

Telephone: 0207 066 8080
Email: foi@fca.org.uk

Via Email

9 March 2015

Our Ref: FOI3878

Dear

Freedom of Information: Right to know request

Thank you for your request under the Freedom of Information Act 2000 (the Act), for the following information on financial promotions.

- 1. From August 2014 to the end of January 2015 how many financial promotions did FCA members of staff review? Please break the figures down by calendar month.*
- 2. From August 2014 to the end of January 2015 how many financial promotions did the FCA deem to be unsatisfactory that the owners of the financial promotions were contacted by the FCA? Please break the figures down by calendar month.*
- 3. Of the financial promotions which were deemed unsatisfactory during the period stated in questions one and two, how many of the financial promotions were withdrawn?*
- 4. Of the financial promotions which were deemed unsatisfactory during the period stated in questions one and two, how many of the financial promotions were amended?*
- 5. Of the financial promotions which were deemed unsatisfactory during the period stated in questions one and two, how many of the financial promotions were defended by the FCA regulated entity and not amended or withdrawn?*
- 6. Over the past five years how many of the financial promotions have been deemed unsatisfactory for some reason to 31.01.2015?*
- 7. Of those financial promotions deemed unsatisfactory in question six, how many were from Independent Financial Advisors?*
- 8. Of those financial promotions deemed unsatisfactory in question six, how many were from restricted financial advisors?*
- 9. Over the past five years to the period ending 31.01.2015 which three Independent Financial Advisors were contacted the most by the FCA and FSA regarding concerns over their financial promotions?*

10. *Over the past five years to the period ending 31.01.2015 which three restricted Financial Advisors were contacted the most by the FCA and FSA regarding concerns over their financial promotions?*
11. *Has the FCA or FSA considered setting clear guidelines on the minimum print size of warnings on financial promotions?*
12. *Is there an internal guide to print size on financial promotions at the FCA?*
13. *If the answer to question 12 is yes, please disclose the policy?*
14. *How many of the financial promotions which were deemed unsatisfactory were brought to the attention of the FCA by the Advertising Standards Agency for the period mentioned in question one?*
15. *How many of the financial promotions which were deemed unsatisfactory were brought to the attention of the FCA by a third party other than the Advertising Standards Agency for the period mentioned in question one?*
16. *How many of the financial promotions which were deemed unsatisfactory were detected exclusively by FCA members of staff, for the period mentioned in question one?*
17. *How many members of staff at the FCA are employed to review financial promotions of FCA regulated entities?*
18. *Does the FCA sub-contract any reviews of financial promotions to third parties?*
19. *Does the FCA have a risk based policy for focusing its resources on reviewing financial promotions?*
20. *If the answer to question 19 is yes, please release the policy or policies?*

Your request has now been considered and we can confirm that we hold some information that falls within the scope of your request. However it would exceed the appropriate cost limit under section 12 of the Act for us to comply with points 2, 5, 6, 7, 8, 9, 10, 16 and part of 15. This is because the FCA holds a large volume of information relating to financial promotions which is not held centrally in a readily extractable format. For a detailed explanation as to why this exemption applies, please refer to the Annex.

However, it might be helpful to note that in regards to points 1, 3 & 4, the overall figures for July to December 2014 have been published as part of our Data Bulletin 2ND Edition and is available at: <http://www.fca.org.uk/your-fca/documents/data-bulletin/data-bulletin-issue-2>. Figures from January 2015 onwards will be published in the next edition of the Data Bulletin, which is due in May 2015. It should be noted that because one case can result in multiple promotions being amended or withdrawn, we do close cases with the combined 'Amend/Withdraw' outcome. Therefore, we are unable to provide an accurate split of the number of cases which are only amended, or only withdrawn, without manually checking each case.

Whilst we do not hold an internal guide on 'print size', regarding points 11, 12 and 13 of your request, guidance was published in July 2011 regarding 'Prominence'. This explains our expectations regarding the prominence of key information and would be used to

assess firms' promotions for good or bad practices. This guidance is available at:
http://www.fca.org.uk/static/pubs/guidance/gc11_15.pdf.

