

29 April 2004

Dear Ms. Engledow,

**Re: FSMA: two year review – changes to secondary legislation**

APCIMS is the Association of Private Client Investment Managers and Stockbrokers. We represent some 231 firms operating from over 400 sites in the UK and continental Europe and acting for the private investor.... Our firms have some £250 billion funds under management and act in all areas of the professional financial industry for private clients.

While the main topics addressed by the consultation document are not of particular relevance to the business of APCIMS' members, there are a few issues upon which we would like to offer the following comments –

**Section 5.10 – Article 51 of the Financial Promotions Order (FPC)**

APCIMS is generally supportive of the amendments that have been proposed to Article 51 with a view to extending the high net worth/sophisticated investor exemption so as to include individuals who certify themselves are such. In response to your question as to any further changes that should be made to the FPO, it has been suggested that individuals who are expert private customers classified as intermediate customers under the FSA's rules (COB 4.1.9R) should be regarded as falling automatically within the high net worth/sophisticated investor exemption so long as the communications being made to them are consistent with any limitations upon the type of investments/business in relation to which they have been classified as an intermediate customer.

Under the FSA's rules, a firm has to have regard to certain matters (including the individual's knowledge and understanding of markets and risk, the frequency, size and nature of the individual's previous transactions and the individual's financial standing) in determining whether a private customer can be classified as an intermediate customer – we query whether it would be possible for this process to be recognized as being akin to the certification process outlined in the FPO for high net worth/sophisticated investors?

**Section 11.4 – Controllers of Authorised Persons**

APCIMS would support any HM Treasury decision to review the FSMA provisions on controllers on the basis that any move towards simplification in the statutory requirements should then feed through into the FSA's rules in this area. With regards

to the latter, it has been suggested to us that the current FSA notification regimes can be unduly burdensome for smaller firms where relatively small transfers of shares can result in frequent changes in notifiable holdings.

### **Section 11.10 – Restructuring the financial promotions framework**

In its July 2003 comments to HM Treasury on the N2+2 review, APCIMS made clear its view that the financial promotions regime created by FSMA sections 21 to 25 and the FPO is both thoroughly confusing and difficult to implement and also that the entire approach to financial promotion regulation would benefit from a major overhaul aimed at simplifying both its purpose and its contents. Having said this, however, we are not convinced that either of the approaches proposed would result in a clearer framework as both would result in subjective judgments having to be made, either as to the relative risk of different types of promotions or as to whether a promotion fell foul of the section 397 “misleading statements and practices” offence.

It is APCIMS’ view that authorised firms’ difficulties with the financial promotions regime do not stem solely from the statutory requirements and that any attempt at restructuring the regime in the interests of clarity and simplicity would also have to tackle FSA’s voluminous and frequently incomprehensible rules and guidance. Notwithstanding our uncertainty about the specific approaches outlined in this document, we would welcome any HM Treasury-led exercise aimed at producing a financial promotions regime which those impacted by it could more readily understand and comply with.

We hope that the aforementioned comments are of assistance.

Yours sincerely,

Katharine Green-Armytage  
Head of Compliance