

# Financial Services Authority

Direct line:  
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**FSA**<sup>®</sup>

24 January 2013

Our Ref: FOI2795

Dear

## **Freedom of Information: Right to know request**

Thank you for your request under the Freedom of Information Act 2000 (the Act), for information about NDF Administration Limited promotion of Lehman backed products.

- "1) Which of the NDF Administration Limited brochures did the FSA examine as part of their review.*
- 2) What did the FSA conclude regarding the compliance of each brochure examined under COBS rules and FSA Principles?*
- 3) Did the FSA look at the invitation letter (copy attached) and reach a conclusion regarding the suitability as an approach to potential investors? In particular did the FSA consider the statement that "Your capital is ONLY at risk if the FTSE 100 Index or Dow Jones EURO STOXX 50 fall by more than 50% from the Starting Index Levels" in relation to it being a false statement of inducement as per the Misrepresentation Act?"*

My apologies for the delay in responding to you, your request has now been considered and I shall take each point in turn.

With regard to point 1 of your request, I can confirm that all five of the NDF Administration Limited Lehman-backed brochures were examined as part of the review.

Turning to point 2 of your request, the FSA's concerns about all the Lehman-backed products literature is available on our website via the following link to the press release of 27 October 2009 relating to Lehman-backed structured products:

<http://www.fsa.gov.uk/library/communication/pr/2009/144.shtml>

With regard to the final point of your request regarding the invitation letter (a copy of which you provided for reference), whilst I cannot confirm explicitly that the actual letter you provided was reviewed, I can confirm that we hold information that confirms that invitation

letters of the type that you have provided were reviewed by the FSA. However we can not comment further on what we may or may not have considered during this review.

We consider that we can neither confirm nor deny whether we considered the statement referred to in your request nor can we confirm that we came to the conclusion that you have described during the course of our review of the invitation letter from NDF Administration Limited regarding Lehman backed-products. Confirmation one way or the other could prejudice the commercial interests of that firm and therefore the Section 43 (Commercial Interests) exemption applies.

- **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). As this is a qualified exemption we have balanced the public interest for and against disclosure.

For disclosure:

- Disclosure of the information (if it were held) would increase public awareness and understanding of the regulatory approach taken by the FSA regarding the sale of Lehman backed products .

Against disclosure:

- It is in the public interest that the FSA has the ability to have open and candid exchanges of information and views with its firms, regardless of the commercial sensitivity of the information.
- Disclosure to the public of whether or not we have considered the statement outlined in your request and any conclusions would be likely to undermine these and other firms' willingness to engage in a dialogue with us and to provide us with information. The likely result would be that the FSA would not receive information and cooperation on a voluntary basis from its regulated firms, which would harm the FSA's effectiveness in carrying out its functions and possibly require the FSA to take formal action to obtain information it would otherwise have been provided with.
- The commercial interests of NDF Administration Limited would be likely to be harmed in certain ways by disclosing whether or not we have considered the information requested. Disclosure of the information you have requested would be likely to lead to further comment and speculation, which would, or would be likely to, harm NDF Administration Limited brand and so harm the commercial interests of NDF Administration Limited and stakeholders in it, including employees. As there is no routine public disclosure of a firm's dealing with the FSA, ad hoc public

disclosure under the Act would be likely to attract a disproportionate amount of attention to the firm concerned.

This exemption is qualified and we have balanced the public interests for and against disclosure as required by the Act. In this case, in our view the public interest lies against disclosure for the reasons set out above.

If you have any queries or are unhappy with the decisions made in relation to your request please contact me. If I am not able to resolve your concerns I will advise you of the process for an internal review. If you wish to exercise your right to an internal review you should contact us within three months of the date of this letter.

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.gov.uk](http://www.ico.gov.uk)*

Yours sincerely

**Information Access Team**