For point 14, the Advertising Standards Agency brought 28 financial promotions to the attention for the period outlined. It should be noted that a case with a firm can have more than one non-compliant financial promotion. Therefore, the number of cases raised from these promotions would have been lower than the figure provided.

We do not hold reportable figures regarding the number of 'unsatisfactory' financial promotions, point 15, for the period August to September 2014 for the reasons outlined in section 12 of the Annex. However, due to our case management system being updated with this reportable capability for the period October 2014 to January 2015, we can confirm that 108 financial promotions brought to the attention of the FCA by third parties (excluding the ASA) were deemed 'unsatisfactory'. As with point 14 above, it should be noted that a case with a firm can have more than one non-compliant financial promotion. Therefore, the number of cases raised from these promotions would have been lower than the figure provided.

In regard to point 17, there are currently 11 members of staff in the Financial Promotions Team.

The answer to point 18 is no, the FCA does not sub-contact to third parties.

In response to point 19 the answer is yes. The FCA reviews financial promotions whilst applying a risk-based approach. There are also assessments made by senior management regarding the level of resource allocated to the team.

In regard to point 20, we are not able to provide you with internal guidance on the use of our risk based approach, as disclosure would, or would be likely to, prejudice the exercise by the FCA of its function of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. Therefore, this information is exempt from disclosure under section 31 (Law enforcement) of the Act. For a detailed explanation as to why this exemption applies please refer to the Annex.

Yours sincerely

Information Access Team
Financial Conduct Authority

Your right to complain under the Act

If you are unhappy with the decision made in relation to your request, you have the right to request an internal review. If you wish to exercise this right you should contact us within three months of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone: 01625 545 700. Website: www.ico.org.uk

Annex A

- **Section 12 (Costs of compliance exceeds appropriate limit)**

We are not required to comply with a request under the Act if it would be too expensive to do so, as estimated in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) made by the Ministry of Justice. The Regulations provide that, for the FCA, the cost limit is £450, i.e. 18 hours at the rate of £25 per person hour. The Regulations allow us to take into account, when estimating the cost of complying with a request, time spent determining whether we hold the information requested, locating and retrieving it, and extracting the information from the relevant document(s).

As explained above, we hold a large volume of information relevant to your request which is not recorded or held centrally, in a readily extractable format. Therefore, to process points 2, 5, 6, 7, 8, 9, 10, 16 and part of 15 will require the records for each case to be manually accessed to determine if they hold information falling within the scope of each of the above points for the periods in question. This exercise, we believe, would take well in excess of 18 hours in total. On that basis, we estimate that the cost of retrieving the information you have requested would far exceed the £450 limit.

As our policy is not to divert resources from our regulatory functions in order to meet requests under the Act in excess of the cost limit, we will not carry out an exercise to identify the information you have requested in the above mentioned points.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) and 31(2)(a) and (c) of the Act applies because, disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the purposes of:

- *ascertaining whether any person has failed to comply with the law;*
- *ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of any enactment.*

This exemption applies to point 20 of your request in that such information, if disclosed now would, or would be likely to, prejudice any future enquiries and/or action we may undertake. This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

For disclosure

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of the regulatory approach taken by the FCA and disclosure of the information would demonstrate how the FCA responds to matters arising within the sector it regulates.

- Disclosure of the information would increase public awareness and understanding of the FCA's consideration of financial promotions.

Against disclosure

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible.
- The use of our risk-based approach is a specialist tactical tool. We consider that if we were to provide details to the public as to why and how such tools are used, the use of these tactics in future assessments of financial promotions would be less effective and more transparent. The likely result would be that targeted individuals or groups could attempt to try and fall under our risk threshold. This could affect the way that the FCA considers financial promotions going forward.
- Public disclosure of this information would significantly undermine the FCA's ability to meet its market integrity objective. It would also likely have an inhibiting effect on any future guidance provided to staff which, in turn, could seriously undermine the FCA's regulatory function.

On this occasion we have concluded that the balance of the public interest is in favour of maintaining the exemption under section 31 of the Act, for the reasons set out above.