underlying legislation to remove overlap arising.

iv. Consumer protection

Financial institutions are currently subject to regulatory review by the Financial Regulator, the Financial Services Ombudsman, the Competition Authority, the Data Protection Commissioner and the Director of Consumer Affairs. There has also been some suggestion that the National Consumer Agency will be given a role in the future to assist with consumer protection for the financial services sector (although this may involve a transfer of responsibility from the Financial Regulator).

Effect:
Dealing with a multiplicity of different regulatory agencies, with differing timescales, interpretation of similar rules, consultation processes, expertise and often conflicting objectives can lead to inconsistent outcomes from processes or regulatory interventions in the market place. For example, the Competition Authority's recommendation on Section 149 is seen as sensible and pro-consumer, but the Financial Regulator does not believe the removal of Section 149 is viable at present. Similarly, the Financial Regulator's requirements on advertising, cold calling and selling often militate against the achievement of a competitive dynamic in the market place, contrary to the policy objectives of the Competition Authority. The confusion in respect of this particular example is added to by the Financial Regulator having an explicit statutory role in respect of enhancing competition.

Possible Solution:
It would be a useful exercise if the entities mentioned above (and other parties, including the relevant Governmental departments, such as the Department of Finance, the Department of Enterprise Trade and Employment, the Department of Justice etc) examined their rules, processes and procedures to identify areas where duplication can be avoided and consistency introduced.

v. Inconsistency between "Operating in the State" for Regulatory & Tax Purposes:

Problem:
There is no clear legislative conformity between the concept of "operating in the State" for regulatory purposes and for tax purposes.

Effect
Tax liability could arise (depending on interpretation) for what would be considered to be conducting financial services in Ireland for tax purposes (e.g. stamp duty on credit cards) when this activity would not necessarily be considered to be operating in the State for regulatory purposes.

Possible Solution:
Preferably, harmonisation of legislative approach to "operating in the State" would occur across all regulated activity for tax and regulatory purposes. Failing this, clear instructions (either via legislation or alternatively by regulatory guidance) as to when each relevant governmental agency would view a regulated entity to be operating in the State for their purposes would be preferred.

vi. Acquiring Transactions involving investment intermediaries (Part VI of the Investment Intermediaries Act, 1995)

Problem:
Part VI of the IIA (and similarly Part VI of the Stock Exchange Act, 1995) does not provide for retrospective approval of acquiring transactions which have not been approved in advance by the Financial Regulator. This is at odds with Chapter VI of Part II of the Central Bank Act, 1989[7], which does allow for limited retrospective approval on application to the High Court.

Effect:
In the limited circumstances when an acquiring transaction might occur without prior approval due to pure innocent mistake, the only course of action at present may be the unravelling and reconstituting of a larger deal. This scenario would be most likely to occur where a large multinational group with a very small subsidiary in Ireland (authorised as an investment intermediary) is taken over in another country but prior approval had been missed (this is presumably the reason why a similar provision was introduced into the Central Bank Acts).

Possible Solution:
Harmonising the provisions to those in the Central Bank Acts to allow retrospective approval in exceptional and excusable circumstances would appear to make better commercial sense than persisting with the situation at present. This would require legislative amendment to the relevant Acts involved.

[7] Section 76(2), inserted by Section 56 of the Central Bank Act, 1997, reads "A person may apply to the Court for an order, on such conditions as the Court may decide, declaring that, notwithstanding the failure of that person to notify the Bank as required by this Chapter, the acquiring transaction is, and always had been, a valid transaction and that title to any shares or other interest concerned did pass and that all purported exercise of powers is and always had been valid, and if the Court finds that the failure to notify the Bank of the proposed acquiring transaction was due to inadvertence on the part of the person, or if the Court considers that it is otherwise in the interest of justice to do so, it shall grant the order sought".

6. Simplification of Process:

UBG believes that there are a number of instances where the burden of regulation could be reduced through the simplification of processes applying to regulated entities. Clear, straightforward regulatory requirements improve the quality of regulation both for consumers and companies operating in a specific sector. Some examples of where such changes could be made are set out below:

i. Proliferation of Warning Statements:

Problem:
The necessity of including pro-forma warning statements on all forms of advertisements must be questioned in terms of its effectiveness and usefulness. This is especially the case where the advert contains no form of direct offer to purchase.

