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HM Treasury
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Wednesday 9 March 2022

Dear HM Treasury colleagues,

Financial promotion exemptions for high-net-worth individuals and sophisticated investors

We welcome the opportunity to respond to your consultation on high-net-worth individuals and sophisticated investors.

The Quoted Companies Alliance *Primary Markets Expert Group* and *Secondary Markets Expert Group* has examined the proposals and advised on this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "T. Ward".

Tim Ward
Chief Executive

Q1 Do you agree that the exemptions should be retained?

Yes – we agree that the high net worth and sophisticated investor exemptions should be retained as they play an important role in providing SMEs with access to finance at an earlier stage in their growth and development. These companies can often be high-growth, innovative and have significant future potential, and high net worth individuals and sophisticated investors play an important role in providing a source of capital for these companies, helping to improve their prospects of success.

Q2 Do you agree with the objectives for reform? Are there other objectives the government should consider?

Broadly, we agree with the objectives for reform stated in the consultation.

Q3 Do you agree that the financial thresholds for high net worth individuals should be increased? At what value do you think the thresholds should be set? Please justify your answer.

No – we do not agree that the financial thresholds for high net individuals should be increased as HM Treasury has proposed. Instead, we propose that the thresholds are updated following a further review into the appropriate levels for the thresholds to be set.

Whilst it seems straightforward to suggest that the financial thresholds for high net worth individuals should be increased, particularly in light of economic, social and technological developments, we do not believe this is the case. It would appear that, in issuing the proposals to increase the thresholds in this manner, an assumption has been made that the original £100,000 and £250,000 figures in earnings and net assets respectively were the correct thresholds for when they were first set in 2001. Under this situation, it would appear to be logical to increase the thresholds in line with inflation. However, we consider that there should be more of a fundamental assessment as to what the correct thresholds should be rather than simply adjusting them to reflect inflation.

In issuing this consultation, HM Treasury has the opportunity to conduct a deeper review of the thresholds to ensure that they were set at the right level in the first instance. Following this, it can be determined, more accurately, what the appropriate thresholds should be increased to.

Furthermore, we would stress that the proposals to increase the thresholds in this manner would reduce the number of investment gateways for companies looking to raise finance at an early stage in their growth. If these changes are implemented as proposed, there will be an immediate decrease in the pool of potential exempt investors, limiting access to finance for a potentially large number of companies. Moreover, the purpose of these exemptions when they were first introduced in 2001 was to promote investment opportunities for long-term/angel investors in SMEs where the cost of having a financial promotion approved by an authorised person were prohibitive.

Q4 If you are a business (or trade body who represents businesses) who use the exemptions when promoting investments to investors, can you provide information on the investor profile of the investors who are promoted to within the exemptions? How would increasing the high net worth investor thresholds affect your ability to make communications to these investors?

We have no comments.

Q5 Do you agree that the assets in scope of the net asset calculation should remain the same?

Yes – we agree that the assets in scope of the net asset calculation should remain the same.

Q6 Do you agree that the unlisted company criteria of the self-certified sophisticated investor test is no longer a reliable way of demonstrating sophistication, and therefore should be removed?

Yes – we agree with the proposal to remove the unlisted company criteria from the self-certified investor test as it no longer accurately demonstrates sophistication.

Q7 Do you have suggestions for other tests that could be included to demonstrate sophistication, and could be incorporated into the definition of a self-certified sophisticated investor?

Other tests that could be included to demonstrate sophistication and expertise could be through defined professional qualifications such as IMC, CFA, amongst others.

Q8 Do you agree that the fourth criteria of the self-certified sophisticated investor definition should be updated so that the company must have, or have had, a turnover of at least £1.4 million?

As highlighted in our response to Question 3, we believe that deeper consideration of whether these figures were the correct figures in the first place is needed as opposed to simply updating them to account for inflation.

Q9 Do you agree that a greater responsibility should be placed on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors?

No – we do not believe that greater responsibility should be placed on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors and certainly not without the issuance of guidance. This proposal will be a significant concern to firms without any guidance to determine how a “reasonable belief” can be met. Furthermore, if the proposals are implemented as stated in the consultation document, we see that there is a very realistic possibility that there could be a paralysis in relation to the approval of exemptions, which could have knock-on consequences for companies seeking to raise finance.

Prior to any changes being made to place greater emphasis on firms to ensure investors satisfy the thresholds, HM Treasury must provide guidance. The guidance should, at a minimum, cover:

- How firms should consider and review their procedures and processes for managing their relationships with clients;
- How firms can formalise mechanisms to determine how a “reasonable belief” is met;
- What systems should be in place for recording and documenting where and when “reasonable belief” has been met; and
- The frequency of how and when the “reasonable belief” assessment should be performed.

Without this guidance, we strongly oppose the proposal to give firms more responsibility to ensure that investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors.

Q10 If so, do you agree that the emphasis of the “reasonable belief” be shifted so that the firm communicating the financial promotion must have a reasonable belief that an individual meets the criteria? Is there a better alternative?

Please see our answer to Question 9 above.

Q11 Do you think there is a better alternative than placing greater responsibility on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors?

We have no comments.

Q12 If you are a firm who uses the exemptions, how would you establish a reasonable belief that a particular individual satisfied the relevant net worth or sophistication criteria? How would this compare to what you do now? If you envisage problems in establishing whether a consumer meets these criteria please explain why?

Whilst the QCA is not a firm who uses the exemptions, many of our members firm do. They have stated that independent verification of the individual’s personal circumstances would, at the very least, need to be obtained in order to demonstrate “reasonable belief”. This could also result in data protection issues were such verification or information discloses sensitive personal data.

Q13 Do you agree that firms should be required to provide details about themselves in any communications made using the exemptions?

Please see our response to Question 9 – we believe that guidance must be provided before consideration is given to whether firms should be required to provide details about themselves.

Q14 Do you agree that the investor statement should be updated to achieve greater engagement from investors and awareness of the regulatory protections they are losing in receiving financial promotions under the exemptions?

Yes – we agree with the proposal to update the format of the investor statement and to simplify the language as these seem like sensible and logical changes. However, in a similar vein to our answer to Question 9 above, requiring greater levels of investor engagement may cause a paralysis in the system for approving exemptions. This would particularly be the case if prospective investors are required to provide additional information to prove their eligibility as high net worth or sophisticated investors. Further consideration must be given to this by HM Treasury before this is taken forward.

Q15 Do you agree with the proposed changes to the investor statements?

Please see our answer to Question 14 above.

Q16 Do you have any other suggestions for how the investor statement could be updated to ensure greater investor engagement, for example, to work more effectively as part of a digital journey?

We have no comments.

Q17 If you are a firm that uses the exemptions, do you envisage any issues with the proposed changes, particularly to require individuals to set out how they meet the exemption criteria? Please justify your answer.

We have no comments.

Q18 Do you agree that the title of the ‘certified high net worth individual’ exemption should be updated to ‘high net worth individual’?

Yes – we agree with the proposal to update the title to “high net worth individual” on the basis that investors no longer have to be certified by a third party.

Q19 Are there any other ideas that you feel would deliver on the three objectives of these proposals, outlined in paragraph 4.7?

We have no comments.

Q20 The financial promotions regime plays an important role in protecting vulnerable consumers when investing. The government would welcome views from groups that represent vulnerable groups regarding any of the information presented in this consultation, and in particular on the proposals outlined in the preceding chapter.

We have no comments.

Q21 If you are a firm or individual who relies on the OPE to provide or receive financial services from foreign jurisdictions, what effect would the proposed changes have?

We have no comments.

Appendix A

The Quoted Companies Alliance *Primary Markets Expert Group*

Samantha Harrison (Chair)	Grant Thornton UK LLP
Azhic Basirov (Deputy Chair)	Global Alliance Partners Financial Limited
Colin Aaronson	Grant Thornton UK LLP
Stuart Andrews	finnCapp PLC
Andrew Buchanan	Peel Hunt LLP
Richard Crawley	Liberum Capital Ltd
David Foreman	Zeus Capital
Chris Hardie	W.H. Ireland Group PLC
Stephen Keys	Cenkos Securities PLC
Katy Mitchell	W.H. Ireland PLC
Nick Naylor	Allenby Capital
Jeremy Osler	Cenkos Securities PLC
Niall Pearson	Hybridan LLP
Mark Percy/Dru Danford	Shore Capital Group Ltd
George Sellar	Peel Hunt LLP
Paul Shackleton	Arden Partners PLC
James Spinney	Strand Hanson
Stewart Wallace	Stifel
Christopher Wilkinson	Numis Securities Ltd
David Worlidge	Allenby Capital

The Quoted Companies Alliance *Secondary Markets Expert Group*

Mark Tubby (Chair)	finCapp PLC
Amber Wood (Deputy Chair)	Cenkos Securities Plc

John Beresford-Peirce	Hybridan LLP
Jasper Berry	W.H. Ireland PLC
Richard Bungay	Diurnal Group PLC
Andrew Collins	Charles Russell Speechlys LLP
Sunil Dhall	Peel Hunt LLP
Nick Dilworth	Winterflood Securities Ltd
Fraser Elms	Herald Investment Management Ltd
William Garner	Charles Russell Speechlys
Jon Gerty	Peel Hunt LLP
Mitchell Gibb	Stifel
Keith Hiscock	Hardman & Co.
James Lynch	Downing LLP
Jeremy Phillips	CMS
Katie Potts	Herald Investment Management
Simon Rafferty	Winterflood Securities Ltd
James Stapleton	Winterflood Securities Ltd
Stephen Streater	Blackbird PLC
Peter Swabey	ICSA