



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

30 June 2008

Callum McCarthy  
Chairman  
Financial Services Authority  
Canary Wharf  
LONDON  
E14 5HS

Dear Callum

#### **GRANTING OF SOCPA POWERS**

At our recent Tripartite meeting I gave you a brief update that we had made good progress on your receiving the SOCPA powers but I thought it would be helpful to set out more formally what is being proposed and the next steps.

As I said, the Attorney General and Minister for Justice have agreed to your receiving the SOCPA powers. For your information BERR will also probably be added to the list at the same time as you both play a role in tackling financial crime and fraud. At this stage I would appreciate you keeping the BERR proposal confidential.

It is clear that the exercise of such powers will require adequate superintendence. Further discussions with the AG's office have produced the outline of such arrangements but clearly the detail will still need to be completed in conjunction with yourselves and BERR. The superintendence would take the following shape:

- Use of the full immunity power would require the consent of the AG. This would be explicit on the face of the bill. The provision would also allow for possible consultation between the AG and the other specified prosecutors. A requirement for consent of the AG is not explicitly mentioned in the Act for the existing designated prosecutors but they do have to seek such approval according to their terms of their superintendence. You therefore will be in the same position albeit set out in different ways.



- Use of the other SOCPA powers would be subject to compliance with any guidance that the AG may issue. This would be explicit on the face of the Bill. The guidance would apply to all the designated prosecutors and would be drawn up in consultation with all the designated prosecutors.
- The AG will arrange regular liaison meetings bringing together all the designated prosecutors to improve co-ordination and share best practice. Such meetings would ensure that application of the SOCPA powers remained aligned. This would not be explicit on the face of the Bill.
- The AG will agree an MOU with yourselves to establish appropriate arrangements to monitor the FSA's use of the SOCPA powers.

I think the above package provides a strong framework of checks and balances which recognise that you are not within the existing superintendence arrangements of the AG and yet provides a workable solution for you at the operational level.

Assuming you are content, the next steps would be for the MoJ to seek approval for bringing forward the legislation. This would be done in July. Assuming agreement from all other Ministerial colleagues, MoJ would then move to instructing Parliamentary Counsel to draft the clauses. I will ensure that we share those with you wherever possible. The Bill will be introduced in the next session and, all being well, could receive Royal Assent at the end of next year. We would welcome your support in preparing the necessary defensive materials for the passage of the Bill.

I also discussed with the AG what additional support could be offered to help with your enforcement work and potentially boost the number of prosecutions, as you have highlighted that you are keen to do. The new SOCPA powers will clearly have most effect if there is a credible threat of prosecution and I note recent statements confirming that you are committed to pursuing more criminal prosecutions and welcome this policy.

The AG has a number of operational proposals in this regard which they will outline directly with you (such as ensuring that you have adequate protocols with other prosecutors and reviewing your prosecution process charts). The most important, which I would encourage you to take forward ahead of the work on SOCPA, is to include you (or more probably the Director of Enforcement) within her round of informal bilateral liaison meetings that the AG holds with all prosecutors. This would offer you a chance, say twice a year, to highlight the practical problems you are encountering but also to hear from the AG what



other prosecutors are doing. I think this would offer real benefit and hope that you will be agreeable to this.

I think this package of proposals will offer real benefit for your efforts in tackling market abuse and would welcome your confirmation so that we can move forward with the steps to deliver these proposals.

*Yours sincerely*  
*Ad*

**ALISTAIR DARLING**