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BEYOND ENDOGENEITY: HOW FIRMS AND REGULATORS CO-CONSTRUCT THE MEANING OF PROCESS-ORIENTED REGULATION

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Beyond Endogeneity: How Firms and Regulators Co-Construct the Meaning of Process-Oriented Regulation

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Abstract: How do the meanings of open-ended regulatory terms emerge and evolve? What role do regulators and firms play in this process? Currently, the most prominent theorization of the emergence of regulatory meaning is the New Institutional *legal endogeneity* model. This model posits that businesses' commercially-rooted constructions of what is entailed in compliance with ambiguous legal norms tend to gradually infiltrate the state's legal and administrative systems. Professionals, such as lawyers, are portrayed as the key agents who construct legal interpretations so as to make them amenable to managers, and thereafter transmit and institutionalize these interpretations as authoritative legal decisions. Building on this model, and on a detailed case study of British financial firms' responses to a Process-Oriented Regulatory initiative, this article develops a more complete image of the evolvement of regulatory meaning: *co-construction*. This involves an interactive and iterative process of regulators' strategic framing of regulatory interventions so as to gain the cooperation and support of businesses and political overseers, alongside intra-businesses professionals' partial reframing of regulatory messages. The meaning and content of regulation, which emerges out of this process, involves an amalgamation of regulatory-initiated solutions, packaged in industry-appealing frames, as well as existing or emerging industry practice framed as a solution to both regulatory and business problems.

Keywords: New-Institutional theory, legal endogeneity, Process-Oriented Regulation

Beyond Endogeneity: How Firms and Regulators Co-Construct the Meaning of Process-Oriented Regulation

I. Introduction

In 2004, following over a decade of recurring scandals of customer abuse by financial firms, the British regulator - the Financial Services Authority (FSA) - announced an initiative in the name of Treating Customers Fairly. The FSA stressed that senior managers need to assume responsibility and control over their firms' fair treatment of customers. It pointed to several issues that managers ought to consider, including employees' remuneration and the design of financial products. The industry, to begin with, resisted these messages. Overtime, in response to FSA pressure, firms introduced elaborate formal structures for monitoring their treatment of customers, but only limited change to underlying processes and practices. At the same time, some firms saw a need to introduce a component of customer feedback to their product-design processes and to employee remuneration schemes. The origin of this focus on customer feedback was in commercial, business-marketing discourse regarding the means via which firms can enhance customers' satisfaction, loyalty and advocacy. The FSA, in response to firms' reception and translation of its messages, stressed that firms need to demonstrate that their formal governance structures are making a real difference for customers, and also that customers' feedback and satisfaction are unreliable indicators for objective fair treatment. Firms, in reply, modified their formal systems and calibrated their customer-feedback methodologies to include assessment of customers' understanding of their financial transactions. Ultimately, out of this iterative process, an institutionalized meaning of what is entailed in demonstrating compliance with "treating customers fairly" gradually emerged.

Building on analysis of the above case, this article develops a tentative model for the process via which regulators and firms negotiate and co-construct the meaning of open-ended regulatory provisions. In so doing the article draws upon, and extends, New-Institutional research that has shown how the content and meaning of legal norms emerges out of their enactment by regulated organizations (see Edelman and Talesh, 2011, for a review). By comparison, extant socio-legal scholarship regarding corporate responses to regulation has given little explicit attention to the construction of regulatory meaning. Most studies are written as if there is a bright line that divides firms' compliance, non-compliance and so called beyond-compliance with regulation. Consequently, the primary focus of these studies is on corporations' motivations for compliance, and on the factors that shape their motivations (e.g. Ayres and Braithwaite, 1992; Etienne, 2011; Gunningham et al. 2003, 2004, 2005; Gezelius and Hauck, 2011; Hutter and Jones, 2007; Kagan and Scholz, 1984; May, 2004; May and Wood, 2003; Nielsen and Parker, 2012; Parker, 2002; Winter and May, 2001). What current research largely avoids is analysis of the substance of corporations' compliance, and of the process by which the meanings of regulation and of compliance with regulation are constructed.

However, the patent reality of regulation is such that the process via which the meanings of regulation and compliance are constructed is too important to be left out of regulatory literature. To begin with, all legal rules are to a certain degree open to interpretation, and some regulations more so than others (Black, 1997; Edelman, 1992; Edelman et al. 1991, 2010; Edelman & Suchman, 1997). Moreover, currently prevalent forms of Process-Oriented Regulation,[1] such as the FSA's Treating Customers Fairly initiative, explicitly shift the responsibility for interpreting what compliance entails to regulated corporations. The theory underlying these regulatory forms is that firms should devise compliance systems that embody regulatory goals and objectives in a way that is relevant to their individual contexts. Consequently, corporate interpretation and enactment of regulation are integral to what these new regulatory forms are all about.

We therefore need to understand why certain meanings of compliance with regulation are chosen over others and this article advances current understandings of this question both empirically and theoretically. The rest of the article proceeds as follows. The next section presents the most prominent current theorization of the emergence of regulatory meaning, and points to its potential limitations. Thereafter, section 3 explains the research methodology. Section 4 provides the background to the case study. Sections 5 and 6 analyze the meaning and content, which the FSA and firms attached to the notion of fair customer treatment. The final section summarizes the article's key arguments and contribution.

II. Theoretical Beginnings

How do the meanings of open-ended regulatory terms emerge and evolve? What role do regulators and firms play in this process? The most prominent theorization of the emergence of regulatory meaning, under conditions of ambiguity, is the New Institutional *legal endogeneity* model. This model posits that just as much as organizations are affected by legal pressures, so does the state's legal system gradually assimilate business constructions of what the law entails (Edelman et al. 2011; Edelman and Talesh, 2011). Professionals, in and around business organizations, are portrayed as the key agents of this endogenous process in two respects. First, professionals construct the meaning of compliance with ambiguous laws so that it matches their professional identities and enhances corporate demand for their services over those of other competing professions (Dobbin and Sutton, 1998; Dobbin and Kelly; 2007; Edelman, 1990, 1992; Edelman et al. 1992, 1999, 2001). In particular, studies have shown how personnel consultants, and to lesser extent lawyers, writing in human resource and legal periodicals, amplified the legal risk posed by the American labor and civil-rights laws, and constructed human-resource management structures and procedures as rational means for reducing legal risk (Dobbin and Kelly, 2007; Dobbin and Sutton, 1998; Edelman et al., 1992; Edelman et al., 1999). Conversely, other studies (Edelman et al, 2001; Kelly and Dobbin, 1998) have demonstrated how personnel professionals sought to maintain and enhance the adoption of human-resource management structures by appealing to managerial values of efficiency, productivity and profitability. In the latter case, professionals reframed existing human-resource management structures, which they previously framed as a means to buffer legal threats, as a solution to the alleged increasing diversity of the American workforce. Second, as participants in both business and legal networks, professionals, particularly lawyers, transmit and inject emerging business practices into legal jurisdictions (e.g. while claiming defense at court). In this way, the perceived rationality and legitimacy of emerging business practices and structures is further institutionalized via judicial rulings (Edelman et al. 1999, 2011; Dobbin and Kelly, 2007), dispute-resolution mechanisms (Talesh, 2012), legislation (Talesh, 2009) and regulation (Bozanic et al. 2012). Compared, with the agency of business professionals, state actors - judges, legislators and administrators -

are implicitly portrayed as passively ceding to industry constructions of the law. Importantly, the focus of the endogeneity model is on the cognitive process via which business constructions of the law attain a taken-for-granted status, as opposed to businesses' exertion of political power.

Situated against the broader field of New Institutional theory, the legal endogeniety model's emphasis on the strategic role of professionals has been a pioneering manifestation of current actor-centered explanations for how practices and their idiosyncratic meanings are institutionalized (e.g. Lawrence and Suddaby, 2006; Maguire et al. 2004; Maguire and Hardy, 2006; Zilber, 2008). A dominant stream of this burgeoning literature borrows the notion of "frame alignment" from social-movements theory (Snow et al., 1986; Benford and Snow, 2000) to explain how professionals and other entrepreneurs legitimize the adoption of new or alien structures and practices (e.g. Creed et al. 2002; Markowitz et al. 2011; Meyer & Hollerer, 2010). Frame alignment, as understood in the social movement literature, is a purposive act wherein actors strategically link a new idea to notions or values that are familiar and/or appealing to their audiences in order to gain their support and cooperation. Benford and Snow (2000) differentiate between three subject matters of frame alignment: *problems*, *solutions* and *motivations*.[2] They further suggest that the successful framing of problems, solutions and motivations depends on their linkage with broader ideological master-frames. To take one concrete example of the application of this notion to institutionalization processes, Creed et al. (2002) have found that advocates of gay-friendly policies altered their framing strategies depending on the arena within which they operated. Whereas in congress gay-rights advocates were inclined to invoke a "civil rights" frame, "advocates [within corporations] drew more directly on the *good for business* … frame – creating legitimating accounts that resonate with their organizations' market strategies…corporate cultures…concern for cost containment, reputation and sense of corporate citizenship" (491).

The theoretical lens of this article draws upon the legal endogeneity model and on the broader emphasis in New Institutional theory on framing as a central means via which actors legitimize and institutionalize new ideas. However, even before proceeding to the empirical findings of this study, it would seem plausible to suggest that the legal endogeniety model has overly focused on the strategies of business professionals, while overlooking administrative agencies' strategies in pursuit of firms' cooperation with their policy aspirations. In the conclusion, this article will propose a more complete *co-construction* model that explains the evolvement of regulatory meaning as an interactive and iterative process of content negotiation *between* regulators and firms as well as *within* firms (cf. Heimer & Gazley, 2012).

III. Methodology

The article draws on a prominent case study of Process-Oriented Regulation. It focuses on the process via which the British Financial Services Authority's (FSA) Treating Customers Fairly (TCF) initiative took shape between 2004 and 2008. The FSA's ambiguous requirement that firms' should treat their customers fairly, and its Principles-Based approach (Black et al. 2007; Black, 2008), as described below, provided a fertile terrain for firms' endogenous construction of regulation. In addition, during the relevant period, in the years leading to the global financial crisis, the FSA faced a politically powerful and economically successful financial industry, and a general anti-regulation mood within the British government (Cf. Froud et al. 2012). Under these circumstances, legal endogeneity – i.e. regulatory passive endorsement of business practice - would seem like the most probable outcome of any regulatory initiative. Hence, if we find that the endogeneity model does not fully depict this case, then the same is most likely to be true in less extreme circumstances.

To analyze the emergence of regulatory meaning, I tracked and compared the FSA's and firms' framing and enactment of the TCF initiative as reflected in the following three datasets. The first dataset included all public speeches by FSA officials, delivered between 2003 and 2008, which mentioned "treating customers fairly" anywhere in the text, yielding 16 speeches. The second dataset involved five key guidance notes (labeled "progress reports"), which the FSA published in relation to the TCF initiative.[3] Following Benford and Snow (2000), FSA speeches and progress reports were analyzed to gauge which problems and solutions received greater/lesser prominence in FSA communication of its initiative.[4] In addition, I analyzed the extent to which the FSA's emphasis on certain solutions changed/did not change over time in response to industry implementation of TCF. The coding of FSA construction of problems and solutions is based on my initial free coding of FSA speeches, as well as on conventional classification of the goals underlying financial regulation. This inductive-deductive classification resulted in my coding of FSA framing of problems and related solutions under six master-frames: compliance, consumer choice, product regulation, cultural, managerial and commercial. Thereafter, the salience of each frame was measured by counting the number of mentions of relevant keywords in speeches (table 1) and progress reports (table 2). Table 1A of the Appendix summarizes the essence of each master frame.

The third dataset involved 50 semi-structured interviews with 40 participants from 24 large firms (insurers, retail banks and building societies), and with 21 other industry participants (from small firms, consultancies and industry trade associations), carried out between February 2008 and July 2010. The number of interviewees per firm varied, depending on access opportunities, from one to five, and some of the interviews involved more than one interviewee. Within firms, interviewees included firms' risk or compliance officers (15), and other managers who were involved in the coordination of firms' implementation of the regulatory initiative (28).[5] Interviews lasted between one and two hours, were recorded and thereafter fully transcribed.[6] Interview questions investigated firms' interpretation and enactment of the regulatory initiative. Interview transcriptions were analyzed for recurrent themes, starting from open coding of a number of interviews, and thereafter moving to systematic close coding of the whole interview database, using qualitative data analysis software (Atlas ti). This analysis allowed me to depict firms' framing of the problems underlying TCF, and the association between their framing and enactment of TCF. In addition, employing the same categories as in tables 1 and 2, the material changes that 16 (out of the 24) large firms, for which sufficient information was available, introduced in response to TCF were content analyzed in order to provide a rough quantitative depiction of firms' enactment of TCF (table 3). Unfortunately, the information obtained in interviews with the other 8 firms was not sufficiently detailed.

IV. Case Study Background

Mis-Selling Scandals

The TCF initiative transpired against a perception of regulatory failure. The goal of retail-finance regulation, as traditionally conceived in Britain, was to ensure that firms provide potential buyers with sufficient information, and that the products that firms sell are "suitable" to customers' needs, financial capability and "attitude to risk." Yet, since the mid 1990s the selling of retail financial products has generated a series of "mis-selling" scandals, that is - public and regulatory contention that firms failed to follow the regulatory requirements to provide customers with clear information, and to sell financial products that are suitable to individual customers. These scandals were accompanied by massive numbers of consumer complaints, and with media and political scrutiny of financial firms and the FSA.

The Institutional basis of the Industry's Practice

A critical characteristic of financial mis-sellings scandals was their institutionalized, industry-wide scope. Regulatory attempts to tackle mis-sellings were ineffective because firms' hard-sell practices were embedded in industry discourse and in customary remuneration schemes and product-development practices. The industry's traditional taken-for-granted assumption was that the general population is under-insured and under-invested and that it is therefore legitimate and imperative for firms to aggressively "push" their products. This strategy was structurally institutionalized in firms' design of money-spinning products that maximize their gains and transfer market-volatility risks to customers, and in their inducement of staff and intermediaries to sell these products by means of sales-volume targets and either bonuses or commissions. Firms varied the level and structure of commissions and/or bonuses across products to incentivize distributors and employees to sell one firm's products over those of its competitors and more profitable products over others. At the same time, firms tended to dismiss public accusations of mis-selling as something that does not concern them. Interviewees often referred to mis-sellings as a historical affair of the 1980s and 1990s, as something that happens in other, less responsible, firms, and, concurrently, as a media or regulatory social construction, such as:

> "the accusations against the finance sector… some of it is media-driven, and the media being the media, they're not interested in boring stories, they're interested in scandal, because that's what sells papers and gets you turning your television on" (IV 40).

Within the industry there were also weak manifestations of an alternative, or complementary, business strategy, which was triggered by years of regulatory pressure and reputation damage (Morgan and Sturdy, 2000). The emerging alternative - retail-marketing – suggested that corporations should study customers' segmented preferences and design and offer products and distribution channels that meet these diversified preferences. In contrast with the traditional sales-focused strategy, the marketing perspective presumed able consumers who have clear preferences and are able to exercise choice. Associated with marketing were two specific approaches and methodologies: Customer Relationship Management and Customer Experience. Customer Relationship Management regard firms' use of tools that are known to improve customers' emotional experience, e.g. personalization of service, politeness, clean and inviting environment etc. Customer Experience regards organizations' systematic collection of customer feedback in any kind and form (e.g. surveys, focus groups, participation in on-line forums, real time post-transaction feedback, as well as observation of interaction between customers and staff). The end goal of the latter is to design firms' products and services in light of customers' habits and feedback, so as to enhance their satisfaction, loyalty and their promotion of the firm to their families and friends, and ultimately to enhance the financial value that firms extract from their existing clients (Berry et al, 2002; Berry et al., 2006; Meyer and Schwager, 2007; Riechheld, 2003). In light of this alternative strategy, financial firms, including those that participated in this study, increasingly rebranded themselves both internally and externally as "customer-centric," adopted customer-related mission statements and set various change programs to enhance the so called customer experience. Yet, despite these changes, throughout the 2000s, the research period included, mis-selling scandals persisted and product-led hard-sales techniques and related remuneration structures remained entrenched.

The Treating Customers Fairly Initiative

Responding to public and political disapproval of recurrent mis-selling scandals, the FSA announced the TCF initiative in July 2004.[7] This initiative, as already stated, included a number of features that made the gradual endorsement of industry practice – i.e. endogeneity – almost certain. First, the FSA framed TCF as a "Principles-Based" initiative (Black, 2008; Black et al. 2007; Ford, 2008), which was explicitly intended to allow executives flexibility to design a response in light of their assessment of the unique risks that their firms' operations impose on customers. The FSA therefore avoided formulation of additional prescriptive rules. Instead, it relied upon an existing broad standard, which instructed that: "A firm must pay due regard to the interests of its customers and treat them fairly" (FSA handbook, Principles for Business). Second, the FSA's articulation of TCF developed over a period of four years (2004-2004), in a series of informal guidance and public speeches by its officials. During this period the FSA conducted a series of pilot studies with firms, as well as themed inspections of firms' implementation of TCF. In its written and oral communication of TCF, the FSA articulated both general stipulations as well as examples of "good" and "bad" practice that the inspectors allegedly observed in their pilot studies and themed inspections.

Firms were slow to respond and resistant to the FSA's messages regarding TCF, because they perceived their practices as *already* fair to customers (Gilad, 2011). Firms typically pointed to their financial success, customer-satisfaction scores and to their existing compliance and business controls as proof of their fairness to customers. Consequently, of the large firms that participated in this research and regarding which sufficient data was available, only two firms introduced a formalized change program in response to TCF by 2005, four more firms have done so during 2006, whereas fifteen did not do so until 2007 and 2008. One firm retained its approach that TCF entails little if any change throughout the research period. [8]

In response to firms' initial inaction, the FSA intensified its pressure. Breaches of the duty to treat customers fairly increasingly featured in FSA enforcement decisions. In addition, in May 2007, the FSA set March 2008 as the deadline by which firms should be able to demonstrate their capability to fully assess and measure their fairness to customers, and December 2008 as the date by which firms should be fully compliant with the substantial duty to treat their customers fairly. Thereafter, around March 2008, the FSA conducted intensive industry-wide reviews of firms' implementation of the requirement to *measure* their fairness to customers, and in June of that year it published a progress report suggesting that 87% of large and medium-size financial firms failed to pass this review. Yet, the FSA further indicated that "with a very substantial, continuing effort approximately 80% of the [reviewed firms]… are still capable of meeting the December deadline" (FSA, 2008: 3). Following this review, the FSA communicated individual "risk mitigation plans" that firms had to complete by December 2008. Hence, the FSA incentivized firms to further invest in TCF, and signaled that most of the industry will pass the final December 2008 review. However, the scheduled final industry-wide TCF review was abruptly cancelled in November 2008 in light of internal and external pressure on the FSA to refocus its supervisory resources in response to the global financial crisis. Consequently, the assessment of TCF was integrated with the FSA's routine supervision and inspection of firms, and the FSA has not published any statistics regarding firms' performance.

V. REGULATORY FRAMING OF TREATING CUSTOMERS FAIRLY

This endogeneity model would lead us to expect the FSA to defer to the financial industry's interpretation of TCF. In this case, endogeneity would involve a gradual shift in FSA conception of what is entailed in compliance with TCF from a traditional regulatory approach towards adoption of the industry's commercial discourse. In particular, as shown in the next section, marketing professionals within firms sought to equate TCF with customer-experience methodologies, and endogeneity would involve penetration of this conception into regulatory cognition and policy.

However, close analysis of the type of "solutions" that the FSA advocated, in speeches (table 1) and progress reports (table 2), albeit employing broad, open-ended messages, and the consistency of its messages over time, provides surprisingly limited support for the endogeneity model. The FSA's most salient message regarded firms' need to device Management Information (MI) systems, which will enable them to systematically assess the risks that every aspect of their organizations' operations and corporate culture pose to the fair treatment of customers, to implement needed changes and to regularly evaluate the impact of these changes. In addition, as of 2006, the FSA required firms to analyze and structure their compliance with TCF against its formulation of six TCF Outcomes (figure 1, Appendix). The FSA's second most prominent message regarded firms' need to assess the type of behaviors that are triggered by their remuneration systems, and to adjust the latter so as to incentivize employees' and independent advisers' fair treatment of customers. Third, firms' need to evaluate and restructure their existing and future products in light of their duty to treat customers fairly was also salient in FSA speeches, but less so in FSA progress reports. What united these three messages was that they involved FSA signaling of its commitment to scrutinize firms' practices in areas beyond the traditional scope of British retail-finance regulation. At the same time, the FSA stressed its expectation that firms enhance their compliance with its traditional rules, i.e. their responsibility to provide customers with clear information and with products that match their individual needs and appetite for risk.