Effect:
The same warning statement will often be viewed on numerous separate occasions by a customer prior to a product sale and often in circumstances where no warning may be necessary.

Possible Solution:
As per previous specific examples discussed earlier, UBG would prefer a split between advertising disclosures (which are relative to the content of the advertisement), and all other relevant mandatory disclosures to be required on a "see at least once" basis before commitment to a service or the purchase of a product (akin to the Distance Marketing regime).

ii. Valuation Statements:

Problem:
The IFSRA Code of Practice for Credit Institutions requires valuation statements to be produced for all deposit products, including those products that are fixed term and whose value can only be calculated at maturity (the most common example of this would be equity-linked deposits). The benefit to a customer of such a valuation statement is negligible.

Effect:
The statement, in respect of some products, may provide the customer with a misleading impression of product performance. While it may be the case that such activity is exempt from this Code if these deposits constitute "tracker bonds", the lack of any definition of tracker bond, and the overlap between requirements may mean institutions must err on the side of caution and attempt to comply with both regimes.

Possible Solution:
The requirement to produce annual statements should be limited to products where no confusion might arise in respect of the value of the product to the customer.

iii. Mortgage Intermediary Appointment Process and a "live" register of regulated entities authorised to conduct business in Ireland:

Problem:
The process for appointing, renewing and discontinuing the appointment of mortgage intermediaries by mortgage providers is unnecessarily complex and is not conducive to the orderly and proper running of a mortgage business. The IFSRA response time is protracted

and the absence of a "live" IFSRA centrally managed register for all types of regulated entities being available on-line is unhelpful to both providers and consumers.

Effect:
It is more difficult than should be the case for regulated entities and consumers to ascertain whether a mortgage intermediary is authorised at any given time to conduct certain business. This can lead to delays in starting new business channels or continuing existing channels where an appointment is due to end.

Possible Solution:
The appointment and authorisation process should be streamlined to be in line with other more effective appointment and authorisation processes within the Financial Regulator. UBG understands that this work may already be underway in the Financial Regulator, and would like to see such changes brought in as soon as possible. However, UBG would also like to see a "live" authorised firm register being made available (for all regulated entities) as soon as possible, preferably in line with that available on the UK FSA website[8].

7. Regulation that does not appear to operate in the interest of customers:

UBG believes that there are also instances where regulations that impose a compliance burden actually operate against the interest of consumers, either in terms of imposing additional costs or reducing their exposure to new products or services. Some examples are outlined below.

i. Commission Disclosure:

Problem:
The requirement for the disclosure of commission (e.g. under the Life Assurance Provision of Information Regulations) has never been properly tested for value or analysed as to cost / benefit from a consumer perspective.

Effect:
Commission disclosure is required in some circumstances but not in others. This may make some products (where commission does not need to be disclosed) artificially appear more attractive than other competing products (where commission must be disclosed).

Possible Solution:
The Financial Regulator previously engaged in a consultation on commission disclosure[9] but the response to same has not yet been published (although certain aspect of the response would be expected to be included in the forthcoming Consumer Protection Code). In any event, the Financial Regulator may not be in a position to make legislative amendments necessary to harmonise the approach across the industry (where some requirements arise under legislation). A harmonised approach should be agreed between the Financial Regulator and the relevant Government departments, preferably whereby commission disclosure is not required where the final cost to the customer in taking out a product or service is disclosed in a manner which is, in itself, clear, fair and not misleading.

[8] http://www.fsa.gov.uk/register/
[9] http://www.ifsra.ie/data/CP_Files/Consultation%20Paper%20CP9.pdf

ii. IFSRA Cold Calling Rules:

Problem:
The IFSRA rules restrict telephone calls being made to existing and prospective customers, which acts as a deterrent to new business and may not be in customers' best interests. In our view the rules as currently drafted (and as proposed in the draft Consumer Protection Code[10]) are unnecessarily restrictive and anti-competitive. In particular, an arbitrary bar on marketing to certain customers who have given consent to being called for marketing purposes is unfair and not in line with customers' expressed wishes and data protection requirements.

