



**BANK OF JAMAICA**

# **CONSULTATION PAPER**

## **PROPOSED CODE OF CONDUCT**

**To be issued under Section 132(4)(b) of the  
Banking Services Act, 2014**

**MARCH 2015**

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## **Preamble**

This paper contains Bank of Jamaica's proposal for the Code of Conduct to be issued under Section 132(4)(b) of the Banking Services Act (BSA). It is being circulated to deposit taking institutions (DTIs) as defined under the BSA, the Consumer Affairs Commission and other relevant stakeholders, including industry associations, to facilitate industry discussion and consultation on the proposed Code of Conduct.

## **1. Responding to this Consultation**

Bank of Jamaica invites comments on the proposal for the Code of Conduct. Comments are most helpful if they:

- indicate the clause and specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternative regulatory choices the Bank of Jamaica should consider.

## **2. Submission of Responses**

Comments on the proposals will be received up to close of business on Tuesday, 21 April 2015 by email to [fisdfeedback@boj.org.jm](mailto:fisdfeedback@boj.org.jm).

This consultation paper is available on the Bank of Jamaica's website at [www.boj.org.jm](http://www.boj.org.jm).  
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# **Proposal for the Code of Conduct (For purposes of Consultation)**

## **Part I. Introduction**

This Code of Conduct (the Code) is issued pursuant to Section 132(4)(b) of the Banking Services Act. It is intended to establish minimum standards of good banking practice for DTIs under the Banking Services Act, in engaging in financial relationships and activities with existing and prospective customers. The Code outlines DTI's key responsibilities to their customers and applicants for business with regards to disclosures pertaining to interest rates, fees and charges, terms and conditions relating to product and service offerings, notification of significant issues arising from the disclosed terms and conditions contained in contracts, and notification of resolution mechanisms for customer related issues. In particular, the Code is intended to:

- be clear and simple in providing expectations for the accountability of DTIs in relation to their customer relationships; and
- be enforceable by the Supervisory Committee and provide criteria by which compliance can be assessed.

The Code does not regulate fees and charges or affect any right of enforceability in respect of the contractual arrangements between a DTI and its customers. The sanctions for breach of the Code are as set out under Section 132(6)(7)(8) of the Banking Services Act. For continued relevance the Code will be reviewed every three years or earlier as deemed necessary by the Supervisor.

## **Applicability of the Code**

This Code will be applicable to deposit taking institutions under the Banking Services Act. A DTI shall ensure compliance with the Code in the offering of all banking products and services including those offered through its branches, agents and all other channels of service delivery. A DTI is therefore expected to have in place adequate and effective structures, policies, procedures and control systems for ensuring compliance with the Code.

## Part II. Definition and Interpretation Section

In this Code:

“account” means a continuing relationship between a DTI and a customer who is an account holder, in which deposits and debts are held and processed within a framework of established rules and procedures;

“advertisement” has the meaning assigned to it under Section 2 of the Banking Services Act;

“agent” means a non-bank third party that offers banking services on behalf of DTIs pursuant to Section 108(1) of the Banking Services Act;

“complaint” means an expression of discontent or dissatisfaction lodged by a complainant against a DTI or any agent thereof regarding a product or service of a DTI and or the conduct of a DTI or agent before, at the time of or after the acquisition of the product or service by the complainant;

“complainant” means an aggrieved customer who makes a complaint in relation to a breach of a contractual arrangement with a DTI;

“customer” means any person to whom a DTI provides or offers to provide a product or service, and any person who requests such a product or service and includes an account holder;

“deposit taking institution” (DTI) is as defined in the Banking Services Act;

“disclosure” means the provision of information by a DTI to a customer;

“document” has the meaning as defined in the Banking Services Act.

### **Part III. Codes of Conduct**

*Code 1. A DTI shall disclose to customers, information on the terms and conditions, fees and charges, and interest rates of its products and services.*

#### **1.1 Terms and Conditions**

1.10 Prior to a customer opening an account with or accessing a product or service from a DTI, the DTI shall provide the customer with the contract to be signed, where applicable. The contract should contain all of the terms and conditions relating to the product or service being accessed. Further, the DTI shall be required to:

- i. offer to the customer the option of receiving the intended contract in writing by physical or electronic means; and,
- ii. provide the customer with a copy of the original contract as signed by the customer and the DTI as soon as is reasonably practicable.

1.11 A DTI shall inform a customer of the terms and conditions of the products and services prior to the customer accessing the product or service.

