

FOI5391: Disclosures applying to request for information, dated 22 October 2017 (see Annex A for details)

File 1

From: [ASA]
Sent: 28 July 2016 18:13
To: [FCA]; [ASA]
Cc: Tina Archer [FCA]
Subject: RE: Council decision

Hi

As I explained, the ASA Council have agreed with our recommendation following a constructive discussion about the issues. They were happy to agree but in doing so they asked if you can attend the ASA Council meeting in six months' time to feedback on what you have done in this area to allow both parties to review the decision.

On the above condition, we will refer the [Redacted] complaints for [Redacted] and further complaints about all PSR services to you for the next six months at which point we'll review the decision and if we consider it still appropriate, consider amending the MoU at that time. I hope this is acceptable.

The Executives responsible for the [Redacted] investigations will refer the cases to you shortly. All parties concerned will be notified of the decision. There has obviously been a significant amount of work on each investigation so please let me know what documents you need from us in relation to this referral.

Given the [Redacted] case was a reopened investigation, we will be removing the initial ruling from our website. We will also be adding an annotation to other published rulings to explain that you will be dealing with complaints about these services going forward. Please let me know if there is any preferred text that you'd like to included to make those who view the rulings (likely to be an industry audience) aware of your responsibilities in this area.

If you have any questions don't hesitate to ask. I look forward to hearing from you to confirm.

Kind regards

[Redacted]

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From: [FCA]
Sent: 26 July 2016 10:08
To: [ASA]; [ASA]
Cc: Tina Archer [FCA]
Subject: Council decision

Morning

Trust you are well.

How did the council meeting go on Friday and a decision reached regarding the position of the currency transfer firms.

Look forward to hearing from you.

Regards

[Redacted]

Senior Associate / Financial Promotions / Conduct Specialists/Supervision



Financial Conduct Authority

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London
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File 2

[Outside of time period of request]

.....

File 3

From: [ASA]
Sent: 28 July 2016 15:56
To: [FCA]
Cc: Tina Archer [FCA]
Subject: RE: Council decision

Hi [Redacted]

Apologies for the delay in getting back to you – we had to have a few follow-up discussions internally. Just to let you know briefly that Council agreed our recommendation but I'll write to you later this afternoon with more detail and the next steps.

Kind regards

[Redacted]
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File 4

From: [ASA]
Sent: 18 July 2016 14:38
To: Tina Archer [FCA]
Subject: RE: Advertising by payment institutions

Hi

Yes I think that would be best given we've presumably already told the complainants it falls within your remit and given Council's decision is very close.

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]
Sent: 18 July 2016 14:11
To: [ASA]
Subject: RE: Advertising by payment institutions

Yes, they are the PSR firms' adverts for prepaid cards. Is it ok if we look at them?
Thanks

Tina Archer

Manager / Conduct Specialists / Supervision



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188
Fax: +44 (0)20 7066 9189
www.fca.org.uk

ConductSpecialistsAdmin@fca.org.uk

From: [ASA]
Sent: 18 July 2016 14:07
To: Tina Archer [FCA]
Subject: RE: Advertising by payment institutions

Hi

Presumably they are for pre-paid cards that don't fall under FSMA? If so, then it seems our team may have been sending them over thinking that they do fall under FSMA.

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]
Sent: 18 July 2016 11:58
To: [ASA]
Cc: [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 are receiving a number of referrals about misleading advertising in respect of prepaid cards from your colleagues. We assume we should continue to look at these until/unless you let us know otherwise.

Thanks
Regards
Tina

Tina Archer

Manager / Conduct Specialists / Supervision



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: [ASA]
Sent: 18 July 2016 11:29
To: Tina Archer [FCA]
Cc: [ASA]
Subject: Advertising by payment institutions

Dear Tina

I'm writing to confirm that we'll be discussing remit for the [Redacted] payment services companies with Council this Friday 22 July. As you know, our recommendation is that

Council does not make a ruling in these [Redacted] cases and withdraws its previous ruling on the [Redacted] case which is currently subject to independent review.

After the Council has made its decision, and if it chooses to agree with our recommendation, I'll discuss with colleagues the outstanding matter of whether all complaints about misleading advertising for services that sit under PSRs should be referred on to you and let you know the outcome as soon as possible.

