



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

REGULATION OF OVER-THE-LIMIT (OTL) FEES

May 2023

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I. INTRODUCTION

1. The Banks and Deposit Companies Act 1999 (BDCA) was amended in August 2022 to extend the powers of the Minister of Finance (Minister) to issue regulations to “regulate any commercial or operational business fee, charge, or penalty to be paid by clients of an institution holding a deposit-taking licence in furtherance of carrying on its business.” The amendment was brought into force on 8 March 2023.
2. Amidst concerns raised regarding the nature and timing of fees that banking customers may face for exceeding certain credit limits, the Minister has determined that it is timely and appropriate to issue regulations under section 60(2) to specifically address Over-the-Limit (OTL) fees incurred by banking customers.
3. In support of those efforts, the Bermuda Monetary Authority (BMA or Authority) is seeking feedback on the proposals set out in this paper and the attached illustrative draft “*Banks and Deposit Companies (Over-the-Limit Fees) Regulations 2023*” (Regulations), which are intended to limit the frequency with which OTL fees may be levied, as well as introduce other requirements for institutions to ensure that customers have the ability to opt into, or out of an OTL facility contained within a product or service.
4. The Regulations will apply in respect of any credit card, debit card, overdraft or other credit facility which may attract OTL fees.
5. It bears emphasis that in addition to the measures proposed within these Regulations, institutions licensed under the BDCA are also subject to the provisions of the recently implemented Banks and Deposit Companies Code of Conduct (Code), which is administered by the Authority. The Code enshrines principles for good conduct by those institutions and fair treatment of their customers, including provisions that address governance of fees, including through establishing mechanisms for transparency and proper disclosures.
6. In the context of all the above, the Authority invites interested parties to submit their views on these proposals by emailing their comments to policy@bma.bm no later than the close of business on 12 June 2023.

II. SUBSTANTIVE PROPOSALS

In codifying requirements relating to OTL fees, the Regulations will primarily seek to:

Require institutions to obtain written consent from customers to opt into the OTL facility of a product or service

7. When customers wish to avail themselves of a particular product or service that has an OTL facility, the institution must ensure that each customer is aware of the facility and the terms and conditions associated with the OTL facility. Therefore, it is proposed that at the outset of the business relationship, should a customer wish for the OTL facility to be included within the product or service, the institution must obtain an express written agreement, once approved, from that customer.
8. Where a customer did not expressly agree to an OTL facility included within a product or service being offered to them and later wishes to opt into that facility, the customer will be afforded the opportunity to do so at least once a year by notifying the institution in writing. To this effect, customers must be duly advised of their ability to opt into an OTL facility, including the timeframes within which requests must be submitted for consideration.
9. The institution will consider each request by a customer to enter into an OTL facility in the context of its standard approval processes and in each case that it approves such a request, must obtain express agreement that the customer has agreed to the terms and conditions of the OTL facility.
10. Consent to an OTL facility can be withdrawn in writing by a customer once a year and in accordance with the terms of business for that product or service. Customers must be duly apprised of their ability to make such a request, including the timeframes within which such written requests must be submitted to the institution. Where a customer rescinds a previously granted consent to include the OTL facility, that action will not invalidate OTL transactions and fees incurred up to the point that notification of the customer's intention takes effect.
11. *While paragraph (3)(a) of the attached Regulations reflects the proposal in paragraph 10 of this Consultation Paper, the Authority is also seeking stakeholders' feedback on an alternative proposal of affording customers the ability to opt out of an OTL facility at any time, subject to the terms and conditions of that facility and after satisfying any existing obligations incurred while that facility remains in place. The Authority will consider that feedback, after which paragraph 3(a) of the Regulations may be modified accordingly.*

12. Agreement by a customer to the terms and conditions of the OTL facility within the product or service effectively authorises the institution to process an OTL transaction and, therefore, to impose any associated OTL fees. Where a customer does not grant explicit permission to include the OTL facility within the product or service, the institution must advise the customer that they will be barred from conducting transactions that would exceed the credit limit in place for the relevant product or service, and the customer must indicate their understanding of the implications of this decision. If the customer attempts to perform a transaction that would take them over the credit limit agreed in relation to that product or service, they will be prevented from completing that transaction.

