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Subject: Response of the City of London Law Society
Regulatory Committee: supplemental

I refer to the response of the CLLS Regulatory Committee, submitted last week under cover of a letter from David Wyld.

In its response the Committee welcomed all of HM Treasury's proposals in chapter 7 of the consultation with regard to investment by occupational pension scheme trustees. However, one Committee member has made the following observations on the draft Statutory Instrument at chapter 16, which you might find helpful.

(1) The proposed amendment to Article 4(6)(d) - it is difficult to see that there are any "assets mentioned in sub-paragraph (a)". The draftsman may mean the assets of the relevant collective investment scheme, investment company or insurance company, but if so any requirement should be limited to those assets which are securities or contractually based investments, and should also provide an exemption for a self-managed investment trust (or overseas investment company) which is not an authorised person (or "overseas person"). Better still, is there any need for Article 4(6)(d) any longer?

(2) The proposed new Article 4(7)(b) refers to DPB firms as being included within the class of exempt person in relation to the activity of investment advice. DPB firms are excluded from the definition of "exempt person" in section 417 FSMA. Instead the reference to such firms should be made a new sub-paragraph (c). (We suspect the draftsman has been misled by the use of the term "exempt" in the heading to section 327). An alternative would be to use the same language as in section 36 of the Pensions Act, namely a person who can give investment advice without contravening the prohibition imposed by section 19 of the FSMA.

Kind regards

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