Effect:
The requirements militate against new entrants to specific financial services products and protects incumbents. Given the findings in market share of the Competition Authority (Non-Investment) Banking Sector report, the continuation of such restrictions, in the absence of publicly disclosed justification for same, should be revisited.

Possible Solution:
A less onerous set of requirements should be introduced which cater for any publicly disclosed justification for competition restriction (at least we would like to have the opportunity to challenge the Financial Regulator's consumer research in this area which they have stated backs up their current approach). An example might be any restriction on calls only applying to personal customers, and not business customers, or alternatively, restrictions might apply to calls which result in a customer completing a transaction over the phone, but not to other calls which only involve advertising but no commitment to a service or to purchase a product. Ultimately, we believe no restriction should affect the ability to market to an existing or potential customer by phone in circumstances where such a call would be in compliance with data protection and other relevant legislative requirements (such as Distance Marketing requirements).

iii. Prevention of Consumer Credit being agreed electronically:

Problem:
The legislative prevention (through a combination of the Electronic Commerce Act 2000 and the Consumer Credit Act 1995) against consumer credit being agreed electronically is anti-competitive and contrary to the general thrust of Government Policy on e-commerce.

Effect:
The restriction on availability of credit by electronic means is preventing a potential cost saving to the industry (where applications currently progressed in person could be conducted, in whole or in significant part, on-line) and also restricts the ease with which customers can apply for credit.

Possible Solution:
The relevant legislative changes should be introduced to allow for the agreement to provide credit being capable of being concluded electronically. UBG understands that the Department of Finance and the Department of Communications, Marine and Natural Resources are currently looking into this issue, and it would be beneficial for this to be progressed as soon as possible.

[10] See pages 24 and 25 of the Financial Regulator's Public response to CP10:
http://www.ifsra.ie/data/CP_Files/Consumer%20Protection%20Code%20Public%20Response%20to%20CP10.pdf

iv. Prevention of quotation of Underlying Mortgage Interest Rate:

Problem:
The APR of a mortgage (unlike other forms of credit) may not be as relevant a figure as the underlying interest rate (borrowing rate) given the long term nature of the product and the almost certainty of rate change during the full term. However, the Regulator has previously indicated no reference to borrowing rate can be made to customers in any document (e.g. a website) which might be construed as an advertisement (*given section 21(1) of the CCA*), notwithstanding that there may be legitimate reasons to state the borrowing rate (e.g. to clarify how the APR is arrived at, or to keep existing customer aware of what the underlying interest rate on their mortgage is, or when it changes). This is most apparent on websites, which are often used for the dual purpose of informing existing customers about their products, and also advertising new products to new customers. This problem is also tied in to the difficulty in distinguishing advertisements from information documents under the Consumer Credit Act, and also the lack of up-to-date guidance on the correct representation of a typical APR.

Effect:
Customers may be confused as to what the rate on their product is and/or the true cost of a mortgage for comparison purposes when shopping around. In addition, customers may not be capable of distinguishing between products on offer (either within a single regulated entity or from a variety of such entities). Regulated entities may be frustrated in providing information to customers which they believe is relevant information in deciding to take out a mortgage or switch providers.

Possible Solution:
Provided the distinction between both rates are explained, there should be no bar on stating borrowing rate (as well as APR) on advertisements or information documents. This could be resolved by legislative amendment and supplementary regulatory guidance clarifying when such information is acceptable and when it is not.

v. Equity Release Mortgages:

Problem:
There are currently inadequate regulation / regulatory warnings required for equity release mortgages in comparison to traditional mortgages.

Effect:
This may make equity release mortgages appear unfairly more attractive than traditional mortgages (particularly when traditional mortgages require significant and repeated warnings).

