

**12 CLARENCE GATE GARDENS, LONDON NW1 6AY**

**E-MAIL: R.MARAN@MARAN.CO.UK**

Enterprise Team (4/N2)  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

24th March 2004

Dear Sirs

**Informal capital-raising  
Changing the Financial Promotion Order**

Your various proposals for relaxing the procedures for dealing with high net worth and sophisticated investors are welcome as, whichever model is adopted, the operation of the market for informal capital should be improved. There is one aspect of this market, however, which seems to have been overlooked in your discussion paper.

Your objective is to lower the barriers facing the promoters of smaller enterprises who wish to raise capital from angels. Yet such promoters face two risks if the rules are not strictly observed: (a) they may be subject to severe penalties under the FSMA, and (b) they may be vulnerable to unscrupulous investors who use a defect in procedure as the basis on which they later renege from an investment which turns sour. So promoters must either buy expensive advice or do some careful study on the limits of permissible activity. Promoters need some protection too!

The 'reasonable belief' exemption in the draft paragraph 48(1)(b) is welcome but, in my submission, does not go far enough. Consider the circumstances operating in an angel groups whose unregulated meetings are open both to 'exempt' individuals and others such as providers of professional services (with some attendees enjoying both roles). In these circumstances, a promoter has no basis on which confidently to form a reasonable belief in the exempt status of any individual, and so cannot be certain whether a written follow-up to that individual will fall foul of the regulations.

The obvious next step for the promoter is to ask the individual whether or not they are exempt. But, human nature being what it is, potential investors are reluctant to disclose their status without having confirmed at least in broad outline the nature of the investment proposal. So here's a quandary: to elicit a response from a potential investor, the promoter must give at least a short description of the offering. If it turns out that the individual was not an exempt investor, the hapless promoter may have broken the rules.

A simple addition to the proposals for change would give the promoter the freedom required. Taking model 1 of the proposed revised SI, a new sub-paragraph within 48(1) might provide that the financial promotion restriction does not apply to any communication made to an individual for the purposes of establishing the exempt status of that individual so long as any description of the investment opportunity in that communication does not exceed, say, 250 words. Thus promoters will have a simple definition of what they can do (in contrast to a catalogue of what is prohibited), and so can design their approach letters with confidence that the risks earlier mentioned have been avoided.

Yours truly

*Roger Maran*

Roger Maran