

25 October 2003

Ms Eve Engledow  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ



16 Park Crescent  
London W1B 1AH

Tel: 020-7612 7039  
Fax: 020-7612 7034

Email:  
robertblanks@icsa.co.uk

Dear Ms Engledow

**Re Treasury Shares: A consultation on the proposed changes to the Regulated Activities order.**

I am pleased to be able to submit this brief response to the above consultation on behalf of the Institute of Chartered Secretaries and Administrators.

*Q1 Do you agree that, in practice, companies that buy back their shares and cancel them pursuant to s 160(4) and s 162(1) of the Companies Act 1985 carry out such transactions only infrequently and thus are not caught by the business test?*

Agreed.

*Q2 Do you agree that companies should not have to obtain authorisation from the FSA in order to buy back their own shares or sell treasury shares on a frequent basis?*

Agreed

*Q3 Should companies that wish to buy back their own shares or sell treasury shares be required to use the services of a broker or other authorised person?*

We believe that companies should have the flexibility to choose although we doubt that many companies would not choose to use a broker as it helps to ensure an arms length transaction.

*Q4 Do you agree that a new exclusion should be added to the Regulated Activities Order so that a company buying its own shares to hold in treasury or selling treasury shares pursuant to the Companies act (Acquisition of own shares)(Treasury Shares) Regulations 2003 is not carrying out a regulated activity? The alternative of leaving the legislation as it is would require firms to rely on (i) not carrying out such transactions frequently; (ii) seeking FSA authorisation; or (iii) using an authorised person.*

We believe that it is essential that such an exclusion should be added to the Regulated Activities Order.

*Q5 Do you agree that our proposed amendments to the Regulated Activities Order achieve the goals set out in this paper?*

The proposed changes do appear to have the desired effect.

*Q6 Do you agree that a company wishing to buy back its own shares for holding in treasury or selling its treasury shares should be able to take advantage of the article 43 exemption or the article 69 exemption? I.e. are there valid policy reasons for allowing a company to make such communications themselves or should they be required to make such communications through an authorised person?*

We believe that companies should ordinarily be able to take advantage of the article 43 exemption.

*Q7 do you agree that companies wishing to buy back their own shares for holding in treasury or selling their treasury shares will be able to bring themselves within the article 43 exemption as described in paragraph 34 or the article 69 exemption as described in paragraphs 35-36?*

We believe that companies will normally be able to bring themselves within the article 43 or the article 69 exemptions as described.

*Q8 Are there situations when a company dealing in its treasury shares pursuant to the regulations should be exempt from the financial promotion restriction but will not be able to bring itself within the article 43 exemption or the article 69 exemption? If so, what are these situations and why should there be a wider exemption to cover them?*

We are not aware of any such situations.

Yours sincerely

Robert Blanks FCIS MCT  
Deputy Director  
Policy Unit