Possible Solution:
UBG notes that the Financial Regulator seeks to include additional warnings for these types of products in the forthcoming Consumer Protection Code. However, it is imperative that any entities not subject to the Code should be subject to similar requirements if offering these types of product to the public, and this would probably require legislative change.

vi. Inconsistent Application of Regulatory Regimes:

Problem:
Certain entities are exempt from the general financial services regulatory regime (either in whole, as with travel agents in respect of travel insurance, or in part, as with credit unions, friendly societies and local authorities) conducted primarily by the Financial Regulator.

Effect:
This distinction provides an unfair imbalance between providers of the same product. Typically, the marketing and literature produced by such entities operating outside the general financial services regulatory regime appears less complicated / more attractive.

Possible Solution:
The operation of less regulated regimes for some financial services providers needs to be objectively justified with a view to ensuring consistency in regulation across providers, either at the current level for mainstream financial services institutions, or at the lighter touch level that applies to entities that are exempt. If such entities are to remain unregulated by the Financial Regulator, then UBG would suggest that similar requirements in respect of advertising and product or service delivery should be imposed by way of legislation or potentially an alternative regulator.

vii. Consumer Protection – extension to Non-Consumers:

Problem:
There is increased evidence that financial services regulation (or at least consumer protection requirements) is being extended to financial services being provided to "non-consumers" in circumstances where no quantitative / qualitative analysis as to the extent of the problem that exists in respect of non-consumers appears to have been made, and no European mandate exists to otherwise justify such extension.

Effect:
The extension of the "consumer" protection code to non-consumers amounts to unnecessary additional regulation in circumstances where an extension of the regulatory burden is assumed to bring benefits, without any objective justification for the changes made.

Possible Solution:
UBG is not necessarily suggesting that consumer protection requirements should never be extended to non-consumers. However, UBG would seek that any such suggestion be backed up by publicly available and transparent analysis of the merits and demerits of such an approach (probably by way of a Regulatory Impact Analysis).

viii. Proliferation of "Warning Statements" to Customers on mortgages:

Problem:
The relevant CCA requirements (e.g. sections 121(5), 128, 132, 133, 134, 135 (as in directions issued by the Regulator, which has occurred in the past), and overlapping but separate Regulatory requirements (e.g. those proposed under the Consumer Protection Code) require specific information and warning statements on all "information documents" (defined as "any document, leaflet, notice, circular, pamphlet, brochure, film, video or facsimile issued to the general public or to certain persons (whether solicited or not) for the purpose of giving information in relation to housing loans"), application forms, and approval documents (as appropriate).

Effect:
As per previous similar examples, the mandatory inclusion of such warnings is very repetitious. In fact, the deluge in warning statements that consumers are subjected to under the various regulatory requirements may actually be counter productive and merely reinforce a perception that text repeated so frequently can be ignored or disregarded.

Possible Solution:
As per previous similar examples, UBG would suggest that there should be minimum requirements to provide this information to the customer in a clear, fair and not misleading way *at least once* prior to purchasing a product rather than a "blanket" approach of including the information on everything a customer might see.

ix. Telephone Calling Rules to existing customers for non-marketing purposes:

Problem:
Relevant legislative provisions (e.g. section 46 of the CCA and the IFSRA Telephone Calling Rules) that relate to phone calls to customers / potential customers have been superseded by technology and are difficult to apply given the modern preference for the use of mobile phones (e.g. a rule preventing you from ringing someone at their place of work was to stop other work colleagues being aware of the banking relationship).

Effect:
The personal nature of mobile phones means compliance with these requirements can be difficult to ensure as a call to the customer's mobile may still not be made because the person is deemed to be "in work". Regulation needs to keep pace with developments in technology and lifestyles to be effective and relevant.

Possible Solution:
Relevant requirements which distort the ability to phone customers in work should be specifically amended to exempt calls to telephones where customers have provided regulated entities with numbers to such phones for operational contact purposes.

8. Section 149, Consumer Credit Act:

Problem:
UBG agrees with the contention of the Competition Authority in its recent report on Competition in the Non-Investment Banking Sector that S149 of the Consumer Credit Act should be repealed. However, there does not appear to be a clear dynamic at present within the Department of Finance or the Financial Regulator for setting a clear timetable for removal of S149.

