

Transcript 1:

From: FCA
Sent: 05 August 2016 11:01
To: ASA
Subject: RE: Council decision

Hi [REDACTED]
Trust you are well

[REDACTED]. Can you give us an indication of when we are liable to receive these.

Regards
[REDACTED]

[REDACTED]
[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

[REDACTED]
www.fca.org.uk

.....
Transcript 2:

From: FCA
Sent: 02 August 2016 14:13
To: ASA
Subject: RE: Council decision

Afternoon [REDACTED]

As promised please find attached our suggested wording.

"XXXXX (Firm Name) is authorised by the Financial Conduct Authority (FCA) under the Payment Service Regulations 2009 for the provision of payment services. We have forwarded this case to the FCA for their consideration".

Regards
[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]

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From: FCA
Sent: 01 August 2016 13:28
To: ASA
Subject: RE: Council decision

HI [REDACTED]

Further to our telephone conversation - thanks to you and [REDACTED] for [REDACTED].

In respect of any wording for inclusion we have prepared a sentence which is currently with our General Council Division for their consideration. I will advise you as soon as I receive confirmation of the wording.

Regards

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]

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Transcript 3

From: FCA
Sent: 26 July 2016 10:08
To: ASA
Subject: Council decision

Morning [REDACTED]

Trust you are well.

How did the [REDACTED].

Look forward to hearing from you.

Regards
[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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Tel: [REDACTED]
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Transcript 4:

From: FCA
Sent: 18 July 2016 14:11
To: ASA
Subject: RE: Advertising by payment institutions

[REDACTED]

Thanks

Tina Archer

Manager / Conduct Specialists / Supervision



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Canary Wharf
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E14 5HS



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ConductSpecialistsAdmin@fca.org.uk

From: FCA]
Sent: 18 July 2016 11:58
To: ASA
Subject: RE: Advertising by payment institutions

Many thanks for the update, [REDACTED]. We look forward to hearing from you in due course.

We note that we [REDACTED]

Thanks
Regards
Tina

Tina Archer
Manager / Conduct Specialists / Supervision



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E14 5HS



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ConductSpecialistsAdmin@fca.org.uk

From: FCA
Sent: Friday, July 8, 2016 11:11 AM
To: ASA
Subject: RE: Meeting regarding advertising by payment institutions and next steps

[REDACTED]

I attach a document, [REDACTED]. The document does not contain details of our current action on [REDACTED].

I am sure you would anyway, but please could you kindly keep this document confidential and not disclose it outside the ASA, or indeed wider than necessary within the ASA. The detail as to the way [REDACTED].

Please let me know if you have any questions. We look forward to hearing [REDACTED].

Many thanks and have a good weekend.
Regards
Tina

Tina Archer
Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

File attached to above email

The FCA's powers to deal with misleading advertising by payment institutions

The FCA authorises/registers payment institutions under the Payment Services Regulations 2009 (the 'PSRs'), and a wide range of other financial services firms under the Financial Services and Markets Act 2000 ('FSMA'). We have powers in relation to the marketing of both sets of firms, but under different pieces of legislation. [REDACTED]

[REDACTED]

Supervisory or enforcement action

The FCA’s Financial Promotions team can take supervisory action if they consider that a firm is producing misleading advertising. This will generally take the form of writing to a firm, asking them to amend or withdraw the relevant advertisement. If, however, the firm does not address the Financial Promotions team’s concerns, the team can consider referring the case for enforcement action. Any decision by the FCA to take enforcement action will be made in line with the FCA’s criteria for taking enforcement action and the FCA’s published Enforcement Guide.

[REDACTED] approach of the FCA’s Financial Promotions team in relation to its supervisory approach

This section describes the approach of the FCA’s Financial Promotions team to supervision of firms. In relation to supervisory action, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dealing with misleading advertising by firms regulated under FSMA

For FSMA firms, the FCA applies Principle 7 of the Principles for Businesses module in the FCA Handbook, which requires communications to be clear, fair and not misleading. There are also more detailed rules and guidance elsewhere in the FCA Handbook, that the FCA applies as appropriate. [REDACTED]

[REDACTED]

[REDACTED]

Dealing with misleading advertising by payment institutions

For PSR firms, the legal framework is different.

As with FSMA firms, the Financial Promotions team would generally expect to first write to PSR firms, asking them to address their concerns by amending or removing the advertisement. They would expect most firms to comply with their request without the FCA having to apply to court or exercise its formal powers.

However, if firms do not address the Financial Promotions team’s concerns, the team can, as above, consider referring the case for formal action. Below are two routes that the FCA could take in this situation; the most appropriate route will depend on the particular case.

The FCA could take action under the PSRs. Specifically, Regulation 11 of the PSRs states that the FCA may vary a person's authorisation for a number of different reasons, including, if it appears to us that the variation is desirable to protect the interests of consumers. So if the FCA has concerns about an advertisement (e.g. that it may mislead consumers) in relation to services of a payment nature, the FCA could vary the firm's permission so as to impose a requirement that it has to address our concerns by amending or removing the advertisement. The FCA can exercise this power through its internal decision-making processes and without applying to court (although the subject can challenge our action before the Upper Tribunal). As with FSMA firms, the FCA also has the power under regulation 10 of the PSRs to remove the firm's regulatory authorisation. For both FSMA firms and PSR firms, [REDACTED]

As an alternative to action under the PSRs, the FCA can enforce the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPRs') through the Enterprise Act 2002 ('EA') in cases where there is harm to the collective interests of consumers. The FCA is a 'designated enforcer' under the EA. So if a firm produces an advertisement that the FCA considers to be misleading under the CPRs (i.e. it is an unfair commercial practice under the CPRs) and which it considers harms the collective interests of consumers, the FCA can, following consultation with the firm, apply to court for an enforcement order (the FCA can, in relatively urgent cases, obtain an interim enforcement order).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: FCA

Sent: Wednesday, July 6, 2016 10:08 AM

To: ASA

Subject: Meeting regarding advertising by payment institutions and next steps

Dear [REDACTED],

Thank you for meeting with us yesterday. We hope you found the meeting useful.

We have summarised the next steps below, as we understood them. Please let us know if you feel that anything needs to be altered or clarified.

Next steps

- The FCA Financial Promotions Team will send the ASA a statement of how we

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- These statements provided by the FCA will then [REDACTED]
[REDACTED]
[REDACTED].

- [REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

- Both the FCA and the ASA understand the important of us providing broadly consistent messages to firms and consumers.

Best regards,

[REDACTED]
[REDACTED]



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[REDACTED]

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Visit our pages on <http://www.fca.org.uk/firms/being-regulated/financial-promotions>

Transcript 5:

From: FCA

Sent: Friday, July 8, 2016 1:16 PM

To: ASA

Subject: RE: Meeting regarding advertising by payment institutions and next steps

[REDACTED], [REDACTED]

Just to clarify, you will see that our note refers to firms authorised under the PSRs. So this would include all firms authorised under the PSRs, not just currency transfer firms, but also e.g. e-money firms, which produce promotions for prepaid cards etc. [REDACTED]

[REDACTED]

Regards

Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

Transcript 6:

NOTE FOR RECORD

Date: 5 July 2016

By: [REDACTED]

Phone: [REDACTED]

Copied to: David Blunt, Tina Archer and [REDACTED]

Subject: MEETING WITH THE ADVERTISING STANDARDS AUTHORITY

Meeting on 4 July 2016, 15.30, at ASA office, Holborn

Attendees

David Blunt – HOD Conduct Specialist Department

Tina Archer – Manager, Financial Promotions

[REDACTED] Financial Promotions

[REDACTED] Financial Promotions

[REDACTED] (ASA)

[REDACTED] (ASA)

1. After the introductions DB set out the areas for discussion as:
 - Our approach
 - The MOU
 - Specific issues
2. DB set out our approach in that PSR firms fall within our scope although the legislation is different. Whilst there is a different framework it does not colour our approach and that we would be treating PSR firms in the same way as FSMA firms.

[REDACTED]
4. TA cited 8.31 of the FCAs document “The FCA’s role under the Payment Services Regulations 2009 Our approach June 2013” and read out the following extract [REDACTED] apply to their payment service business with consumers”.
5. TA went on to say we would [REDACTED] in the same way of our normal approach and if misleading.
6. [REDACTED]
7. TA said that we would consider [REDACTED] against our criteria in accordance with our normal practice [REDACTED].
8. [REDACTED]
9. TA stated that [REDACTED]
10. [REDACTED].
11. DB run through the process and mentioned the MOU .
12. [REDACTED].
13. DB reiterated our approach would be consistent with FSMA firms and asked [REDACTED].
14. [REDACTED].

15. DB ran through [REDACTED].
16. TA said we look at the code first to determine the breach [REDACTED].
18. [REDACTED].
19. TA asked what happens [REDACTED].
20. [REDACTED].
21. [REDACTED].
22. Agreed that we would do a next steps and send to the ASA and that FCA are happy [REDACTED].

Meeting closed 16.30

Transcript 7:

From: FCA

Sent: 04 July 2016 11:06

To: ASA

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

[REDACTED], my head of department, David Blunt, would also like to join us. Would that be ok? And are you ok with all four of us coming along? We don't want to force you to get a bigger meeting room!

Thanks

Regards

Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA
Sent: 27 June 2016 13:03
To: ASA
Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Thanks for getting back to us so quickly. Would next Tues 5 July suit you, maybe 3.30 to 4.30 or 4 to 5? We could come to your offices of course.

Regards
Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA
Sent: 27 June 2016 11:10
To: ASA
Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa
Importance: High

Hi [REDACTED]

I hope you are feeling better now. Thanks also to [REDACTED] for calling last Monday, it was very helpful.

As mentioned, we would find it very helpful to have a meeting before [REDACTED]
[REDACTED]. I know [REDACTED]

[REDACTED]. We would be very happy to meet to discuss these powers with you. We would have thought that it would be helpful for us to have this discussion before [REDACTED].

In addition, [REDACTED]. Most recently, we have been sent [REDACTED], where there is mutual interest in an issue. Given the potential transfer of remit/joint remit in this situation, we would find it very helpful to have discussions with you [REDACTED], so I think the liaison generally seems to work quite well.

Do you think it would be possible to liaise with you regarding [REDACTED]? If you are too busy to deal with this at the moment, we would be happy to liaise with anyone else at the ASA you might recommend. We would find it very helpful to meet sooner rather than later. [REDACTED].

If you could kindly get back to me today, then it would be much appreciated.

Many thanks

Regards
Tina

Tina Archer
Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA
Sent: 17 June 2016 12:48
To: ASA

Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [REDACTED]

We have now been sent the [REDACTED] by the complainant in this case. I think I have mentioned already that [REDACTED]. It would be very helpful for us to engage with you, [REDACTED].

[REDACTED] yet -

we are very happy to do so, and indeed would welcome the opportunity to meet with you, both [REDACTED].

We have always had a good, constructive relationship with the ASA in relation to our FSMA firms, and we very much hope we can also do so in respect of our PSR firms as well.

I look forward to hearing from you.

Thanks
Regards
Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA

Sent: 16 June 2016 14:18

To: ASA

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Thanks [REDACTED], for the response.

I would be grateful if you could kindly provide some more information on the following:

[REDACTED]

[REDACTED].

Going forward, [REDACTED]. This would be in line with our approach to FSMA firms. So it would include all promotions for prepaid cards/e-money/currency transfer etc. [REDACTED]

[REDACTED]

[REDACTED].

Would you be able to clarify [REDACTED]
[REDACTED]

We can assess promotions under the CPRs, using our Enterprise Act powers, but we can also do so under the PSRs; we can vary a firm's permission if we think we should do so to protect the interests of consumers. This could include requiring them to amend or remove an advert.

If you could kindly get back to me on the above asap, it would be great. I think it would be good to have a meeting next week to discuss the above in more detail, as this is a very important issue for us.

Many thanks
Regards
Tina

Tina Archer
Manager / Conduct Specialists / Supervision



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ConductSpecialistsAdmin@fca.org.uk

From: FCA
Sent: 16 June 2016 09:02
To: ASA
Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [REDACTED]

Sorry to pester you again! Following my email of yesterday, [REDACTED]
[REDACTED]. We are also shortly (at the end of next week) going to start a review of retail FX firms' promotions to see whether they have been amended to meet the expectations set out in our email of 26 May. It will therefore be important for us to understand the ASA's proposed stance [REDACTED] and for us to agree an approach/[REDACTED].

In view of the above, would you kindly be able to meet us next week to discuss the above further? We are of course happy to come to you, if more convenient.

Many thanks

Regards
Tina

Tina Archer
Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA

Sent: 14 June 2016 13:11

To: ASA

Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [REDACTED]

Do you have an update by any chance on [REDACTED]?

Many thanks

Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

From: FCA

Sent: 25 May 2016 09:29

To: ASA

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [REDACTED]

Many thanks for your help in this.

Once this is finalised we should catch up again to [REDACTED] and next steps.

Regards

[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]

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From: FCA
Sent: 24 May 2016 18:39
To: ASA
Subject: Re: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Thanks - the wording is now with our CEO - we will let you know whether she has any comments
Regards

From: FCA
Sent: 24 May 2016 18:15
To: ASA
Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

[REDACTED]

If we can have an answer by 9.30 that should be great.

We're getting there

Thanks

[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]

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From: FCA

Sent: 24 May 2016 18:07

To: ASA

Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [REDACTED]

Many thanks for your help and [REDACTED]

[REDACTED]

Can you call me to let me know you are happy with this suggested [REDACTED]

Regards

[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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Tel: [REDACTED]

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Transcript 8:

From: FCA

Sent: 24 May 2016 14:39

To: ASA

Subject: FW: Currency transfer firms

Afternoon [REDACTED]

Trust you are well

I have been trying to get hold of [REDACTED] in respect of the email chain below and have left a voicemail for both [REDACTED] and yourself earlier today.

[REDACTED]

Regards

[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]

www.fca.org.uk

From: FCA
Sent: 24 May 2016 09:20
To: ASA
Subject: FW: Currency transfer firms

Hi [REDACTED]

Many thanks for this. [REDACTED]

[REDACTED]

We do not believe there is anything in the email that is contrary [REDACTED]. Will call you later to discuss.

Regards

[REDACTED]

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists/Supervision



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[REDACTED]
www.fca.org.uk

From: FCA
Sent: 19 May 2016 16:40
To: ASA
Subject: Currency transfer firms

Please treat this as Confidential

Hi [REDACTED]

We are proposing to send out an email towards the end of May to those firms engaged in currency transfer activity outlining our concerns. Attached is the current version of our proposed email which although agreed by a number of areas involved is still subject to possible refinements.

Please advise us by Monday if our proposed route is liable to cause any concern with the ASA.

Look forward to hearing from you.

[REDACTED]
[REDACTED] / Financial Promotions / Conduct Specialists/ Supervision
[REDACTED]

This email is classified as FCA Restricted, unless marked otherwise

.....
Transcript 9:

From: FCA
Sent: 11 May 2016 16:03
To: ASA
Subject: RE: Currency transfer firms

Hi [REDACTED]

Thank you for your email of the 10 May

[REDACTED]

- 1) The FCA's Rules and Principles do not apply to payment institutions, as they are authorised by the FCA under the Payment Services Regulations 2009 (PSRs), rather than FSMA. However, we can instead consider payment institutions' compliance with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), using our powers under the Enterprise Act 2002 (EA02). We can seek enforcement orders (similar to injunctions) or accept undertakings from firms via this route. We can alternatively take OIVOP/OIREQ-type action under regulation 11 of the PSRs. These two actions are varying a firm's permission, which could effectively stop them carrying on the activity or alternatively imposing a requirement on a firm to take certain actions. The PSRs require firms to have regard to the CPRs. Paragraph 8.31 of the FCA's June 2013 document, 'The FCA's role under the Payment Services Regulations 2009' reads, *'Payment service providers should note that the CPRs still apply to their payment service business with consumers. The CPRs are intended to protect consumers from unfair commercial practices by businesses. Further information about the CPRs can be found on our website and on the OFT's website'*.

[REDACTED]

- 3) The currency transfer services offered by the payment institutions [REDACTED] are also available via banks. The banks are authorised under FSMA, and any advertising concerns would be generally be passed to us for consideration. [REDACTED]

[REDACTED]

- 4) For the avoidance of doubt, [REDACTED]

[REDACTED]

Currency transfer firms

[REDACTED]

[REDACTED]

We hope that our approach [REDACTED]

[REDACTED]

[REDACTED] It will make sense for us to have a joined up approach.

Given the importance of ensuring that this sector falls under the most appropriate regulator's remit, it might make sense to arrange a meeting to discuss the next steps or alternatively we could arrange a conference call. Would you be happy to do this?

Regards

[REDACTED]

From: FCA
Sent: 10 May 2016 12:09
To: ASA
Subject: Currency transfer firms

Hi [REDACTED]
Hope you are well.

It has been agreed that we should formally deal with the advertising of the payment service institutions/currency transfer firms who are regulated by us under the payment services regulations.

[REDACTED]

[REDACTED]

[REDACTED] / [Financial Promotions](#) / [Conduct Specialists](#) / [Supervision](#)

[REDACTED]

*This email is classified as **FCA Restricted**, unless marked otherwise*

Transcript 10:

From: FCA
Sent: 24 May 2016 11:32
To: ASA
Subject: RE: Currency transfer firms

[REDACTED]

Thanks for your email. It would be helpful to have a discussion about this asap (apologies, I know [REDACTED] has already left a message).

[REDACTED] communication by the FCA to the firms that the FCA regulates, which could also have an impact on the ASA's area, similar to other publications that we put out, e.g. the social media guidance.

[REDACTED]

[REDACTED]

Apologies for the tight timescale, but as the email is going out on Thursday, we have got to press 'send' pretty soon. If you and colleagues would like to call us, perhaps we could set up an urgent meeting today.

Thanks

Regards
Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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25 The North Colonnade
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E14 5HS

[REDACTED]
[REDACTED]

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ConductSpecialistsAdmin@fca.org.uk

Transcript 11:

From: FCA
Sent: 04 May 2016 10:42
To: ASA
Subject: RE: ASA Enquiry Ref: [REDACTED]

Dear [REDACTED] and [REDACTED],

Following our previous emails regarding [REDACTED], [REDACTED]
[REDACTED]. Therefore, [REDACTED]
[REDACTED].

[REDACTED] these firms, [REDACTED], how we supervise them and
[REDACTED]

Therefore, [REDACTED]

I understand that [REDACTED] has been liaising with [REDACTED] regarding [REDACTED] investigation into [REDACTED]. [REDACTED]. We would greatly appreciate [REDACTED], as this will greatly assist us during the internal processes we are currently undertaking.

Best regards,

[REDACTED]
[REDACTED] / Financial Promotions / Conduct Specialists / Supervision



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[REDACTED]
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Visit our pages on <http://www.fca.org.uk/firms/being-regulated/financial-promotions>

From: FCA
Sent: 20 April 2016 13:28
To: ASA
Subject: RE: ASA Enquiry Ref: [REDACTED]

Hi [REDACTED],

Thank you for your response.

We would very much appreciate [REDACTED]. We shall wait to receive this prior to making a decision on whether a meeting is required to discuss our views on [REDACTED].

Best regards,

[REDACTED]
From: FCA
Sent: 19 April 2016 10:48
To: ASA
Subject: FW: ASA Enquiry Ref: [REDACTED]

Dear [REDACTED],

We understand from [REDACTED] that [REDACTED]. I am sure you must be aware that we are currently considering payment services firms in our work too, [REDACTED]. There is potential that this will [REDACTED]. With this in mind we were wondering if it was possible for you to keep us updated on [REDACTED].

We are also aware of the [REDACTED] by the ASA and have made a similar request [REDACTED].

You might be interested to know that we [REDACTED]. We would be happy to discuss our own interpretations of [REDACTED], if this would be helpful [REDACTED].

Best regards,

[REDACTED]

[REDACTED] / Financial Promotions / Conduct Specialists / Supervision



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[REDACTED]

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Visit our pages on <http://www.fca.org.uk/firms/being-regulated/financial-promotions>

Transcript 12:

From: FCA

Sent: 04 May 2016 14:03

To: ASA

Subject: RE: ASA Enquiry Ref: [REDACTED]

Dear [REDACTED],

Thank you for your email and [REDACTED].

We will revert back to your as soon as we possibly can following the internal decisions.

Best regards,

[REDACTED]