1.12 Any contract, including its terms and conditions, shall be written in clear and simple language, in a manner that is not misleading.

1.13 The DTI shall ensure that key terms are clearly identified for the customer's attention. Without limiting the generality of the foregoing, key terms include matters such as rates, terms, fees and payment dates, and other matters as indicated in Schedule I.

#### **1.2 Fees and Charges**

1.20 Prior to any customer of a DTI acquiring or accessing any product or service from a DTI, the DTI shall make available to its customers, in writing by physical or electronic means, a schedule containing the fees and charges pertaining to the product or service being accessed inclusive of the costs of discontinuing the product or service.

1.21 The schedule must also state the basis on which a fee or charge reflected therein can be varied. In the event the delivery of the product or service of the DTI is preconditioned on the delivery to the customer of a product or service by, from or through a third party, the following additional disclosures must be stated:

- a) the purpose served by the additional product or service;

- b) the list, including the names and particulars, of any third party acceptable to the DTI;
  - c) any fee and/or charge applicable by such third party to the provision of the additional product or service;
  - d) whether the fee and/or charge is to be paid directly or indirectly to the third party;
  - e) whether any such third party is connected to the DTI as defined in the Act; and
  - f) disclosure of any other information in relation to the fees and charges that are pertinent to the additional product or service.
- 1.22 A DTI shall prominently display in all locations of operations a schedule of current fees and charges, including interest rates imposed by it. This display must be in all of its retail premises including agent locations as the case may be, in a manner that is easily accessible by customers. At a minimum, this schedule shall include the fees, charges, and rates applicable to its products and services in accordance with the minimum disclosure requirements prescribed by the Supervisor from time to time (*refer Appendix I*). In any channel where limited services are provided, including ABM and internet banking, the specific fees related to use of the channel shall be displayed.
- 1.23 Where a product or service is being offered by a DTI to a customer, the DTI shall disclose to the customer comprehensive information on all additional charges, if any, that the customer will have to pay in relation to the product or service. Disclosures of this nature applies to charges for early withdrawal, encashment and repayment in relation to any of a DTI's products or services.
- 1.24 A DTI shall provide customers with information on the cost of the various options of conducting transactions when acquiring the particular product and service.

### **Interest Rates**

- 1.30 A DTI shall provide customers with information on the applicable interest rates for the respective products and services they have applied for. These interest rates should also be expressed as an effective annual rate (EAR) to be calculated in a standard manner across the banking services industry in accordance with the methodology prescribed in Schedule II.
- 1.31 Where interest rates are being displayed or published, the EAR must be reflected and shall be the most prominent rate displayed, published or reflected.

- 1.32 A DTI shall also provide customers with information as to the cycle and timing for the applicable interest to be debited or credited to the account.
- 1.33 In the case of a product with a variable interest rate, a DTI shall advise a customer of the current rate when the customer applies for the product and the basis on which and when it may be varied and any notice period that may be applicable.
- 1.34 For any product of a DTI that carries an interest charge, such as a loan or deposit savings account and the interest rate of which a customer has the option to convert from fixed to floating and or vice versa, the DTI shall clearly disclose to the customer the conditions and charges thereof.

***Code 2: Every DTI shall provide a customer with reasonable notice in writing of any change to the terms and conditions, fees and charges, and interest rate applicable to any of the DTI's products or services that has been acquired or accessed by the customer.***

- 2.0 A customer of a DTI shall be notified in writing by physical or electronic means with full details of any change in terms and conditions, fees and charges and interest rates applicable to any product or service that has been acquired or accessed by the customer, including but not limited to:
- the interest rate paid or charged on any account and the basis for the change in rate;
  - a non-interest charge on any account;
  - introduction of or change in a fee or charge other than a government charge;
  - variation in the minimum balance to which an account should be maintained; and
  - variation in the methodology by which interest is calculated.
- 2.1 Notice of any change(s) shall be provided in writing, by physical or electronic means, by a DTI to a customer not less than 45 calendar days in advance of any such change(s) being implemented, unless such change is not within its control, as for example being the result of the application of a new third party charge. Where this arises, the DTI shall notify the customer at the earliest possible time.
- 2.2 A DTI shall disclose information on changes in fees, charges and interest rates in all of its retail premises including agent locations as the case may be, as well as by means of its website(s), statements, and brochures.

- 2.3 Where a change is to the customer's advantage, including, for example, the elimination or reduction of a previous fee, the change may be made prior to a written notification of the change being provided by the DTI or its agent to the customer.

