

Norwich Union
An AVIVIA company

Life
2 Rougier Street
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27 May 2004

Our ref: Compliance Department/P. A.Cox

Dear Ms. Engledow,

**Financial Services and Markets Act Two Year Review:
Changes to Secondary Legislation**

Norwich Union is pleased to have the opportunity to comment on this Treasury Consultation Document.

We support the Treasury's efforts to streamline the regulation of advice and to clarify and simplify the boundaries of regulation. In particular, we welcome any measures which are designed to help employers promotes workplace pensions to their employees.

Responses to Individual Questions

The impact of FSMA on advice centres (Vol. 1/p. 7 – p. 11)

Q1. Do you think that the current scope of the financial promotion restriction creates uncertainty or is unduly restrictive of the work of advice centres?

Whilst there may be some uncertainty as regards the exact scope of the financial promotion restriction insofar as advice centres are concerned, research recently published by the Financial Services Authority (FSA) ("*Consumer Research 26: Widening the scope? FSA and CAB research into delivering financial advice through CAB*" (CR26)) does not appear to indicate that the current work of advice centres is being unduly restricted.

Q.2 Do you think that there should be a specific financial promotion exemption for advice centres?

We do not believe that there should be a specific exemption for advice centres. We do not subscribe to the view that "some advice (even if slightly flawed) may be better than no advice at all". As you state elsewhere in the consultation document, "Misguided financial advice, however well-meaning, can have serious long-term consequences". We see no reason why advice centres should not be subject to the same regime as others who provide

financial advice. We would prefer to see other solutions developed to improve access to financial advice.

Q.3 Is there a case for further legislation?

We do not believe that there is a case for further legislation.

Q4. Do you think that there should be additional legislation to confirm that advice centres are not carrying on regulated activities?

We do not believe that there should be additional legislation specific to advice centres.

Q5. Do you agree with the proposed conditions for exemptions relating to advice centres?

Q.6 Do you think that there should be other conditions (eg. minimum competence criteria and specific PII thresholds)?

Q7. Do you agree with limiting the exemptions to mortgages, endowments, pension products and shares?

Q8. Do you think that an exemption limited only to members of certain established networks of advice centres provides a better alternative?

Q9. Do you think that exemptions for advice centres could have regulatory consequences for other bodies besides advice centres?

In the light of our response to question 2, we have no specific comments with regard to questions 5 to 9 inclusive.

The impact of FSMA on employers offering pension products (Vol. 1/p.13 – p.21)

Q.10 Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1c)? If not, which of options (1a) and (1b) do you prefer?

We prefer option 1 (a). As you stated “This would enable employers to answer questions more freely in staff presentation and meeting and in particular enable them to promote particular pension products without fear of transgressing the financial promotion regime”.

Although this approach does leave some gap in consumer protection, we do not think the risk is significant. Most employers will be working with a product provider who will be able to ensure that “any written promotional materials they distributed were written or approved by FSA authorised persons”. We believe that this “compliant” written material will probably form the most significant part of the promotion and is more likely to be relied upon by the employees in question.

Q11. Do you agree that any exemption should be subject to conditions and not unrestricted?

We agree that conditions should apply.

Q12. Do you agree with the conditions outlined in paragraph 4.31?

We agree with the conditions outlined, although post “Pensions Simplification” it may not be possible to split out categories of investment such as “group personal pension schemes” and “stakeholder pension schemes”.

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

There may be some merit in taking account of the extent to which the employer will be making a financial contribution to the “scheme” in question.

Where an employer will be making an unconditional contribution to a scheme, the potential risk to an employee who joins that scheme solely because of the employer’s promotion of that scheme is probably marginal.

At the opposite end of the spectrum, where an employer will not be contributing, other options need to be considered and, as a result, the potential risk to an employee who joins the scheme solely because of the employer’s promotion is far greater.

Q.14 Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employees?

Yes. Employers are unlikely to have the necessary expertise/qualification to be able to offer individual advice to employees. In any event, we feel it is unlikely that employers will want to divert resources from their core business(es) in order to be able to provide individual advice.

Q.15 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 a person’s individual circumstances is an appropriate condition?

Yes.

Q.16 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?

We feel that this approach will not help employers to promote workplace pensions. We prefer the alternative approach you have outlined – see Q.17 below.

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?

Yes. This proposal would mean that employers would focus on the merits of their own pension arrangements.

Q18. Do you agree that there should be no restriction on which employer's representatives can promote the employer's pension schemes?

Yes, provided the individuals in question are adequately briefed and are aware that they cannot provide individual advice.

The Financial Promotion Order (Vol. 1/p.23 – p.27)

Q19. Do you agree with the proposed changes to the Financial Promotions Order?

Q20. Are there any further changes to the Financial Promotions Order, which you think should be considered?

Q21. Do you agree that the current article 69 of the Financial Promotions Order is too complex and should be simplified?

Q22. Do you agree with widening the scope of the exemption but widening the circumstances?

Q23. Do you agree with the proposed specific conditions for the exemptions to apply?

We have no specific comments with regard to questions 19 to 23 inclusive.

Sale of a Body Corporate (Vol. 1/p.29 – p.37)

Q.24 Do you agree that the exclusion in the Regulated Activities Order should be narrowed so that the "may reasonably be regarded" test will apply only in relation to a party who is acquiring or disposing of the day to day control of that body corporate and hence not to advice given to a party whose object is not acquisition or disposal of day to day control?

Q.25 Do you agree that the exclusion in the Regulated Activities Order should be narrowed so that the "may reasonably be regarded" test will apply only in relation to takeovers of small companies?

Q.26 Which option do you prefer as the definition of "small" company in respect of which the "may reasonably be regarded" test should apply? Do you have any other suggestions?