--Tables 1 & 2 inserted here –

(Tables and illustrations appear at the end of the paper)

As demonstrated in Table 2, the above issues – Management Information, employee remuneration and product design - were prominent in FSA communication of TCF from its inception in 2004 and 2005. At that point, as mentioned above, very few firms engaged in implementation of TCF, and there was no institutionalized industry interpretation that they FSA could have endorsed. Moreover, the subject matter of the FSA's messages makes it unlikely that they reflected industry-initiated interpretation of what is entailed in fair treatment of customers. In relation to Management Information, the FSA was relatively prescriptive, requiring firms to engage in across-the-board measurement and monitoring of every aspect of their operations against its six TCF Outcomes. Moreover, in response to firms' allegations that their practices are already fair, the FSA increasingly stressed that firms must measure the ultimate outcomes, or impact, of their internal processes and controls. As mentioned, eighty-seven percent of firms failed the FSA's March 2008 review of their implementation of this requirement. Even more contentious, the FSA's reference to firms' employee remuneration and product development systems signaled its inclination to scrutinize the structural underpinnings of mis-selling scandals. However, in these areas it communicated a permissive, flexible, approach. In relation to remuneration schemes, rather than demanding that firms forgo sales-volume targets and bonuses, FSA officials made statements such as “we are not trying to tell you what reward packages are right for your firm. That is a judgment for you … The important thing is to understand the risks to your customers. What we will be looking to you to be able to show is how effective you are in tackling those risks” (Oliver Page, 2005). Likewise, the FSA did not prescribe how firms should structure their products. Rather, it shifted responsibility to senior managers, suggesting that “we expect the markets to determine what products should be produced and distributed. However, we do expect firms to be able to satisfy themselves that they have given sufficient thought to their TCF responsibilities in developing a new product“ (Sam Tymms, 2006).

As is apparent from the above quotes, while employing TCF to effectively broaden the scope of regulation into new and contentious fields, the FSA framed it as a means for executive direction and flexibility, and as curbing regulatory burden. As evident from tables 1 and 2, the most salient “problem” that the FSA associated with TCF was its categorization as a senior management responsibility. The second most salient framing of TCF was its categorization as a “cultural” issue. The precise meaning of the latter was never directly disentangled by the FSA. Instead, the FSA elaborated what it perceived as the key drivers of culture: strategy, leadership, controls, training and remuneration (figure 2, Appendix). These “managerial” and “cultural” frames called for executives to assume central direction over their firms’ fair treatment of customers, and its embedding in institutional structures. For instance:

> “So what is different about this initiative from past regulatory action? … The first, and the starting point, is underlining that TCF is the responsibility of senior management. But in doing so, making clear that senior management responsibility is not just about setting the vision for their organisation on TCF. They have also to drive their organisation to ensure that TCF is built consistently into the operating model and culture of all aspects of the business” (Speech by Oliver Page, FSA, 2005).

By comparison, the FSA framed delegation of authority to compliance departments as part of the problem rather than the solution. For example:

> "The FSA's principles, rules and guidance place responsibility on senior management for incorporating the fair treatment of customers into the firm's corporate strategy, delivering that strategy and monitoring its effectiveness. But in some firms these issues are treated in a minimalist, box-ticking way and are buried in Compliance Departments. They are not owned by senior management and therefore, hardly surprisingly, have little impact on the culture and behaviour of the individual members of staff who make up the firm" (Speech by Carol Sergeant, FSA, 2003).

By categorizing TCF as a senior management responsibility the FSA sought to simultaneously put pressure on firms' executives, yet portray an appealing picture of managerial flexibility and discretion. Moreover, this framing, and more broadly the categorization of TCF as Principles-Based, as opposed to Rules-Based, embodied FSA attempt to align TCF with the British government's then anti-regulation attitude and its declared commitment to limit regulatory burdens, to enable innovation and to favor private solutions whenever appropriate (FSA, 2005). By comparison, while mis-selling scandals were clearly the trigger for the TCF initiative, they were subdued in FSA framing of the problems underlying it. This relatively low salience of mis-selling most likely reflects the FSA's disinclination to link TCF with a negatively-connoted frame.

Finally, references to firms' commercially-driven customer-experience and other marketing methodologies were almost missing in FSA speeches (table 1). By comparison, reference to these methodologies - customer feedback, customer surveys - increasingly featured in the FSA progress reports (table 2). How have customer-experience methodologies infiltrated FSA documents? As apparent from table 2, reference to these methodologies abruptly increased in July 2007, when the FSA elaborated the drivers of fair culture. The "cultural framework" (figure 2, appendix), as articulated in that document, was partially designed by a private consulting firm. This consultancy worked simultaneously with the FSA and with a number of financial firms, and its senior managers perceived the integration of TCF with firms' customer experience programs as fundamental to the success of the regulatory initiative (IV 28; 57, 58, 59). Reference to customer-experience methodologies further increased in the FSA's June 2008 report, which was published following the FSA's industry-wide review of firms' implementation of TCF. In this case, reference to customer-experience methodologies most likely embodied FSA espousal of firms' interpretations of TCF as observed in its industry-wide review. This gradual endorsement of customer-experience methodologies, and their linkage with the FSA's stress on organizational culture, is consistent with the expectations of the endogeneity model. Yet, as evident from table 2, alongside its espousal of firms' linkage between TCF and customer-feedback methodologies, the FSA increasingly challenged the goals underlying these methodologies. It stressed that there is a marked difference between satisfying customers and treating them fairly, and that customer feedback, alone, can be a misleading measure of fair treatment. For instance:

> "Firms are frequently placing too much reliance on customer satisfaction and insufficient focus on the fair treatment of consumers. Whilst customer satisfaction can provide some useful insights it is not a measure of fair treatment. Firms also frequently place reliance on the customers' view of whether they have been treated fairly, which may not be a reliable measure of whether fair treatment is actually occurring" (FSA, 2008: 11).

In conclusion, the FSA's framing of TCF involved a linkage between its consistent signaling of its expectations for change to existing institutional arrangements, and an appealing image of managerial responsibility-flexibility and of fair customer treatment as a cultural, as opposed to a legal-compliance, issue. Employing these managerial and cultural frames the FSA sought to drive firms to make changes in traditional areas, in which it faced persistent non-compliance (the suitability of financial advice, disclosure of information), and in new terrains regarding which prescriptive regulation was likely to have been met with strong corporate resistance and possibly with legal challenge (employee remuneration, product structure). This framing of TCF seems like a strategic attempt to attain legitimacy within government and to gain financial firms' cooperation for change in sensitive domains beyond the traditional scope of British financial regulation. Therefore, with all the flexibility and deliberate ambiguity of the FSA's messages as to what is entailed in complying with TCF, its endeavor seems incompatible with the portrayal of passive regulatory incorporation of industry practice. This notwithstanding, the FSA did gradually incorporate customer-experience methodologies into its written guidance. However, even alongside this apparently endogenous process, the FSA sought to infuse these methodologies with regulatory values.

VI. FIRMS' FRAMING AND ENACTMENT OF TREATING CUSTOMERS FAIRLY

The endogeneity model predicts that professionals within firms seek to frame existing or emerging industry practice as a response to regulatory demands, as opposed to espousing regulatory-initiated solutions. Analyzing the dynamics of firms' interpretation and enactment of TCF, this section and the summary of the changes that firms introduced (table 3) reveals a complex and dynamic picture involving firms' receptivity to FSA messages and initiated solutions, alongside their entrenchment of existing practice and/or promotion of emerging practice.

