

RETAIL BANKING MARKET INVESTIGATION

Notice of the CMA's intention to operate a confidentiality ring to allow submissions on the unredacted version of the update on personal current account pricing analysis working paper

As part of the retail banking market investigation, the Competition and Markets Authority (the CMA) has received information and/or data from a number of parties which the CMA has used and taken into account in producing its 24 May 2016 update on personal current account (PCA) pricing analysis working paper (Updated Pricing Analysis).

The information and data referred to above is specified information within the meaning of section 238 of the Enterprise Act 2002 (the Act) and therefore falls within the general restriction on its disclosure pursuant to section 237 of the Act.

The CMA has, pursuant to section 241 of the Act, decided to disclose the unredacted version of the Updated Pricing Analysis (the Data) to the external advisers of certain parties by way of a confidentiality ring (the Confidentiality Ring) for the purpose of allowing such parties' advisers an opportunity to review the information provided and prepare submissions and representations to the CMA on the Updated Pricing Analysis.

In light of the commercially confidential nature of the Data, the CMA considers it necessary to disclose the Data to a limited number of approved external legal and/or economic advisers of the relevant parties through the Confidentiality Ring. Specific details of the Confidentiality Ring are set out below.

Confidentiality Ring

In order to safeguard the confidentiality of the material contained in the Data, and in line with usual confidentiality ring procedures, those persons to whom disclosure is being made (as well as the advisory firms for which they act) will be required to sign confidentiality undertakings. **We propose that access to the Confidentiality Ring be limited to the external legal and/or economic advisers (the external advisers) designated for this purpose by the parties.** The CMA retains the right to limit the number of external advisers for each party.

The Data will be made available by the CMA as soon as practicable following either signature of the undertakings (for any adviser who is approved by the CMA and has not already entered a confidentiality ring) or confirmation that the adviser accepts disclosure on the same terms as the undertakings previously signed and an amended Schedule 1 (where an adviser has previously entered a confidentiality ring in this market investigation) and until the CMA publishes its final report (with the possibility of an extension in the event of an appeal by the relevant party), at which point the external advisers must destroy any documents incorporating the Data (other than documents which have been submitted to the CMA). External advisers will be given the opportunity to make submissions in relation to the Data. **The deadline for such submissions on the Data will be 5pm on Tuesday 7 June 2016.**

Please register your interest in entering the Confidentiality Ring **by Friday 27 May 2016**. When registering confirmation of your interest in accessing the Confidentiality Ring, please explain the basis of your interest in gaining access to this information as well as the name and role of those for whom access is requested (ie name, job title and firm of each external adviser).

Individual and firm confidentiality undertakings are attached to this notice. All individuals and firms who have not already signed confidentiality undertakings in the context of the retail banking market investigation will be required to sign these undertakings before being granted access. Individuals and firms who have previously signed confidentiality undertakings in the context of the retail banking market investigation, and who wish to have access to the Data, will be required to confirm their agreement that those undertakings extend to the Data.

RETAIL BANKING MARKET INVESTIGATION (THE INVESTIGATION)**UNDERTAKINGS GIVEN BY [NAME OF ADVISER] TO THE COMPETITION AND
MARKETS AUTHORITY (CMA) IN RELATION TO DISCLOSURE OF CERTAIN
SPECIFIED INFORMATION (UNDERTAKINGS)****WHEREAS**

- I. On 6 November 2014, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), the Competition and Markets Authority (CMA) made a reference for a market investigation in relation to the supply of retail banking services to personal current account customers and small and medium-sized enterprises (the Investigation).
- II. On 12 November 2014, the CMA published an issues statement setting out the framework for the Investigation including three candidate potential theories of harm. On 21 May 2015 the CMA published an updated issues statement in the Investigation, which provides an updated summary of the progress of the Investigation and those issues which are likely to represent the focus of the Investigation in the period up to publication of the provisional findings.
- III. The CMA has also published a number of working papers together with the customer research undertaken.
- IV. On 22 October 2015, the CMA published its provisional findings. The provisional findings are based on economic and financial analyses of the data received by the CMA during the Investigation from a number of parties and take into account the parties' representations received either in writing and/or at oral hearings.
- V. The CMA has decided to disclose the material set out in Schedule 1, which may be amended from time to time by the CMA (the Disclosed Material).
- VI. The CMA considers that the Disclosed Material includes specified information within the meaning of section 238 of the Act to which the general restriction on disclosure in section 237 of the Act applies. The CMA may disclose specified information to any other person in circumstances permitted by the Act.
- VII. The CMA has decided to disclose the materials listed in Schedule 1 for the purposes of facilitating the exercise by it of its statutory functions under section 241 of the Act by way of a confidentiality ring (the Confidentiality

