

CONSULTATION QUESTIONS SUMMARY

RESPONSE FROM CHRISTOPHER POWLES

Q1: Are the current exemptions allowing appropriate numbers of high net worth and sophisticated investors to become certificated?

Answer: The mechanics of people getting certified has caused me problems but I am not in a position to judge the wider picture of whether the actual total number in the UK who are certified is appropriate.

Q2: If no to question 1, is this posing a problem for smaller firms seeking to raise capital via unlisted equity and for investors? Please give examples where appropriate.

Answer: n/a

Q3: Do you agree that promotions should be allowed on the basis of a reasonable belief that an individual is either a certified high net worth investor or a certified sophisticated investor?

Answer: Yes. I agree most strongly with this. In fact I would very much recommend that this idea is taken one small step further. If the rules worked as the question suggests it would help. What would help more is if a promotion could be made to someone if there is a reasonable belief that the person falls within the rules i.e. even if the actual process of that person getting a certificate has yet to be done. Then to ensure the necessary protections exist, the law can stipulate that prior to the actual money being invested, at that point the full certification must be produced. Hence – allow the promotion to be sent on a reasonable belief test that the person is a HNWI or SI but only allow the cash to be taken by the company when the actual certificate is produced.

Q4a: Should potential investors be able to self-certify that they qualify as high-net worth individuals?

Answer: Yes.

Q4b: Do the majority of sophisticated investors already meet the high net worth criteria?

Answer: A majority almost certainly does but I believe there will be a big minority who strictly speaking do not. This is because many angels have arranged their finances in such a way that their cash etc is in a trust, investment company or other entity that legally is separate to them.

Q4c: If yes to Q4a, should the self-certification exemption replace or be introduced alongside the current high net worth exemption?

Answer: Replace.

Q5: Should the net assets test for self-certification by high net worth investors be increased to £500,000, remain at £250,000 or be set at another level? Please give reasons and evidence for your choice.

Answer: Keep as is – the points in para 4.12 of the consultation document are ample reason for this.

Q6: Do you think a test for self-certifying as a sophisticated investor should be introduced alongside the current regime?

Answer: I think it is the right thing to have self-certification if there are the appropriate criteria laid down for one to judge oneself against – but this does not need to be alongside the current regime. I see no reason why it can not replace it.

Q7: Do you agree with the proposed criteria for sophistication? What changes do you suggest and why?

Answer: The criteria seem fine.

Q8: Do you think self-certifying as a sophisticated investor without detailed criteria to test against should be introduced?

Answer: No.

Q9: Out of models 1, 2 and 3, which do you think provides the most appropriate balance between investor protection and facilitating investment in SMEs, and why? Please provide examples or supply evidence where appropriate.

Answer: 2. Why 2 is better than 1 or 3 is that it provides the right balance of ease of doing business and investor protection.

Q10: Should amendments equivalent to those made to the Financial Promotion Order be made to the CIS Order?

Answer: I don't know enough about the CIS Order to be sure but if it applies to ECF's then the answer if I went into it fully is very likely to be yes.

Q11: What other regulatory issues are proving a constraint on business angel investment?

Answer: See Q 12 below for what I regard as a key issue.

Q12: Are there particular regulatory barriers preventing angel syndication?

Answer: The actual formation of business angel syndicates or clubs in the first place is heavily constrained by regulation. When 2 or more angels wish to co-invest and also share deal flow, market intelligence, perhaps recruit an analyst to help them etc this whole activity needs to be regulated as it falls within the

definition of investment activities. Most entrepreneurs are unwilling to deal with the bureaucracy and cost this entails and so don't bother to form the syndicate. A significant loss to the UK of early stage investing is the result. Either FSMA needs to be changed so that the investor syndicate does not need to be regulated or some form of collective investment vehicle should be allowed that invests its own funds and hence does not need to be regulated but which does not then suffer a double charge to tax (which is the current problem if, for example, a syndicate is done through a private limited company).

Q13: What regulatory constraints or costs impact on access to equity finance for growing firms?

Answer: Again see above in Q 12 for the key problem.

Q14: Is there an under-provision of private sector intermediation in this area and if so, what are the causes?

Answer: When I founded Pi Capital (arguably the UK's first syndicate pro-actively managed for the investors) we had no difficulty whatsoever in finding angel clients (i.e. our syndicate members). A key reason for this was the fact that Pi Capital (the management company) did virtually all of the work for them in sourcing, evaluating and monitoring investments. Hence we could include in our syndicate those whom I called "non-active" business angles i.e. people who invest but only have the time to assist to a limited degree with deal sourcing, due diligence, non-ex directorship work and such like – the hallmarks of a traditional "active" angel.

The above, without any doubt, clearly demonstrates that there was then (and I believe there still is) a strong unfulfilled demand from would be angels for an intermediation service acting in their interests in a pro-active and professional way doing most of the work for them. The government should consider how this pool of what I call "non-active" business angel money could be tapped into further. The potential pool of cash they have for early stage investing is far, far greater than regular active angels.

The key causes of the under-provision of an intermediation service to these people is the combination of the issue in 12 above and the cost of providing the service. It is difficult to make a management company economic unless it draws heavily on or consists mostly of a few "archangel" investors who do most of the work, not for a salary but for a privileged investment position (e.g. some options or a carried interest on the others' investment). The government can help by making angel syndication from a tax and regulatory point of view as simple and attractive for high net worth individuals as possible. Also there are some detailed EIS as well as tax and regulatory issues I would be pleased to go through with the SBS if the SBS so wishes.