Effect:
UBG believes such a change is required in the interests of competition and consumer interests due to the following effects of the current regime:

- This process for consideration of a change in fees or charges is lengthy and can be expensive. The Regulator has up to 4 months to either make a decision on a fee notification submission or to seek further information. In addition, this is a costly process: the Regulator can charge up to €37,150 per fee notification (this is on top of the levy currently paid by credit institutions, amongst others, towards the operation of the Financial Regulator).
- S149 restricts innovation and competition. Due to the time delays involved in the approvals procedure, there is often a delay in confirmation as to whether a product or initiative can

proceed – this makes it hard for innovative companies to respond to market developments. In addition, the Regulator may revert with a maximum amount to be charged that is lower than the amount proposed in the submission and with the result that the offering may no longer be commercially viable or desirable to proceed with.

- The CCA relates to 'consumers' (defined as 'a natural person acting outside the person's business'). However, S149 of the Act refers to 'customers', therefore requiring the process to apply to both personal and non-personal charging submissions – this is particularly of new products that are directed at the SME market, and seems wholly inappropriate where large corporate customers are concerned.
- The Regulator requires Banks to revert with a detailed submission (including a detailed statement of costs and commercial justification) two years from the date of their original Direction. This requirement has further increased the level of S149-related compliance costs.
- If the Regulator approves a fee or charge on the basis of a submission from a regulated entity, this approval (provided its terms are complied with) may actually act against customer interests, as it probably prevents the Regulator from subsequently challenging the validity of the fee or charge outside of any "review" date included in the approval.
- S149 requires applicants to complete a "commercial justification" on a cost plus basis. However, as UBG does not (and cannot) allocate shared costs, any attempt to complete a commercial justification on a cost plus basis would be subjective and entirely dependent upon the various assumptions made.

Possible Solution:

Various avenues of approach could work to remove S149, either on a total or phased basis. For example, its application could be immediately limited solely to consumers rather than customers generally (this might reflect market reality whereby most business fees and charges are individually negotiated). In addition, the ranges of specified products and services to which S149 applies could be limited and reduced.

An alternative possibility would be for new fees and charges to solely be notified to the Regulator (rather than subject to prior approval), so that the Regulator could continue to inform the public as to what fees and charges are out in public (letting the customers decide who to go to). This would allow firms to get on about the business of innovating and competing, while also giving the Financial Regulator the comfort of (a) knowing what fees and charges are in place in the industry, (b) allowing them to assist members of the public in shopping around for financial products and services, and (c) allowing the regulator to challenge (either at the time of notification or thereafter) the purported fairness of a fee or charge with the relevant regulated entity concerned.

9. Additional improvements in regulation:

UBG believes that there are a number of additional changes to the operation of the regulatory regimes applicable at the moment which could improve the quality and effectiveness of regulation in the market place. The key additional changes that UBG would welcome include:

i. Regulatory Impact Assessments (RIAs) and Cost-Benefit Analyses (CBAs):

Problem:

Proposed initiatives or processes by regulatory authorities or Governmental departments that could have a material impact on regulated entities or their customers or not routinely subject to RIAs or CBAs to determine the necessity and pros and cons of the proposed initiative.

Effect:
It is commonly recognised that the RIA process increases competitiveness through encouraging a better regulatory environment. This would increase the pressure on regulatory authorities to take such regulatory actions as are necessary and proportionate in the circumstances of specific sectors. The current absence of RIAs and CBAs have resulted in legislation being agreed at European level which has subsequently prevented the industry or the Government from developing a legislative solution which suits "Ireland Inc". Similarly, initiatives have been publicly committed to which, in hindsight and a better understanding of the potential impact, might not have been adopted (or may not have been committed to being completed so quickly) or may have been more limited in scope and direction.

