
From: Freedom of Information
Sent: 15 May 2013 16:19
To:
Subject: Freedom of Information: Right to know request
Attachments: FOI2948 Information Provided 2 of 2 20130508.pdf

Our Ref: FOI2948

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.

"would you please let me have information which I requested in point 3.1(3) of my revised request i.e. all the information contained in the FSA's feedback letter to Keydata on its review (i.e. the 2007 Keydata Product Provider Review)".

For ease of reference please be aware that The Financial Services Authority (FSA) has now been succeeded by the Financial Conduct Authority (FCA).

Your request has been considered. We can confirm that the FCA holds the information you have requested and enclose a copy of the FSA's feedback letter to Keydata Investment Services Limited (Keydata). As you are aware, from previous correspondence, there are ongoing investigations into Keydata and related individuals. You will also be aware that information relating to the investigation is exempt from disclosure and, for similar reasons explained to you in the past, parts of the information you have requested are exempt and cannot be disclosed to you.

We consider that section 40 (Personal information), section 31 (Law Enforcement) and section 44 (Prohibitions on disclosure) of the Act are applicable to the information you have requested. Further details on our application of these exemptions are set out below.

The FSA's feedback letter to Keydata contains a small amount of information which we consider to be personal data; the names of internal and external individuals. We consider that to disclose the individual's identities would breach the Principles in the Data Protection Act 1998. The following exemption applies.

- **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 this personal detail

to be made public and the release of such information may be detrimental to the individuals themselves.

We also consider that some of the information is exempt under the section 31 (Law Enforcement) exemption, as disclosure of the information would, or would be likely to, prejudice the exercise by the FCA of its functions under FSMA, as follows.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) and 31(2)(c) and (d) of the Act applies because, to the extent that the FCA is directing regulatory enquiries to certain firms and / or individuals during the course of enquiries, 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 circumstances exist or may arise which would justify regulatory action in pursuance of any enactment.

As you are aware, Keydata and related individuals are under investigation and as a result of the Judicial Review the disciplinary process is currently on hold. Any premature disclosure of facts surrounding the investigation could result in the disciplinary process being frustrated.

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.

Against disclosure:

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible.
- Premature disclosure of this information has the potential to affect and hinder the disciplinary process, which is currently on hold pending the outcome of the Judicial Review, and would, or would be likely to, prejudice the decisions which have yet to be made.
- Premature disclosure of this information at such a crucial time in our enquiries, could lead to unnecessary speculation about which could hinder and prejudice the progress of any current and/or future FCA enquiries, considerations and/or action.
- It is in the public interest that the FCA has open and candid exchanges of information and views with its firms and internally, regardless of the commercial sensitivity of the information. Disclosure of this information would be likely to undermine the firms' willingness to engage in a dialogue with us and to provide us with information. The likely result is, again, that the FCA would not receive further information or cooperation on a voluntary basis from its regulated firms, which would harm the FCA's effectiveness in carrying out its functions and possibly require the FCA to take formal action to obtain information it would otherwise have been provided with voluntarily.

In our view, the balance of the public interest in this case is in favour of maintaining the exemption under section 31 of the Act.

Furthermore, some of the information contained in the FSA's feedback letter to Keydata has been received by the FSA (now succeeded by the FCA) 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 FSA (now succeeded by 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 (now succeeded by the FCA) for the purposes of or in the discharge of its functions under FSMA and which is not in the public domain.

In this instance, the letter in question refers to information provided by Keydata ("the firm") to the FSA (now succeeded by the FCA) which has been received for the purpose of carrying out our supervision of Keydata, so falls within Section 348. Consequently the FCA is prohibited from disclosing to you any information which we received while performing our regulatory duties and which is not in the public domain.

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

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*

Yours sincerely

Information Access Team



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

www.fca.org.uk

Direct line: 020 7066
Local fax: 020 7066
Email:
Web: <http://www.tsa.gov.uk/>

Private and Confidential

Keydata Investment Services Limited
Fountain House
2 Queens Walk
Reading
Berkshire
RG1 7QF

02/10/2007

Our Ref: 194148. 447108..187966
Your Ref:

Dear

Re: FSA SUPERVISION VISIT – KEY DATA SECURE INCOME BOND/PLAN

We write with reference to our meeting held at your offices on 4 and 5 September 2007 and thank you for taking the time to meet with us.

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5. IFA interface

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5.2. Understating the risks of the products

5.2.1. The firm has issued a number of press releases that make headline claims that the SIB offers full return of capital within the main body of the press release. It is only in the 'Notes to Editors' section that risk factors are outlined,

5.2.2. We have also identified a press release dated 19 July 2005 on the firm's website that explicitly stated that the product offers full return of capital in its title and first paragraph and the press release also omitted any reference to the lack of guarantees concerning return of capital.

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5.4. Involvement in Intermediary Direct Offer Promotions

5.4.1. Over the course of our review,

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6.4. *Wider impact on the firm*

6.4.1. The firm also offers structured products and Venture Capital Trusts,

other products.

7.

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7.2.

8. Required Actions

8.1. FSA is seeking the firm to undertake actions that will:

- Address the failings identified and remedy any disadvantaged consumers
- Ensure the failings do not re-occur with future offerings of this product
- Ensure that these failings are not replicated for the sales and marketing across its other product ranges

8.2. We would like the firm to address the concerns raised in this letter, and prepare a detailed action plan to demonstrate to us how it intends to achieve the outcomes specified in 8.1. This action plan should be provided to the FSA by 10 October 2007 and the firm should be prepared to discuss the proposals with us at our scheduled 10 October meeting. If the firm's proposals are deemed to be inadequate, FSA may require the firm to undertake certain actions.

8.3.

Yours sincerely

SFD Investments 4 MWi
Small Firms Division

In order that we can deal with this matter as quickly as possible, would you kindly ensure that you include the reference 194148. 447108..187966 in the title/heading/subject of your response.