

Our ref: ALG/JT-D8403

Your ref:

31 March 2004

Informal Capital Raising Consultation Responses
Enterprise Team (4/N)
HMWI
1 Horse Guards Road
London SW1A 2HQ

Dear Sirs

RE: REPLY TO CONSULTATION
INFORMAL CAPITAL RAISING AND HIGH NET WORK AND SOPHISTICATED
INVESTORS JANUARY 2004

We refer to the consultation questions summary and reply as follows. As a preliminary we would advise you that we are a firm of solicitors specialising in assisting SMEs to raise early stage funding and thereafter to raise funding in connection with admission to OFEX, AIM and other smaller markets.

We are authorised by the Financial Service Authority and have been active in assisting sophisticated investors particularly to obtain certificates. As a general comment again, we see no reason why these should be a complex or time consuming matter. We have produced a preliminary form which we send to potential sophisticated investors and having received the form back are in a position to consider whether further enquiries are required. We also delimit the forms by relation to the relevant securities under consideration. We enclose a copy of the form that we use.

Our response therefore to question 1 is that the failure to obtain sufficient certificates is largely due to:-

- a) the persons granting those certificates being reluctant to take any exposure which may follow; and
- b) to a general lack of understanding of the system which in our view is too complex.

Furthermore, there is a substantial overlap between high net worth individuals and sophisticated investors. We are far from convinced that the two categories are necessary. We do not understand why there should be a one year period for HMWI and a three year period for sophisticated. We do not understand why there should be different methods of certification. Therefore, as a general comment, one of the reasons why the system is not working is that it is too complicated.

We do not consider that question 1 poses a problem for smaller firms. Where the problem is arising is that most early stage companies have no idea that there is anything wrong whatsoever with simply issuing a business plan with a view to raising money from friends and family. We have been consulted in a number of circumstances where this has been done and they have been subsequently advised that they are in breach of the regulations. In that context, it is worth considering whether there should not be:-

- a) wider publicity of the regulations; and
- b) an exemption for a business plan which does not directly seek to raise funds but only to identify potential of interest.

There will be inevitably considerable difficulties as to the reasonableness of belief almost by definition. When something goes wrong and an investor complains he will allege that the person concerned did not have a reasonable belief and should have approached him directly to obtain specific confirmation. It is also critical to ensure that the "risk factors" are made available to a relevant party.

Question 4(a) - see above.

Question 4(b) – In our view the majority do not, though many do. Many "sophisticated investors" who trade regularly but are not necessarily people of wealth. In our view mere accumulation of wealth which may well have come from business activities does not necessarily mean that somebody is an appropriate recipient of a high risk Financial Promotion. There is a confusion between wealth and knowledge. We therefore propose the abolition of the high net worth exemption which is a carry over from an American attitude towards wealth.

For the reasons set out above, in our view increasing the level is wholly irrelevant and indeed likely to be negative. We regard the proposed criteria for self certification as too difficult. In our view an investor trades three or four times a year in a particular kind of security should be entitled to receive a Financial Promotion relating to that kind of security but not to other kinds of securities, irrespective of the number of times that he has dealt in a particular form of security. The key issue is to match the type of security in relation to which the investor is sophisticated to the security that has been offered to him pursuant to a Financial Promotion. Thus for example a sophisticated trader in shares may well be wholly unsophisticated in options or warrants or, indeed, debt instruments. For the reasons above, we would be opposed to the change set out in question 8.

As far as question 9 is concerned, in our view the approach remains ineffective. Our view would be that there should be a clear categorisation of investments and that any approval whether self certifying or certified should relate to those categories and to each category there should be attached a clear range of "risk factors". It is the balance between the risk factors relating to the relevant securities and the nature of the individual experience in trading those securities that is relevant. There may also be some industry criteria relating to investment.

Question 10 – No comment.

Question 11 – As noted above the present Financial Promotions regime is considerably more complex than, for example the accredited investor regime in the United States. They have a well developed packet of forms provide the forms are properly filled in all parties are clear as to the consequences. The terminology in the Financial Promotions order relating to eg Real Time Communications is also not well understood.

Our firm practices considerably in this area but nevertheless has been obliged to consult with the Financial Services Authority on a number of occasions. In most cases their response has been unhelpful since they themselves have been unwilling to take a fixed position.

Yours truly

Atlantic Law