

**Ombudsman Determination**

**CIFO Reference Number: 16-000410**

**Complainant: [The complainant]**

**Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.<sup>1</sup>

The complaint relates to an investment into the [fund] transferred to [Company X] which received its Class D Investment Business Licence on [redacted for anonymisation purposes].

**Background**

[The complainant] invested £100,000 into the [fund] on 19 November 2014 on the advice of [redacted for anonymisation purposes], his independent financial adviser. [The independent financial adviser] subsequently joined [Company X] when it was granted its licence by the [jurisdiction 1] Financial Services Commission on [redacted for anonymisation purposes]. For the purposes of this complaint against [Company X], the relevant dates are therefore from [redacted for anonymisation purposes] when [Company X] took on responsibility for the investor's portfolio. We consider that [the complainant] became a client of [Company X] as at that date. [The complainant's] stated investor risk tolerance profile, as documented by [Company X], was assessed as being moderately cautious.

On 29 July 2016 [Company X] informed clients that [the fund manager] had taken the decision to suspend the [fund].

Subsequently, on 9 August 2016, the [jurisdiction 2] Financial Services Commission released a statement that the [fund] and the fund manager, [redacted for anonymisation purposes], had been placed into administration and [redacted for anonymisation purposes] had been appointed as administration managers. As a consequence, [the complainant's] £100,000 investment into the [fund] is no longer accessible. On 4 October 2016, [Company X] ceased commercial operations and the Royal Court of [jurisdiction 1] appointed [the administration manager] as liquidators of [Company X].

The complainant has not received any distributions or returns of the funds invested and subsequently complained to CIFO seeking compensation for what he considered to be the loss of his investment.

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<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

## Findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In line with my statutory duty to disclose evidence, I have provided copies of the evidence which I have relied upon in reaching my decision. The complainant has received details of a link and password where the evidence can be viewed.

### *Risk Rating and Suitability of the [redacted for anonymisation purposes] Investment*

In considering the suitability of the [redacted for anonymisation purposes] investment recommended to the complainant, I note the following risk considerations drawn from documents provided to us by [the administration manager], the Court-appointed administrator for [Company X]:

- The fund was to have been invested entirely in [redacted for anonymisation purposes] creating a geographic concentration of local economic and political risk;
- The fund was to have financed the factoring of receivables for commercial enterprises in the [redacted for anonymisation purposes] marketplace (a higher risk, higher return form of commercial financing), a single asset class from a specific sector representing a significant concentration risk;
- The funds raised in GBP were invested and the returns were to be paid in local currency potentially exposing the investor to foreign exchange risk (which risks were described as being fully hedged by the underlying factoring companies presumably at significant cost);
- The potential for fraud by parties involved in the [redacted for anonymisation purposes] business activities;
- Potential for increase in the default rate of the factoring operations in [redacted for anonymisation purposes];
- The ability of the factoring companies to effectively deploy the funds raised in revenue-generating factoring activity;
- Lack of investment history of the new fund;
- Risk of the investment return being insufficient to pay dividends at the rate contemplated;
- Liquidity risk of there being insufficient cash on hand to pay dividends as contemplated;
- Limitation on redemptions creates an inability to access funds for a set period;
- Leverage risk due to the level of debt taken on by the fund in relation to its capital;
- And numerous other general risks set out in the disclosure documentation.

I also note the following disclosure statements by [the fund manager] extracted from the [fund] Scheme Particulars and the [fund] Supplemental Particulars provided in conjunction with the Scheme Particulars:

*“There are significant risks associated with an investment of the type described in this document, including the risk of loss of the entire amount invested.”*

*“In view of the risks noted below, the Fund should be considered a speculative investment and the investors should invest in the Fund only if they can sustain a complete loss of their investment.”*

Given the above, I conclude that the [fund] was a high-risk investment. Such an investment would not be suitable for anyone who was not determined by a robust know your client process to be a high-risk investor. [The complainant] was determined to be a moderately cautious investor.

While I acknowledge that a portfolio approach to investment recommendations might result in a modest proportion of high risk investments being included in an overall investment portfolio for a non-high risk investor, there was no evidence in this case of any such portfolio strategy being agreed with the complainant and documented in the [Company X] client file.

I therefore conclude that the [fund] was unsuitable for the complainant and compensation should be paid to reflect both the loss on the investment and the opportunity cost, that being the return that would have been made on the invested amount had it been invested suitably for an investor of the complainant’s risk rating.

#### *Loss and Opportunity Cost*

I consider that it is reasonable for [the complainant] to receive compensation for his lost investment. Whilst the initial investment was £100,000, the investment would have changed in value from the date of the original investment to 16 April 2015, when [Company X] became responsible for the portfolio. Although I am unable to determine the exact value of the [fund] at any specific point, it would be reasonable to apply an appropriate benchmark representing a reasonable return for the period from the point of initial investment to 16 April 2015 which corresponds with the complainant’s risk rating.

The benchmark used in the appendix to this determination sets out that, appropriately invested, the initial investment would be valued at £102,555.25 on 16 April 2015 when [Company X] assumed responsibility. I also consider it reasonable for the complainant to receive compensation in accordance with what £102,555.25 would have returned had the funds been invested in appropriate moderately cautious risk investments from 16 April 2015 to the present date.

The benchmark used in the appendix to this determination sets out that, appropriately invested, the return would be £5,351.33 on the £102,555.25 invested as at 16 April 2015.

## Determination

My determination is that [Company X] should pay [the complainant] £102,555.25 to compensate for the loss on the investment and £5,351.33 in opportunity costs for a total of £107,906.58.

## Next steps for [the complainant]

We understand that, since we sent our preliminary determination, you have received communication from [the administration manager].

In terms of the prospect of funds being available to pay compensation as determined by CIFO in this matter, we have been in contact with [the administration manager], who have advised us as follows:

*“[The administration manager], as Court-appointed liquidator for [Company X], is reviewing the matter with legal advisers and will be providing affected customers with a further update in due course with respect to the final position of insurance cover. This will consequently determine the ability to pay any amounts from the liquidation estate of [Company X] and, in the event of the insurance cover being denied, [the administration manager] has confirmed that no payments will be made as [Company X] is insolvent.”*

After taking the above into account, you must confirm whether you accept this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **12 May 2017**. The determination will become binding on both parties if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of **12 May 2017**, please contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Company X] of the status of the determination once the deadline has passed.

Douglas Melville  
Principal Ombudsman and Chief Executive

12<sup>th</sup> April 2017

## Appendix

### Opportunity Cost Calculations

An appropriate moderately cautious risk benchmark has been sourced from the ARC Private Client Indices [PCI]. This benchmark reflects [the complainant's] risk rating.

Date of Initial Investment	Amount Invested	Transfer Date	Value at Transfer Date
19 November 2014	£100,000	16 April 2015	£102,555.25

Date Invested with [Company X]	Amount Invested	Latest Indices date available or Exit Date	ARC Cautious
[redacted for anonymisation purposes]	£102,555.25	28 February 2017	£5,351.33