-- Table 3 inserted here --

Firms' Espousal of FSA-Initiated Solutions

As demonstrated in the previous section, the most salient "solution" that the FSA advocated in relation to TCF was firms' need to device appropriate Management Information tools, as a means for executive direction of their firms' fair treatment of customers. Concurrently, the FSA categorized TCF as a managerial, as opposed to a compliance, responsibility and prerogative.

Firms' compliance officers, who were traditionally responsible for coordinating their firms' responses to any regulatory initiative, including TCF, were receptive to its framing by the FSA as a managerial responsibility. Moreover, they utilized this frame internally to induce managers' engagement with TCF and to resist managers' expectation that their compliance departments would shield them from the FSA's escalating pressure (Gilad, 2011). Eventually, during 2007 and 2008, in most firms (14/16 in my sample) the primary responsibility for leading and coordinating TCF was reallocated to managers outside compliance department. With some variation, each firm established a managerial-governance structure around the implementation of TCF. This typically involved an executive-level TCF steering committee, shadowed by a "working" committee of second-tier managers from across the company. Firms further tended to nominate a designated middle manager, either on a permanent basis or as temporary project-director, to head the working committee and to coordinate their response to TCF. In many cases these designated coordinators were marketing or customer-experience specialists. As discussed further below, this choice reflected firms' conception of marketing and customer experience as compatible with the FSA's fairness agenda.

In addition, in line with the FSA's emphasis on Management Information, all firms, regarding which sufficient information is available, introduced some form of measurement and reporting systems for TCF. Typically, firms' Management Information tools took the form of multiple Excel files with higher and lower levels of granularity depending on the rank of management for which they were designed. Firms' boards therefore received the most aggregated, and therefore the least detailed, reporting regarding the whole business. Firms' internal reporting was commonly organized around the FSA's Six TCF Outcomes, with a number of indices against each Outcome, numeric targets and thresholds for each index, and periodic rating of the firm's performance as green, amber or red. From interviewees' point of view, the introduction of extensive measurement and reporting systems involved a major undertaking. Moreover, they perceived this regular reporting of customer-related, as opposed to sales-volume data, to an executive committee as a significant innovation.

The analysis so far suggests an alignment between the FSA and intra-corporate participants' framing of TCF, which resulted in firms' enactment of changes that were compatible with FSA messages. However, whereas the FSA, in speeches and documents, framed TCF as the responsibility of firms' executive teams and boards, compliance officers and the new business coordinators of TCF were inclined to frame it more broadly as a whole "business issue." Coupled with this framing was their stress that the directors of business units and second-tier departmental managers have the prerogative to design and manage TCF within their own sphere of authority vis-à-vis their line managers and employees. This nuanced difference in framing had important implications for firms' enactment of TCF. Firms, particularly larger ones, typically conceptualized their governance of TCF as a multi-tiered federal system. Namely, a system wherein each business director and his/her departmental managers were expected to set their own targets and measurements for TCF in light of their commercial strategy and relative appetite for regulatory risk, monitor their own performance, decide on due action and report upwards in very general terms. Compliance departments and other TCF project coordinators conceptualized their own role, and that of the central executive committees and/or corporate boards, in terms of challenge provision as opposed to steering and direction. For example:

> "[the] business units …drive what our overall proposition to our market looks like, and where we want to stand out from the crowd, where we're happy to be in with the pack, and where we're prepared to actually not perform as well as [others]… They decide that, and ... because they were [also] involved in building the [TCF] score cards [of targets, measurements and performance assessment] that [overall prerogative] influences the way that they benchmark their RAG [red-amber-green] statuses [for TCF]."
> (IV 28, TCF project director)

> "the [target] thresholds depend on the business units, and their own understanding of what's the appropriate measures … the executive summary [to the central executive committee or the board] covers off what the key issues are, it's signed off by …. the accountable exec[utive] in each of the business units … [to] demonstrate [that] they're comfortable [with] the [target] thresholds, comfortable with the issues being measured appropriately, and we'll challenge them if we feel that's not quite right" (IV 43, compliance).

The ultimate outcome of firms' above reframing and enactment of TCF was high intra-company variability in the measurements and targets across business units and departments, alongside wide discretion for departments' and business units' managers to decide which issues need to be reported and highlighted to higher levels of management. This interpretation of TCF arguably undermined the FSA's intent to induce firms' boards and executives to enhance their control over, and their accountability for, their firms' *overall* treatment of customers. Hence, the process via which the meaning of "Management Information" took shape involved firms' introduction of regulatory-initiated institutional arrangements, alongside their revision. In other words, it involved a process of FSA and firms' co-construction of the meaning and content of compliance with TCF.

Firms' Entrenchment of Existing Practice

Despite firms' introduction of elaborate Management Information and governance systems for TCF, as discussed above, they tended to make only incremental change to the processes and practices underlying this measurement and reporting exercise. Interviewees suggested that their firms' design of management information for TCF mostly involved collection and better analysis of existing business and compliance data, and formalization of existing processes so as to make them more consistent and thereby measurable. In other words, firms' 'fairness' indices mostly included their performance measures and control processes, which were already in place before TCF, either for regulatory or for commercial reasons. Similarly, the targets that firms set for themselves typically took their existing performance as a benchmark, and set targets for incremental improvement in areas where firms saw a commercial value to enhance their performance vis-à-vis their competitors.

Interviewees related their firms' introduction of limited change, beyond the setting up of Management Information and reporting systems, to managers' belief in the fairness of their pre-TCF practice and culture. In order to overcome this cognitive barrier to the implementation of TCF, compliance officers and other TCF coordinators reframed it as requiring provision of external evidence for the firm's *existing* fair treatment of its customers as opposed to fundamental cultural-change. This reframing of TCF was in part a tactical move intended to overcome their colleagues' initial emotive resistance to the FSA's implicit message that firms' practices are unfair. At the same time, most coordinators themselves shared their colleagues' belief that their firms' practices are already fair, and perceived TCF as a means for demonstrating this externally. For example:

> "People … [said] 'We are [InsurancePlc] of course we do the right things for customers…' And…we then said, 'Okay, well, evidence it, prove it, show it' … So, a lot of what TCF has been about is, [as] I describe it [to people], …it's a bit like a maths exam, you can't just put a number 44 at the end [but rather you need to show how you got there]" (Customer experience; IV 30).

> "Our culture was customer-centric - it was [all about providing] great customer service experience …It worked against us in the short term, because

> we were very inert and didn't do anything [about the TCF initiative], and then we realized, what the FSA were looking for, was evidence, and then that [realization] put us in a better place" (Customer experience, IV 27).

As mentioned and demonstrated in table 2, in response to firms' perception of TCF as entailing little if any change to practice, the FSA increasingly stressed that firms should demonstrate that TCF is making a real difference to the six TCF Outcomes. This, together with the interest of some internal participants as discussed below, drove firms to demonstrate that TCF is in fact resulting in change. Consequently, most firms made *some* process change, constructed a few completely new indices and set themselves tighter targets in some areas. Yet, according to most firms' accounts, the scope of these additional changes tended to be small and restricted. All in whole, while firms' implementation of TCF involved adoption of regulatory-initiated formal institutions (the introduction of Management Information systems) it was partially endogenous (inasmuch as the measurements underlying these measurements mostly involved formalization of existing processes and performance).