Q.27 Do you agree that the exemption for promotions in respect of takeovers should be subject to the same conditions as those, which apply under the revised RAO?

Q.28 Do you agree that it is desirable to have some form of regulation or conditions on unauthorised persons who are carrying out telephone campaigns?

Q.29 Do you agree that broadly speaking we should regulate to the same extent as under previous legislation?

Q.30 Which of the three options above do you prefer and why?

Q.31 Do you agree that under the proposed regulatory framework the provisions in the Financial Promotion Order providing exemptions for takeovers of relevant unlisted companies (i.e. Articles 63-66) are no longer necessary?

We have no specific comments with regard to question 24 to 31 inclusive.

Investment by Occupational Pension Scheme Trustee (Vol. 1/p.39 – p.42)

Q.32 Do you agree that the expression “routine or day to day decisions” should be replaced with “day to day decisions” so as to increase the scope of decisions which unauthorised trustee are permitted to take?

We agree with this proposal.

Q.33 Do you agree that the scope of products in which unauthorised trustees are permitted to invest should include pooled investment vehicles and contracts of insurance?

Yes.

Q.34 Do you agree that the condition under which unauthorised trustees can invest in certain products should be relaxed so that they only have to obtain and consider independent advice rather than act in accordance with it?

We agree with the proposed relaxation.

Q.35 Do you agree with the condition under which unauthorised trustees can invest in certain products should be relaxed so that advice can also be given by professional firms operating under Part XX of FSMA?

We agree with the proposed relaxation.

Q.36 Do you agree with the rationale for our proposals for deregulating trustees’ investment activities?

Yes.

Q.37 Do you agree that the scope of exempt products should be limited to pooled investment vehicles or contracts of insurance and not include individual quoted securities or derivatives?

Yes. This proposal sees to achieve an appropriate balance, allowing trustees a wider range of investment opportunities whilst seeking to minimise the potential risk.

Changes to the Regulated Activities Order (Vol. 1/p.43 – p.44)

Q.38 What are your views on the three changes proposed to the Regulated Activities Order in chapter 8? We seek, in particular, views on the question of theatrical debentures.

We have no specific comments with regard to question 38.

Other Secondary Legislation (Vol. 1/p.45 – p.53)

Service of Notices

- Q.39 We welcome views on this proposed change to the Service of Notice regulations.

We have no specific comments with regard to question 39.

Trustees in Bankruptcy

- Q.40 Do you agree that there should be provisions in FSMA applying to trustees similar to those of the Financial Services Act?
- Q.41 We welcome views on the appropriate means of legislating for trustees in bankruptcy.

We have no specific comments with regard to questions 40 and 41.

Disclosure of Information

- Q.42 We welcome views on this proposed change to the Disclosure Regulations. Do you think that independent actuaries should be able to disclose information to others in either of the situations outlined in (a) or (b) above, or both, or not at all?

We have no specific comments with regard to question 42.

Swiss Insurers

- Q.43 In relation to the proposals above, should the existing exemptions be removed or limited?

We have no specific comments with regard to question 43.

NETA Advice Exemption

- Q.44 Do you agree that there has been no evidence of investor detriment from unregulated advice being given to investors (a) in the electricity forward markets or (b) in the course of either the Balancing and Settlement Arrangements or the provision of balancing services to NGC?
- Q.45 Do you agree that only those investors who have knowledge of the electricity markets i.e. professionals are likely to consider investing in the electricity forward markets?
- Q.46 Do you feel that there is a need for the Electricity Industry advice exemption?
- Q.47 Are there any BSC Parties who currently take advantage or might take advantage of this exemption?
- Q.48 Could a BSC Party take advantage of the exemption to provide investment advice (e.g. advice about financial engineering in the electricity markets) that should properly be regulated by the FSA?

Q.49 Do you agree that the Electricity Industry advice exemption should be retained? Please explain your views.

We have no specific comments with regard to questions 44 to 49 inclusive.

Open-Ended Investment Companies (Vol. 1/p.55 – p.60)

Q.50 Do you agree that such a change to Regulation 22(5) should be made?

Yes, if it is more appropriate and timely for FSA to provide a written notice.

Q.51 Do you agree that the costs of requiring OEICs to have an AGM outweigh the benefits?

Yes.

Q.52 Do you agree that OEICs should be able to elect to dispense with the holding of AGMs?

Yes.

Q.53 Do you agree that there will be adequate safeguards to protect shareholders if the requirement for OEICs to have an AGM is changed to an elective requirement?

Yes.

Q.54 Is the requirement that all shareholders agree to an elective resolution too onerous a requirement for OEICs to meet? Should the threshold be lower e.g. 95 per cent of shareholders?

Yes. The threshold should be even lower than 95%.

Q.55 Should an ordinary resolution be sufficient to revoke the elective resolution?

Yes.

Q.56 Regarding the proposed amendments to regulation 34 outlined in paragraph 10.18, do you agree that appointments should not have effect for longer than twelve months starting on the date of appointment?

Yes.

Q.57 Do you have any comments on our proposed amendment for regulation 36 outlined in paragraph 10.19?

It is unlikely that shareholders will have any interest in these documents. We think it would be sufficient to add a note to the annual accounts (short form accounts as per new guidelines under CP185) advising shareholders that they are available on request.

Q.58 If it is possible to do so, should any amendments be made to the requirement in regulation 78 regarding the information that is made public?

Yes.

Q.59 If it is possible to do so, should any amendments be made to the requirement in regulation 78 regarding the manner in which information is made public? Is publication in the London or Edinburgh Gazettes appropriate or would publication elsewhere be more useful?

We believe it would be sufficient to tell existing shareholders only. However, if the requirement to publish this information remains, then perhaps publication via the FSA website would be a more appropriate medium.

Yours sincerely,

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Compliance Department