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**From:** Freedom of Information  
**Sent:** 10 April 2013 15:43  
**To:**  
**Cc:** Freedom of Information  
**Subject:** Freedom of Information : Right to know request  
**Attachments:** FOI2852 Information provided (1) 20130326.pdf; FOI2852 Information provided (2) 20130326.pdf

Our ref: FOI2852

Dear

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

*"I would like to see all correspondence with HMT ministers and officials and notes of communications with same on matters relating to the sale of derivatives to SMEs and copies of notes and other documents, whether in written, digital or handwritten form, covering such communication and preparation for or response to such communication. My request relates to the period 1st September 2012 up to today's date [29 January 2013]"*

Your request has now been considered and we attach some information that we are able to disclose to you.

In our email of 26 February 2013, we confirmed that we hold information that falls within the scope of your request, and explained that we needed more time to consider the public interest arguments. We have now completed that balancing exercise and this letter sets out why we consider that some of the information is exempt under section 36 (Prejudice to the effective conduct of public affairs).

We consider that this exemption applies as disclosure of the material requested is typical of our discussions with HM Treasury on important regulatory issues and public disclosure would be likely to harm the quality of discussions and on-going relations between the FSA (now succeeded by the Financial Conduct Authority ("FCA")) and HM Treasury.

• **Section 36 (Prejudice to the effective conduct of public affairs)**

Under section 36 (2) (b) (i) and (ii) this exemption applies if, in the "reasonable opinion" of the FCA's Qualified Person, disclosure of the information would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. Each of the FCA's Board members is a Qualified Person and your request was considered by Martin Wheatley. This email explains why, in his opinion, the exemption applies and it is not in the public interest for this information to be disclosed.

It is vital that the FCA has a protected space in which it can discuss fully, openly and candidly with HM Treasury regulatory matters which may have an impact on the industry. Disclosure of the FSA's advice provided to and exchanges of views with HM Treasury, presents a real risk of harm to the quality of the deliberations of both the FSA and HM Treasury, as well as to the FCA's on-going relations with HM Treasury.

In particular, disclosing exchanges between the FCA and the HM Treasury would be likely to result in the future free and frank exchanges of advice and views among them being inhibited. That would be likely to be detrimental to the effective operation of the relationship between the FCA and HM Treasury on matters relating to the regulation of the UK financial sector. Disclosure would also be likely to result in HM Treasury becoming more inhibited about the information which they are prepared to provide to the FCA. This would lead to the loss, or impairment, of an important channel of

communication, all the more valuable at a time when financial regulation is going through a period of significant change.

As the exemption in s.36 FOIA applies, the Qualified Person has next considered whether the public interest favours disclosing or protecting the information requested.

#### *For disclosure*

In favour of disclosure, it is in the public interest that information is generally available as to how the FCA and HM Treasury share information and make decisions that are of importance to the wider public.

Disclosure of these documents would show the FCA to be an open and transparent organisation. It would give greater transparency to the workings of the FCA, and to both its internal and its external communications.

#### *Against disclosure*

The factors against disclosure are set out under "Section 36" above. In addition, the matter is current, rather than being of historic interest only.

Overall, the Qualified Person has concluded that there is a reasonably high likelihood that public disclosure of the information you have requested would harm the provision of advice to, and the exchange of views with, HM Treasury in the future. In the circumstances, the Qualified Person is satisfied that it is in the public interest to protect the information requested from public disclosure.

Furthermore, some of the information requested is information which the FSA (now the FCA) has received for the purpose of carrying out its regulatory function under the Financial Services and Markets Act 2000 ("FSMA"), and so the following exemption applies.

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

Section 44 provides that information is absolutely exempt if its disclosure (otherwise than under the Act) is prohibited by or under any enactment. Section 348 of the FSMA restricts the FCA from disclosing "confidential information" it has received 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 received by the FSA for the purposes of or in the discharge of its functions under FSMA and which is not in the public domain. Consequently the FCA is prohibited from disclosing to you any of this information which is not in the public domain.

Disclosure of any such confidential information would be in breach of s.348 of FSMA and is a criminal offence.

Some of the information has also been withheld because the correspondence includes the names of personnel within the FSA (now the FCA) and HM Treasury whose names are not in the public domain due to their relatively low level of seniority. Therefore we consider the details of these individuals constitute their personal data and they have been exempted under the Personal Data exemption.

- **Section 40 (Personal Information)**

To the extent that the information that we hold contains personal data about an individual, section 40 (2)(b) of the Act provides that "Any information to which a request for information relates is also exempt information if ... either the first or second condition below (see sections 40(3) and 40(4) of the Act) is satisfied".

We have applied this exemption because the first condition (as stated in section 40(3) of the Act) is satisfied as some of the information requested comprises the personal data of individuals other than yourself, which if disclosed would breach the Principles in the Data Protection Act 1998. It would be a breach of Principle 1 to disclose such information, as it would not be lawful or fair to the individuals

concerned. The individuals concerned have not given their consent for their personal details to be made public and, given their roles and previous decisions made by the Information Commissioner in this area, they would not reasonably expect information about how they do their work to be made public. Further, the release of such information may be detrimental or upsetting to the individuals themselves.

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 email.

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  
Financial Conduct Authority

# Financial Services Authority

Direct line:  
Local fax:  
Email: @fsa.gov.uk



5 December 2012

The Rt Hon Greg Clark MP  
Financial Secretary to the Treasury  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Our Ref: Case No. 121204A

Your Ref:

*Dear Greg*

The term 'mis-selling' is not actually a regulatory concept, but the term is commonly used to refer to sales which do not meet the FSA's Principles for Businesses and the rules contained in the FSA's Handbook. The Principles for Businesses are high level requirements that apply in a general sense when firms carry on regulated activities. They include:

- the requirement that firms treat their customers fairly;
- the requirement that firms pay due regard to the information needs of their clients and communicate with them in a manner that is clear, fair and not misleading; and
- the requirement that firms take reasonable care to ensure the suitability of their advice.

These are supplemented by more detailed provisions in the Handbook that impose specific conduct of business obligations on firms. These include:

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25 The North Colonnade Canary Wharf London E14 5HS United Kingdom  
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www.fsa.gov.uk

Financial Services Authority is a Limited Company in England and Wales No 1820828 Registered Office in London

- in relation to "non-advised sales", rules around establishing a customer's understanding of risks or their knowledge and experience; and
- in relation to "advised sales", the rules requiring firms to take reasonable steps to ensure that the product was suitable for the client in their circumstances.

Yours sincerely,

**Martin Wheatley**  
**Managing Director**

**From:** @fsa.gov.uk]  
**Sent:** 28 November 2012 20:48  
**To:** - HMT  
**Subject:** IRHPs: FSA letter to customers

To confirm, the FSA letter has now been distributed to firms who are sending to customers starting this week. We hope this exercise will be completed shortly. The letter is also available on our website, at the link below.

<http://www.fsa.gov.uk/static/pubs/other/irhp.pdf>

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Q: To ask Mr Chancellor of the Exchequer, when he expects the full review by the Financial Services Authority into the sale of interest rate hedging products to be completed; and if he will make a statement. 134278