Ring). Access to the Confidentiality Ring is provided for the sole purpose of reviewing and understanding the Disclosed Material and preparing submissions and representations to the CMA on the Disclosed Material during the Investigation and (if relevant) to prepare any appeal against any decision of the CMA in connection with the Investigation (the Permitted Purpose).

VIII. Access to the Confidentiality Ring is restricted to the external Advisers of [Name of Party]:

- a. who have been approved in writing by the CMA
- b. who have provided an original signed copy of undertakings in such form as the CMA has approved in writing (the Individual Undertakings) and
- c. in respect of whom written undertakings have been provided by such adviser's relevant firm/employer in such form as the CMA has approved in writing (the Firm Undertakings)

(each such Adviser being an Authorised Adviser).

IX. The Permitted Purpose must be completed no later than the date of the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal) at which point all documents in whatever format incorporating any of the Disclosed Material, other than those documents which have been submitted to the CMA and subject to paragraph L, must be destroyed or rendered inaccessible in the case of electronic documents. The CMA requires Authorised Advisers to confirm the destruction or inaccessibility of such documents by email, specifying the manner of destruction or, in the case of electronic documents, how they have been rendered inaccessible, on or before the date of the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal).

X. Subject to Individual and Firm Undertakings which contain the Disclosed Material in Schedule 1, the CMA will make the Disclosed Material available to [Name of Adviser] by encrypted Egress email unless otherwise specified in Schedule 1. [Name of Adviser] will then be permitted to download the Disclosed Material on a computer via Egress, subject to ensuring the Disclosed Material is password-protected, and print copies so long as each

Authorised Advisor only has one hard copy in existence at any one time (each a 'Permitted Copy').

- XI. Disclosure of the Disclosed Material or any part thereof, other than in accordance with these Undertakings, is not permitted without the express and prior written consent of the CMA and will constitute a criminal offence under section 245 of the Act.
- XII. [Name of Firm] has been instructed by [Name of Party], which is a party to the Investigation, for the purposes of providing [legal/economic] advice to [Name of Party] in relation to the Investigation. [Name of Adviser] is employed by [Name of Firm] as [legal/economic] adviser.

NOW THEREFORE

I, [Name of Adviser], [Job title] at [Name of Firm], who has been engaged by [Name of Party] in connection with the Investigation undertake to the CMA in my own name and not that of [Name of Firm] which has given separate Firm Undertakings:

- A. To use the Disclosed Material for, and only for, the Permitted Purpose on behalf of [Name of Party];
- B. To only access the Disclosed Material through the Permitted Copies and in the secure electronic format provided by the CMA, ensuring the Disclosed Material if downloaded is password-protected and accessible to the Authorised Advisers of [Name of Party] only and that any printed copy is accessible to the Authorised Advisers of [Name of Party] only;
- C. Save as provided for in paragraph L, at the conclusion of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal), to destroy or render inaccessible in the case of electronic documents the Permitted Copies and all documents in whatever format incorporating any of the Disclosed Material, save for those documents which have been submitted to the CMA, and to confirm the destruction, or in the case of electronic documents the inaccessibility, of such documents to the CMA no later than the date on which the period for appealing against the CMA's final report in the Investigation expires (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal);