Kind regards

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]

Sent: Friday, July 8, 2016 11:11 AM

To: [ASA]; [ASA]

Cc: David Blunt [FCA]; [FCA]

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

[Redacted]

I attach a document, which I hope addresses the issues you raise. The document does not contain details of our current action on this matter (monitoring with a view to deciding whether to take any cases forward) as this information is not in the public domain, but our proposed action is as discussed at our meeting on Tuesday.

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 we risk assess cases is not something we normally discuss with firms etc. and we are disclosing it to you with the express purpose of assisting your Council to make a decision. I would be grateful if you could kindly bear this in mind.

Please let me know if you have any questions. We look forward to hearing your Council's decision in due course.

Many thanks and have a good weekend.

Regards

Tina

Tina Archer

Manager / Conduct Specialists / Supervision



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

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File [7] 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. However, although the legislation differs, we currently propose to apply the same fundamental principles to advertising by firms in both sectors in so far as this is possible; our broad aim is to ensure that, whether a firm is authorised under the PSRs or under FSMA, consumers will find their advertising is not misleading. The FCA's strategy may always change in relation to any sector, but the current approach is to treat marketing by firms authorised under the PSRs and FSMA in the same way,

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.

Risk-based 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, the FCA's Financial Promotions team would not take forward every case in which it has concerns about a firm's advertising, whether the firm is authorised under FSMA (a 'FSMA firm') or under the PSRs (a 'PSR firm'). They take a risk-based and proportionate approach, directing their resources where they consider they can be used most effectively. The team carries out both proactive monitoring of advertisements published by FSMA firms, and reactive

handling of referrals they receive in respect of advertising by such firms. The team would propose to take the same approach to PSR firms.

With FSMA firms, the Financial Promotions team first determines whether there has been a breach of the FCA's financial promotions rules. They then carry out a detailed risk assessment of the issue. [Redacted]

How the Financial Promotions team applies its risk-based approach to FSMA firms and PSR firms

As stated above, the Financial Promotions team proposes to apply its risk-based approach to both FSMA and PSR firms in the same way. [Redacted] They consider consistency in the underlying approach to be very important.

In the team's current work in respect of misleading advertising by currency transfer firms, they propose to apply the same criteria, irrespective of whether the firm is a bank (a FSMA firm) or a retail currency transfer firm (a PSR firm). Indeed, consistency is one of the reasons why the FCA would ideally like to have a clear remit over advertising by firms acting in the PSRs sphere - so that different standards are not applied to firms carrying out essentially the same activities (taking different approaches could also potentially have competition implications).

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. If a firm produces misleading advertising that breaches the rules, the Financial Promotions team will (depending on the nature of the breach) generally write to them first to request that they amend or remove the misleading advertising. Most firms whom they write to will take such corrective action without the FCA needing to take more formal/intrusive measures.

If, however, firms do not address the Financial Promotions team's concerns, the FCA may then consider using its formal powers, such as varying a firm's permission or imposing a requirement on them under section 55J or 55L of FSMA; the FCA also has the power (used in the most egregious cases) to cancel a firm's authorisation. The FCA can also take disciplinary action. Each case is considered on its individual merits.

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. [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).

Effective regimes

The Financial Promotions team considers that the FCA can take effective action to deal with misleading advertising by PSR firms, and that the FCA has the ability to address any concerns we have with a FSMA or PSR firm's advertising.

We hope that the above sets out clearly enough the information you have requested. Please let us know if you have any questions.

From: [ASA]

Sent: 07 July 2016 16:58

To: [FCA]; [ASA]

Cc: Tina Archer [FCA]; David Blunt [FCA]; [FCA]

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

Dear [Redacted]

Thank you for producing the summary so quickly. The steps are as we understood them too. Just a slight clarification over the MoU (your penultimate bullet). The ASA isn't making an absolute commitment to amend the MoU before we've seen how things are working in practice. But as discussed at our meeting, we will certainly commit to reviewing the MoU with you on the basis of our joint experience, and amending it may well be the obvious next step.

I'm starting to put together something for Council, so welcome your statement about risk assessment, action and the powers as soon as you have it.

