

7th February 2005

Dear Complainant

Split Capital Complaint

Thank you for your email of 17th December 2004 and all of the previous correspondence which details the elements of your complaint against the FSA. This letter sets out our final decision on the complaints you have raised. The FSA have chosen to split your complaint into 11 separate allegations and deal with them in that manner. Having reviewed the considerable evidence and correspondence I intend to address the two substantive issues as I see them, namely;

Issue 1 You believe that once the FSA were aware that there may have been a problem with Split Capital Investment Trusts ('Splits') they should have alerted the public to this problem. You contend that such an alert would have stopped you from making the Splits investments that you made and hence would not have suffered the losses that you incurred. You refer in your letters of 14th March 2003 and 20th March 2003 to the Guernsey Regulator's position in January 2001. In the latter, you state "had you done your work efficiently and issued the requisite warnings to investors, my wife and I would not have made the following investments".

Issue 2 You contend that the FSA have dealt with your complaint badly and that the delays in answering your complaint cannot be justified.

Issue 1

You invested into the Firm on the 19th July 1999 and 4th March 2000. The rest of your Splits investments were made during January and February 2002. You contend that had the FSA issued warnings after the events of January 2001 you would not have bought Splits subsequent to that date.

The evidence does not demonstrate that the regulator had been aware of any potential issues with the Splits market prior to the 4th March 2000. Consequently it would have been impossible to warn prior to your two earliest investments. As a consequence, these particular investments will not be investigated. It is also important to note that there are two complaints schemes operating with regard to the FSA. The main scheme deals with the actions or inactions of the FSA after the 1st December 2001 and in this scheme the FSA have the option of awarding compensation if it is due. The Transitional Complaints Scheme refers to actions or inactions of the FSA prior to the 1st December 2001. In this scheme the award of compensation is unavailable. I have no power to overturn the transitional scheme's position with regard to compensation.

You contend that if the FSA had issued warnings about Splits you would not have invested in them, if this is so, after the warnings from the regulators issued in March 2001 and December 2001 the issue arises, why did you choose to invest in Splits in January and February 2002. The evidence clearly shows that the FSA issued an alert in March 2001 which received press coverage. A Discussion paper was issued in December 2001 which also received press coverage. Based on your contention it is reasonable to assume that had you been monitoring the FSA (not to mention the press) for such information, prior to your investment, then you would have not made these investments. This leaves me to conclude that either you were not monitoring the FSA as you contend or you chose to ignore the warnings. Either way the FSA could not be potentially responsible for the losses you suffered, if you did not monitor the FSA or chose to ignore its alerts.

It should be emphasised that the losses you have suffered have been as a direct result of the performance of investments which you made with various providers. If you feel that the performance of these investments has not matched your expectations your complaint lies with these providers. Splits are not regulated products and although some may feel that they should be, this does not detract from the fact that during the relevant period the FSA had no duty to treat them as such.

For the reasons above I do not uphold your claim for redress for the loss you suffered from your Splits investments made in 1999, 2000 nor those in 2002. For further information about Splits I refer you to the FSA publication dated 24th December 2004 titled "FSA and firms announce details of Split capital Investment trust settlement" enclosed.

Issue 2

It is clear from the chronology that your first complaint letter to the FSA was the 6th December 2002 and that the FSA provided you with its substantive response on the 12th September 2003.

In complex cases, such as Splits, often there is a great deal of work being done by a number of bodies, including the FSA, other than providing an answer to your complaint. The Complaints Scheme is not designed to replace or to set precedent for legal proceedings, enquiries or any other form of investigation. In fact the Scheme's rules dictate that should another more suitable manner of solving the dispute be available, the investigators have the option not to investigate the complaint in favour of that other manner of investigation. Furthermore it should be remembered that the Scheme is designed to give consumers and firms an opportunity to resolve their dispute with the FSA quickly and for no cost before legal proceedings, if required, begin.

With the backdrop of the Treasury Select Committee, the FSA's various own investigations and the media interest I do not feel that the time taken by the FSA to provide you with a substantive response is unreasonable.

Final Decision

It is clear that the premise of your complaint, the causal link between lack of FSA warnings about Splits and your consequent investment and losses has not been upheld. Consequently there is no liability on the FSA's part for the losses you have suffered within your Splits investments.

It is clear that you have many criticisms of the FSA handling of the Splits issue and that you are not alone in the opinion that the issue could have been handled better by the FSA. The FSA have in response launched a number of initiatives in order to try and ensure that such events are less likely to occur. The statement of the 24th December 2004 also demonstrates that the FSA have endeavoured to be proactive in their handling of the Splits situation.

However none of this detracts from;

1) the FSA did issue warnings prior to your split investments in 2002 and hence your causal argument is not upheld and consequently the FSA are not potentially liable for your losses.

2) Splits are unregulated products and consequently investors are not afforded the same level of protection than those with regulated products.

3) If you invest with a firm and you are dissatisfied with their performance your complaint should be directed to them.

I appreciate that this final decision may come as a disappointment to you, however I hope my reasons for reaching these conclusions are clear.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner