

Eve Engledow
FSMA secondary legislation consultation responses
Financial stability and Regulatory Policy Team
Room 4/23
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Ms Engledow

FSMA two-year review: Changes to secondary legislation

We are pleased to provide our thoughts and comments on the proposed changes to secondary legislation under the Financial Services and Markets Act 2000 in respect of its application to corporate Trustee and Depositary activities. Other 'specialist' responses and / or a general response to this paper may be submitted on behalf of The Royal Bank of Scotland Group, at a later date.

Due to the specialist nature of our business our comments are in turn restricted to the proposed changes affecting the Regulated Activities Order and Open-Ended Investment Companies.

Changes to the Regulated Activities Order (RAO)

In relation to the proposals for theatrical debentures we believe that amending article 77 of the RAO could have significant consequences for other forms of debenture. Legal opinion obtained by us indicates that in order for an investment to be classed as a debenture there must be an obligation to repay the investors capital investment. This would not appear to be the case with theatrical debentures and by inserting the words *a present or future* (indebtedness) in the revised article may inadvertently allow other manufactured investment vehicles to qualify as debentures which would otherwise have been excluded under the current wording.

Open-Ended Investment Companies

We support the general principle that the requirement for Oeics to have an annual general meeting should be removed for the reasons outlined in section 10.9 of the paper. However we believe that the proposed changes to the legislation will make it difficult for most schemes to take advantage of the relaxation envisaged. Schemes aimed at retail investors will find it virtually impossible to get the support of *all* shareholders entitled to vote. In our view the Oeic regulations should be amended to either remove the need for an AGM altogether or to allow an AGM to be dispensed with if passed as an ordinary or extraordinary resolution at a meeting of unit holders.

With regard to the requirement to publish certain documents in the Edinburgh or London Gazette under regulation 78 of the Oeic regulations we would agree that this regulation should be revoked.

Yours sincerely

Alan Calder
Senior Compliance Manager