***Code 3: Every DTI shall provide reasonable access to customers of their account information and all transactions with the DTI in relation to their account.***

- 3.0 A DTI shall provide each of its customers with access to account information regarding the customer's financial relationship with the DTI.
- 3.1 Access to a customer's financial information shall be limited to matters relating to the contract and specific transactions and activities undertaken by the customer in the operation of every one of the customer's accounts.
- 3.2 A DTI shall maintain up-to-date records in respect of each of its customers, including details of all products and services provided by the DTI to each customer, as well as all correspondence between the DTI and each of its customers.
- 3.3 A DTI shall provide each of its customers in writing by physical or electronic means as instructed in writing by the customer, a monthly statement of every account the DTI operates for the customer, unless otherwise agreed in writing by the DTI and the customer. Each account statement shall, at least, contain:
- the opening and closing balances;
  - all transactions undertaken in respect of the account during the period covered by the statement; and
  - details of interest and other charges, including amounts that have been applied to the account during the same statement period.

Statements shall be self-explanatory and legible in a font size that reasonably facilitates the reading of every word and number. Where there is a charge payable by the customer for the receipt of any statement, depending upon the mode of delivery, the DTI shall notify the customer of this charge prior to the customer exercising an option for the submission of the statement according to that mode.

- 3.4 A DTI shall notify a customer in writing, by physical or electronic means, at least 90 days prior to an account being classified as dormant or funds in the account being treated as unclaimed money. Notice and advice of the implications of the account becoming dormant,

in particular the associated charges that will apply thereafter, shall also be provided by the DTI to the customer.

- 3.5 At a customer's request, and subject to its statutory obligations regarding records, a DTI shall make available to the customer, a copy of any record relating to an existing or a prior banking transaction, product or service regarding the customer within a reasonable timeframe.

***Code 4: A DTI shall establish internal mechanisms and procedures for handling customer complaints and for dispute resolution.***

4.0 A DTI shall have a written customer complaints policy and procedures manual approved by its board of directors. The manual shall comply with any Standard of Sound Practice issued by the Supervisor and shall, without limiting the generality of the foregoing, provide for:

- mechanisms for the submission of complaints (inclusive of details on supporting documents) by customers to the DTI;
- record capture and maintenance mandates for complaints received by the DTI;
- procedures for handling customer complaints;
- training requirements for DTI staff on the DTI's policy and procedures in relation to the handling of customer complaints;
- mechanisms for the DTI to handle non-compliance with the DTI's policy and procedures;
- procedures governing the on-going analysis of complaints data, and the documentation of the analysis of such findings;
- mechanism for monitoring compliance with reporting requirements of the Supervisor with respect to complaints data; and
- periodic review of the policy to allow for assessment of effectiveness and continued relevance.

4.1 A DTI shall have a designated point of contact, responsible officer or specialized unit for the handling of customers' complaints charged with responsibility for ensuring the DTI's compliance with the Code.

4.2 Clear, accurate and up-to-date information on the dispute resolution mechanism of a DTI shall be provided to a customer prior to opening an account. Additionally, this information shall be made available at all of its retail premises including agent locations as the case may be

which should include information on how and where to access the requisite documents to be completed by any customer who wishes to file a complaint with the DTI. This shall also include details of how to submit a complaint and the process that will be followed by the DTI when it handles a complaint. Access to the documentation to facilitate the filing of complaints should be widely available.

4.3 The DTI shall investigate all complaints, including those relating to their agent operations, and provide the complainant with written updates on the progress of the investigation within the time period specified below:

- acknowledgement of receipt of the complaint in writing by physical or electronic means within a period not exceeding five (5) business days indicating when an initial response may be expected; and
- written response outlining the final decision within a period not exceeding 30 business days of the receipt of the complaint. Where the complaint is upheld in whole or in part, this response is to include a description of the action(s) taken or to be taken by the DTI to remedy the situation. Where the complaint is rejected in whole or in part, an explanation of the decision is to be provided. Any resolution which will not be concluded within 30 days should be notified to the Supervisor in writing prior to the expiration of the 30 day period. This notification shall outline the nature of the complaint, the reasons for the delay in resolving the complaint, and the expected completion date.

4.4 Where a DTI receives an oral complaint, it must offer the customer the opportunity to have this handled in accordance with the DTI's complaints process.

