

Information relating to Clydesdale and Yorkshire Banks Review of Interest Rate Hedging Products (12 October 2012)

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Introduction

Customers may have read in the Press that the Financial Services Authority (FSA) has been in discussion with a number of banks, including Clydesdale and Yorkshire Banks (the Bank), about a review of the sale of certain Interest Rate Hedging Products, often referred to as “Interest Rate Swaps”. This letter sets out what the Bank has agreed with the FSA, the steps that we propose to take and details of where you can obtain further information.

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A. The Review.

Although the FSA has not made any finding that the Bank sold any such products inappropriately, we have agreed to undertake a review of the sale of certain Interest Rate Hedging Products sold to Private and Retail customers on or after 1 December 2001, where the customer does not meet the definition of a “sophisticated customer”.

Accordingly, if:

- You were not a Private or Retail customer at the time of the sale, or
- You meet the definition of a “sophisticated customer”,

then you will not be covered by this review.

If you are within the scope of the review then the steps that we will take will depend on the type of product that you purchased.

You have received this letter because we think that you may be in scope of the review, as you purchased an Interest Rate Hedging Product during the period since 1 December 2001. Only those customers who would have been categorised by us as a Private or Retail customers will be in the scope of the review. If we determine that you were not a Private or Retail customer or you come within the definition of a “sophisticated customer” as the review progresses, then we will write to you to confirm this and as a consequence, you would not fall within the scope of the review.

The FSA has defined a “sophisticated customer”, as one who met at least two of the following criteria during the financial year in which the product was taken out:

- a turnover of more than £6.5 million; or
- a balance sheet total of more than £3.26 million; or
- more than 50 employees.

There is an alternative test for a “sophisticated customer” that may apply where a customer clearly had the necessary experience and knowledge to understand the type of product envisaged at the time it was taken out.

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B. The products that we have agreed to review.

The nature of the review depends upon the type of product that you purchased. When we have established your position we will write further to you to explain how you will be affected by the review. A full list of the products that are included within the scope of review can be found in appendix one of this letter.

We have agreed to undertake the review in the following way:

1. In the case of a sale of a Structured Collar, the Bank will undertake a proactive exercise to redress those customers who did not meet the definition of a sophisticated customer at the time when the product was sold. The redress will be assessed on the basis of what is fair and reasonable in the circumstances.
2. In the case of other Interest Rate Hedging Products, apart from Caps, the Bank will write to all customers who did not meet the definition of a sophisticated customer asking if they wish to have their file reviewed. For those customers who do ask for their files to be reviewed, we will then undertake a past business review of the sale of those products. Redress is not automatic but if we assess that the sale was not appropriate, then redress will be assessed on the basis of what is fair and reasonable in the circumstances.
3. In the case of a Cap a review will only be undertaken if we receive a complaint from you. If you make a complaint and are a non-sophisticated customer we will review the sale and, where it is appropriate to do so, provide redress on the basis of what is fair and reasonable in the circumstances.

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C. Tailored Business Loans (TBLs).

In addition to the products above that the Bank has formally agreed to review with the FSA, the review will also consider the sales of certain TBL products. A full list of the TBL products that are included within the scope of review can be found in appendix one of this letter

The Bank will undertake a past business review of the sale of those products to customers who do not meet the definition of a sophisticated customer at the time that the product was sold. Redress is not automatic but where it is considered to be appropriate, it will be assessed on the basis of what is fair and reasonable in the circumstances.

We have agreed to undertake the review in the following way:

1. In the case of those TBLs exhibiting comparable features to a Structured Collar, the Bank will undertake a proactive exercise to consider redress to those customers who did not meet the definition of a sophisticated customer at the time when the product was sold. Any redress will be assessed on the basis of what is fair and reasonable in the circumstances.

2. In the case of those TBLs exhibiting comparable features to other Interest Rate Hedging Products (e.g. simple collars), but not including Caps or fixed rate products, the Bank will write to all customers who do not meet the definition of sophisticated customers asking if they wish to have their file reviewed. For those customers who do wish to have their files reviewed, the Bank will then undertake a past business review of the sale of those products. Redress is not automatic but if we assess that the sale was not appropriate, then redress will be assessed on the basis of what is fair and reasonable in the circumstances.

3. In the case of those TBLs exhibiting comparable features to Caps (defined as a Capped Rate Loan), a review will only be undertaken if we receive a complaint from you. If you make a complaint and you fall outside the definition of “sophisticated customer” we will review the sale and, where it is appropriate to do so, provide redress on the basis of what is fair and reasonable in the circumstances.

TBLs where the interest rate was fixed for the period of the loan or any part of it will not be reviewed. If you hold such a product and are unhappy about the way in which it was sold, your right to complain is unaffected (see section H for more details).

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D. Next Steps.

The Bank is currently undertaking a review of the products that it has sold since December 2001 and will identify whether you purchased any of the products referred to in paragraphs 1 or 2 of Sections B and C above. If you did, we will then determine whether or not you fall within the definition of “sophisticated customer” in order to ascertain whether you are within the scope of the review. We will try to do this from information already in our possession. However, we may need to write to you for additional information to help clarify whether, for example, you employed fewer than 50 people in the financial year in which you took the product out.

In the case of customers who do not meet the definition of a “sophisticated customer”, and who took out a Structured Collar we will undertake a proactive redress exercise and will write to you further confirming that we are doing this and explaining how the exercise is being undertaken.

In the case of customers who have taken out one of the products referred to in paragraph 2 of Section B and C above, and who are not classified as a sophisticated customer, we will write to you and set out in general terms any potential failings and invite you to respond if you would like us to review our sale of the relevant product.

For those TBLs which have comparable features to a Structured Collar, we will consider redress as referred to in Section C numbered paragraph 1 of this letter.

If your product is a Cap or a relevant TBL exhibiting comparable features to a Cap, we will only review your case on receipt of a complaint from you about the sale of the product. Details of the address to which complaints should be addressed are set out in section H of this letter.

We will be reviewing all of the affected products in the manner described above, as sold since 1 December 2001, including all cases that have previously been referred to the Financial Ombudsman Service or have been considered by us following a complaint from you.

Those customers who are experiencing financial difficulties will be reviewed first. We will not be foreclosing on any affected customers until the review is completed unless, by exception, we need to foreclose to preserve the value in your business or you consent to us doing so.

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E. Overview of our Decisions.

We have agreed with the FSA that all of our decisions under sections B1, B2 and B3 (including whether we regard you as meeting the sophisticated customer criteria) will be reviewed individually by an independent person/firm who has the necessary skill and expertise to ensure that we are acting fairly and in accordance with our agreement with the FSA. This person/firm is known as a “Skilled Person” and their appointment has been approved by the FSA.

The firm appointed for this purpose is the law firm Berwin Leighton Paisner LLP.

The FSA has issued guidance on the role of the independent reviewer and published it on the FSA web site at:

<http://www.fsa.gov.uk/static/pubs/other/factsheet-interest-rate-hedging-products.pdf>

We have also appointed Berwin Leighton Paisner LLP to act as independent reviewer of sales of Tailored Business Loans (TBLs) covered under sections C1, C2 and C3 above. Although the review of Tailored Business Loans falls outside the scope of the agreement with the FSA referred to above, we are committed to ensuring that sales of Tailored Business Loans are reviewed applying the same approach and principles (so far as they apply to these products) to ensure fair and reasonable outcomes for our customers.

This will ensure that all aspects of the Bank review, including the level of any appropriate redress to be provided to customers, are independently assessed and are consistent across the whole process.

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F. Further Information.

The FSA has issued a statement dealing with the issue (as it affects Clydesdale Bank in respect of sections B1, B2, B3). This can be found on the FSA web site at:

http://www.fsa.gov.uk/library/other_publications/interest-rate-swaps/interest-rate-products

It has also issued a helpful Questions and Answers publication, including a glossary of terms that is regularly updated which refers to the element of the review explained in Section C. This is also available from its web site at:

http://www.fsa.gov.uk/library/other_publications/interest-rate-swaps/interest-rate-swaps-faqs

The FSA's findings in relation to the four largest banks can be found at:

<http://www.fsa.gov.uk/static/pubs/other/interest-rate-hedging-products.pdf>

If you are unable to access the documents via these web sites please let us know and we will provide you with paper copies.

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G. Claims Management Companies.

There are claims management companies who may offer to submit your complaint to the bank or the Financial Ombudsman Service (FOS). However, they will charge for using their services and this could involve the payment of a significant fee to a claims management company (relative to the amount of any redress received). You do not need to use a claims management company because the process is straightforward.

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H. Complaints.

Our agreement to review these products does not affect your right to complain. If you fall within the definition of a sophisticated customer or are a customer with a product not included in the review your right to complain about the sale of a product remains. Such complaints should be addressed to:

Customer Engagement,
4th Floor,
40 St Vincent Place,
Glasgow,
G1 2HL.

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Appendix 1: Full list of products falling within scope of the review as categorised A, B and C for both Interest Rate Hedging Products (Standalone) and Tailored Business Loans (TBLs)

Hedging Product	FSA Category	Product Category	Product Name
Standalone	A	Structured Collar	Ladder Swap
	A	Structured Collar	Pivot Swap
	A	Structured Collar	Window Swap
	B	Collar	Collar
	B	Swap	Callable Swap
	B	Swap	Extendable swap
	B	Swap	Swap
	B	Swap	Swaption
	C	Cap	Cap
Tailored Business Loan	A	Structured Collar	Discounted Fixed Range Rate Loan
	A	Structured Collar	Fixed Trigger Rate Loan
	A	Structured Collar	Flexible Drawdown Participating Fixed Rate Loan
	A	Structured Collar	Modified Participating Fixed Rate Loan
	A	Structured Collar	Participating Fixed Rate Loan
	B	Collar	Range Rate Loan
	B	Swap	Convertible Floating Rate Loan
	B	Swap	Discounted Fixed Rate Loan
	B	Swap	Fixed Rate Flexible Maturity Loan
	B	Swap	Flexible Drawdown Fixed Rate Loan
	B	Swap	Ratchet Rate Loan
	C	Cap	Capped Rate Loan

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