

17th April 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00056Thank you for your email of 9th March 2015.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I shall not repeat them here.

Your complaint

From your email I understand that you are unhappy with the manner in which the FCA acted following your allegations that Mr B, a director of a firm (Firm T), was responsible for market abuse. You feel that the FCA has failed to comply with its intended objective of ensuring that “the conduct of firms, and with it the interests of consumers and participants in the financial markets, are placed at the heart of the regulatory system and given the priority they deserve”. You add that you believe the FCA hides behind confidentiality far too much and cuts down the complaint to consider only the parts it wants to look at, avoiding responsibility wherever possible.

My position

First, it may be helpful if I set out the scope of the Complaints Scheme.; The Complaints Scheme is designed to consider complaints about the conduct of the FCA. As non-regulated companies (such as Firm T) are not subject to direct supervision or oversight by the FCA, the FCA’s role is limited to considering the issuing of securities, reviewing prospectuses and considering market disclosures (through the listing and disclosure rules). The FCA does not have any legal jurisdiction for the general conduct of a director of such firms.

I now come to your concerns about the FCA’s consideration of the alleged incorrect market disclosures by Director B and/or Firm T which you raised with the FCA’s Market Abuse Team. Firm T is an AIM listed firm. The AIM is a market which is regulated by the London Stock Exchange (LSE) rather than by the FCA, with AIM listed firms being subject to direct oversight by their nominated adviser (Nomad).

Although regulation of the AIM market rests with the LSE, with the conduct of an AIM listed firm being monitored by its Nomad, the FCA does have the ability to intervene if the AIM listed firm is guilty of market abuse. As the FCA explained in its letter of 2nd March 2015, the market abuse regime is intended to address, amongst other things, instances where market participants are manipulating or creating a false impression of the company’s share price (which would include making or releasing false statements).

I understand from the FCA's file that you have contacted the FCA on a number of occasions to highlight what you believe amounts to market abuse by both Director B and Firm T. I know that you feel that the FCA has failed in its objectives but, when responding to your referrals, the Market Abuse Team explained that, whilst it would consider the information you had provided, because it operates under strict confidentiality restrictions it may not be able to update you upon the decision it had reached in respect of your referral.

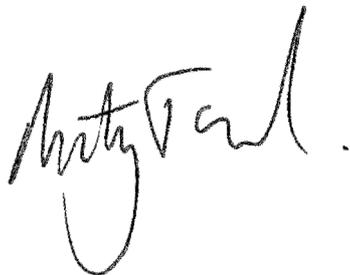
Although I am not permitted to say precisely what action the FCA took when it considered your referrals, what I can say is that the FCA did consider the information you provided, as did the regulators of the AIM market who are also aware of your concerns about the conduct of Mr B and Firm T. I would add that the information provided to me indicates that, following your referral, the regulators of the AIM market indicated that they would consider your complaint and may still be giving consideration to your concerns. If, as a result of any further enquiries which may be undertaken, sufficient evidence of market abuse is identified, then further action may be taken. I must make you aware here that, unless formal action is taken (when a Final Notice, which sets out the outcome of any action the FCA has taken, will be published), the FCA is unlikely to be able to provide you with any further details or a more comprehensive explanation of what consideration was given to your concerns.

Having carefully reviewed the records, I am satisfied that the FCA has taken a course of action which is both reasonable and rational.

Finally, you are concerned more generally about whether the regulatory system has responded adequately to your more general concerns about Mr B. Mr B's conduct about which you have complained relates to a non-FCA approved role with a non-regulated entity and therefore falls outside the FCA's jurisdiction. However, if the FCA were to find clear evidence of market abuse (and I must emphasise here that such a finding has not been made) and take action against him in respect of that, the FCA has assured me that they would consider whether any further formal action was required in relation to other regulated functions undertaken by Mr B.

I appreciate that you may be disappointed with my decision but hope that you will understand that I have very carefully considered the points you have made, and that you may be at least partly reassured that your concerns have not been ignored..

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner