

Internet Unit
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

8 October 2001

For the attention of the Internet Unit

The Consumer Panel welcomes this opportunity to respond to the Discussion Paper, 'The FSA's approach to the regulation of e-commerce'. While we do accept that the development of e-commerce will bring significant benefits for consumers, we also recognise that there could also be potential problems with the issue of control over the global provision of financial services, the development of international standards, the security risks for consumers and the need for good consumer information especially when consumers may not be protected by the UK regulatory framework.

We agree with the FSA's analysis in Chapter 4, 'International context', but we are concerned that the identification of risks to the consumer could be understated. The differences in the approach to and scope of regulation may encourage more firms to base themselves in countries where the level of regulation is lowest. This would enable them to cut their regulatory costs and offer what may appear excellent deals to the consumer. The Discussion Paper and the NSOS research suggests that there is at present little evidence that UK consumers are investing through e-commerce. However, this could change comparatively quickly. And, in any event, consumers are likely to use e-commerce for other financial transactions as well as investing - eg for banking, credit, mortgages and insurance.

Regulation through global co-operation and harmonisation of core standards are essential but these international initiatives are often slow to develop and cumbersome to implement in a very fast moving technology based market. We would suggest that the FSA and its international counterparts give a high priority to developing a simple system whereby consumers can find out in which country a firm is based, what level of protection exists, and what systems of redress are in operation. This should be in standard format.

In the EU, we are aware that Member States have only until 16 January 2002 to implement the requirements of the Electronic Commerce Directive. The Panel notes that the single market provisions of the Directive introduce a "country of origin"

approach, requiring Member States to ensure that service providers established in their jurisdiction comply with all domestic requirements when providing services across the EEA via the Internet and solicited e-mail. We appreciate the advantages of a “country of origin” approach from a regulatory perspective in that it should make any regulatory action that may be necessary easier to implement. However, from a consumer perspective, the advantages are not so readily apparent. On the contrary, there are risks that the consumers will sign up for services from firms in other Member States without realising that they will be subjecting themselves to levels of protection that are different – perhaps inferior – to those applicable in respect of providers established in the UK.

We are very concerned about consumer understanding in this area and suggest that the FSA needs to be proactive in providing consumers with a straightforward warning. If people want to deal with foreign institutions over the Internet, they should do so with their eyes open to the fact that the system of consumer protection operating in the country of origin will apply and that this may be different from (and inferior to) that pertaining in the UK. If people can also be directed to an information source that enables them to compare and contrast the regulatory standards and levels of protection available in different jurisdictions, so much the better.

On the question of consumer security, there is a limit to the number of passwords and amount of personal security information that any individual can commit to memory and recall at a moment’s notice especially if they have a number of accounts all requiring separate passwords, many of which are changed at regular intervals for security reasons. It is simply not realistic to expect consumers to remember all these details without writing them down somewhere. The NSOS research results show that 83% of users write their account passwords down, presumably because they find it impossible to remember them. This raises issues of liability in the event of fraud if the consumer is in breach of the firm’s terms and conditions. The Consumer Panel believes that the onus for developing user-friendly security should be on the industry. Some credit card companies are already investigating ‘no-fraud guarantee’ systems for their Internet sites and we would recommend that FSA explores this approach with the industry. The challenge of fraud prevention should not be met by expecting consumers to remember increasingly complex information.

We accept that security is a shared responsibility between consumers and industry and there is a balance to be struck. The Discussion Paper, however, does place disproportionate emphasis on the obligations of the consumer without considering equally what more the industry could do to reduce the threat of fraud. There is clearly a role for consumer education and for high quality information about firms who do business on the Internet so that consumers can check, for example, for on-line scams. We also believe that the industry could do more to raise awareness among consumers about the importance of security information such as the padlock and the need for regularly updated anti-virus software.

Finally, I should say how helpful we found it to have questions of particular interest to consumer groups highlighted by shading in Annex F. We have not addressed all those questions, but have picked out what we consider to be the main issues and hope that other consumer groups will have highlighted any questions they are particularly concerned about.

We hope that these comments are helpful.

Yours sincerely,



Colin Brown
Chairman
FS Consumer Panel

FS Consumer Panel can be contacted c/o Consumer
Panel Secretariat at the FSA

Tel: 020 7676 0720 Fax: 0207 676 9711

Email: enquiries@fs-cp.org.uk

Website: <http://www.fs-cp.org.uk>