Professionals' Promotion of Emerging Commercial Practice

Alongside firms' reframing TCF as a problem of external evidence, as opposed to a cultural-change program, some of them further conceptualized it as FSA-jargon equivalent for their enduring aspiration to enhance customers' experience of their services. Given this conceptualization, in many firms (7 out of 16 in my sample), Marketing and Customers Experience specialists were asked to coordinate their organizations' responses to TCF, and it was common for these and other firms to incorporate TCF into their ongoing customer-experience programs. For instance:

> "we ….saw that TCF was integral to our customer experience programme …when you looked at the [TCF] Six Outcomes…each of those … linked into the customer experience strategy that we'd already started to work on ... We did a lot of customer experience work in … 2004, 2005….and that was a big cultural programme across the business…talking about treating a customer fairly…was really the next stage on from that" (Customer Experience, IV 32).

> "We feel we were at an advantage because we already had our seven

> principles of [customer] care…what we did …was we mapped the six TCF outcomes to our seven principles of care….[our] approach to TCF was never to try and make it a regulatory stick to beat people with, we wanted to embed it naturally, because we felt people would buy into it better like that … and that's why it was managed …from a customer experience team, rather than from our compliance regulatory services team (Customer Experience, IV 46).

Why did firms link TCF with Customer Experience, as opposed to some other internal discourse? In the most general sense, and as elaborated in section 4, marketing and customer-service orientations were conceived within the financial industry as the alternative to aggressive sales-oriented strategies. As the FSA's pressure escalated, and firms felt compelled to react, some of them were inclined to invest in enhancing their performance against marketing measures, which they associated with good customer relations. Moreover, the repackaging of TCF in terms of Customer Experience was strategically employed by retail-marketing departments in order to tunnel some of the budget and efforts that firms invested in preparation for the FSA's 2008 TCF reviews into expanding their ongoing programs. For these specialists, TCF was perceived as an opportunity for gaining greater weight for customer satisfaction and loyalty as opposed to short-term sales within their firms.

Firms' equation between TCF and Customer Experience was consequential for its enactment. As already mentioned, firms' enactment of TCF generally involved relatively limited change to the processes underlying their Management Information measurement and reporting systems. However, enhanced solicitation and use of customer feedback and engagement – the bread and butter of Customer Experience – was a predominant feature of the change that firms chose to introduce. To take few examples, as summarized in table 3, most firms introduced some change to their product design and review processes (11 out of 16). This, in itself, was responsive to FSA messages regarding product design, and an impressive success given that this was a domain which was traditionally outside the scope of regulatory intervention. Yet, the micro content that firms injected into this process involved enhanced solicitation and formalization of customer feedback and customer research as part of their product development and review processes.

Similarly responsive to FSA messages was firms' inclination to make adjustments to their employee remuneration schemes (9/16 firms), arguably the most difficult domain for regulatory intervention. Firms reported that in response to TCF their firms incorporated "qualitative" performance measurements, beyond sales volumes, into employees' remuneration and bonus schemes. The content of these "qualitative" measures was partly compliance-oriented: negating bonuses from employees whose sampled transactions failed to pass the firm's internal compliance audits. Yet some of the new non-sales based remuneration metrics were marketing, and customer-experience related: linking employees' remuneration to customers' satisfaction and/or to their reported inclination to recommend the firm to their family and friends.

More generally, some firms (6 /16), reported that TCF drove them to solicit more periodic feedback on various aspects of their services, and/or to purchase new IT systems to support their capture and analysis of customer feedback. An interviewee from one of these firms remarked:

> "there's a big turnaround in terms of the value that we contribute to consumer research ... it is now riddled through everything we do …[previously] it was very ad hoc…that's the biggest change (marketing; IV 37).

Firms' linkage between TCF and Customer Experience methodologies seems like a prototype case of endogeneity, in this case boosting an emerging, and relatively feeble, industry discourse and practice. This process likely involved alternation of the goals underlying the FSA's initiative. The methodologies of customer experience, as explained in section 4, rest on the presumption that customers have clear *preferences* that can be studied, whereas the FSA was skeptic about consumers' financial literacy and sought to drive firms to design products that are both comprehensible and match customers' objective *needs*. Moreover, marketing methodologies are intended to cater for customers' emotional needs and states, i.e. making them feel comfortable, welcome, esteemed etc. Conversely, as already mentioned, the FSA stressed that there is an important difference between satisfying customers and treating them fairly.

Nonetheless, the process via which TCF attained its meaning was interactive and dynamic, and did not stop with firms' reframing of the FSA's message. In response to the salience of customer feedback methodologies in firms' enactment of TCF, the

FSA, as discussed in section 5 and documented in table 2, increasingly stressed the importance of differentiating between customer fairness and satisfaction. Interviewees, particularly compliance officers, were attentive to these messages and sought to adjust their firms' TCF-related customer-feedback methodologies so as to align them with FSA expectations. For example, one innovation, which a number of firms introduced, involved post-sales calls to customers to gauge their experience of the sale, and their understanding of the product's features. This particular innovation best exemplifies a case were customer-experience type methodologies (direct customer engagement) were put into use in a way that was consistent with regulatory concerns over customers' understanding of financial products that are sold to them. The following interviewees explain:

> "We do lots of contacts with customers by telephone on a regular basis … 'So you went through this [financial] process, did you understand the following,' and then you run through [with them about] what they should have understood or not understood and that's not [about assessing] customer satisfaction" (IV 7, compliance).

> "[One change that we've introduce regard] post-purchase questionnaires, that we send out every time we sell a product. We revised the methodology to align it to the six [TCF] outcomes, we're [now] asking customers questions that are more specific, not just, 'Are you happy with your product' and so on, but …have they understood it" (IV 54, CEO).

In conclusion, firms' reframing of the problem underlying TCF as involving either evidence and/or enhanced customer-experience management resulted in their linkage between existing and/or emerging industry practice and the regulatory category of 'fairness.' This, in itself, is compatible with the theoretical expectation that legal meaning in organizational fields is endogenous to its interpretation and enactment by businesses. However, the FSA was not a passive bystander of this process. It challenged this reframing of its messages and to some extent succeeded in driving firms to adjust their customer-engagement methodologies in pursuit of the FSA's problem definition. In this sense, co-construction, as opposed to pure endogeniety, was involved in the process via which the meaning of TCF took shape.

DISCUSSION AND CONCLUSION

The endogeneity model, from which this article set out, expects business professionals to frame existing and/or emerging industry practices, which are compatible with their own professional aspirations, as solutions to both regulatory pressures and to managerial concerns. It further expects regulators to passively endorse business constructions of what is entailed in compliance with ambiguous regulations. How have these expectations fared with the case of Treating Customers Fairly, and what are the broader implications of this article's tentative conclusions?