Kind regards

[Redacted]

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From: [FCA]

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

To: [ASA]; [ASA]

Cc: Tina Archer [FCA]; David Blunt; [FCA]

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 assess financial promotions breaches and risk, specifically referencing how we would risk assess advertising by payment institutions, including firms carrying out international currency transfer services. This will also incorporate a statement regarding the action we could potentially take against these firms, and the powers we would use.
- These statements provided by the FCA will then be added to a paper to be submitted by the ASA to their Council for consideration on 22 July 2016. The ASA will recommend to the Council that the FCA should pursue these specific issues going forward.
- If the ASA Council agrees with this proposal then the immediate action should be that they will cease the ruling on the [Redacted] case and it is also likely the independent reviewer for the [Redacted] case will also cease work on that case.
- If the ASA Council disagrees with this proposal then they will make rulings on the [Redacted] cases involving [Redacted]. The FCA will then have a chance to challenge the decision by the Council not to transfer over remit, should they wish to do so. The ASA have explained that the likely outcome is that the ASA Council will agree to the FCA taking these issues forward (although this is not guaranteed).
- Following an agreement by the Council to transfer remit, the MoU between the FCA and the ASA will not be immediately amended, as the ASA would first like to see what action is taken against these firms by the FCA, to ensure that the level

of consumer protection provided by the FCA would be greater or equivalent to that which would have been achieved by the ASA. The ASA will, however, produce internal guidelines that will recommend the forwarding of payment institution referrals to the FCA, and they will involve the FCA in drafting such guidelines. Once the ASA is happy with the way the referral system is working and that consumers are being adequately protected, they will work with the FCA to amend the MoU.

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

Best regards,

[Redacted]

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File 5

From: [ASA]
Sent: 11 July 2016 13:12
To: Finprom
Cc: Tina Archer [FCA]; [FCA]
Subject: RE: ASA case ref [Redacted]

Dear Sirs

Further to the below, please find attached a copy of the draft recommendation to the ASA Council, for your information.

As you are aware, the ASA Council will shortly be asked to consider whether this type of complaint should be referred to the FCA for their attention and, therefore, whether the current case should be withdrawn. The attached report is a contingency in case the Council do not agree with that course of action, and would allow them to make a ruling on the case forthwith. If the Council do agree to pass such matters to you, the recommendation would not be confirmed or acted upon.

Nonetheless, if you have any questions about the attached, please do let me know.

Kind regards

[Redacted]

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From: [ASA]
Sent: 13 April 2016 16:21
To: 'finprom1@fca.org.uk'
Cc: 'tina.archer@fca.org.uk'; [FCA]
Subject: ASA case ref [Redacted]

Dear Sirs

The ASA has received a complaint about the attached ad on the grounds that the displayed exchange rate cannot be achieved by customers and the ad is therefore misleading. We have taken the decision to formally investigate the issue and have contacted the advertisers for their response.

We aim to keep you informed at the key stages of this case. If you wish to comment on the advertising then we would be happy to discuss the matter with you, but please be aware that if we are to take your view into account as part of our assessment then a copy of your comments would need to be shared with the parties to the case and the ASA Council.

I'll be in touch again in due course to provide an update on the case. If you have any questions please do let me know.

Kind regards

[Redacted]

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[Attached – Redacted]

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File 6

From: [ASA]
Sent: 08 July 2016 14:35
To: Tina Archer [FCA]; [ASA]
Cc: David Blunt [FCA]; [FCA]
Subject: RE: Meeting regarding advertising by payment institutions and next steps

Dear Tina

Thanks for your note and also the point of clarification. I'm afraid your understanding isn't quite the same as ours. The matter we're referring to the ASA Council is about money transfer firms, and the reason we're consulting Council is because the cases are ongoing ASA investigations, one of which is a case re-opened under Independent Review and that was a decision the Council took in relation to an existing ruling. From this will flow a decision about whether to refer payment services complaints to the FCA more generally, but not anything broader as that's the matter in hand.

We understand, however, that the wider point about whether the ASA refers the population of companies regulated under the PSRs clearly follows on from your perspective. We're open to considering it, but it is something the ASA will need to reflect on further in terms of its ramifications and so is not something we'll be addressing at our Council meeting. The thinking we've done so far is pragmatic, as I explained, and relates to the ongoing complaints about payment transfer services that are already in our system. That said, we're happy to put the wider issue on the agenda for an ASA Executive discussion post-Council meeting and come back to you on that. If it would be useful to meet again after [ASA] and I have managed to have the relevant conversations with colleagues, we're more than happy to do so.

I hope this helps you know where we are in terms of our thinking.

Kind regards

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]
Sent: Friday, July 8, 2016 1:16 PM
To: [ASA]; [ASA]
Cc: David Blunt [FCA]; [FCA]
Subject: RE: Meeting regarding advertising by payment institutions and next steps

[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. Our understanding is that any transfer of remit would be in respect of this total population, so all firms authorised under the PSRs.

Regards
Tina

Tina Archer

Manager / Conduct Specialists / Supervision



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

File 7

NOTE FOR RECORD

Date: 5 July 2016

By: [FCA]

Phone: [FCA]

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

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 [FCA]

Tina Archer – Manager, Financial Promotions [FCA]

[Redacted] – Associate, Financial Promotions [FCA]

[Redacted] – Senior Associate, Financial Promotions [FCA]

[ASA]

[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.

3. [ASA] asked about the CPRs.
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 "Payment service providers should note that the CPRs still apply to their payment service business with consumers".
5. TA went on to say we would treat these firms in the same way of our normal approach and if misleading under the CPRs would act in the same way as we do FSMA firms.
6. [ASA] raised the question "Could a single ad trigger a review of the promotion" and "if the ASA could do it would there be similar action?"
7. TA said that we would consider the promotion against our criteria in accordance with our normal practice so it is not based on how many complaints.
8. [ASA] asked about notification of outcomes and said they regulate under the CPRs and their backstop is trading standards.
9. TA stated that notification is only if a complaint goes through to full enforcement.
10. [ASA] said that if the FCA had stronger sanctions then the Council might be happy for the FCA to have remit over these firms. [ASA] said she was open-minded and was looking for reassurances that consumers are protected.
11. DB run through the process and mentioned the MOU.
12. [ASA] said that the ASA have expertise with the CPRs.
13. DB reiterated our approach would be consistent with FSMA firms and asked what is needed to satisfy the council.
14. [ASA] asked about the actions we can take.
15. DB ran through the risk appetite and threshold and that it is same approach.
16. TA said we look at the code first to determine the breach [Redacted].
17. [ASA] confirmed the date of the council meeting on 22/7.
18. [ASA] would be putting forward details of how we assess and the actions we might take.
19. TA asked what happens if council say NO.
20. If this happens then the [Redacted] pipeline cases with the ASA recommence if yes these fall away and come under our remit.
21. [ASA] asked about follow up.
22. Agreed that we would do a next steps and send to the ASA and that FCA are happy for information to go to the council but not to the market.

Meeting closed 16.30

File 8

From: [ASA]

Sent: 04 July 2016 12:04

To: Tina Archer [FCA]; [ASA]

Cc: [FCA]

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi Tina

That's absolutely fine. See you tomorrow.

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]

Sent: 04 July 2016 11:06

To: [ASA]; [ASA]

Cc: [FCA]

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



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: [ASA]

Sent: 27 June 2016 15:05

To: Tina Archer [FCA]; [ASA]

Cc: [FCA]

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi

3.30 to 4.30 would be good that day. Your offer to come to our offices would be appreciated if that's still ok.

When you can, please let me know who will be attending so I can book you in with reception.

Kind regards

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]

Sent: 27 June 2016 13:03

To: [ASA]; [ASA]

Cc: [FCA]

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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Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: [ASA]
Sent: 27 June 2016 11:46
To: Tina Archer [FCA]; [ASA]
Cc: [FCA]
Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi Tina

Yes, I'm feeling better now thanks.

We'd be happy to have a meeting with you to discuss matters further. Please let me know what day(s) would be preferable for you?

Kind regards

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]
Sent: 27 June 2016 11:10
To: [ASA]; [ASA]
Cc: [FCA]
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 [ASA] for calling last Monday, it was very helpful.

As mentioned, we would find it very helpful to have a meeting before you go to the ASA Council for a decision as to remit. I know [ASA] mentioned that the ASA needs satisfactory reassurance that the FCA has the powers to be able to deal with any breaches of the CPRs etc. 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 you go to the Council in July.

In addition, the [Redacted] in one of the cases is continuing to send us correspondence with you relating to the relevant cases. Most recently, we have been sent [ASA] email to the [Redacted] of 24 June, relating to amending a draft recommendation. Whilst of course this is the ASA's ruling to draft, we have in the past found it helpful to liaise with the ASA to discuss draft rulings, 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 about the rulings. We were asked for our views on [Redacted]

separate rulings last Thursday by your colleagues on other matters, and got back to them on Friday with our views, so I think the liaison generally seems to work quite well.

Do you think it would be possible to liaise with you regarding both the issue of remit, and the rulings? 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. We also think it would be useful to have a discussion about whether the MoU should be amended to provide certainty to both firms and consumers.

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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25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: Tina Archer [FCA]

Sent: 17 June 2016 12:48

To: [ASA]

Cc: [FCA]

Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [Redacted]

We have now been sent the [Redacted] draft ruling by the [Redacted] in this case. I think I have mentioned already that [Redacted] has also sent us a copy of their letter to you. It would be very helpful for us to engage with you, as/before you produce your rulings in these matters. We have always found it helpful to do so in the past, and would like to continue to do so now in respect of these firms.

I note that you say to the [Redacted] that 'the attached report is now ready to be sent to the ASA Council.'. We are still not altogether clear whether you will be ruling on these or not. I note that you say that as the cases are advanced, you won't be withdrawing from them unilaterally, but that you are also recommending that you cease action. I don't think that the prospect of your ceasing action has been passed to the [Redacted], unless

this is in separate correspondence? I also note that in your letter to the [Redacted], you refer to 'the need to determine the best course of action in light of our conversations with the FCA'. We do not feel that we have had these conversations yet – we are very happy to do so, and indeed would welcome the opportunity to meet with you, both to discuss the draft rulings, and to discuss the issue of remit going forward. We are also keen not to say anything to the [Redacted] that could interfere with your rulings on [Redacted], but this will be much easier if you could kindly keep us updated as to the progress of your rulings.

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



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188
Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: Tina Archer [FCA]

Sent: 16 June 2016 14:18

To: [ASA]

Cc: [FCA]

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:

'We've also decided that should Council agree with our decision, we will continue to accept and, where necessary, investigate complaints about advertising by currency transfer sites where the issues complained of differ from those upon which you are currently taking action. If any new issues come to light then we can discuss with you whether it is a matter that you can act on. We also consider it important to review the

arrangement at a later date. We therefore feel that at this stage the MoU doesn't need to be amended as we can still refer complaints to you should Council agree.'

Are you saying that the ASA will retain remit for any currency transfer issues that differ from the current issues being investigated? If so, I'd be grateful if you could kindly explain your thinking behind this.

Going forward, we are proposing to look at the advertising for all firms regulated under the PSRs by the FCA. 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. Is the ASA proposing to retain remit in this area? If so, would you be able to explain why this is the case?

I note your comment that you do not think we need to amend the MoU. We would have thought that the MoU should be amended to reflect the division of work, as it is at the moment in relation to FSMA firms.

Would you be able to clarify why the ASA is taking a different approach to the promotions of firms regulated under the PSRs as opposed to FSMA, even though the FCA is the regulator of both sets of firms? We think that a more consistent approach would be preferable. In particular, we would expect to be able to review the promotions of all the firms we regulate. I note your comment that you can still refer complaints to us should your Council agree; we would have thought it would be better to have clearly defined procedures set out in the MoU. This would also provide more clarity to firms and consumers. A situation where we are both commenting separately on the same advert would obviously not be ideal.

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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Canary Wharf
London
E14 5HS

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ConductSpecialistsAdmin@fca.org.uk

From: [ASA]

Sent: 16 June 2016 12:29

To: Tina Archer [FCA]

Cc: [FCA]

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi Tina

I hope you're well. Many apologies for the delay – we've had issues with external email in the last few days (apparently we were being blocked by Google!)

We've now had a high-level meeting about the matter. As you know this has been a difficult decision for us as it does not fall under FSMA and because you would ultimately be acting under the CPRs rather than any FCA-specific legislation.