***Code 5: A DTI shall maintain accurate and complete documentation and records in relation to customer complaints received and resolutions thereof.***

5.0 A DTI shall maintain an up-to-date record of all complaints received including those related to its agent operations. At a minimum, the record for each complaint shall contain:

- the name of the complainant;
- the date of the DTI's receipt of the complaint whether directly or through its agents;
- the nature and description of the complaint;

- the name and position of the DTI staff member responsible for handling the complaint;
- a copy of the DTI's response(s);
- a copy of the complainant's response(s);
- a copy of all other relevant correspondence and documentation;
- the action taken to resolve the complaint and the final decision taken by the DTI as a result; and
- whether all matters raised in the complaint were settled and, if not, the matter(s) that remain in dispute, if any.

Any such record shall be made available by the DTI to the Supervisor on request.

***Code 6: A DTI shall ensure that its advertisements are consistent with the disclosure requirements under this Code in relation to terms and conditions, fees and charges and interest rates.***

***Code 7: A DTI shall provide reports to the Supervisor in the manner, frequency and within the deadlines established by the Supervisor.***

- 7.0 A DTI shall provide reports on its compliance with the Code including information on complaints and complaints-handling to the Bank of Jamaica in the manner, format and frequency specified by the Supervisor.
- 7.1 A DTI shall publish data on customer complaints at least annually or at such other frequency in accordance with minimum requirements as maybe specified by the Supervisor.

## Schedule I

### Proposed Minimum Information for Inclusion in Key Terms for Deposit and Loan Products Pursuant to Code 1.13

#### Savings/Deposit Products

- Type of product
- Effective annual interest rate
- Nominal interest rate, where applicable
- Tenure, where applicable
- Currency of the deposit
- Minimum balance requirements, if any
- Associated maintenance and other costs e.g. monthly service charges
- Penalties for early encashment and withdrawal, if any

#### Loan Products

- Type of loan
- Currency of the loan
- Loan amount
- Loan purpose
- Effective annual interest rate
- Nominal interest rate and type
- Loan tenure
- Periodic payment amount and frequency
- Date of first payment
- Associated bank fees and charges
- Penalties for early repayment, if applicable

## Schedule II

### Methodology for Determining the Effective Annual Interest Rate

The effective annual interest rate is used to determine the actual annual rate that would be paid on a loan or a financial product if the stated annual rate takes into account the effects of compounding. The formula represents the standard method of converting an annual percentage rate (APR) to an effective annual rate (EAR).

$$EAR = ((1+APR/n)^n)-1$$

Where: EAR represents the annual rate of interest when compounding occurs more often than once a year

APR represents the number of accounting periods

n represents the number of compounding periods.

### **Examples of Computation of the Effective Annual Interest Rate**

#### Example 1

A loan has an interest rate of 12 percent per annum that is compounded monthly. Applying the formula:

$$EAR = (1 + .12/12)^{12} - 1$$

$$EAR = .12683 \text{ or } 12.683\%$$

#### Example 2

A deposit account pays 5 percent per annum compounded quarterly. Applying the formula:

$$EAR = (1 + .05/4)^4 - 1$$

$$EAR = 0.050945 \text{ or } 5.0945\%$$

## Appendix I

### **Proposed Minimum Disclosure Requirements Regarding Fees, Charges, and Rates Applicable to a DTIs Products and Services (per Code 1.22)**

#### Deposit Accounts

- Certification of account balance
- Cheque processing fees (domestic and foreign currency)
- Dormant account fees
- Duplicate, interim, replacement or copy statement
- Funds transfer to own bank and third party
- In-branch deposit and withdrawal fees
- Minimum balance fees and related thresholds
- Minimum monthly service charge for account maintenance
- Replacement and duplicate passbook
- Replacement debit and credit cards
- Returned cheque fees
- Returned cheques fees (domestic and foreign currency)
- Telegraphic and wire transfer fees (inward and outward)
- Transfer between accounts

#### Loans

- Annual renewal fees
- Commitment and acceptance fees
- Late payment charges
- Renegotiation fees

#### Credit Cards

- Annual membership fees
- Cash advance interest charge
- Late payment charges
- Over limit fees
- Replacement card

#### Electronic Banking

- ABM transaction fees:
  - Balance enquiry
  - Funds transfer
  - Own and other machines
  - Deposit and withdrawal fees
  - Declined transaction fee
  - Statement fees
- Points of sale transactions

#### Other

- Banker's reference letter
- Cheque encashment fee (own bank and other bank)
- Domestic and foreign currency managers cheques (account holders and non-account holders)
- Standing Order
- Stop payment and cancellation order