

30 March 2004

Informal Capital-Raising Consultation Responses  
Enterprise Team (4/N2)  
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Dear Sirs

**Re: Informal capital and high net worth and sophisticated investors: A consultation document on proposed changes to the Financial Promotion Order**

APCIMS is the Association of Private Client Investment Managers and Stockbrokers. We represent some 228 firms operating from over 400 sites in the UK and continental Europe and acting for the private investor (a list of members is attached). Our firms have some £250 billion funds under management and act in all areas of the professional financial industry for private clients. In April 2002, the European Association of Securities Dealers merged with APCIMS thus enhancing APCIMS' role in continental Europe.

APCIMS read this well written consultation paper with great interest. APCIMS is unsurprised by the Treasury findings that the current exemptions are not working as intended. In discussions with our members we found that many had a decided as a matter of policy not to provide certificates. This was because of concerns about the possibility of a certified investor taking action against the firm at a later date if their investment failed.

We note the concern that the current regime hinders the fund raising of some smaller businesses and that there is a need to allow such businesses to market themselves to high net worth and sophisticated investors in order to acquire the necessary finance. We welcome the initiative to replace the current arrangements with one based in self-certification. This will ensure that finance can flow more easily to the smaller businesses and this in turn will benefit the economy.

Our comments on the proposed models and the draft statutory instruments are set out on the attached sheets.

If you wish to discuss our comments, please call me.

Yours faithfully



Katharine Green-Armytage  
**Head of Compliance**

## **APCIMS' comments on HM Treasury consultation document on proposed changes to the Financial Promotion Order**

**Model 1** propounds that high net worth individuals would self-certify that they meet the high net worth criteria. APCIMS supports this proposal and suggests that it be introduced alongside the existing exemption for high net worth individuals. The consultation paper also invites comments on whether the move to self-certification should be coupled with a higher net assets test, for example, to £500,000. Although the inclination to introduce this higher test is understandable, APCIMS believes that a single net assets test should be available for all high net worth individuals whether they self-certify or rely on the current regime.

With regard to the draft statutory instrument to implement Model 1, APCIMS only comment relates to Schedule 1, article 48(3) which provides that the validity of a statement is not affected by a defect on the wording. APCIMS believes that the wording of this statement should be strictly adhered to in order to ensure that there is no abuse or misrepresentation of the self-certification regime. Allowing the validity of the statement to be unaffected by deviations from the wording undermines its value as a tool to support self-certification. This comment also applies to the similar clauses in the draft Schedules for the other Models.

**Model 2** incorporates the changes suggested in Model 1 alongside an additional new test for sophisticated investors. The current sophisticated investor test would remain for those wishing to be certified in respect of a wider range of investment products. Model 2 proposes that investors could self-certify that they meet certain criteria for establishing sophistication.

APCIMS supports the Treasury's intention of creating an objective test for sophisticated investors. However, we suggest that the criteria could be expanded to include directors, entrepreneurs and other business people who may have significant knowledge and understanding of financial markets.

**Model 3** incorporates the changes suggested in Model 1, retains the current sophisticated investor test and introduces an additional test for self-certified sophisticated investors which is less prescriptive than that outlined in Model 2. Model 3 will allow anyone who regards themselves as sufficiently knowledgeable to self-certify as a sophisticated investor in respect of investment into unlisted firms without detailed criteria to judge themselves against.

APCIMS notes the Treasury's hesitancy regarding this model and agrees that there is a danger that it could result in self-certifications by inappropriate investors. However, our members believe that these concerns are misplaced and that Model 3 is most likely to achieve the Treasury's objective of enabling small companies to raise capital by promoting to self-certified sophisticated investors.

In conclusion APCIMS suggests that the Treasury proceeds with Model 3. This Model incorporates the changes in Model 1 which we endorse and it also allows for self-certification for sophisticated investors.