However, our thoughts at this stage are that for a number of reasons, including the fact that you are taking action on the issues you identified in your email to firms, the most appropriate thing for us to do is to cease any action that relates to these issues. However we want the ASA Council to ratify our decision which they won't be able to do until they meet in July. We consider this important, particularly because [Redacted] of the cases are being dealt with under our Independent Review procedure.

We won't be unilaterally withdrawing from our ongoing investigations into [Redacted]. Instead, we will continue to bring them towards a conclusion before asking the ASA Council to consider whether or not to ratify the decision over remit. Those cases are quite advanced and our intention is to complete those investigations so that, if the Council disagrees with our intended approach, it can rule on those cases at that meeting. I should say that we don't expect them to disagree with our recommendation to refer these cases to you. We also won't be continuing to further investigate another [Redacted] complaint until we know the outcome of Council's July meeting.

We've also decided that should Council agree with our decision, we will continue to accept and, where necessary, investigate complaints about advertising by currency transfer sites where the issues complained of differ from those upon which you are currently taking action. If any new issues come to light then we can discuss with you whether it is a matter that you can act on. We also consider it important to review the arrangement at a later date. We therefore feel that at this stage the MoU doesn't need to be amended as we can still refer complaints to you should Council agree.

In terms of you taking follow-up action on your email to firms, it would be helpful if I could discuss with my colleagues to determine how that might impact on us. Most of our senior staff are absent today and tomorrow but I will try and garner their thoughts to be able to respond to you as quickly as possible.

To be able to present the strongest argument to our Council, it would also be helpful to know whether you have any other action planned in the sector aside from the review you have already mentioned. Just to ask about this as well, presumably you intend to approach those firms that you feel are non-compliant?

I know this is probably not completely what you were expecting so if you would still like to meet next week, we would be happy to. If not then I'll let you know our thoughts on your intended action as soon as possible.

Kind regards

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]
Sent: 16 June 2016 09:02
To: [ASA]
Cc: [FCA]
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] have just sent us a copy of their correspondence to you in relation to your current investigation of [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 on [Redacted] and for us to agree an approach/ any amendments to the MoU going forward.

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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Canary Wharf
London

E14 5HS

Tel: +44 (0)20 7066 9188

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From: Tina Archer [FCA]

Sent: 14 June 2016 13:11

To: [ASA]

Cc: [FCA]

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 the MoU issue?

Many thanks

Tina

Tina Archer

Manager / Conduct Specialists / Supervision



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London

E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

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ConductSpecialistsAdmin@fca.org.uk

From: [FCA]

Sent: 25 May 2016 09:29

To: [ASA]

Cc: Tina Archer [FCA]

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 discuss the MOU and next steps.

Regards

[Redacted]

[Redacted]

Senior Associate / Financial Promotions / Conduct Specialists/Supervision



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From: [ASA]

Sent: 25 May 2016 09:12

To: Tina Archer [FCA]

Cc: [FCA]

Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi

Just to confirm that we are happy with the changes. Hopefully your CEO will agree.

I'm offline until about 10 but if you have anything urgent before then please contact my Director [Redacted]

Thanks

[Redacted]

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From: Tina Archer [<mailto:Tina.Archer@fca.org.uk>]

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: [ASA]
Sent: Tuesday, May 24, 2016 06:36 PM
To: [FCA]
Cc: Tina Archer [FCA]
Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi

Yes, nearly there! I'll definitely respond by 9.30 am at the latest. Thanks for your understanding with this.

Have a good evening.

[Redacted]

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From: [FCA]
Sent: 24 May 2016 18:15
To: [ASA]
Cc: Tina Archer [FCA]
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]

Senior Associate / Financial Promotions / Conduct Specialists/Supervision



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From: [ASA]
Sent: 24 May 2016 18:13
To: [FCA]
Subject: RE: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [Redacted]

Many thanks for this.

What the latest that you need confirmation on this by? Is tomorrow morning too late? I was hoping to let my superiors have a look.

[Redacted]

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From: [FCA]
Sent: 24 May 2016 18:07
To: [ASA]
Cc: Tina Archer [FCA]
Subject: FW: Possible__Retail_FX_draft_email_to_firms_20160517-Latest_draft_(3) asa

Hi [Redacted]

Many thanks for your help and the suggested text.

I have incorporated your wording however you will see I have split it under the two separate headings as these appear to reflect the two separate elements of your text as highlighted in the track changes on the attached document.

I have also added the word any as highlighted in the second sentence.

Can you call me to let me know you are happy with this suggested approach to your text.

Regards

[Redacted]

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File 9

From: [FCA]
Sent: 24 May 2016 14:39
To: [ASA]

Cc: Tina Archer [FCA]; [FCA]
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.

As you will see from my email we do have problems in holding up the email. Is it possible to give either myself a call [Redacted] or Tina Archer on 020 7066 9188 to discuss this.

Regards

[Redacted]

Senior Associate / Financial Promotions / Conduct Specialists/Supervision



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From: [FCA]
Sent: 24 May 2016 09:20
To: [ASA]
Cc: Tina Archer [FCA]; [FCA]
Subject: FW: Currency transfer firms

Hi [Redacted]

Many thanks for this. The delaying of the email is a problem as firstly we are under pressure to be seen to be doing something and secondly we are entering into a time of purdah where we are precluded from any communications of this nature until after the referendum.

Whilst we appreciate your concern is there anything we could add to the email that would allow us to send this email.

We do not believe there is anything in the email that is contrary to your stance. Will call you later to discuss.

Regards

[Redacted]

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From: [ASA]

Sent: 23 May 2016 17:47

To: [FCA]

Cc: [FCA]

Subject: RE: Currency transfer firms

Hi [Redacted]

Hope you're well. Thanks for your email.

Given it's only been a short time since receiving an explanation about how you intend to take action against this sector, we haven't had sufficient time to determine whether we are satisfied that we can hand over responsibility for non-broadcast ads. For the reasons I've explained before, this is an important decision for us as there are a number of implications. We need more time to work through the matter.

Therefore, given we haven't yet reached a decision, your intended email does cause concern. We also feel it has the potential to cause confusion amongst the industry. As you've noted, we previously have a number of ongoing cases and we're continuing to assess complaints about these services.

Therefore, are you able to postpone this proposed email until such a time until we've reached a decision? As you've suggested it might be helpful to meet again to talk through the issues?

I look forward to hearing from you.

Kind regards

[Redacted]

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From: [FCA]]
Sent: 19 May 2016 16:40
To: [ASA]
Cc: [FCA]
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]

Senior Associate / Financial Promotions / Conduct Specialists/ Supervision

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File 10

From: [FCA]
Sent: 11 May 2016 16:03
To: [ASA]
Cc: Tina Archer [FCA];
Subject: RE: Currency transfer firms

Hi [Redacted]

Thank you for your email of the 10 May.

I have outlined below details of the rationale for us taking forward the remit relating to non-broadcast advertising in this sector, together with details of our proposed action. Point 5 sets out our position in respect of currency converters.

- 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'*.
- 2) As payment institutions are authorised by the FCA we believe we should regulate advertising by these firms. This would be consistent with our approach to FSMA firms. If the ASA is content with this approach, we would propose that the ASA and we amend the MoU accordingly. We will, however, be interested in any alternative point of view that you might hold.
- 3) The currency transfer services offered by the payment institutions we are looking at are also available via banks. The banks are authorised under FSMA, and any advertising concerns would be generally be passed to us for consideration. Given

the need to adopt a level playing field between banks and payment institutions and to maintain a consistent approach in this respect, we consider that it would be preferable if the FCA acted as lead regulator for this type of business.

- 4) For the avoidance of doubt, we are suggesting the above approach for all payment institutions, not just those that offer currency transfer services.

Currency transfer firms

Regarding the currency transfer/interbank rate issue, we propose to issue an email on or around 26 May to all regulated firms carrying out currency transfer activity, together with publication on our website. Please note that this proposed action is confidential, so please do not disclose this information any further.

Whilst we are not prohibiting the use of the interbank rate in currency converters, it is important that the customer is clear that the resultant figure is not the amount they will receive.

We expect that where firms refer to the interbank rate they include appropriate wording to make it clear to consumers that they may not get this rate.

We hope that our approach to these cases is not inconsistent with the approach the ASA might take. We are aware that the ASA is having another look at the [Redacted] cases. We can perhaps discuss how any transfer of responsibility for this sector to the FCA would affect these cases. 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: [ASA]
Sent: 10 May 2016 14:33
To: [FCA]
Cc: [FCA]
Subject: RE: Currency transfer firms

Hi [Redacted]

I'm good thanks – hope you're well too.