- D. Save as provided for in paragraphs J and K, to hold the Disclosed Material in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make the Disclosed Material available in any other manner to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]), except for:
- a. those Authorised Advisers of [Name of Party] in relation to the Disclosed Material being discussed, disclosed, transmitted or communicated;
 - b. CMA staff and CMA panel members of the Investigation; and
 - c. any information in the Disclosed Material that has been purchased directly from Charterhouse by a firm may be discussed with any employee of that same firm.
- E. To keep the Disclosed Material, the Permitted Copies and/or any report or document prepared which refers to the Disclosed Materials secure at all time, including in a manner which is not accessible to any other person (including any officer or employee of [Name of Firm]), save for those Authorised Advisers of [Name of Party] who have provided Individual Undertakings to the CMA in respect of the Disclosed Material being made accessible;
- F. Not to make any copies of the Disclosed Material, other than the Permitted Copies;
- G. To ensure that any report, document or analysis which derives from the Disclosed Material that is shared with anyone other than the Authorised Advisers of [Name of Party] and the CMA cannot be used in any way to disclose any part of the Disclosed Material, by inference or otherwise;
- H. To ensure that any document incorporating or referring to the Disclosed Material submitted to the CMA is submitted separately from any other written submission of [Name of Party] and highlights any Disclosed Material; and
- I. To notify the CMA immediately if I become aware of or suspect that any of [Name of Party]'s Authorised Advisers have failed to comply with these Undertakings.
- J. I may disclose the key trends of the Disclosed Material to [Name of Party] but in doing so I will not disclose, transmit, communicate or otherwise make available or known to [Name of Party] specific figures, any information on any individual bank and any information that would allow comparisons between banks.

- K. For the avoidance of doubt, I must ensure that such key trends do not enable or assist [Name of Party] to gain an understanding of its position or potential future position in any market, relative to any other market operator.
- L. If it is required to comply with [Name of Firm]'s professional indemnity insurance policy, the Authorised Advisers of [Name of Firm] may retain one copy (between them) of the Disclosed Material and any report, submission or other document which contains or refers to the Disclosed Material, provided:
- a. The copy is stored securely in accordance with the undertaking in paragraph E;
 - b. The CMA is notified of the retention at the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal); and
 - c. The CMA is consulted prior to any disclosure of the copy under the terms of [Name of Firm]'s professional indemnity insurance policy.

PROVIDED THAT

These Undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include:
 - a. any confidential information belonging to, relating to or deriving solely or partially from any other party to the Investigation or,
 - b. for the avoidance of doubt, any information, statement or ranking that has not been derived solely from [Name of Party]'s data;
- ii. at the time of supply is in the public domain or subsequently comes into the public domain, except through breach of these Undertakings or Individual Undertakings given by any Authorised Advisers in relation to the Disclosed Material;
- iii. is required to be disclosed by law or regulation, so long as [Name of Firm] consults with the CMA prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure where such consultation is permitted.

AND IN AGREEMENT THAT

These Undertakings shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these Undertakings and the Confidentiality Ring.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Adviser] on the further disclosure of information, subject to the Undertakings above.

These Undertakings have been executed and shall take effect on the date on which they are signed.

[Name of Adviser] of [Name of Firm]

[signature]

[Date]

Schedule 1: the Disclosed Material

For the purposes of these Undertakings, the Disclosed Material includes:

- An unredacted version of the Update on PCA Pricing Analysis working paper

RETAIL BANKING MARKET INVESTIGATION (THE INVESTIGATION)

UNDERTAKINGS GIVEN BY [NAME OF FIRM] TO THE COMPETITION AND MARKETS AUTHORITY (CMA) IN RELATION TO DISCLOSURE OF CERTAIN SPECIFIED INFORMATION (UNDERTAKINGS)

WHEREAS

- I. On 6 November 2014, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), the Competition and Markets Authority (CMA) made a reference for a market investigation in relation to the supply of retail banking services to personal current account customers and small and medium-sized enterprises (the Investigation).
- II. On 12 November 2014, the CMA published an issues statement setting out the framework for the Investigation including three candidate potential theories of harm. On 21 May 2015 the CMA published an updated issues statement in the Investigation, which provides an updated summary of the progress of the Investigation and those issues which are likely to represent the focus of the Investigation in the period up to publication of the provisional findings.
- III. The CMA has also published a number of working papers together with the customer research undertaken.
- IV. On 22 October 2015, the CMA published its provisional findings. The provisional findings are based on economic and financial analyses of the data received by the CMA during the Investigation from a number of parties and take into account the parties' representations received either in writing and/or at oral hearings.
- V. The CMA has decided to disclose the material set out in Schedule 1, which may be amended from time to time by the CMA (the Disclosed Material).
- VI. The CMA considers that the Disclosed Material includes specified information within the meaning of section 238 of the Act to which the general restriction on disclosure in section 237 of the Act applies. The CMA may disclose specified information to any other person in circumstances permitted by the Act.
- VII. The CMA has decided to disclose the materials listed in Schedule 1 for the purposes of facilitating the exercise by it of its statutory functions under section 241 of the Act by way of a confidentiality ring (the Confidentiality Ring). Access to the Confidentiality Ring is provided for the sole purpose of reviewing and understanding the Disclosed Material and preparing

submissions and representations to the CMA on the Disclosed Material during the Investigation and (if relevant) to prepare any appeal against any decision of the CMA in connection with the Investigation (the Permitted Purpose).

- XIII. Access to the Confidentiality Ring is restricted to the external Advisers of [Name of Party]:
- a. who have been approved in writing by the CMA
 - b. who have provided an original signed copy of undertakings in such form as the CMA has approved in writing (the Individual Undertakings) and
 - c. in respect of whom written undertakings have been provided by such adviser's relevant firm/employer in such form as the CMA has approved in writing (the Firm Undertakings)

(each such Adviser being an Authorised Adviser).

- VIII. The Permitted Purpose must be completed no later than the date of the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal) at which point all documents in whatever format incorporating any of the Disclosed Material, other than those documents which have been submitted to the CMA and subject to paragraph N, must be destroyed or rendered inaccessible in the case of electronic documents. The CMA requires Authorised Advisers to confirm the destruction or inaccessibility of such documents by email, specifying the manner of destruction, or, in the case of electronic documents, how they have been rendered inaccessible, on or before the date of the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal).

- IX. Subject to Individual and Firm Undertakings which contain the Disclosed Material in Schedule 1, the CMA will make the Disclosed Material available to the Authorised Advisors of [Name of Firm] by encrypted Egress email unless otherwise specified in Schedule 1. The Authorised Advisors of [Name of Firm] will then be permitted to download the Disclosed Material on a computer via Egress, subject to ensuring the Disclosed Material is password-protected, and print off copies so long as each Authorised Adviser only has one hard copy in existence at any one time (each a 'Permitted Copy').

- X. Disclosure of the Disclosed Material or any part thereof, other than in accordance with these Undertakings, is not permitted without the express and prior written consent of the CMA and will constitute a criminal offence under section 245 of the Act.
- XIV. [Name of Firm] has been instructed by [Name of Party], which is a party to the Investigation, for the purposes of providing [legal/economic] advice to [Name of Party] in relation to the Investigation.

NOW THEREFORE

[Name of Firm] which has been engaged by [Name of Party] in connection with the Investigation undertakes to the CMA that:

- A. Only Authorised Advisers acting for [Name of Party] who have given Individual Undertakings to the CMA in respect of the disclosure in the Confidentiality Ring will be given access to the Disclosed Materials; and
- B. It will notify the CMA immediately if it becomes aware of or suspects that there has been any breach of these Undertakings or that any Authorised Adviser of [Name of Party] has failed to comply with the Undertakings which (s)he has given to the CMA in respect of the Confidentiality Ring.

Further, [Name of Firm] also undertakes to the CMA to use reasonable endeavours to ensure that the Authorised Advisers of [Name of Firm]:

- C. Will use the Disclosed Material for, and only for, the Permitted Purpose on behalf of [Name of Party];
- D. Will only access the Disclosed Material through the Permitted Copies and in the secure electronic format provided by the CMA, ensuring the Disclosed Material if downloaded is password-protected and accessible to the Authorised Advisers of [Name of Party] only and that any printed copy is accessible to the Authorised Advisers of [Name of Party] only;
- E. Save as provided for in paragraph N, will at the conclusion of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal), destroy or render inaccessible in the case of electronic documents the Permitted Copies and all documents in whatever format incorporating any of the Disclosed Material, save for those documents which have been submitted to the CMA, and confirm the destruction, or in the case of electronic documents the inaccessibility, of such documents to the CMA no later than the date on which

the period for appealing against the CMA's final report in the Investigation expires (unless [Name of Party] appeals the final report in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal);

- F. Save as provided for in paragraphs L and M, will hold the Disclosed Material in strict confidence and not discuss, disclose, transmit, communicate or otherwise make the Disclosed Material available in any other manner to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]), except for:
- a. those Authorised Advisers of [Name of Party] in relation to the Disclosed Material being discussed, disclosed, transmitted or communicated;
 - b. CMA staff and CMA panel members of the Investigation; and
 - c. any information in the Disclosed Material that has been purchased directly from Charterhouse by a firm may be discussed with any employee of that same firm.
- G. Will keep the Disclosed Material, the Permitted Copies and/or any report or document prepared which refers to the Disclosed Materials secure at all time, including in a manner which is not accessible to any other person (including any officer or employee of [Name of Firm]), save for those Authorised Advisers of [Name of Party] who have provided Individual Undertakings to the CMA in respect of the Disclosed Material being made accessible;
- H. Will not make any copies of the Disclosed Material, other than the Permitted Copies;
- I. Will ensure that any report, document or analysis which derives from the Disclosed Material that is shared with anyone other than the Authorised Advisers of [Name of Party] and the CMA cannot be used in any way to disclose any part of the Disclosed Material, by inference or otherwise;
- J. Will ensure that any document the Authorised Advisers prepare incorporating or referring to the Disclosed Material submitted to the CMA is submitted separately from any other written submission of [Name of Party] and highlights any Disclosed Material; and
- K. Will notify the CMA immediately if I become aware of or suspect that any of [Name of Party]'s Authorised Advisers have failed to comply with their Individual Undertakings.

- L. Authorised Advisers may disclose key trends of the Disclosed Material to [Name of Party] but in doing so will not disclose, transmit, communicate or otherwise make available or known to [Name of Party] specific figures, any information on any individual bank and any information that would allow comparisons between banks.
- M. For the avoidance of doubt, Authorised Advisers must ensure that such key trends do not enable or assist [Name of Party] to gain an understanding of its position or potential future position in any market, relative to any other market operator.
- N. If it is required to comply with [Name of Firm]'s professional indemnity insurance policy, the Authorised Advisers of [Name of Firm] may retain one copy (between them) of the Disclosed Material and any report, submission or other document which contains or refers to the Disclosed Material, provided:
 - a. The copy is stored securely in accordance with the undertaking in paragraph G;
 - b. The CMA is notified of the retention at the expiry of the period for appealing against the CMA's final report in the Investigation (unless [Name of Party] appeals the final report or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal); and
 - c. The CMA is consulted prior to any disclosure of the copy under the terms of [Name of Firm]'s professional indemnity insurance policy.

PROVIDED THAT

These Undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include:
 - a. any confidential information belonging to, relating to or deriving solely or partially from any other party to the Investigation or
 - b. for the avoidance of doubt, any information, statement or ranking that has not been derived solely from [Name of Party]'s data;
- ii. at the time of supply is in the public domain or subsequently comes into the public domain, except through breach of the Undertakings or Individual Undertakings given by any Authorised Advisers or Firm Undertakings given in relation to this disclosure;

- iii. is required to be disclosed by law or regulation, so long as I consult with the CMA prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure where such consultation is permitted.

AND IN AGREEMENT THAT

These Undertakings shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these Undertakings and the Confidentiality Ring.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Firm] on the further disclosure of information, subject to the Undertakings above.

These Undertakings have been executed and shall take effect on the date on which they are signed.

[Name of Firm]

[signature]

[Date]

Schedule 1: the Disclosed Material

For the purposes of these Undertakings, the Disclosed Material includes:

- An unredacted version of the Update on PCA Pricing Analysis working paper