

23 December 2005

Mr John McDonagh
Savings & Investment Products Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Mr McDonagh

**Response to Proposed changes to the eligibility rules for
establishing a pension scheme**

We welcome the opportunity to respond to the proposals outlined in above Consultation Document, and attach, in the Annex, our comments. IMA would be pleased to discuss the detail of the proposals, and our comments, in further detail, while the proposals are being developed.

IMA represents the UK-based investment management industry. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of about £2 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (i.e. unit trusts and open-ended investment companies).

IMA welcomes the proposals to allow a wider range of firms to establish pension schemes. In particular, we support firms being able to enter this business at the earliest possible opportunity, and would urge implementation of Option 4.

Yours sincerely

Angus Milne
Senior Adviser

Annex

Q 4.7: Do you agree that the current eligibility rules may restrict entry to the personal pensions market and, for some providers, add to administrative costs?

We agree that the current eligibility rules do restrict entry to the personal pensions market. However, the restriction is not absolute for our members; it just requires investment management firms to use certain business models in order to have access that market.

The types of firms that are permitted to establish schemes are:

- (a) insurance company,
- (b) unit trust scheme manager,
- (c) operator, trustee or depository of a recognised EEA collective investment scheme,
- (d) an authorised open-ended investment company (OEIC),
- (e) building society,
- (f) bank, or
- (g) EEA investment portfolio manager.

The final section, (g), is defined as an institution (EEA, but non-UK) which has permission under FSMA to manage portfolios of investment. This means that the type of firm permitted to establish these pension schemes is applied more widely for EEA (but non-UK) investment managers than for UK firms. This would seem to put UK firms at a disadvantage compared to their EEA competitors.

There does not seem to be any logic in permitting only unit trust managers to establish these schemes. Most such firms do not themselves actually carry out investment management, delegating this to another firm (until a couple of years ago legislation required that the unit trust manager and the investment manager were separate firms). The rules on the type of firm that can manage ISAs do not seem to have been drawn up in the same way.

Many investment management businesses have at least two regulated entities – an asset manager and an operator of Collective Investment Schemes. The actual investment of the assets of the CIS is often delegated to the asset management sister company. European legislation (commonly called UCITS III) now permits CIS operators to also undertake investment management activities, but many groups still maintain separate businesses with separate functions.

Those of our members entering the Defined Contribution (DC) pension environment have normally done so by first establishing an insurance company. This business model has held the attraction of being more familiar to the intermediaries than pensions being provided direct by fund managers, but in reality is more driven by tax implications.

Going forward, it is still unclear as to whether investment management firms would find it worthwhile entering the personal pensions market themselves, but while the pension simplification occurring in 2006 may well provide sufficient change in emphasis to make it possible for the cultural problems to be overcome, tax issues are

likely to continue to affect this decision. We think that it is more likely that other types of firm may well be more likely to enter the market. We would wish to support this development, as we believe that it has the potential to bring more options to the investor, while providing more opportunities for our members.

The fund management industry is becoming, increasingly, a manufacturer of funds, with ever fewer individual customers appearing as direct, personal investors. Instead, those individuals are becoming investors through an additional layer of intermediary; advisers and investment platforms and aggregators.

The growth of these fund supermarkets, wrap providers and other platforms mean that it is these firms that may be in the best position to benefit from the proposed changes, to provide greater flexibility and to create and meet new customer demand. These firms would provide the personal pension policy, with open architecture providing customer access to the investment funds. We would support this development, as it is likely to produce the maximum possible choice for investors at the most competitive cost.

Q 4.8: Do you agree that the definition of persons eligible to establish a tax-privileged pension scheme should be changed?

We agree that the definition should be changed. We believe that continuing the restrictions on the types of eligible persons as defined in legislation could be a barrier to innovation. As explained above, we also believe that the current definition is illogical. With the increased simplification of pensions brought about by the Pensions Act 2004 the market should be allowed to develop. Actuarial and other specialised advice and services, not necessarily held within the firms that may wish to enter the market, could either be developed in-house, or can be made available on an "as required" or contractually outsourced basis. To restrict the expansion of firms permitted on the basis of them not already holding the relevant expertise seems to be creating barriers to innovation.

The need for individuals to increase the amount saved for retirement is universally recognised, and some of those firms or types of firms currently excluded from this process may well be in the best position to encourage and support this expansion.