Thanks for this update. Although you've agreed internally to take on this sector, we need to decide whether we are satisfied that we can hand over remit relating to non-broadcast advertising in this sector. As I've mentioned before, we are often challenged on our remit in certain areas and we need to be able to robustly defend why we would be handing over responsibility for an area that does not currently fall under FSMA or the MoU.

To enable us to make that decision, we still need from you information about how you could act against these ads – the legislation that you would be acting under, how you could seek amendment to advertising, the sanctions that you could apply and anything else that you think makes the FCA more appropriate to deal with this sector.

In the previous meeting, we also discussed the use of currency exchange converters in ads so we'd be interested to know whether you've come to a decision about whether you're happy for these to be included at all, even when set in an appropriate context.

Many thanks

[Redacted]

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Mid City Place, 71 High Holborn
London WC1V 6QT
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From: [FCA]
Sent: 10 May 2016 12:09
To: [ASA]
Cc: [FCA]
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.

To this end we will need to look at revising the MOU between the ASA and the FCA. Please can you advise us how you wish to proceed with this.

[Redacted]

Senior Associate / Financial Promotions / Conduct Specialists/ Supervision

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File 11

From: Tina Archer [FCA]
Sent: 24 May 2016 11:32
To: [FCA]; [ASA]
Cc: [FCA]
Subject: RE: Currency transfer firms

[Redacted]

Thanks for your email. It would be helpful to have a discussion about this asap (apologies, I know [FCA] has already left a message). I appreciate your concerns relating to the overlapping remit and your current rulings. However, we are hoping that the ASA could just regard it as a 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. Whilst your current rulings could cover much of the same ground, we think that our communication is very high level, and is just drawing firms' attention to some of the areas that they need to watch, and the legislation that applies – the PSRs, CPRs and BCOBS. We consider that our comm would support your rulings if anything – obviously you would not be saying to firms that they should be using the interbank rate in a misleading way, so it would hopefully not interfere with the substance of your rulings.

Whilst there could be some confusion in the industry whilst you make decision as to your/our remit, the ASA and FCA have always had an overlapping remit to some extent, so I don't think this would pose a risk. If questioned, we could just say that the ASA is dealing with a number of current rulings, but that we would expect to work with the ASA. And you could perhaps say something similar.

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



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 9188

Fax: +44 (0)20 7066 9189

www.fca.org.uk

ConductSpecialistsAdmin@fca.org.uk

Files 12 and 13

From: [FCA]

Sent: 04 May 2016 14:03

To: [ASA]; [ASA]

Cc: [FCA]

Subject: RE: ASA Enquiry Ref: [Redacted]

Dear [Redacted],

Thank you for your email and for sending a reminder to the case handlers.

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

Best regards,

[FCA]

From: [ASA]

Sent: 04 May 2016 13:52

To: [FCA]; [ASA]

Cc: [FCA]

Subject: RE: ASA Enquiry Ref: [Redacted]

Dear [Redacted]

I can only apologise. The case handler wasn't in the office when the case was closed, which I suspect was the reason for this oversight. We have reminded all of those responsible for cases involving online currency converters to notify you of their investigations, and to keep you informed throughout.

We look forward to hearing from you following your internal deliberations in due course.

[Redacted]

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

Dear [Redacted],

Following our previous emails regarding [Redacted], we were expecting to be informed of the final ruling prior to general publication. Therefore, we were surprised to see the publication of this [Redacted], with no further correspondence from yourselves or the case officer.

You will appreciate that these firms, their promotions, how we supervise them and indeed the MoU between the FCA and the ASA are the subject of current internal committees. Therefore, it is important that we have sight of these rulings prior to general publication.

I understand that [FCA] has been liaising with [ASA] regarding [ASA] investigation into [Redacted]. [ASA] has also provided assurances that we shall be kept up-to-date regarding key stages of this case. We would greatly appreciate it if these assurances were kept, as this will greatly assist us during the internal processes we are currently undertaking.

Best regards,

[Redacted]

Associate / Financial Promotions / Conduct Specialists / Supervision



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Canary Wharf
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