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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

1 June 2004

Dear Ms Engledow

**Response to HM Treasury's Financial Services and Markets Act two year review:
Changes to secondary legislation.**

As a currently regulated pension scheme trustee we welcome this consultation documents proposal to introduce a new exclusion for trustees arranging custody services in certain circumstances. We also welcome the opportunity for us to provide feedback on this proposal and set out our response below.

Credentials of Personal Pension Management Limited

- **Who we are**
Personal Pension Management Limited (PPML) is the specialist SIPP administration subsidiary of Winterthur Life UK Limited, which is part of the financial services arm of the Credit Suisse Group.
- **PPML and the SIPP Market**
PPML is a leading administrator of Self Invested Personal Pensions (SIPP). It launched the first ever SIPP in 1990 and currently administers at least one quarter of the SIPP market. The SIPP market has grown rapidly. A recent survey by the Pensions Management trade publication indicates an increase of about 37% since last year, bringing the number of SIPPs to around 90,000. The value of assets under management is reported at a very conservative £16bn, due to a number of firms not providing figures. The market is widely predicted to continue to experience exceptional growth with a projected 500,000 SIPPs by 2010. This reflects the move away from the perceived niche market status of SIPPs and towards their increased appeal from a broader range of consumers.



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Response to HM Treasury's Financial Services and Markets Act two year review

1 June 2004

- 2 -

- **PPML's regulated status**

We believe that we are the only major SIPP administration company to be regulated by the FSA for activities related to administration. PPML is primarily regulated for safeguarding and administering investments in relation to its trustee activities and arranging deals in investment in relation to its third party administration activities.

PPML's response

For sometime PPML has been concerned about the inconsistencies that are apparent in relation to the regulation of SIPP trustees. After reviewing and discussing our regulated position with the FSA, PPML was authorised by IMRO on 19 October 2001. The main reason for PPML requiring authorisation, in relation to its pension trustee activities, was that it was regarded as safeguarding and administering investments. We do not believe that we undertake these activities or hold ourselves out as providing a service in relation to these activities, in a manner which is different in any significant way to any of our competitors. However we believe that we may be the only SIPP trustee regulated for safeguarding and administering investments. We believe that in some respects this puts us at an unnecessary competitive disadvantage due to the increased costs and prudential requirements of regulation.

The assets that PPML administers in relation to its trustee activities are held with third party custodians authorised by the FSA to safeguard and administer assets belonging to third parties. PPML therefore strongly supports the proposal to introduce the Article 41A exemption. We believe that the proposed exemption should resolve the apparent discrepancies in regulation referred to above and avoid unnecessary layers of regulation in this area.

PPML, however, do have some concerns as to how effective the proposed exemption will be. Currently Article 40 includes two activities safeguarding and administering and arranging safeguarding and administering. PPML holds FSA permissions in relation to both of these. The FSA's draft perimeter guidance in relation to pension scheme activities issued in CP 179 states the following – "Given their fiduciary responsibility for the trust assets, trustees will invariably be safeguarding and administering investments belonging to another whether or not they employ a specialist custodian" (6.8.2G). This view was reaffirmed during a meeting with the FSA to discuss our response to CP 179. If this view prevails then the new exemption may be superfluous as trustees are regarded as invariably safeguarding and administering rather than arranging safeguarding and administering. There is a potential way around the issue if trustees only hold out that they are arranging and do not hold out in relation to actual safeguarding and administering. In this way they can use both the new Article 41A exemption and the existing Article 66 exemption to avoid the need for regulation in relation to safeguarding and administering activities.

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Response to HM Treasury's Financial Services and Markets Act two year review

1 June 2004

- 3 -

The above discussion highlights how complicated this area can be. To ensure that the proposed exemption is effective it needs to be supported by clear guidance. We understand that this is the remit of the FSA rather than HM Treasury and therefore we will be forwarding our comments in relation to this to the relevant department at the FSA for consideration.

If you would like to discuss this further please contact either Peter Press or Tim Green in our Compliance Department.

Yours sincerely



John Moret
Executive Chairman

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