Limit the frequency of OTL fee charges

13. Further to the provisions above, it is proposed that where institutions charge an OTL fee, they are restricted to either only once per billing cycle or once per quarter where the billing cycle exceeds 90 days, in accordance with the terms of business governing the use of a particular product or service.

Establish a transition period

14. Restrictions on the frequency of OTL fees which may be applied shall take immediate effect upon the making of these Regulations.
15. In order to afford adequate time for customers to understand and make informed choices in line with these new requirements, as well as for banks to make the necessary adaptations to their systems, it is proposed that the remaining requirements come into effect no later than six months after the date these Regulations are made by the Minister.

- END -

April 2023

BERMUDA

BANKS AND DEPOSIT COMPANIES (OVER-THE-LIMIT FEES) REGULATIONS 2023

BR / 2023

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The Minister of Finance, in exercise of the powers conferred upon him by section 60 (2) of the Banks and Deposit Companies Act 1999 (Act), makes the following Regulations—

Citation

1 These Regulations may be cited as the Banks and Deposit Companies (Over-the-limit Fees) Regulations 2023.

Interpretation

2 In these Regulations, unless the context otherwise requires—

“over-the-limit agreement” means any agreement entered into between the institution and the customer for use by the customer of certain products, services or facilities offered by the institution, which may attract over-the limit fees”;

“institution” has the meaning given in section 2 of the Act;

“Minister” means the Minister of Finance;

“over-the-limit fees” mean fees or charges levied on a customer by an institution, for transactions made by a customer that are over an agreed credit limit, which occur as a result of the customer’s use of the institution’s following services, products or facilities—

- (a) overdraft and other credit facilities;
- (b) directly or indirectly, credit card or debit card facilities.

Timing of imposition of over-the limit fees

3 An institution shall not charge over-the-limit fees on a customer for each product, service or facility more than once per—

- (a) billing cycle; or
- (b) quarter, where the billing cycle is longer than ninety days.

Administration of over-the limit fees by institutions

4 (1) An institution must when administrating over-the-limit fees in relation to the use of a service, product or facility which may attract an over-the-limit fee—

- (a) set out all terms and conditions relating to any such service, product or facility to be used by the customer, under an over-the-limit agreement;
- (b) obtain written confirmation from the customer for the duration of an over-the-limit agreement —
 - (i) of acceptance of new or recurring terms, conditions or fees applicable or to be imposed, under an over-the-limit agreement after execution by the customer; or
 - (ii) of declination of new or recurring terms, conditions or fees applicable or to be imposed, under an over-the-limit agreement.

(2) Where a customer declines to accept the terms, conditions or fees applicable or to be imposed under an over-the-limit agreement in accordance with subparagraph (1) (b) (ii), the customer must acknowledge in writing to the institution, that there will be no access to the product, service or facility set out in the over-the limit agreement, beyond the established credit limit under such agreement.

(3) Where a customer consents to the terms and conditions of an over-the-limit agreement in accordance with subparagraph (1) (b) (i), the agreement must provide—

- (a) an opportunity on an annual basis for a customer that has previously—
 - (i) declined a term, condition, or fee applicable to, or imposed under an over-the-limit agreement in accordance with subparagraph (1) (b) (ii), to confirm in writing that they wish to enter into an over-the-limit agreement or agree to such term, condition, and shall pay such applicable fee; or
 - (ii) entered into an over-the-limit agreement or any term or condition, to confirm in writing that they wish to terminate the over-the-limit agreement or end any applicable term or condition;

- (b) confirmation that termination of the over-the-limit arrangement shall not invalidate an over-the-limit transaction made by the customer prior to the termination date;
- (c) confirmation that if over-the-limit fees have been incurred by the customer—
 - (i) prior to termination of the over-the-limit arrangement; or
 - (ii) during the period from the notification date of termination until the date of termination;

such fees shall remain payable by the customer until fully paid or the institution advises the customer that such is not payable.

Transitional

5 Paragraph 4 of these Regulations shall come into effect six months after the commencement date.

Commencement

6 These Regulations shall become operable on [DATE].

Minister of Finance