Possible Solution:
Ideally, a RIA and a CBA would be carried out by the relevant Governmental body either (a) proposing new domestic legislation / regulation which potentially effects financial services firms or (b) considering the domestic position in interfacing with the relevant parties at a European level in the production of a draft EU Directive / Regulation. Such RIA would have to be conducted in full consultation with the parties potentially affected, and should provide sufficient time to allow a proper understanding of the potential issues to be agreed. Such action would appear to be in line with the Government's Six Principles for Better Regulation[11], published in January 2004.

ii. Library of Regulatory Requirements and Guidance Notes:

Problem:
The Financial Regulator has issued various guidance notes / directions / best practice notes to the industry but these are not held in a public easily accessible database (e.g. they are not contained in the "Codes and Requirements" section of the IFSRA's website[12], or are included but the layout of the document makes certain sections impossible to read[13], or, in many cases, not available on the Regulator's website at all[14]).

Effect:
It is very difficult to be aware of what regulatory requirements are in place and therefore to be able to confirm, as an individual regulated entity, or as a regulated industry, compliance with all rules.

Possible Solution:
There should be a central store for all such requirements, and their ongoing relevance and value should be reviewed regularly by the Regulator as part of their annual Strategic Plan, in consultation with the industry and other affected parties.

[11] See "Regulating Better" (the Department of the Taoiseach's Government white paper setting out six principles of better regulation) http://www.betterregulation.ie/attached_files/upload/static/1166.pdf
[12] e.g. Credit Institutions' Licensing and Supervision Requirements are included in an "Other Documents" section rather than the "Codes and Requirements" section
[13] e.g. see footnote 2 on page 4 of the Code of Practice for Credit Institutions (June 2001) - http://www.ifsra.ie/data/in_car_files/Codes_of_Practice.pdf
[14] e.g. individual letters have been sent to regulated entities stating changes to the existing requirements, or stating new requirements, without amending the base documents on the website and without including copies of such letters on the website, for example the last 2 changes to the required regulatory statement on advertisements under the Advertising Codes. The continuing application of historic letters, for example a guidance notice dated 23 February 1989 on cross-marketing of financial services within bank groups, is also unclear.

iii. Regulator/industry fora

A formal process should be established for interaction between the regulatory authorities and the regulated entities to ensure that the system operates effectively and whereby general regulatory issues can be addressed effectively on an industry-wide or sector-specific basis. This should report twice yearly to the Department of An Taoiseach on the operation of the regulatory regime for the specific sector, with any improvements requiring legislative intervention being highlighted urgently.

10. Process Issues:

Problem:
No defined consultation process appears to exist in most areas responsible for the creation and development of legislation and regulation that impacts financial services firms.

Effect:
While some consultation does take place, it tends to be unstructured and insufficiently transparent to ensure major issues are addressed in a comprehensive and fully informed manner. Some consultations have been better than others, and some initiatives have been commenced without any consultation occurring (or without issues raised being properly addressed, if addressed at all). Consequently, regulated entities are often left in the invidious position of being prevented from complying with certain legislation without ceasing business (due to insufficient time being provided to implement changes), or alternatively are unclear as to what obligations imposed actually require of them (owing to poor construction of requirements or lack of guidance during the consultation process or thereafter).

Possible Solution:
UBG would suggest the following in the context of future consultation papers with the intention of adding value to the consultation process by assisting interested parties to provide quality feedback in a timely manner, which in turn should result in proposed changes or new rules or requirements being introduced more quickly and effectively:

- where possible, include a full consolidated copy of all relevant existing laws and rules (in particular, Irish and EU, but also UK and others where especially relevant) currently in place that are directly relevant to the issue under consultation;
- where proposing to expand an existing rule or law, and where a Regulatory Impact Analysis has not already occurred, include a full and detailed explanation in a segregated section as to why the expansion is deemed necessary and proportionate;
- a statement of whether a Regulatory Impact Analysis is anticipated before introduction / commencement of the new law or changes (and if such an analysis is not to be carried out, an explanation why it is felt this is not necessary);
- for ease of understanding, the use of flowcharts to demonstrate how any changes will be effective once commenced to assist in making the proposed changes more transparent;
- include a brief outline of what the next stage of the consultation process may entail (or whether no further consultation is anticipated);
- the provision of a list of other public and/or private bodies that have been specifically approached / invited to engage in the consultation process.

