



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

Legal & General Group Plc
Legal & General House
Kingswood
Tadworth
Surrey
KT20 6EU.

Tel: 01737 374335

E-mail: adrian.boulding@landg.com

27 May 2004

Dear Ms Engledow,

Re: Financial Services and Markets Act two year review: Changes to secondary legislation

I am writing in response to the above mentioned consultation on behalf of Legal & General Group Plc.

You will find detailed responses to the questions relating to the impact of FSMA on employers offering pension products attached.

Should you require further clarification on any of the points made, please do not hesitate to contact me. I will of course be happy to discuss.

Yours sincerely,

Adrian Boulding
Pensions Strategy Director

Response to HMT Consultation Document Re: Financial Services and Markets Act two year review: Changes to secondary legislation

10. Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1(c))? If not, which of options 1(a) and (b) do you prefer?

Legal & General have extensive experience of work based pension schemes, in both occupational and Stakeholder/Group Personal Pension Plan form. We concur with the analysis from the Association of British Insurers that the current form of the Financial Promotions Order is a major worry to employers that are keen to provide good workplace information to their employees regarding the pension available at work. The FSA publication "Helping your employees with their pension options", whilst clarifying the legislation, only serves to underline to employers how easy it is to cross the line of the Financial Promotions Order.

We support option 1(c), namely that there should be an exemption for both real and non-real time promotions by employers. We believe that it would result in inconsistent communication if only one were exempted.

11. Do you agree that any exemption should be subject to conditions and not be unrestricted?

Whilst we agree that some conditions should be applied in the interests of consumer protection, we feel that the exemption needs to be drawn as widely as possible and with the minimum number of clear cut conditions. Otherwise there will be a danger that employers will be confused by the conditions, which would put us back where we are today, with employers frightened to communicate to employees about pension options at work as they are confused over which communications are caught by the FPO.

12. Do you agree with the conditions outlined above?

We believe that the only condition should be that the employer itself is making a financial contribution to the pension scheme. This is a relevant and important condition as we cannot see that employers who are not prepared to contribute have any business advising on pensions. It will also underline the importance of an employer contribution to pension schemes.

We do not believe that any of the other proposed conditions merit inclusion. They would serve to complicate the exemption and spread confusion amongst employers as to whether or not the exemption applied to them. Commercial benefit can be particularly difficult to interpret - Legal & General has at times provided computer

software to employers, free tickets to pensions conferences and corporate hospitality to employers who have chosen our Stakeholder Pension. We do not believe that any of these offers have encouraged employers to mislead their employees, but employers could well be concerned or confused over whether such benefits could, in hindsight, be regarded as commercial benefits. We do not therefore believe that there should be a condition relating to no commercial benefit in the exemption.

13. Do you think that there should be other conditions?

No. The exemption needs to be simple and clear cut or it will not achieve its intention of giving employers the confidence to talk to their employees without fear of the Financial Promotions Order.

14. Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employers?

No. We do not believe that it is practical or reasonable to expect an employer to be able to distinguish when advice on the workplace pension scheme moves from being generic to individual.

15. If so do you think that limiting the ability of the employers to make promotions by a requirement that they do not provide pension advice in relation to an employee's individual circumstances is an appropriate condition?

Not applicable.

16. Do you think that limiting the ability of employers to make promotions by reference to the definition of the activity of advising in article 53 ROA is an appropriate condition above?

No. We do not think it is either practical or reasonable to expect an employer to recognise when they would be crossing this boundary.

17. Do you think that the limiting the ability of employers to make promotions by prohibiting reference to unfavourable comparisons with other pensions is a viable alternative condition above?

No. In the interest of creating a wide and clear exemption from the Financial Promotions Order we do not support this limit. We believe that consumer protection is still adequately served by the criminal offence of making false or misleading statements and the requirement that documents and the sale are subject to FSA conduct of business requirements.

18. Do you agree that there should be no restriction on which employer's representatives can promote the employer's pension schemes?

We agree with this proposal.