

Direct line:
Local fax:
Email:

By email

Xx xx 2014

Our Ref: FOI3834

Your Ref:

Dear

Freedom of Information: Right to know request

We refer to your emails requesting information under the Freedom of Information Act 2000 (the Act) regarding (in summary) GC11/28 "Proposed Guidance on TPLIs". The full text of your emails is in Annex A.

Before considering your request, I would like to explain how we have processed your requests. The FCA has received 2 requests in total from you on 16th and 20th December 2014 in relation to this guidance consultation paper and seeks information about the same subject matter. We are therefore aggregating your requests into one FOI request, FOI3834.

As you are aware from 1 April 2013, the responsibilities of the Financial Services Authority ("FSA") were split between two new regulators, the Prudential Regulation Authority and the Financial Conduct Authority. For convenience, references in this letter to the FCA are also to its predecessor, the FSA, where appropriate.

Turning now to your aggregated request, we have now considered your request, and I provide comments as follows. Please note, we are answering point 2) outside the Act.

- 1) *[regarding FSA's work with TLPI providers prior to publication to ensure that they had plans in place] As the providers subsequently could not deal with the increase in redemption requests, can you please advise what measures were taken by the FSA to ensure the providers had plans in place?*

As you are aware, the FCA gave advance notice of publication to some TLPI providers, and encouraged them to make plans to deal with an increase in redemption requests. However, the providers in question were based in territories outside of the FCA's jurisdiction. We had no power to compel them to take any action.

Beyond this, we cannot disclose what measures were taken as some of the information requested is information that the FCA has received for the purpose of carrying out our functions under the Financial Services and Markets Act 2000 ("FSMA"), it is exempt from disclosure under section 44 (Prohibitions on disclosure) for the reasons set out in Annex B.

In respect of that information which is not confidential, we consider that disclosure of the information could prejudice the commercial interests of those firms, if it was made public, and therefore the Section 43 (Commercial interests) exemption applies for the reasons set out in Annex B.

- 2) *The FSA did not pre-consult on the wording of the announcement so did they ensure the providers understood the announcement would include terms such as 'Ponzi like' and 'toxic' in the announcement?*

We assume your reference to an "announcement" is a reference to the press release accompanying the publication of our guidance consultation [GC11/28](#) on 28 November 2011. In that public consultation exercise, the FCA expressed its concerns about traded life policy investments (TLPIs) and urged firms not to promote them to mass retail investors in the UK. We published the finalised guidance ([FG 12/12](#)) and a [summary of feedback](#) to the consultation in April 2012. We addressed the feedback received in relation to the use of the word "toxic" and the comparison to Ponzi schemes in our summary feedback, and have nothing further to add in that respect.

- 3) *Could you please send me copies of the 55 responses to the consultation on the 'Proposed guidance on TPLIs' which was conducted between 28 November 2011 and 23 January 2012 and which were referred to in the FSA summary of feedback received also published in 2012.*

We have interpreted your request as being for non-confidential and confidential responses the FCA received regarding GC11/28 Proposed guidance on TLPIs.

Firstly, it may be helpful if I explain that the FCA routinely disclose non-confidential responses to consultation papers on request. Accordingly, we are providing the non-confidential responses outside the Freedom of Information Act (attached).

However, regarding the confidential responses received, we can confirm that we do hold some such information, however, we are not able to disclose these to you, because this is information, as explained above in point 1), that falls under s44 (Prohibitions on disclosure) for the reasons set out in Annex B.