11. Upstream Risk:

Problem:
A significant amount of legislation / regulation which (potentially) affects the operation of financial services providers is being introduced at national and European level[15]. In many respects, the manner in which this legislation and regulation is being introduced and considered is not being co-ordinated in an organised way which would minimise the potential for future over-regulation.

Effect:
In many cases, some areas of Government or Regulators are developing new legislation or regulation while other areas are developing overlapping / conflicting legislation or regulation. Alternatively, even if there is no actual overlap of requirements, there is overlap of effect on business, and the relevant timescales for consideration of proposals and / or implementation of each of the various proposals does not take into account the shared resource drain involved across the different projects.

Possible Solution:
A co-ordinated approach tracking all relevant legislative and regulatory change at Irish and European level should be pursued by the Government, potentially spearheaded by the Better Regulation Unit of the Department of the Taoiseach. All legislative and regulatory initiatives should be "screened" here to ensure cohesion between the various separate agendas and initiatives with consultation programmes and implementation timelines taking account of relevant overlapping resource drain.

[15] A sample list of some of these is attached at Appendix I.

Notes:

Costs:

Ulster Bank does not apportion shared costs across business units or specific product lines. As a consequence, it has not been possible to detail the cost of specific aspects of regulation throughout this submission. However, UBG would be prepared to discuss any aspects of our submission with the Business Regulation Forum if required.

While certain general costs might be identifiable (such as the employment of compliance departments, or the printing costs for having to produce a particular type of form etc), the nature of the regulatory problems facing businesses are not directly referable to these costs, and therefore we have endeavoured to focus on issues where underlying cost is not as much of a factor as relevance or necessity of the requirements themselves.

Contact Points:

Communication in regard to this submission should be directed to:

David Peacock
Head of Corporate Affairs
Ulster Bank Group Corporate Affairs
Ulster Bank Group Head Centre – 2nd Floor
George's Quay
Dublin 2
Tel: 01 6084000

APPENDIX I

Sample list of selected incoming regulation / legislation projects which could affect financial services providers in Ireland.

Irish-specific initiatives
Law Reform Commission Consultation Paper on Judgement Mortgages
Money Laundering Revised Guidance Notes
Revenue Commissioners proposed 'co-operative approach to tax compliance'
Company Law Winding-Up Reforms
Company Law Reform and Consolidation Bill RoI
Obligation of regulated service provider to provide a compliance statement under the Central Bank and Financial Services Authority of Ireland Act 2004
Law Reform Commission Reform and modernisation of Irish Land and Conveyancing Law
Law Reform Commission Consultation Paper on Law and the Elderly
IFSRA research into access to financial services
Equality Authority Initiative to help access to financial services for disabled customers
Review of the Netting of Financial Contracts Act, 1995
Regulation of Credit Intermediaries
Ombudsman (amendment) Bill
Electronic Commerce Act 2000
IFSRA CP9 Review of Remuneration Structures and Transparency
IFSRA CP2 & CP10 Consumer Protection Code
IFSRA CP11 & CP15 Probity and Competence (Fitness) Testing of Directors and Senior Management
IFSRA CP4 & CP14 Mandatory Competency Requirements
Companies (Auditing and Accounting) Act 2003 - section 45 Directors' Compliance Statements
Irish Stock Exchange Dematerialisation of Irish Listed Shares Consultation Paper
Cash in Transit Code
IFSRA Corporate Governance CP
FR s135(1) Debt Consolidated Mortgages Advertising Direction
IFSRA Authorisation Process for Mortgage Intermediaries
Whistleblowers Protection Bill 1999
Consolidation of Financial Services Legislation Bill
Competition Authority Report into Competition in the (non-investment) banking sector in Ireland
Insurance Mediation #2 Regulations
Standardise ID and Address verification documents (Competition Authority Report Recommendation 5)
DoF/IFSRA Removal of price regulation (Competition Authority Report Recommendation 6)
Cost table for business current account (Competition Authority Report Recommendation 11)
IBF Business Switching Code (Competition Authority Report Recommendation 12)
Standardised mortgage document (Competition Authority Recommendation 13)
Improvement in the transferability of mortgage charges / security (Competition Authority Report Recommendation 14)

