

foi@fca.org.uk

24 April 2019

Our Ref: FOI6297

Dear

Freedom of Information: Right to know request

I refer to your request under the Freedom of Information Act 2000, dated 2 March 2019, concerning the Collateral Companies. For ease of reference a copy of your request can be seen in Annex A below.

In our email of 1 April 2019, we advised we needed more time to consider whether the balance of public interest in the retention of information outweighed the public interest in its disclosure. I can confirm we have now completed this exercise and the response to your request is set out below.

On what date did the FCA become aware that Collateral (UK) Ltd was trading without valid authorisations / permissions?

23 November 2017

What actions did the FCA take subsequent to discovering that Collateral (UK) Ltd was trading without valid authorisations / permissions apart from having BDO appointed?

I can confirm that we hold information relevant to this aspect of your request; however, we are not able to disclose this information to you, for the following reasons:

Disclosure of some of the information you are seeking 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. This information is therefore exempt from disclosure under section 31 (Law enforcement) of the Act.

Further, some of the information is held for the purposes of investigations which might lead to a decision by the FCA to institute criminal proceedings which we have the power to conduct. Such information is therefore exempt from disclosure under section 30 of the Act.

Lastly, some of the information is (or contains) "confidential information" we have received for the purpose of carrying out our regulatory functions under section 348 of the Financial Services and Markets Act 2000 ("FSMA"). As a result, we are prohibited from disclosing

the information under section 44 (Prohibitions on disclosure) of the Act. For a detailed explanation of why these exemptions apply, please refer to Annex B below.

The information which we are able to disclose to you is contained in the public statement published by the FCA on 4 April 2018, which can be seen on our website at: <https://www.fca.org.uk/news/news-stories/information-investors-collateral-companies>

The statement states "the Collateral Companies agreed to cease their lending activities" how was this communicated and on what date?

On 12 February 2018, by email, the Collateral Companies agreed to cease facilitating new loans.

Did the FCA take any action to preserve data following the Collateral Companies agreeing to cease their lending activities?"

The FCA applied to the High Court to appoint new administrators who would take over the business. This application was made on 16 March 2018 and adjourned by the court at the request of the directors and Mr Craig. Both the directors and Mr Craig made formal undertakings to the court that, in the interim, the assets of the Collateral Companies (which would include its data) would be retained.

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 40 working days 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

Yours sincerely,

Information Disclosure Team
Financial Conduct Authority

Annex A:

"In the FCA's statement 'Information for investors in the Collateral Companies' dated 04/04/2018 the FCA stated "In fact, none of the Collateral Companies held any valid authorisation or permission to carry on regulated activities."

On what date did the FCA become aware that Collateral (UK) Ltd was trading without valid authorisations / permissions?

On 28th April 2018 BDO were appointed as the 'new' administrators at the request of the FCA.

What actions did the FCA take subsequent to discovering that Collateral (UK) Ltd was trading without valid authorisations / permissions apart from having BDO appointed?

The statement states "the Collateral Companies agreed to cease their lending activities" how was this communicated and on what date?

Did the FCA take any action to preserve data following the Collateral Companies agreeing to cease their lending activities?"

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) of the Act to have the information communicated to them. The rights in section 1(1)(a) and (b) are subject to a number of exclusions and exemptions.

- **Section 30 (Investigations and proceedings conducted by public authorities)**

Information is exempt from disclosure under section 30(1) if it has at any time been held for the purposes of:

- (a) *any investigation which the FCA has a duty to conduct with a view to it being ascertained:*
 - (i) *whether a person should be charged with an offence, or*
 - (ii) *whether a person charged with an offence is guilty of it,*
- (b) *any investigation which the FCA conducts which may lead to a decision to institute criminal proceedings; and*
- (c) *any criminal proceedings which the FCA has power to conduct.*

This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

In favour of disclosure

- There is a strong public interest in favour of transparency, and in the public being made aware of any information we may or may not have received in relation to the firms and/or individuals who are operating in the financial services industry, particularly where these matters may impact on the public directly.
- Disclosure of such information would reassure the public about the effectiveness of the approach taken by the FCA, and demonstrate how we respond to matters arising within the sector we regulate.

Against disclosure

- Disclosure could diminish the chances of a successful prosecution, bringing future charges, or making arrests. Disclosure could also diminish the chances of a fair trial taking place.
- Disclosure could harm the FCA's ability to gather intelligence information from confidential sources (for instance, informants/whistleblowers/calls to Crimestoppers).
- Disclosure could also harm the interests of justice in the participation of victims, witnesses, informants, suspects or offenders in investigations and proceedings; and impede other ongoing or future proceedings.

For the reasons set out above, in this case, in our view the public interest lies in favour of not disclosing any information.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies 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 any person has failed to comply with the law, see section 31(2)(a); and
- ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of any enactment, see section 31(2)(c).

This exemption applies in that such information, if disclosed now would, or would be likely to, prejudice any future enquiries and/or action we may undertake and may compromise the FCA's ability to obtain information from other agencies with associated prejudice to our ability to carry out investigations. 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.

- Disclosure of the information would demonstrate how we respond to matters arising within the markets we regulate and would enable regulated firms to better understand why and how we make decisions on regulatory matters.
- Disclosure would also provide the public with information to assist them in making decisions about their dealings, or potential dealings, with the markets and firms that are operating in the financial services sector.

Against disclosure

- Disclosure of the information could lead to further speculation which, in the absence of any further background information, could be taken out of context and could lead to the wrong conclusions being drawn in respect of our decision-making processes.
- Disclosure could also 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 the facts of this particular request we have concluded that the balance of the public interest is in favour of maintaining the exemption under section 31 of the Act, for the reasons set out above.

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

Section 44(1)(a) provides that information is absolutely exempt if its disclosure (otherwise than under the Act) is prohibited by or under any enactment.

Section 348 of 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 FCA for the purposes of or in the discharge of its functions under FSMA and which is not in the public domain.

In this case, the information received by the FCA was received for the purpose of carrying out its regulatory functions and so falls within section 348 of FSMA. Consequently the FCA is prohibited from disclosing it to you.

Disclosure of any such "confidential information" is in breach of section 348 of FSMA and is a criminal offence.

Section 44 of the Act contains an absolute exemption and so it is not necessary to balance the public interest for and against disclosing the information.