

## Financial promotion

Financial Services Consumer Panel response to:  
'Financial promotion – a consultation document', a HM Treasury document

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## Summary

The Financial Services Consumer Panel:

- a. notes the Government's proposals for financial promotion and suggests that some aspects might warrant reconsideration (*paragraph 2*);
- b. stresses that effective enforcement of financial promotions originating overseas is essential (*paragraph 2*);
- c. considers that exempting promotions originating overseas which are not directed at the UK is acceptable for reasons of practicality (*paragraph 4*);
- d. strongly supports the regulation of financial promotions made by persons in the UK to other countries (*paragraph 5*);

- e. strongly supports the proposal to impose liability on passive communications providers under the Bill if following notification by the FSA of a non-compliant web site the passive communications provider fails to take action to close the site down (*paragraph 6*);
- f. supports the proposed exemption for personal communications from the financial promotions regime subject to some changes, but does not support the extensions or alternatives proposed (*paragraphs 7 to 8*);
- g. recommends that the Government assesses the risk to consumers of exempting financial journalism (*paragraph 9*);
- h. considers an exemption for generic promotions would be unacceptable, particularly given the definition of promotions in clause 17 of the Bill that promotions are designed to lead to purchasing (*paragraph 10*);
- i. considers it inadequate for disclosures or warning statements for Web pages on the Internet only to rely on information contained in a hypertext link (*paragraph 11*);
- j. recommends that the only safe option for permitted unapproved advertisements to sophisticated investors would be if sophisticated investors had the chance to opt into to a network; other definitions are likely to expose unsophisticated investors to risks (*paragraph 12*).

## Introduction

1. This response is submitted by the Financial Services Consumer Panel ('the Panel') to the Treasury consultation on '*Financial Promotion*'. The Financial Services Authority (FSA) established the Consumer Panel to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is

independent of the FSA - it can raise its own concerns, initiate its own research and publish its own reports.

## Part 1 - Overview

- The Panel notes the Government's proposals for financial promotion but suggests that some aspects may warrant reconsideration.** We support the maintenance of the distinction applying to financial promotion by authorised and unauthorised persons and the fact that exemptions from the prohibition on financial promotions by unauthorised persons will be made by Treasury rather than the FSA. We agree that the distinction between an advertisement and unsolicited call is not relevant. We welcome the fact that breaches of the financial promotion prohibition by an unauthorised person through any medium will be a criminal offence. **We stress that effective enforcement of financial promotions originating overseas is essential to the proposed financial promotions regime.**

## Responses to the July 1998 consultation

- The Treasury is considering further the enforceability of contracts entered into in breach of the financial promotion prohibition. It is an important safeguard for consumers, as well as a deterrent, that contracts resulting from promotional breaches should continue to be unenforceable.

## Territorial scope

- We think the proposals to narrow the scope of the financial promotion regime set out in the draft Bill, by excluding financial promotion communications which originate outside the UK and are not directed at the UK, are acceptable for reasons of practicality.** An exception is where the promotion originates on behalf of a person in the UK, in which circumstances the financial promotion regime should apply even if the promotion is not directed at the UK.

5. We support the continued search for harmonised protection across Europe that will need to provide cross-border access to complaints and redress. However, we are concerned that the home-state regulatory principle in the proposed E-commerce Directive will undermine consumer protection in the UK as afforded through the new Bill, unless member governments and other regulators work together to raise standards to the highest common denominator rather than the lowest. Therefore, the **Panel strongly supports the regulation of financial promotions made by persons in the UK to other countries**. It may actually reduce costs if firms have to operate within one regime rather than having a separate regime for overseas sales. It will also enhance the UK's reputation as a safe financial centre. In consumer terms, unrestricted cold calls, for example, are not acceptable, wherever they arise. The possible consumer detriment is potentially even greater than with home country calls, as they are so difficult to stop.

## Part 2 – Financial promotions on the Internet

### Proposed regulatory approach

6. **We strongly support the proposal to impose liability on passive communications providers under the Bill if following notification by the FSA of a non-compliant web site the passive communications provider fails to take action to close the site down.** Newspapers and magazines already accept some responsibility for vetting advertisers through the Mail Order Protection Schemes: this seems analogous.

## Part 3 – Proposed new exemptions

### Personal communications

7. **We support the proposed exemptions for personal communications at paragraph 1.2 page 15 subject to the following changes:**

- the exemption for financial promotions to a close relative should exclude promotions made in a business capacity; and
  - the exemption for circumstances where a promoter does not receive any direct or indirect benefit should include a close associate of the promoter (the indirect benefit will also need careful drafting to ensure that the promotion is not sub-contracted to trade associations).
8. We are not convinced about the extensions or alternatives proposed in paragraph 3.1 of limited circulation tests or a monetary threshold. For example, financial promotions to a limited number of people could be equally, if not more, harmful to consumers than promotions that would not be exempted. It is also unclear how compliance with such exemption could be monitored. We consider that the general exemption at paragraph 1.2 is sufficient.

## Journalists

9. The Treasury is proposing to distinguish between financial journalism and 'advertorials' (where the purpose is to advertise a particular investment or service). Under the Treasury's proposals the former would be exempted from the financial promotion regime but the latter would be caught. **In our response to the Treasury's consultation on 'Regulated Activities' we called on the Government to assess whether there are any significant risks to consumers caused by the exclusion of investment advice given in newspapers/other publications from regulation. We recommend that editorials that give contact details from a firm/individual's press release should be subject to approval.**

## Generic promotions

10. **An exemption for generic promotions is unacceptable, particularly given the definition of promotions in clause 17 of the Bill that promotions are designed to lead to purchasing.**

## Part 4 Proposed approach to current exemptions

### Investment advertisements

11. **We are not content with the proposed approach to compliance with disclosures or warning statements for Web pages on the Internet outlined at paragraph 2.5 which could rely on information contained in a hypertext link.** It is possible to collapse a section with the warning at the beginning of the access/home page (ie before the promotional material not after it).

### Informal capital raising

12. The simplest and safest exemption is likely to be for raising capital through networks and agencies that sophisticated investors opt into. **Without investors opting in there is unlikely to be a reliable and watertight way of defining a class of sophisticated individual investors without including individuals who would be put at risk by unapproved investment advertisements.**