Clearing of electronic copies of cheques (Competition Authority Report Recommendations 20, 21, 22 & 23)
Automated Clearing House - Request for Proposal (Competition Authority Report Recommendations 24 & 25)
Law Reform Commission Public Consultation on plans for the Restatement of Statute Law
Criminal Justice (Mutual Assistance) Bill
Social Finance Initiative
Charities Regulation Bill
FATF Mutual Evaluation of Ireland
Communications Data Retention Bill
Revenue Bill
Contractual Obligations (applicable Law) Bill
Social and affordable housing: clawback provisions
BCI General Advertising Code Consultation
IAASA consultation on legal protection of the term 'accountant'
IFSRA Risk Weighting of Residential Mortgages
Gaming and Lotteries (Amendment) Bill
IFSRA 'Online Resource' for savings and investment products and SSIA maturity

European Union initiatives
Implementation of FATF Special Recommendation IX: Cash Couriers
EU European Bank Account Arrestment Green Paper
EU Regulation on Consumer Protection Co-operation
EU proposals on credit ratings agencies
EU White Paper 2005 - 2010: The next stage of the EU Financial Services Action Plan
Corporate Governance: European Commission consults on shareholders' rights
European Commission initiative on cross-border consolidation in the EU financial sector (Mergers and Acquisitions)
EU Mortgage Forum Recommendations and Green Paper on Mortgages - Possible EU Mortgage Regulation
EU European Commission Competition Enquiring in to Retail Banking
Directive on the recognition of professional qualifications (2005/36/EC)
CESR consultation raising question of centralised EU Regulation
EU European Commission Competition Enquiring in to Business Insurance
European Commission Review of effectiveness of Regulation 2560/2001
EU proposals for a New Legal Framework for a Single European Payments Area (SEPA)
Consumer Credit Directive
EU Implementation of International Accounting Standards
EU Consultation on VAT on Financial Services
EU Recommendation on FATF SR7 (Information on the originator of a payment)
Possible EU regulatory regime for hedge funds
EU Unfair Commercial Practices Directive
EU Gender Equality Directive

EU 3rd Money Laundering Directive
Draft EU directive concerning the annual accounts of certain types of companies and consolidated accounts
OFT & EU investigations of the Multilateral Interchange Fee
Markets in Financial Instruments Directive [MiFID / ISD 2]
Basel 2 / EU Capital Requirements Directive
Trading Book Review (TBR) - part of the Basel 2 package being developed by Basel / IOSCO
EU Financial Conglomerates Directive
Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
Joint Forum high-level principles for business continuity CP
Company Law Action Plan COM 2003/284
Proposal for a Directive on Services in the Internal Market
UCITS Review
CEBS CP10 consultation on validation and assessment of the risk management and risk measurement systems
EU Better Regulation Plan
Green Paper on the enhancement of the EU framework for investment funds
Proposal for Collective Board Responsibility and more Disclosure on Transactions, Off-balance Sheet Vehicles and Corporate Governance Statements
Draft EU Directive on the Statutory Audit of Annual and Consolidated Accounts
European Commission Review of the E-money Directive
UN Convention Against Corruption
EU Waste Electrical and Electronical Equipment Directive
European Commission's Recommendations on 'Fostering an Appropriate Regime for the Remuneration of Directors'
European Commission's Recommendations on the role of (independent) non-executive or supervisory directors
CEBS Financial Reporting CP
European Commission Communication on clearing & Settlement in the equities, bonds and derivatives markets
CEBS CP02 on outsourcing
Environmental Liability Directive
European Commission Review of the Deposit Guarantee Schemes Directive
BCBS Paper on Enhancing Corporate Governance
CEBS CP05 on framework for Supervisory Disclosure
Directive on the Portability of Pensions
European Commission Action Plan on modernising Company Law and Corporate Governance in the EU
CEBS Consultation on Supervisory Co-operation for Cross Border Banking and Investment Firm Groups
CEBS Consultation on Common European Framework for Solvency Reporting (ROI & NI)
EU Fifth Motor Insurance Directive