- 4) *Could you also please send me copies of the 'previous communications' referred to on page 3 of the summary of feedback from the consultation in the following sentence, "By setting out our concerns in stronger terms than in previous communications, we hope..."*

I can confirm that the "previous communications" referred to here, is the concerns we raised in a number of papers and a speech by Peter Smith. We provided links to these papers and speech in our response of 23rd May 2014 (FOI3437). I provide the links again for your information –

http://www.fsa.gov.uk/library/communication/speeches/2010/0224_ps.shtml
http://www.fsa.gov.uk/library/communication/speeches/2010/0224_ps.shtml

DP11/1 – Product intervention paper (published January 2011) http://www.fsa.gov.uk/pubs/discussion/dp11_01.pdf
http://www.fsa.gov.uk/pubs/discussion/dp11_01.pdf

Retail Outlook Risk report (published February 2011) <http://www.fsa.gov.uk/pubs/other/rcro.pdf>
<http://www.fsa.gov.uk/pubs/other/rcro.pdf>

Yours sincerely

Information Access Team
Financial Conduct Authority

Your right to complain under the FoI 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

Email of 16th December 2014 –

You state below that the FSA had worked with the providers before publishing the guidance to ensure that they had plans in place to deal with an increase in redemption requests.

1) As the providers subsequently could not deal with the increase in redemption requests, can you please advise what measures were taken by the FSA to ensure the providers had plans in place?

2) The FSA did not pre-consult on the wording of the announcement so did they ensure the providers understood the announcement would include terms such as 'Ponzi like' and 'toxic' in the announcement?

Email of 20th December 2014 –

1) Could you please send me copies of the 55 responses to the consultation on the 'Proposed guidance on TPLIs' which was conducted between 28 November 2011 and 23 January 2012

and which were referred to in the FSA summary of feedback received also published in 2012.

I note the invitation for responses issued by the FSA included the following statement:

"It is the FSAs policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure."

- 2) *Could you also please send me copies of the 'previous communications' referred to on page 3 of the summary of feedback from the consultation in the following sentence, "By setting out our concerns in stronger terms than in previous communications, we hope..."*

Annex B

- **Section 44 (Prohibitions on disclosure)**

Section 44(1) of the Act provides that information is absolutely exempt from disclosure if its disclosure (otherwise than under the Act) is prohibited by or under any enactment. Section 348 of FSMA restricts the FCA from disclosing "confidential information" it has received in carrying out its functions except in certain limited circumstances (none of which apply here).

Confidential information for these purposes is defined as information which relates to the business or other affairs of any person and which was obtained by the FCA for the purposes of, or in the discharge of, its functions under FSMA and which is not in the public domain.

Some of the information requested in point 1) amounts to confidential information which, when received by the FCA, would have been received in the discharge of its functions under FSMA. Disclosure of any confidential information, without the consent of the provider of the information, and, if different, the consent of the person to whom the information relates would be a breach of section 348 of FSMA and would be a criminal offence.

In respect of point 3) any information from a firm or an individual provided to the FCA would have been received for the purpose of consulting the financial industry on proposed guidance, so falls within Section 348. Consequently the FCA is prohibited from disclosing to you any information which the FSA received while performing its regulatory duties and which is not in the public domain.

Disclosure of any such information is in breach of section 348 of FSMA and is a criminal offence.

Section 44 is an "absolute" exemption, and so it is not necessary to balance the public interest for and against disclosing the information.

- **Section 43 (Commercial Interests)**

Section 43(2) of the Act provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

The commercial interests of the firms in question may be harmed in several ways by disclosing the information requested. Disclosure of the information you have requested would be likely to lead to further comment and speculation about the firms, which would or would be likely to harm the firms' brands and so harm the commercial interests of the individual firms and their stakeholders, including their employees. As there is no routine public disclosure of a firm's dealings with the FCA, ad hoc public disclosure under the Act would be likely to attract a disproportionate amount of attention to the firms concerned.

Section 43 is a qualified exemption and we have therefore considered, as required by the Act, where the balance of public interest lies.

For disclosure:

- Disclosure of the information would reassure the public about the effectiveness of the regulatory approach taken by the FCA, particularly in relation to traded life policy investments.
- Disclosure would also provide information to consumers to assist them in making decisions about their dealings or potential dealings with the firms and individuals that are, or may be, operating in the financial services industry.

Against disclosure:

In addition to the argument set out above, it is strongly in the public interest that the FCA has open and candid exchanges of information with the firms it regulates, regardless of the commercial sensitivity of the information.

On this occasion we have concluded that the balance of the public interest is in favour of not disclosing the information, for the reasons set out above.