

Our ref: AD/SLD/1

Your ref:

10 February 2005

Norham House 12 New Bridge Street West

Newcastle upon Tyne NE1 8AS DX 61011

www.robertmuckle.co.uk

Facsimile: +44 (0)191 261 6954 / (0)191 221 0269

e-mail: enquiries@robertmuckle.co.uk

**Telephone: +44 (0)191 232 4402**

Mr S Cubley  
HM Treasury  
Capital Markets & Governance Team 44/22  
1 Horseguards Road  
London  
SW1A 2HQ

By e-mail and post [simon.cubley@hm-treasury.x.gsi.gov.uk](mailto:simon.cubley@hm-treasury.x.gsi.gov.uk)

Dear Mr Cubley

### **Response to the Consultation Document on UK implementation of the Prospectus Directive**

I apologise for missing the deadline for comments on the above but hope that you will nevertheless take account of the comments below.

The only issue that I wish to raise is in relation to questions 3 and 4 of the consultation document (i.e. what should be done below the €2.5million threshold).

My concern is in relation to what will happen if the current ability for a company to issue a prospectus governed by the Public Offers of Securities ("POS") Regulations and related exemptions is withdrawn for sums lower than €2.5million.

At present, a public limited company can issue a prospectus in order to raise funds from the public by the issue of either equity or debt securities. Provided that the directors comply with all of the disclosure requirements set out in POS Regulations, and are willing personally to accept liability for the content of the document, companies are able to raise relatively small sums of money at a reasonable cost. This is because (although they would normally take advice on the form and content of the prospectus) there is no requirement for them to engage a professional firm regulated by the FSA. The company can itself promote the existence of its own prospectus without contravening the financial promotion regime (see regulation 73 of the FSMA 2000 (Financial Promotion) Order 2001 (S1 2001/1335)). If this ability is removed (because it is no longer possible to produce a POS Regulations prospectus), far from making it easier and cheaper to raise money from the public, as claimed in the consultation document, it will, in fact, be more expensive. The reason is that companies will be required to engage an adviser authorised under FSMA 2000 to issue the offering document. The risk will shift from the directors to the advisers, many of whom will be reluctant to become engaged in such activity unless their fees are significant. That adviser will also wish to cover its risk by expensive due diligence and verification and will need to observe its compliance procedures.

Compulsory application of the financial promotions regime to small issues could significantly limit access to capital for small companies. The POS Regulations already exist. The present system is not, to my knowledge, being abused. The POS Regulations have been developed based on years of experience to help companies to identify the information required in order to raise money from the public. To abolish them and leave the question of disclosure to an organisation authorised pursuant to FSMA will (in addition to increasing cost) result in different standards of disclosure developing, with the risk that the investing public will be confused.

I urge you to retain the facility (which could be optional) for a company to issue a prospectus compliant with a POS Regulations equivalent and to publicise the availability of that prospectus without the need to comply with the financial promotions regime.



I shall be very pleased to elaborate on the above in discussion if that would assist.

Yours sincerely

**Andrew Davison**

Direct Line: (0) 191 244 2950

E-mail: [adavison@robertmuckle.co.uk](mailto:adavison@robertmuckle.co.uk)