Summary of Findings

Regulatory framing of TCF: The empirical analysis depicted the FSA's strategic framing of TCF in pursuit of firms' consent to and cooperation with the expansion of regulatory scope. Specifically, the FSA persistently sought to drive firms to measure and monitor the impact of every aspect of their operations on their fairness to customers, and to introduce *some* changes in thorny areas such as employee remuneration and product structure. It was further shown how the FSA sought to attain firms' cooperation by linking TCF with a positive image of enhanced managerial discretion and control. This image was also compatible with the British government's then general emphasis on enhancing business innovation and minimizing regulatory burden. Alongside the FSA's consistent communication of its expectations for change, it also reacted and adjusted its messages in response to their reframing by industry. Faced with firms' contention that TCF requires little if any change, because their practices are already fair, the FSA stressed firms' need to systematically measure the Outcomes of their existing incentives and controls. Additionally, although the FSA gradually incorporated business-marketing (customer-experience) methodologies into its formulation of what is entailed in complying with TCF, it explicitly challenged the commercial objective of these measures. All in whole, this analysis portrays a strategic yet pragmatic regulator, who sought to attain firms' cooperation for change in contentious domains by means of flexible regulation and its positive framing.

Frame alignment by business professionals: While stressing the overlooked role of strategic regulatory framing of regulation, the findings of this article confirm the expectation of New Institutional research that business professionals play an important role in the construction of legal meaning. It was shown that the FSA's positive framing of TCF was partially effective, and that its emphases on senior management responsibility and Management Information were picked up by compliance officers and other TCF coordinators within firms. Yet, even then, business professionals tweaked the FSA's messages by stressing that TCF is the responsibility and prerogative of individual business units and departments. In other respects, business professionals' reframing of TCF was more dramatic. The FSA's emphasis on culture was met with managers' resistance and confusion, and thereby reframed by internal participants as requiring provision of evidence for the firm's existing fair culture and/or for its on-going efforts to enhance the customer experience. In all these cases, business professionals reframed the FSA's message so as to create internal support for the implementation of TCF, as constructed in their interaction with their colleagues. While these professionals were strategic in how they reframed TCF vis-à-vis their colleagues, they themselves tended to share the belief that decentralized implementation of TCF is inherently superior, that their organizations are inherently fair, and that enhanced customer experience is what real fairness should be about.

The enactment of TCF: Ultimately, this study suggests that the FSA's and firms' framing strategies were *both* consequential for firms' enactment of TCF. In the most general sense, it was shown that firms introduced new institutional arrangements in those areas that were singled out by the FSA (i.e. measurement and reporting systems, employee remuneration and product design). Yet, the micro content of firms' implementation of TCF amalgamated regulatory-initiated solutions, entrenchment of existing practice and enhancement of firms' investment in customer experience methodologies. Importantly, it was shown that the process via which TCF attained its meaning and association with concrete institutional measures was dynamic and iterative. In response to firms' reframing of its expectations, the FSA adjusted its message and firms' concurrently modified the institutional arrangements that they came to associate with TCF. Moreover, this process likely continued to evolve after the time of the interviews. Last, it should be stressed that under the circumstances of pre-crisis British financial regulation, the FSA's success in driving firms to introduce some, limited, change should not be taken for granted. Hence, if the reader agrees with this writer that the endogeneity model does not *fully* depict this case, then we could be even more optimistic about regulators' ability to strategically induce change to firms' practice in less extreme circumstances.

Implications for Theory: An Ideal-Type Co-Construction Model

Going beyond the case of TCF, the findings of this article tentatively suggest that the meaning of regulation is shaped by regulators' and corporate actors' interactive framing of the problems underlying regulatory interventions and of the solutions to these problems. This *co-construction* process takes place within an existing cultural environment of societal, industry-wide and firm-specific frames, which renders regulators' messages more or less amenable and coherent to their multiple audiences. Consequently, regulators, particularly those facing institutionalized non-compliance by firms and/or a precarious political environment, may seek to gain cooperation and support by framing their preferred solutions in terms that are more compatible with industry frames of legitimate problems and debates, and with the expectations of their political overseers. Compared with regulators, pro-change actors within firms are likely to be even more inclined, and better positioned, to align regulatory messages with firm-specific frames so as to make these messages sensible and amenable to themselves and their colleagues. While pursuing some form of change, these internal actors may also seek to protect their organizations from wholesale regulatory interference and to promote their own preferred technologies by framing them as solutions to both regulatory and business problems. Faced with firms' reception and translation of their messages, regulators need to choose whether to endorse and/or challenge firms' enactment of regulatory concepts. Ultimately, the meaning and content of regulation, which emerges out of these interactive and iterative processes, will likely involve an amalgamation of regulatory-initiated solutions, packaged in amenable frames, alongside existing or emerging industry practice framed as a solution to both regulatory and business problems. Table 4 summarizes and compares the proposed co-construction model with the existing endogeneity model of regulatory-meaning construction.

-- Table 4 inserted here --

Implications for Practice: Understanding the Regulatory Dilemma

The co-construction model highlights the dilemma faced by regulators who operate within environments of institutionalized non-compliance and/or political contention over regulation. In order to attain cooperation, these regulators need to package their concerns and preferred solutions in messages that are more likely to appeal to firms. Current New Institutional theory, building on Benford and Snow's (2000) frame-alignment model, suggest that regulators are most likely to enlist firms' cooperation by aligning their concerns with the discourses of intra-industry agents of change. In our TCF case study, the latter would be Customer-Experience professionals.

However, aligning regulatory messages with firms' internal discourses and with the efforts of pro-change agents within firms runs the risk of regulatory-goals displacement. Hence, regulators face a dilemma between aligning regulatory concerns with indigenous discourses and forces for change, which are only partially compatible with their own goals, versus rejecting these forces at risk of failing to drive meaningful change to firms' practices. Understanding this dilemma sheds a new light on regulatory endorsement of industry practice. Seen in this light, endogeneity is not necessarily a cognitive process whereby regulators come to perceive and endorse industry practice as rational and legitimate. Rather, it may be better understood as a pragmatic compromise by a regulator who balances between pushing firms to accept its own preferred solutions and building upon whatever change firms are inclined to introduce in response to regulatory messages.

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Table 1: FSA Framing of TCF in Speeches

Master frame	**Categorization of problems** (# of mentions in brackets)	**Advocated solutions** (# of mentions in brackets)
Compliance	Mis-selling (17)	Suitability of advice (20)
Customer choice	financial literacy (22)	Clarity of information (44)
Products	Product complexity (6)	Product design (53)
Cultural	Culture (97)	Remuneration (50)
Managerial	Senior management responsibility (165)	Management information (70) Controls (36)
Commercial	Customer experience (1)	Customer feedback (2) Customer research (4) Customer surveys (0) focus groups (0)

Table 2: FSA Framing of TCF in Progress Reports
categorization of problems in **bold** ; advocated solutions in *italics*

Master frames	Problems & Solutions	July 2004 7000 words	July 2005 20207 words	July 2007 (MI) 7238 words	July 2007 (culture) 11350 words	June 2008 18539 words	overall
Compliance	**mis-selling**	7	3	0	1	2	13
	suitability of advice	2	7	10	2	33	54
Customer choice	**financial literacy**	8	5	0	0	0	13
	clarity of information	5	22	11	0	15	53
Products	**product complexity**	4	7	0	0	0	11
	product design	3	29	2	1	14	49
Cultural	**culture**	9	13	9	43	17	91
	Remuneration	12	44	9	71	30	166
Managerial	**senior management responsibility**	24	58	5	52	69	208
	management information	9	49	111	33	162	364
	controls	16	16	4	44	18	98
Commercial	**customer experience**	0	0	0	2	4	6
	customer feedback	0	0	0	17	27	44
	customer surveys	0	2	1	2	10	15
	customer research	0	4	1	1	5	11
	focus groups	0	1	0	0	1	2

