

30th December 2009

Dear Complainant

Thank you for your letter of the 18th August 2009, which details the elements of your complaint against the FSA. This letter sets out my final position on the complaints you have raised. I should immediately say that I do not in any way consider your complaint as having been vexatious.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the FSA-known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your complaint based on its merits and then if I deem it necessary I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>

The Complaint

In your complaint letter to this office referred to above you set out your position with regard to the FSA and its treatment of the Firm. The Firm is a Bermudan registered primary listed issuer with all the disadvantages that follow from that fact from an investor's point of view.

You state that in 2005 and 2006 you "complained" to the FSA about various actions taken by the directors of the Firm. That you have had correspondence with the FSA since that time and the FSA is "still refusing to tell....whether our substantive complaint is being investigated or the outcome of any such investigation". The shares of the Firm were "temporarily" suspended in January 2008 and remain so. You state that the shareholders, such as yourself, have been given "no information on the affairs of the company since the production of the accounts (overdue) for the year to 30th April 2006". You state that the FSA is "unwilling to provide any information as to whether or not an investigation has taken place" and thus you maintain that "there can be no confidence in the FSA as a regulatory body in acting appropriately on a legitimate complaint".

My Position

Having reviewed the documentation available to me I intend to gather together the concerns you have raised in suitable groupings, provide the FSA position on those issues and then provide my position on the matter. These groups of your specific concerns are;

- 1) Pre-emption rights
- 2) Shares offered at more than 10% discount
- 3) Related party transactions

- 4) Property disposal
- 5) Dilution of stake and vote

Once I have addressed these areas I shall turn to the more general issue of how the FSA has dealt with your complaint.

Pre-Emption Rights

In your correspondence with the FSA you have complained about the fact that the Firm released a number of shares at different times which diluted your holding. For example in your letter of 30th January 2006 you state that such shares were released by the Firm prior to the Annual General Meeting in 2005 “without giving the other shareholders the opportunity of purchasing such shares at an equivalent value *pro rata* to their existing shareholdings”. You go on to state that you feel that “we feel that it breaches the listing rules”.

The FSA responded on this matter in its letter of 9th May 2006 stating that “the Listing Rules do not oblige an overseas company with a primary listing to carry out offers on a pre-emptive basis (see LR 9.3.12(4) of the current listing rules)”.

Having reviewed the particular rule and the evidence available to me in regard to this element of your complaint it is clear to me that the FSA is correct in its position with regard to overseas companies and that there is no requirement for a firm in a situation as you have described to make shares available to all shareholders in the manner you have suggested. While that is unfortunate from your perspective the FSA has correctly set out the legal position.

Shares at more than 10% discount

In your letter dated 24th December 2008 you enclose a letter dated 9th September 2005 which alleges a failing on the part of the FSA that as the Firm was allegedly able to offer its shares for sale at more than a 10% discount you contend such action requires shareholder approval under the Listing Rules and hence is indicative of the FSA failing alleged.

The FSA in its letter to you dated 9th May 2006 acknowledged this allegation but noted it could not comment specifically on this matter in relation to this Firm.

Although you have made allegations on this point, it is my view that this particular issue is made impotent by the situation with regard to the Pre-Emption rights position of both this office and the FSA. The 10% rule within the Listing Rules seeks to act as a protection for shareholders who benefit from pre-emption rights which, as is now clear, is not the case in this matter. It is of note that the FSA has also explained to you that you have not provided it with substantive documentary evidence to support your allegations in this regard.

Related Party Transactions

You have alleged to the FSA that the Firm issued shares to “connected person” and as such should have been treated as ‘Related Party Transactions’ requiring shareholder approval under Listing Rule 11.

The FSA in its correspondence with you dated 9th September 2006 has explained that it does govern transactions with related parties under the Listing Rules. In its letter of 22nd May 2009 the FSA has attached an appendix which further explains the situation with regard to such transactions and explains that there are “a number of different criteria for falling as an associate under the LR’s, one of which would be the need to hold a 30% share in a company for it to be treated as a Related Party transactions”.

It is my view, that in the evidence I have seen that you have supplied, you have not demonstrated satisfaction of these criteria. Importantly I should add that even if you had, the FSA would not be able to confirm that satisfaction of criteria nor comment on any actions or decisions taken or not taken by it. Similarly I should add that even if I were to know about such actions or decisions on the part of the FSA I would not be able to disclose it to you for the same reasons of confidentiality enshrined in section 348 of the Financial Services and Markets Act 2000 that have been explained to you by the FSA.

Property Disposal

In your correspondence with the FSA you have suggested that the Firm may have disposed of a property that should have been classified under Listing Rule 10 as a significant transaction.

In the FSA’s correspondence of 22nd May 2009 it has noted that LR10.1.3 (3) specifically excludes transactions of a revenue nature in the ordinary course of business.

