

*Our ref: L0440*

30<sup>th</sup> March 2005

Dear Complainant

Thank you for your letters of 1st November 2004 and 9<sup>th</sup> December, which detail the elements of your complaint against the FSA. This letter sets out my final decision regarding the complaints you have raised.

### Background

You are a shareholder of 'the Firm', and you received a letter from the Firm (dated 23<sup>rd</sup> June) which stated that the firm intended to restructure, and delist on 22<sup>nd</sup> July 2004.

You wrote to the FSA on the 10<sup>th</sup> July about the Firm and then complained to the FSA on the 14<sup>th</sup> July. Exchanges of correspondence followed which included latterly your complaint to my Office (1<sup>st</sup> November) and the FSA substantive response to your complaint (26<sup>th</sup> November).

You complained that the FSA failed to ensure that the Firm's circular letter of 23<sup>rd</sup> June met the requirements of the UKLA listing rule 14.1. This was investigated by the FSA and responded to in their letter 26<sup>th</sup> November.

You also complained that the UKLA rules do not prohibit the directors from delisting a company without consulting the shareholders. This element of your complaint was excluded from the complaints scheme in the FSA letter of 21<sup>st</sup> July 2004. I have confirmed the validity of this decision and no further action will be taken on this point.

### The Complaint

In relation to your complaint concerning the FSA failure to ensure the Firm's letter of 23<sup>rd</sup> June met the requirements of the UKLA listing rule 14.1, the FSA found that the letter had met the requirements of the listing rule. As a consequence of this it was unable to uphold your complaint.

I have reviewed the submitted evidence and procedures of the FSA in regard to the letter of the 23<sup>rd</sup> June (from the Firm) and I am satisfied that the FSA did fulfil its duties in respect of the listing rule. As a consequence I cannot uphold your complaint as the evidence clearly does not support your allegations.

It is also of note that within the letter from the Firm of the 23<sup>rd</sup> June on the front page there is the following warning;

"This document is important and requires your immediate attention. If you are in any doubt as to the action you should take, you should seek your own financial advice immediately from your stockbroker, bank manager, solicitor, accountant or other independent financial adviser authorised under the Financial Services and Markets Act 2000".

This warning is clear and unambiguous. Although your expectations as to how long the FSA would take to complete its investigation were not managed sufficiently, it was clear from the Firms letter, that if you were unclear as to what to do, you should seek independent financial advice.

It is clear that you are dissatisfied with the actions of the Firm in this case. However it should be remembered that the FSA can only be held responsible for its own actions. It is not responsible for the financial decisions of firms. It is clear from the investigation that both the FSA and the Firm operated within the rules which govern them.

#### The FSA handling of your complaint

In the letter, from the FSA dated 16<sup>th</sup> July acknowledging your complaint, the FSA have stated that it "aim(s) to provide you with a response by the 22<sup>nd</sup> July". A letter was issued on the 21<sup>st</sup> July to you, which explained that part of your complaint was being investigated and part of it excluded, however it was not the substantive response you may reasonably have expected to receive. The substantive response was not issued until 26<sup>th</sup> November. I conclude that your expectations as to how long your complaint would take were not managed properly.

The FSA have published service standards which illustrate the timescales in which the FSA aim to deal with the complaints which it receives. At this time the service standard was to have completed 80% of complaints within 8 weeks of the FSA receiving it and 100% within 12 weeks of receipt. Although a letter (dated 23<sup>rd</sup> September) was written to you at the 8 week stage explaining these service standards there does not appear to be a letter at the 12 week stage stating that the case was to go on further than that.

It should be noted that on your request for my office to investigate your complaint the FSA file was requested as evidence for my investigation. It is of note that on receipt of this file it contained insufficient documentary evidence to support the FSA position that the FSA had properly followed its procedures in ensuring that the letter of the 23<sup>rd</sup> June (from the firm) had been through the proper process. This demonstrates a failing within the audit trail of the investigation. This evidence was requested originally on the 3<sup>rd</sup> December 2004 by my office and was not finally received until 16<sup>th</sup> February 2005.

It is of concern to me that the FSA published the conclusion of the investigation without some of the documentary evidence relied upon being suitably recorded in the correct file. However these failings in the FSA record keeping do not in anyway alter my findings in relation to your material complaint.

## My Final Decision

I am unable to uphold the material elements of your complaint. I find no fault with the FSA in its following listing rule 14.1 nor the conclusions of the FSA complaint investigation. I have also concurred with the FSA decision to exclude part of your complaint as explained previously.

I have found that during the investigation the FSA did not manage your expectations sufficiently well as to how long the investigation would take. Furthermore the formal recording of its investigation was insufficient. As a result of this finding I am recommending to the FSA to apologise to you for the failing in managing your expectations as to how long it would take to complete its investigation into your complaint.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner