

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Jody Ketteringham
Financial Crime and Intelligence Department
Financial Services Authority (FSA)

23 August 2012

Dear Jody

Guidance Consultation: Examples of good and poor practice in banks' defences against investment fraud

This is the Financial Services Consumer Panel's response to the above Guidance Consultation which covers good and poor practice in banks' defences against investment fraud.

The Panel supports the work undertaken by the FSA to ensure banks are taking appropriate steps to detect and prevent investment fraud and is broadly supportive of the guidance set out in this consultation. In particular, we welcome the clarification that banks should continually assess the risk of an account being used for fraudulent activities rather than relying solely on checks when the account is opened. However, we feel the guidance should be enhanced in six key areas:

- Firstly, there should be more emphasis on banks' responsibility to protect consumers who have, or may become, victims of investment fraud. Currently, the guidance focuses on banks' efforts to detect and intervene when a customer appears to have income derived from fraudulent activities.
- Secondly, banks should be required to take steps to prevent consumers making payments to accounts which have been identified as having links with investment fraud, unless the consumer truly meant to make a payment to this account. We recognise there are limitations on banks in terms of avoiding tipping off suspected perpetrators, but we believe there is more banks could and should do in this regard.
- Thirdly, banks should focus greater attention on developing systems and checks to detect potential fraud. The Panel feels the current detection processes used by many banks appear unsophisticated and can even disadvantage or inconvenience customers. We have witnessed this most noticeably in the approach of some banks to treat all overseas transactions as fraudulent unless proven otherwise.
- Fourthly, greater emphasis should be placed on banks' fraud departments to liaise with relevant law enforcement agencies where they have evidence of investment fraud. This should include the Police, Office of Fair Trading and Serious Fraud Office.
- Fifthly, front line staff should be actively encouraged to check unusual cash payments or withdrawals with customers to make sure the transaction is

legitimate. The Panel has seen how this best practice can benefit consumers - one recent example saw a customer prompted to check their rights with Trading Standards after a bank queried the nature of a substantial payment to a claims management company.

- Finally, the FSA's thematic review report highlighted how *'the lessons ... can be applied to banks' handling of other types of fraud and criminal conduct affecting their customers'*.¹ Reflecting this, we believe the guidance should more clearly state that best practice should be applied to detecting and preventing wider fraudulent activities, not just investment fraud.

Although the Panel supports the FSA's intention to ensure banks are taking appropriate steps to protect their customers against investment fraud, we also firmly believe the FSA should be doing more to protect consumers that are wrongly suspected of committing fraud. We have raised this issue with the FSA separately.

At the moment, when a bank suspects an individual has committed fraud, the customer's account is typically closed with little or no explanation. Banks then add the consumer to an industry database run by CIFAS. This alerts other banks that the individual may have been involved in fraudulent activities leading to the further withdrawal, or refusal to provide, banking services. Given that holding a bank account is an essential part of participating in a modern society, we feel it is unacceptable that potentially innocent consumers could find themselves trapped in this position with no way to find out what they have been accused of or clear their name.

The Panel firmly believes there is more the FSA should do to ensure consumers trapped in this position are treated fairly by their bank. We would ideally like an independent appeals procedure to be established that allows consumers that feel they have wrongly had their banking services withdrawn or added to the CIFAS database to refer their case to an investigative body. While establishing such a procedure may be beyond the remit of the FSA, we do believe the FSA should:

- collect data to establish the level of accounts forcibly closed for suspected fraud and the proportion subsequently found to be guilty, innocent or unproven – since the Money Laundering Reporting Officer will already have these records, this information is unlikely to be expensive to collect;
- utilise the data collected to assess whether individual banks are being *heavy handed*, or inefficient, in their approach to determining whether a consumer has committed fraud;
- ensure banking conduct supervisors look into the process used by banks to detect potential money laundering, and the actions taken where fraudulent activity is suspected, to ensure this is proportionate;
- require banks to compensate customers for any losses or inconvenience where banking services have been wrongly withdrawn.

I hope that you find these points useful and look forward to seeing publication of the final guidance in due course.

¹ Financial Services Authority (FSA), *Banks defenses against investment fraud: Detecting perpetrators and protecting victims*; June 2012

Yours sincerely,

Kay Blair
Panel Vice Chair