The City of London Law Society

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Response to Second Consultation on *Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2008 has been prepared by the Regulatory Committee*

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the second consultation regarding the *Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2008* has been prepared by the Regulatory Committee. The Committee is made up of a number of solicitors from City of London firms who specialise in regulatory law. Members of the Regulatory Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisors, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We wish to make the following comments on the draft *Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2008* attached at Annexe A to the consultation paper.

Specific points

Although we consider it likely that employers will contribute to a pension scheme, we are unclear as to why the exemption under Article 72A(2)(b) is conditional on employers making contributions to such a scheme. This seems unnecessarily restrictive.

Article 72(A)(2)(d) requires an employer or the contracted third party to notify the employee of the "amount of the contribution" that the employer will make, however an exact monetary figure may not be known at that time. We think it would be helpful to amend this paragraph so that it refers to "the amount of the contribution or the basis on which it will be calculated". Similarly, Article 72A(2)(e) requires the contracted third party to notify the employee "of any remuneration the contracted party has received or will receive". The contracted third party should be permitted to notify the basis on which its

remuneration will be calculated. This point also applies in Article 72C(2)(c) and Article 72E (2)(c).

As a minor point, we note that there is a small typographical error at Article 72A(3)(a) and (b): the word "but" appears at the end of (a) and the beginning of (b). One of these should be deleted.

The exemption set out in Article 72B(1) only applies to the three stated types of insurance products. It is not clear to us why other insurance products should not also be included. In particular, critical illness insurance is included, but not other types of sickness policies. Policies covering accident in or around the workplace are not covered either. We consider that it would be helpful to include other insurance products here, in order that the exemption can apply more comprehensively to the sector.

The reference in Article 72(d)(4)(c) to "paying off another loan" seems very broad. We suggest that this is more narrowly defined.

Paragraph 1.5 of the consultation paper refers to Treasury guidance. We think it might be helpful for this guidance (and indeed any other Treasury guidance given in relation to these and similar exemptions) to be suggested to the Financial Services Authority for possible adoption in PERG.

General Points

The reference to "employees" seems unnecessarily narrow, especially given that many firms now have adopted flexible working arrangements and care should be taken in its definition. We would make the same point about the employee share scheme exemption in Article 60 and the existing exemptions relating to the promotion of pension products by employers to employees. Further, we are not clear why former employees and relatives of employees/former employees are not included in this definition, as they are under Article 60. Presumably, a communication to a former employee inviting him/her to make a further contribution to an existing group pension product also ought to be covered.

We note that, in the case of each Article in the draft Order, communications are only exempted if made to employees. Conversely, there is no such restriction in Article 60 provided that, in any case, a communication "is for the purposes of an employee share scheme" and relates to a relevant investment. Though this might not have a great impact in practice we think it would be preferable, for example, for a communication by a contracted third party to an employer and/or another member of its group to automatically be exempted under these Articles.

We note, also that none of the proposed exemptions take account of group structures (i.e. the exemption should apply to, for example, a pension scheme offered by a company to an employee of another member of its group). This should be taken into consideration in the final drafting.

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Chair CLLS Regulatory Committee

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