

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

Your reference

Our reference

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

**Zurich Financial Services  
(UKISA) Limited  
UK General Insurance**

22 Arlington Street  
London  
SW1A 1RW  
United Kingdom

Telephone +44(0)20 7495 5563  
<http://www.zurich.com>

Direct phone 020 7495 5563  
E-mail [sophie.timms@uk.zurich.com](mailto:sophie.timms@uk.zurich.com)

Dear Ms Engledow

Zurich Financial Services is an insurance-based financial services provider with an international network that focuses its activities on its key markets of North America, the United Kingdom and Continental Europe. Founded in 1872, Zurich is headquartered in Zurich, Switzerland. It has offices in more than 50 countries and employs approximately 64,000 people, including 16,000 in the UK.

We welcome the opportunity to respond to the above review and have participated in the Association of British Insurers' response to the full list of questions in the consultation paper. However, we would also like to stress two points, on the regulation of Swiss insurers and the regulation of employers offering pension products.

### **Swiss Insurers**

Our overriding concern lies in sections 9.20-9.28 and question number 43, dealing specifically with Swiss Insurers and the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001. The 1989 Agreement between the EEC and Switzerland negotiated, in detail, the harmonisation of solvency and other requirements that were necessary and sufficient for establishing reciprocal arrangements across Europe under 'home' supervision. Zurich Insurance Company is incorporated in Switzerland and the majority of our UK general insurance business is written out of the ZIC UK branch. We operate this branch in line with these Agreements and requirements.

The consultation states that the 1989 Agreement excludes Swiss general insurers selling direct insurance through a UK branch from the threshold conditions concerning close links, adequate resources and suitability. The consultation then states that there have been suggestions that these exemptions exceed the scope of the 1989 Agreement and asks if a re-application or removal of these conditions is appropriate. The basis for these suggestions seems to be question marks over the formal authority of the FSA over Part IV permissions for Swiss general insurers, a lack of adequate supervisory powers over

threshold conditions generally and a need to reflect developments in EU regulatory requirements that post-date the Agreement.

The 1989 Agreement enshrined home state supervision rather than supervision at branch level so it is our view, which is supported by our external legal advisers, that a unilateral move by the UK is neither possible nor desirable. This is borne out in Article 11 which leaves no scope for individual states to refuse authorisation based on additional or different requirements. Currently, the FSA liaises with the Federal Office of Private Insurances (FOPI) about a Swiss insurer's position. We can only speak for Zurich, which is supervised on a consolidated basis but this supervision has increased in recent times and includes the requirement to satisfy global solvency criteria.

In response to the proposals on Adequate Resources, Zurich Insurance Company holds in reserve assets equalling liabilities and provides the FSA with Group Solvency calculations. We seek your confirmation that there is no intention of applying more stringent capital requirements than exist in the Agreement. We believe, in any event, that this would require some negotiation by the UK as, in line with Article 39 of the Agreement, it would have no legal authority to do so.

We should point out here, however, that Zurich differs somewhat from other UK branches of Swiss insurers as our Group includes UK-domiciled insurers, including Eagle Star Insurance Company. Therefore, the impact of any changes may vary within the industry and highlights the potential problems that could arise from any blanket approach to Swiss insurers.

Regardless of the specific EU-Swiss Agreement, now may not be the opportune moment to make changes in line with other EU regulatory requirements that post-date the Agreement as there may be further issues in line with the implementation of the Solvency I and, ultimately, Solvency II Directives.

Finally, any concerns about the ability for the FSA to cancel Part IV permissions or double up threshold conditions or capital requirements could result in Swiss insurers looking less favourably on the UK as a place of establishment. This is clearly something we, as a UK branch, want to avoid.

We hope this is an exercise to tidy up outstanding 'grey' areas and simplify the FSA's obligations under the Agreement. The consultation does not make it clear how the proposals will be achieved as the Review states that it would not involve an amendment of the FSA Handbook, Rules or supervisory practices. Therefore, we would be grateful for further clarification on how the limitation or removal of exemptions would be tackled and a public statement from the FSA that supervisory practices will not change.

### **The FSMA and Employers Offering Pension Products**

We agree with the aims set out in the paper: it should be as easy as possible for employers to be able to encourage saving for retirement without causing consumer detriment. In some of the pension schemes that we administer employees are failing to become members, even where they only have to join the scheme to secure an employer contribution. Where this happens, the system clearly is not working in the best interests of consumers.

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We agree that any relaxation of the rules should be for real-time and non-real-time promotions, since employers may have to answer both oral and written questions.

Consumer detriment can be most effectively minimised by concentrating any liberalisation of the rules on schemes where employers make a matching contribution. In this situation employees would have to sacrifice matching contributions to stay out of the fund, and it is very rare for them to gain significantly by missing out on these contributions.

We hope these comments are useful. I believe my colleague, Matthew Connell and Enam Ahmed have discussed a meeting in June or July and we will be happy to go into further detail then.

Yours sincerely

Sophie Timms  
Manager, General Insurance and EU  
Government and Industry Affairs