Q 4.9: Do you agree with the proposed approach of creating a new regulatory activity (Options 3 and 4) or would you prefer that persons with permission to carry on certain existing regulated activities be made eligible under the Finance Act (Option 2)?

We support the proposal that a new regulated activity is created. The current position – whereby some pensions business is regulated while other aspects are not – is confusing, and has potential for customer misunderstanding. As different businesses compete for customers in the provision of new services, it seems unusual to have the business models pre-defined by statute.

However, on its own, Option 3 seems to allow for a problem to arise. With the simplification of pensions schemes, and the widening of the investment opportunities, existing regulated SIPP distributors/advisers will be able to widen their

offering to members of the public, while regulated entities. However, the very firms that are being allowed and encouraged to enter this market will miss out on the opportunities of the April 2006 liberalisations. Investment managers and fund supermarkets will only be able to offer the sort of medium to long-term investment opportunities that will be most appropriate for a significant number of investors by starting with a business model that will be unnecessary within twelve months.

Q 4.10: If you agree with the proposed approach of creating a new regulated activity, do you think that the benefits of implementing a temporary amendment to FA 2004 (as described in Option 4) would be sufficient to make it worthwhile?

We strongly support the approach described in Option 4.

Firms not currently able to establish a pension scheme would be required – unless the Proposal in Option 4 is adopted – to arrange with another entity the provision of the pension policy, but just for one year. This may make it uncompetitive to enter the market until April 2007, by which point some competitive opportunity may well have been lost.

In the normal course of events, our members do not provide personal advice on pensions, whether on SIPPs or Occupational Schemes, but unless Option 4 is taken up the flexibility will allow others to expand this market, while our members will have wait a further 12 months. Others, like the fund supermarkets, wrap providers and other platforms, may well wish to enter this market with their own arrangement, but without the temporary amendment they would have to use the services of one of the existing list of those eligible to provide the pension policy. Our members will hope that the supermarkets would provide a distribution outlet for our members, and to delay their introduction until 2007 may well place all these firms at a substantial commercial disadvantage.

Q 4.11: If you would prefer to rely on existing regulated activities, do you agree that managing investments and safeguarding and administering investments are the right activities to choose?

We believe that establishing and operating a pension scheme is appropriate only for investment firms of some financial standing, at least in part to provide reassurance and protection to individual investors. It would therefore be appropriate to require that the only firms who may operate pension schemes should be those permitted by the FSA to (a) manage investments, or (b) provide the safeguarding and administration of investments.

Such firms are required to hold significant liquid capital, providing that necessary protection to investors.

Q 4.12: The government recognises that firms in the pensions industry have put in place significant programmes of change in preparation for the implementation of pensions tax simplification. Are there specific steps the Government should take to help firms integrate preparation for this change with finalising preparations for simplification?

The IMA considers that its members have already been disadvantaged, in that it is unlikely that they will be in a position to take advantage of the pensions simplification from 'A' Day. Such firms are not in a position to advance their plans until the feedback from the Consultation has been issued, which is unlikely to allow sufficient time before April 2006.

The IMA also understands that the differing tax regimes that exist between insurance companies and fund managers produce an unlevel playing field.

Q 4.13: Operating a scheme classified as an occupational scheme would not fall within the proposed new regulated activity. It is proposed to use the definition of an occupational scheme set out in Pensions Act 2004, but to remove the portion of that definition which excludes schemes with their main place of operation outside the UK. This is to avoid these types of schemes coming within FSA regulation as personal pension schemes. Do you agree with this approach?

The IMA would like to support this approach.

Q 4.14: Do you have any other comments on the proposed amendments?

IMA has no other comment to make on the proposals.

Q 4.15: Do you have any other comments on the proposed amendments?

In paragraph 28 it is suggested that not all firms have the particular expertise to deal with all aspects of operating a pension scheme, and that this might be a reason to limit the changes. However, under the current legislation there are a number of types of firm that have rarely exercised their ability to write this sort of business, but where they have, no greater risk appears to have transpired. Firms will take their responsibilities seriously and the answer, very often, is that these technical issues are outsourced to relevant specialists. If firms are not currently able to undertake a certain type of business they are unlikely to have all the skills and expertise readily available in-house, but that would be part of the planning and development.

We have no other comments to make on the Partial Regulatory Impact Assessment.