

CASE SUMMARY

Complaint against the Securities & Futures Commission about impropriety in handling the complainant's application for a replacement registration certificate

The Complaint

The complainant complained against the Securities & Futures Commission (SFC) for -

- (a) failure to inform him of the proper procedures for applying for a replacement registration certificate; and
- (b) failure to take adequate follow-up action on his application for a replacement certificate.

Opinions and Conclusion

2. The complainant has been continuously registered as an investment adviser by the SFC since 1987. In May 1997, he made a telephone inquiry to the SFC regarding the currency of his registration certificate. He received a letter from the SFC on 30 May 1997 informing him to pay a fee for the provision of a replacement certificate, and he paid the fee on the following day.

3. On 10 June 1997, the complainant received a letter from the SFC requesting him to accept two conditions for registration as an investment adviser. He wrote to the SFC on 11 June 1997 clarifying that he was not a new applicant but only requesting the issuance of a replacement certificate. On 16 June 1997, he received two letters from the SFC repeating its mindedness to impose the conditions on his registration and explaining that all new applicants as well as existing registrants were required to agree to the imposition of the conditions. He sent a letter to the SFC on 18 June 1997 requesting either the immediate issuance of the replacement certificate, or refund of the fee paid and an explanation as to why the certificate could not be issued.

However, he did not receive any response from the SFC up to the end of October 1997.

4. The SFC explains that registration certificates predating 1989 had a currency of one year and were required to be renewed year by year. Starting from 1989, registrants have the option, subject to payment of a fee, to replace their certificates with new certificates which do not include a yearly limit to their currency. However, registrants who prefer to maintain their pre-1989 certificates will still have the "old" certificates recognised as being valid.

5. This Office notes that under the Securities Ordinance, the SFC has the power to impose and amend conditions on registrations. The two conditions involved in the present case were introduced in March 1993 and October 1994. The SFC says that whether or not the conditions will be imposed on a registration will depend on the particular circumstances of the registrant's case. For this reason, the SFC could not impose the conditions on all registrants on a wholesale basis when the conditions were introduced. In this respect, the SFC has taken the practical approach of dealing with the registrations as and when a related matter arises, most notably as and when registrants communicate with the SFC on matters relating to or necessitating the issuance of a new registration certificate. When an appropriate case for imposing one or both of the conditions comes to the notice of the SFC, a letter of mindedness is first sent to the registrant whereby he is informed that the SFC is minded to impose one or both of the conditions and invited to submit details of any objections he may have to such conditions.

6. The SFC explains that the main purpose of its letter of 30 May 1997 to the complainant was to ascertain whether he was interested in obtaining a replacement certificate subject to payment of a fee or whether he preferred to retain his old certificate. Only after he confirmed his decision to apply for a replacement certificate did the SFC proceed to assess whether this would be an appropriate case to impose the conditions and to issue him a letter of mindedness to impose the conditions.

Complaint point (a)

7. This Office considers that in its letter of 30 May 1997, the SFC should have informed the complainant of its mindedness to impose the conditions. Besides, in accordance with the SFC' s internal procedures, a condition letter should be prepared upon the applicant' s verbal acceptance of the condition. As a matter of fact, the complainant had never agreed to the imposition of the conditions. On the other hand, the SFC' s letter of 30 May 1997 clearly stated that a new certificate would be issued upon receipt of the fee. Taking these into consideration, this Office is of the view that complaint point (a) is substantiated.

Complaint point (b)

8. The complainant claimed that he had sent a letter to the SFC on 18 June 1997 by fax and mail, but the SFC denies having received the letter. This Office considers that even if the SFC had not received the letter, it should not have left the matter in abeyance and taken no action for some five months. Although the complainant had not contacted the SFC after 18 June 1997, the SFC should have taken timely action to ascertain his intention, especially when it had already received the fee for the replacement certificate. Therefore, complaint point (b) is partially substantiated.

9. Overall, The Ombudsman concludes that the complaint is substantiated.

Recommendations

10. The Ombudsman recommends the SFC to consider -

- (a) informing registrants of the SFC' s minded intention to impose conditions on their certificates of registration at the earliest opportunity; and
- (b) ensuring that outstanding applications are followed up within a reasonable period of time.

The SFC' s Response

11. The SFC does not agree that the case should be considered as substantiated but accepts in principle the recommendations put forward. In relation to the first recommendation, the SFC will, in its first response to enquiries on replacement certificate, remind registrants of its powers rather than notify them in detail of any mindedness to impose further or vary existing conditions; thereafter, at the earliest opportunity, the SFC' s staff will inform registrants of its mindedness to impose or vary conditions of registration and the details. The SFC has subsequently fully implemented the two recommendations by issuing an internal memo to all staff of its Licensing Department and amending the relevant section of its Procedures Handbook.

Office of The Ombudsman

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