

15<sup>th</sup> July 2015

Dear Complainant

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00087**

Thank you for your email of 29<sup>th</sup> June 2015. I have completed further enquiries of the Financial Conduct Authority (FCA) and am able to write to you.

**How the complaints scheme works**

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

You can find full details of how I deal with complaints at [www.fsc.gov.uk](http://www.fsc.gov.uk). If you need further information, or information in a special format, please contact my office at [complaintscommissioner@fsc.gov.uk](mailto:complaintscommissioner@fsc.gov.uk), or telephone 020 7562 5530, and we will do our best to help.

**What we have done since receiving your complaint**

We have now reviewed all the papers you and the regulator have sent us. My decision on your complaint is explained below.

As the rules of the scheme under which I consider complaints can be found on our website at [www.fsc.gov.uk](http://www.fsc.gov.uk), I do not intend to set them out fully below.

**Your complaint**

From your email and the papers submitted to me by you and the FCA I understand that your concerns relate to the fact that you have repeatedly requested the FCA to give you a definitive answer as to whether your company – Firm I - requires FCA authorisation, which the FCA has not provided.

Firm I is currently authorised, and you have stated 'I want to have the FCA Part 4A Permissions cancelled for Firm I; but I want to continue to provide the same services to professional investors as we have done in the past without fear of contravening FCA regulations.'

## **My position**

By way of background you first made enquiries of the FCA as to whether your firm, Firm I, requires continuing Part IV permission authorisation in December 2014. You did not receive a definitive response (in the context of a clear ‘yes’ or ‘no’ answer) and submitted a complaint to the FCA Complaints Team on 7<sup>th</sup> April 2015. Discussions between the FCA and you resulted in your withdrawal of the complaint so that your query could be progressed as a “complex query”.

The FCA wrote to you on 29<sup>th</sup> May 2015 and again on 26<sup>th</sup> June 2015 to the effect that it is not the FCA’s policy to comment on whether or not Firm I’s activities fall within the regulatory perimeter, and that the onus falls on individuals/firms to establish whether they are conducting regulated activities as defined by the Financial Services Markets Act 2000 (Regulated Activities) Order 2001.

The letters referred you to the pertinent sections of the 2001 Order, relevant sections within the Financial Services and Markets Act (2000) as well as the Perimeter Guidance Manual, for you to assess your continuing need for authorisation.

The FCA also pointed out that under Section 23 of FSMA a person who contravenes Section 19 is guilty of an offence and may be imprisoned and or fined unless they can show that they took all reasonable precautions and exercised all due diligence before committing that offence. I believe that this was simply intended to inform you of the possible consequences if you choose to de-authorise without giving the matter due consideration, and ‘get it wrong’: I do not consider that it was a threat.

I appreciate that it is because you wish to make the ‘right’ decision that you have sought guidance from the FCA as to whether your business needs authorisation. However, the FCA’s policy on this matter is clear: it does not offer judgements on whether a particular firm requires authorisation or not. Firms are required to seek independent legal or compliance advice if they are not sure whether they need authorisation. I refer you to the FCA website page on authorisations where this is explicitly stated: <http://www.fca.org.uk/firms/about-authorisation/do-i-need-to-be-authorised>.

The FCA’s letters of 29<sup>th</sup> May and 26<sup>th</sup> June were clearly intended to draw your attention to relevant considerations without purporting to give you a ruling on whether or not you required authorisation. In that respect, they clearly fell short of your expectation, but that is a consequence of the FCA’s general policy. The letter of 26<sup>th</sup> June was well-intentioned but, I believe, misguided since it really gave you no further assistance.

## **Conclusion**

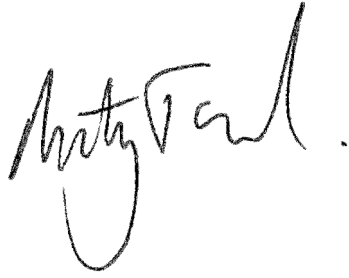
Although I understand that you are unhappy that the FCA has not provided you with a definitive answer to your query, this is not something I am able to consider under the Complaints Scheme. As mentioned in the FCA letter to you of 29<sup>th</sup> May 2015, paragraph 3.5 of the Complaints Scheme states:

*‘The regulators will not investigate a complaint under the Scheme which they reasonably consider amounts to no more than dissatisfaction with the regulators’ general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.’*

While I understand your frustration, the FCA has simply followed its policy of not making definitive advance judgements of whether firms and individuals require regulation. Within that policy, I consider that the FCA tried to be helpful, but inevitably did not meet your expectations.

I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend'.

Antony Townsend  
Complaints Commissioner