

Email:       foi@fca.org.uk

(By email)

26 February 2019

Our Ref:       FOI6228

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

We refer to your request under the Freedom of Information Act 2000 ("the Act"), dated 29 February 2019, for information on the number of investigations into individuals holding Senior Manager or Certified Person functions, or who are subject to the FCA's Code of Conduct pursuant to COCON 1.1.2(6). For ease of reference, the full copy of your request is enclosed in the below Annex A.

Your request has now been considered, and I can confirm that we hold the information you are seeking and the information relating to **questions 1, 3 and 5-10** is set out below.

However, we are unable to disclose the information relating to **questions 2 and 4** as we are of the view that its disclosure could allow the indirect identification of some of the firms/individuals concerned. In turn, this would, or would be likely to, prejudice the exercise by the FCA of its functions for the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. Therefore, the information you have requested is exempt from disclosure under section 31 (Law enforcement) of the Act.

In addition, we consider that disclosure of this information could prejudice the commercial interests of the firms in question were any of their details to be made public, and therefore section 43 (Commercial interests) applies.

Lastly, we are also unable to disclose this information to you because, as mentioned, this could lead to the identification of individuals other than yourself, and therefore section 40 (Personal Information) of the Act applies.

Further details as to why these exemptions apply are sent out in Annex B below.

Please note, some of the figures provided below refer to individuals who hold different functions and who have therefore been counted more than once under any relevant categories.

**1. *Please can you confirm the number of Senior Managers that are currently the subject of an enforcement investigation by the FCA?***

Note this includes Senior Managers where their SMF/SIMF functions are currently inactive or have been withdrawn but the function held is relevant for the purposes of misconduct being investigated.

2. ***Please can you provide the Senior Management Functions (e.g. SMF16) that are held by the Senior Managers referred to in 1.***

We are unable to provide you with this information, for the reasons outlined above and explained in further detail in the below Annex B.

3. ***Please can you confirm the total number of Senior Managers that have been the subject of an enforcement investigation by the FCA since 7 March 2016? This number should include the figure provided in response to 1. as well as any enforcement investigations that have been concluded (including those that have been discontinued).***

<b>Senior Managers</b>	<b>No.</b>
Current Investigations	10
Closed Investigations	7
<b>Total</b>	<b>17</b>

4. ***Please can you provide the Senior Management Functions (e.g. SMF16) that are held by the Senior Managers referred to in 2.***

We are unable to provide you with this information, for the reasons outlined above and in the below Annex B.

5. ***Please can you confirm the number of Certified Persons (or individuals who are/were classified by their firms as Certified Persons) that are currently the subject of an enforcement investigation by the FCA?***

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6. ***Please can you confirm the total number of Certified Persons (or individuals who are/were classified by their firms as Certified Persons) that have been the subject of an enforcement investigation by the FCA since 7 March 2016? This number should include the figure provided in response to 5. as well as any enforcement investigations that have been concluded (including those that have been discontinued).***

<b>Certified Persons</b>	<b>No.</b>
Current Investigations	7
Closed Investigations	5
<b>Total</b>	<b>12</b>

Conduct rules:

7. ***The following questions concern individuals (referred to as 'Conduct Rules Staff' for the purposes of this request) who are employees of firms that are subject to the Senior Managers and Certification Regime and, although they are not Senior Managers or Certified Persons, they are subject to the FCA's Code of Conduct (the Individual Conduct Rules) pursuant to COCON 1.1.2(6):***

- a. **Please can you confirm the number of Conduct Rules Staff (or individuals who are/were classified by their firms as Conduct Rules Staff) that are currently the subject of an enforcement investigation by the FCA?**

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- b. **Please can you confirm the total number of Conduct Rules Staff (or individuals who are/were classified by their firms as Conduct Rules Staff) that have been the subject of an enforcement investigation by the FCA since 7 March 2017? This number should include the figure provided in response to 7b. as well as any enforcement investigations that have been concluded (including those that have been discontinued).**

<b>Total of Conduct Rules Staff</b>	<b>No.</b>
Current Investigations	10
Closed Investigations	3
<b>Total</b>	<b>13</b>

**Number of open enforcement investigations**

8. **Please can you confirm the current total number of enforcement investigations that the FCA has open?**

580

9. **How many of the investigations referred to in 8. above into individuals and how many are into firms?**

<b>Investigations</b>	<b>No.</b>
Investigations into Individuals	360
Investigations into Firms	220
<b>Total</b>	<b>580</b>

10. **Please can you confirm how many enforcement investigations were discontinued by the FCA during 2018 with no enforcement action being taken against the subjects of those investigations?**

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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](http://www.ico.org.uk)

Yours sincerely

**Information Disclosure Team**  
Financial Conduct Authority

## **Annex A**

### "Senior managers:

1. *Please can you confirm the number of Senior Managers that are currently the subject of an enforcement investigation by the FCA?*
2. *Please can you provide the Senior Management Functions (e.g. SMF16) that are held by the Senior Managers referred to in 1.*
3. *Please can you confirm the total number of Senior Managers that have been the subject of an enforcement investigation by the FCA since 7 March 2016? This number should include the figure provided in response to 1. as well as any enforcement investigations that have been concluded (including those that have been discontinued).*
4. *Please can you provide the Senior Management Functions (e.g. SMF16) that are held by the Senior Managers referred to in 2.*

### Certified Persons:

5. *Please can you confirm the number of Certified Persons (or individuals who are/were classified by their firms as Certified Persons) that are currently the subject of an enforcement investigation by the FCA?*
6. *Please can you confirm the total number of Certified Persons (or individuals who are/were classified by their firms as Certified Persons) that have been the subject of an enforcement investigation by the FCA since 7 March 2016? This number should include the figure provided in response to 5. as well as any enforcement investigations that have been concluded (including those that have been discontinued).*

### Conduct Rules:

7. *The following questions concern individuals (referred to as 'Conduct Rules Staff' for the purposes of this request) who are employees of firms that are subject to the Senior Managers and Certification Regime and, although they are not Senior Managers or Certified Persons, they are subject to the FCA's Code of Conduct (the Individual Conduct Rules) pursuant to COCON 1.1.2(6):*
  - a. *Please can you confirm the number of Conduct Rules Staff (or individuals who are/were classified by their firms as Conduct Rules Staff) that are currently the subject of an enforcement investigation by the FCA?*
  - b. *Please can you confirm the total number of Conduct Rules Staff (or individuals who are/were classified by their firms as Conduct Rules Staff) that have been the subject of an enforcement investigation by the FCA since 7 March 2017? This number should include the figure provided in response to 7b. as well as any enforcement investigations that have been concluded (including those that have been discontinued).*

*Number of open enforcement investigations*

8. *Please can you confirm the current total number of enforcement investigations that the FCA has open?*
9. *How many of the investigations referred to in 8. above into individuals and how many are into firms?*
10. *Please can you confirm how many enforcement investigations were discontinued by the FCA during 2018 with no enforcement action being taken against the subjects of those investigations?"*

## **Annex B:**

- **General right of access to information held by public authorities**

Under section 1(1)(a) of the Act, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. If the public authority holds information of the type specified in the request, the person requesting the information is entitled under section 1(1)(b) to have the information communicated to them. The rights in section 1(1)(a) and (b) are, however, subject to a number of exclusions and exemptions, including the following:

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies (for the purpose set out in 31(2)(a), (b) and (c)) because, 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 which would justify regulatory action in pursuance of any enactment exist or may arise, whether any person has failed to comply with the law or ascertaining whether any person is responsible for conduct which is improper.

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.
- There is a strong public interest in the public being aware of any enquiries, considerations or actions the FCA may be taking in relation to the markets, firms or individuals who are, or may be, operating in the financial services industry.
- Disclosure of the information would increase public awareness and understanding of decisions taken by the FCA.

*Against disclosure*

- As mentioned, disclosure of the detailed information you are seeking in questions 2 and 4 could lead to the identification of the firms and individuals involved. This, in turn, could prejudice the FCA ability to carry out its functions in the most effective manner possible, as it may cause those firms and individuals to act in a way that circumvents our regulatory processes.
- Disclosure of the information could also prejudice the outcome of future investigations or criminal prosecutions should they arise.
- Disclosure could affect the brand and reputation of the relevant markets and/or entities in the absence of due process having been followed – i.e. in

the absence of any formal public announcement and without the relevant markets and/or entities having had the opportunity to comment.

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.

- **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, should any of their details be made public, may be harmed in several ways as this would be likely to lead to further comment and speculation about them. In turn, this would or would be likely to harm the firms' brand and so harm their commercial interests as well as that of their stakeholders, including their employees. As there is no routine public disclosure of firms' dealings with the FCA, 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 interest for and against disclosure as required by the Act.

*For disclosure:*

- Disclosure of the information would reassure the public about the effectiveness of the regulatory approach taken by the FCA, and demonstrate how the FCA responds to supervisory matters within the sector it regulates.
- Disclosure would also provide information to consumers to assist them in making decisions about their dealings or potential dealings with firms and individuals that are, or may be, operating in the financial services industry.

*Against disclosure:*

- Disclosure could lead to widespread speculation which could affect the firms brand and reputation in the market in which they operate, in the absence of due process having been followed - i.e. in the absence of any formal public announcement and without the firms having had the opportunity to comment.

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

- **Section 40 (Personal Information)**

We have applied this exemption because the first condition (as stated in section 40(3) of the Act) is satisfied. The information you have requested may lead to the indirect disclosure of the personal data of individuals other than yourself which, if disclosed, would breach the requirement of the General Data Protection Regulations ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA")

In particular, it would be a breach of the first data protection Principle as set out in Article 5 of the GDPR, to disclose such information, as it would not be necessary or



fair to the individuals concerned, or lawful, where none of the conditions in Article 6(1) of the GDPR have been met. The individuals concerned have not given their consent for their personal details to be made public and the release of such information may be detrimental to the individuals themselves.

Section 40 is an absolute exemption so it is not necessary to balance the public interest for and against disclosing the information.