Challenge to Firms' Reframing

Distinguishing fairness from satisfaction	2	0	3	0	11	16
Reference to outcome(s)/ reference to principle(s)	3/36	3/49	55/4	64/2	108/6	233/97

Table 3: Firms' Enactment of TCF		
Solution frames	**Firms' Responsiveness to FSA Solution Frames** # of firms (% of firms)	**Examples of the type of institutional changes that firms introduced**
Advice suitability	9 (60%)	Quality assurance of financial advice suitability; monitoring of sales by third parties/intermediaries
Clarity of information	11 (70%)	Across-the-board review of the clarity of all existing marketing documents; post-sales calls to customers to verify their understanding of product content
Product design	11 (70%)	Across-the board review of the provisions of all existing contract/ policies; Enhanced focus groups and other forms of customer feedback as part of new product design or periodic product review processes
Remuneration	9(60%)	Introduction of "quality" measures for employee bonuses, which are linked to customer satisfaction and loyalty; cancelation of bonus when the customer withdrew shortly after the sale; cancellation of bonus if quality assurance suggest high rate of misguided advice to customers
Management information	16 (100%)	Setting indices, targets and thresholds (red, amber, green), and collection of largely existing information to assess and provide evidence for firms' fair treatment of customers; regular reporting of data summary to tired governance committees
Other forms of customer feedback	6 (40%)	Periodic customer feedback over firms' services; acquisition of new IT systems for recording and analyzing customer feedback

Table 4: Models of Regulatory-Meaning Construction

Ideal type model	categorization of problems	source of solutions
Legal Endogeneity	professionals' framing of business practice, routines and structures as solution to both regulatory demands and to managerial problems	existing, or emerging, industry practice
Co-construction	an interactive and iterative process in which regulatory demands are framed in industry appealing way, and existing or emerging industry practice is framed as a solution to regulatory demands	amalgamation of regulatory-initiated solutions and existing or emerging industry practice

Notes

[1] Process-Oriented Regulation, namely regulatory forms wherein regulators require firms to engage in a process of comprehensive self-evaluation, design, and management of their operations and their internal governance and controls (Gilad 2010). Specific forms of this broad family include management-based regulation (Bennear, 2007; Coglianese and Lazer, 2003) and Principles-Based regulation (Black, 2008; Black et al., 2007; Ford, 2008, 2010).

[2] Problem framing entails tapping into audiences' existing concerns and making links between these concerns and new issues. Strategically framing solutions involves demonstration of links between new techniques and established solutions. Purposefully framing *motivations* entails linking actions with audiences' notions of penalty, reward, urgency and so forth.

[3] Speeches and progress reports were both central to the FSA's development of the TCF initiative, and their content was closely monitored by firms.

[4] While Benford and Snow (2000) further analyze the framing of motivations, this latter type of analysis is not included here, since my focus is on the construction of regulatory content, rather than on the construction of firms' motivations for compliance.

[5] The selection of interviewees was manifold. At the very early stage of the research, I approached those coordinating the response to TCF within key industry associations to get a sense of their views of their members' overall responses to TCF. Thereafter, I relied on existing contacts and a snow-ball strategy to conduct a number of initial interviews with firms. Next, I systematically approached key retail financial firms based on my knowledge of the industry and industry associations' websites. Interviews in these firms were sought by contacting whoever coordinated the firm's response to TCF, where known, or the press offices of relevant firms. The key obstacle to interviewing was locating and contacting those who coordinated TCF within firms, since information on these matters is not publicly available. In addition, contacting firms during a major financial turmoil and the actual or near collapse of major financial institutions rendered interviews, particularly in the banking sector, more difficult. Nonetheless, once identified and contacted, only six firms, as well as the Financial Services Authority, rejected my request to interview them.

[6] Four interviewees declined recording and written notes were taken during the interviews.

[7] There was an earlier initiative by this name, which the FSA announced in 2001 but failed to progress.

[8] No reliable information on this issue is available for 2 out of the 24 large firms.

Appendix

Figure 1: FSA six TCF outcomes

Source: FSA (2006) Treating Customers Fairly – Towards Fair Outcomes for Consumers, p. 3

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.

Outcome 5: 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.

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.

Figure 2: Source: FSA (2007) Treating Customers Fairly – Culture, p. 21

Culture framework

Key drivers and high level indicators and contra-indicators

Indicators	Key Driver	Contra-indicators
Fair treatment of customers is central to the behaviour and values of all managers, they communicate messages about the fair treatment of customers effectively and apply appropriate controls and monitoring to ensure that the fair treatment of customers is delivered by their staff	Leadership	Managers (at any level) cannot explain and/or do not communicate what the fair treatment of customers means for them and their staff and cannot demonstrate that their staff understand what the fair treatment of customers means
The firm has a clear vision which supports the fair treatment of customers. This is reflected within the formulation and implementation of strategic decisions (including change management programmes and outsource arrangements). The firm's risk appetite reflects customer considerations	Strategy	The firm's vision is unclear/blurred or contradicts the fair treatment of customers. It does not consider the fair treatment of customers when making key decisions about future direction
Decision making at all levels reflects the fair treatment of customers. The firm uses staff, customer and other external feedback where appropriate, with timely action. The interests of customers are properly balanced against those of shareholders (and other customer groups)	Decision making	Minimal evidence that decisions reflect any consideration of the impact on customers. The firm is slow or unwilling to react to customer/staff feedback. Conflicts between the interests of shareholders and customers are consistently and inappropriately resolved in favour of shareholders.
The firm has controls, including management information, that aim to ensure and demonstrate the fair treatment of customers. These controls are integral to the firm's risk framework	Controls	The firm cannot evidence customer protection through its controls, has minimal management information and does not use this information to improve its treatment of customers
Management make positive behaviours and attitudes to the fair treatment of customers a key criterion in the selection of staff. They also make effective training and the maintenance of staff knowledge, behaviours and values core to the business. Managers use performance management to develop their staff in the fair treatment of customers, identifying and acting on poor performance and rewarding good performance	Recruitment, training and competence	The firm has inadequate arrangements to recruit, train and assess the competence of staff whose actions affect customers. It has little focus on the fair treatment of customers and has a lack of appreciation of how staff competence has an impact on customer experiences. Poor performance is tolerated
The firm's reward framework (including incentive schemes) throughout the business is transparent, recognises quality and supports the fair treatment of customers	Reward	The firm's reward framework concentrates on sales, volumes and profit without consideration of quality (i.e. the framework drives behaviours which may result in customers being treated unfairly) and there are no controls that mitigate the risks that arise from this framework

Table 1A: Six Master Frames of Fairness to Financial Customers

Master frame	Underlying logic
Compliance	fairness involves firms' compliance with FSA rules and regulations
Customer choice	fairness entails firms' provision of clear information so that customers can make informed financial choices
Products	fairness requires that the products that firms design and sale match the needs of the average customer
Cultural	fairness needs to be inherent to firms' and their employees' core values, as displayed on-the-ground
Managerial	managers need to design and manage their firms' treatment of customers in light of what they perceive as fair
Commercial	fairness involves firms' pursuit of satisfied and loyal customers