etf
Employer Task Force on Pensions

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EMPLOYER TASK FORCE ON PENSIONS (ETF) RESPONSE TO CONSULTATION ON THE FINANCIAL SERVICES AND MARKETS ACT (FSMA) REVIEW

I am writing as chairman of the Employer Task Force on Pensions (ETF) to give our collective view on the consultation on the Financial Services and Markets Act (FSMA) review. Thank you for the opportunity to be involved in this.

Given our remit and area of expertise, we are restricting our comments to one particular aspect of the FSMA review. This concerns the impact of the FSMA on the ability of employers to provide information and advice about pensions to their staff and what might be done to improve matters.

We do believe that there is a problem currently with the restrictions on what employers can say and the lack of clarity on what the restrictions mean in practice. This latter point is at least as important as the rules themselves. The fear of overstepping the mark means that some employers do not give their staff the information and advice they need, even when technically it may be within the rules to do so. Members of the ETF have experience of this and this is also something that has been mentioned in discussions. We therefore welcome this review and hope to see new rules which are both less restrictive and as simple as possible for employers to understand and interpret.

For ease, the attached annex sets out in detail our response to the specific questions posed in the consultation document which relate to workplace advice, but briefly:-

- We think both verbal and written promotions of workplace pensions should be permitted.
- We agree there should be conditions attached to this exemption from the normal rules to maintain appropriate consumer protection.
- We agree with the initial four conditions outlined, though feel the first one should be drawn widely. This should then allow promotion of more flexible savings products (where the employer contributes) than just traditional pensions.
- We do not think there should be further conditions.

- This includes any of the additional possible conditions put forward in the consultation document.

I hope you find our comments helpful and I look forward to hearing about the outcome of the consultation and the way forward on this important issue.

Yours sincerely

Sir Peter Davis
Chairman
Employer Task Force on Pensions

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ANNEX A

DETAILED RESPONSE OF THE ETF ON PENSIONS TO QUESTIONS ON WORKPLACE ADVICE POSED IN THE FSMA CONSULTATION

Para 4.27
Q10 "Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1(c))? If not, which of options 1(a) and (b) do you prefer?

ETF view:- Yes – option 1(c).

Para 4.28 – 4.30
Q11: Do you agree that any exemption should be subject to conditions and not be unrestricted?

ETF view:- Yes.

Para 4.31
Q12: Do you agree with the conditions outlined above?

ETF view:- Yes, agree with the conditions, though think the first bullet point should be drawn more widely ie not be restricted just to promotion of traditional pensions given moves to offer more flexible savings products to staff. The 'requirement to contribute condition' is simple and straightforward and should overcome any concerns about this widening and promotion in general. This condition does, though, limit who will be able to take advantage of the exemption on promotion. Small businesses in particular often do not contribute and so will not benefit. But, on balance, we consider the simplicity of the contribution condition and the powerful protection it offers against mis-selling make this a price worth paying. Increasing the prevalence of contributions amongst small business, which is something that needs to be done anyway, is probably the best way to tackle the negative effects of this proposed condition.

Q13: Do you think that there should be other conditions?

ETF view:- No.

Para 4.38

Q14: Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employees?

ETF view:- On balance, no. Although the intention of this condition - consumer protection – is laudable, in practice it could be difficult for employers to understand the boundaries between generic and individual advice, especially in small companies. This

lack of clarity and confidence with employers will result in a similar situation to the one the review seeks to tackle.

Q15: If so do you think that limiting the ability of employers to make promotions by a requirement that they do not provide pensions advice in relation to an employee's individual circumstances is an appropriate condition?

ETF view:- N/A

Q16: Do you think that limiting the ability of employers to make promotions by reference to the definition of the activity of advising in article 53 RAO is an appropriate condition above?

ETF view:- No

Q17: Do you think that limiting the ability of employers to make promotions by prohibiting reference to unfavourable comparisons with other pensions is a viable alternative condition above?

ETF view:- No. Employers must be able to offer advice that eg a pension with an employer contribution is better than other pensions were there is no employer contribution.