I should also add that if your allegations on this point were proven to be fact and such facts satisfied the criteria there is no option of retrospective action within the Listing Rules and as such there would not be any direct remedy available to you through the Listing Rules. Similarly, considering the jurisdictional issues, and the fact that you have not been able to demonstrate that the FSA was aware of these actions by the Firm contemporaneously and thus has potential culpability, it seems to me that there are very limited options available to you for remedy other than direct legal action against the Firm and its directors on this particular point and for that matter with regard to all your issues with the Firm. Clearly this is an important matter which the FSA and this office take seriously, however the FSA has discretion in how it acts in such cases, and it cannot explain its position to you on this particular point due to reasons of confidentiality which it outlined to you repeatedly.

Dilution of Stake and Vote

In your correspondence of 24th December 2008, and its enclosures, you have suggested that attempts to pass resolutions seeking to remove a certain individual from a significant position within the Firm were not passed.

It appears to me from your arguments that you allege that these would not have been passed had it not been for the shares sold to certain individuals previously, which you presumably do not consider to be legitimate (for want of a better word). However while this may or may not be conjecture on your part in my view (and as the FSA has apparently considered it conjecture since the FSA has not made significant comment on the matter) such findings of fact which you are trying to establish with these comments can only be properly established through proper forensic analysis which is most suitably achieved through the legal process. I do accept for myself however that your analysis is possibly well founded.

My views on the matter in its entirety

It is my view that in relation to the substantive matters of your complaint, namely the behaviour of the Firm and the FSA's actions with regard to it, you have not demonstrated sufficient failings on the part of the FSA in relation to its rules. You have continued to correspond with the FSA for some time after it made clear to you in its letter of 9th May 2006 that you were mistaken in some of your allegations, for example as certain Listing Rules do not apply, and that it could not specifically comment on the matters you referred to as a result of confidentiality requirements. It is clear that even though the FSA has on a number of occasions explained to you that it is prevented from disclosing such information to you, you continue to request such information, such as in your letter to this office dated 18th August 2009.

It is also my view that the FSA has in its correspondence repeatedly made clear its position with regard to the appropriate Listing Rules, especially in its decision letter to you dated 22nd May 2009 in which it provides you with all the information you need to appreciate how the FSA is not the appropriate forum for you to achieve the position you require and the remedies that you doubtlessly seek. You have repeatedly chosen not to accept this information, which when considering its being relatively straightforward, and your professional expertise, seems to me an unusual position to take. I assume that you do not wish to take legal action, as has been suggested, for reasons that remain unclear. Clearly your decision not to take your dispute with the Firm to the appropriate forum, namely the courts, is not the fault of the FSA.

The FSA's handling of your early complaint

I have reviewed the FSA's handling of all of your correspondence with it on this matter. I have also asked the FSA to respond formally to various questions that I have put to it, including questions about how it has handled your complaint. "Complaint" is defined under the Complaints Scheme (COAF 1.1.5) as;

“any expression of dissatisfaction about the manner in which the FSA has carried out, or failed to carry out, its functions under the Act other than its legislative functions.” I have put to the FSA that it should have put your letter of 13th April 2006 to its complaints team for an analysis of whether your letter satisfied the criteria above. The FSA has stated in its response to me that;

“We agree that correspondence raising a complaint (as that term is defined in COAF) should be referred to the Complaints team for assessment.”

It has stated that in your case this was not done because of certain comments you had made in the letter, namely that you would “consider” making a formal complaint and that you were “reluctant” to do so. The FSA has made other comments justifying its position in this regard, but those relate to events that would be outside its service standard for acknowledging complaints, which accordingly in my view, do not hold substantial weight for that reason.

In my view the FSA has not been unreasonable in taking such a position however I do consider its position to be far from ideal. From my construction of the definition of “complaint”, as quoted above, there is no differentiation between a formal complaint or an informal complaint provided for in the definition. In my view the key words are “any expression of dissatisfaction” which in your case do apply even though you state you are “consider(ing)” and “reluctant” to launch a formal complaint process. It is precisely situations such as these where the FSA complaints team’s expertise should be sought so that it can apply its experience to handling such matters.

The Latter stages of the FSA handling of your complaint

I note that the FSA has already apologised to my office for delays in it suffered in providing information to my office. I also note that in my correspondence with the FSA I have had differing types of responses from it. There is the confidential note for record that it provided me dated 13th November 2009, which in my view was an excellent piece of work. In fact the FSA has at this late stage informed me that that date on the confidential note was mistake carried over from an earlier stage and in fact should have been dated the 25th November 2009 which was the date the complaints team received it and forwarded it to this office the same day.

My Final View

It is my final view that the FSA’s position with regard to what it can and cannot tell you in relation to the Firm is correct. The FSA has repeatedly explained it cannot provide you with answers to your questions about what the FSA has, is, has not or is not doing in relation to the Firm due to the relevant statutory law. The FSA has provided you with significant explanations of such legal matters and also ancillary information regarding the Listing Rules-which is sufficiently clear for the lay person to understand why certain rules would not be applicable to a firm, such as that in the position of the Firm, as you have set out in

your correspondence. However arising from my preliminary report the FSA accepts that it should apologise to you in respect of the delays involved with the resolution of your complaint and the FSA will be writing to you with its apology following this my final report.

I am sorry that you find yourself in this position, clearly having suffered potential financial loss due to these shares being suspended. The FSA is not responsible for these losses as I hope my decision makes clear. In conclusion I do not uphold your complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner