

24th January 2005

Simon Cubley, Esq.
HM Treasury
Capital Markets and Governance Team
4/22
1 Horse Guards Road
London
SW1A 2HQ

Dear Mr Cubley

RESPONSE TO THE CONSULTATION DOCUMENT ON UK IMPLEMENTATION OF THE PROSPECTUS DIRECTIVE

Thank you for the opportunity to respond to the Treasury's consultation on UK implementation of the EU Prospectus Directive. The London Stock Exchange is strongly supportive of the aims of the Prospectus Directive to encourage cross-border capital-raising and the development of a pan-European securities market, and we have worked closely with both the EU and UK authorities in order to move towards this laudable goal.

The Appendix to this response provides our detailed views on the specific questions raised by the Treasury. In general terms, we are supportive of the Treasury's approach in deciding to implement those areas of the Directive that are optional for Member States, namely:

1. permitting natural persons and SMEs to take advantage of the qualified investor regime;
2. requiring issuers to publish their prospectuses electronically; and
3. not to require issuers of wholesale non-equity securities to provide a summary prospectus in English.

We believe that the first proposal will help enable smaller quoted companies to raise capital without the time and expense of producing a prospectus. Proposal 2, with certain caveats as noted in the Appendix, will increase transparency without imposing any significant extra burden on issuers, and the final option recognises the professional nature of the wholesale debt markets and the concomitant lesser need for investor protection measures.

Overall, therefore, our view is that the Treasury's approach will enhance the attractiveness of the UK's financial markets, to the benefit of both issuers and investors.

If you would like to discuss any of these issues in further detail, please do not hesitate to contact me.

Yours sincerely

Martin Graham
Director of Market Services/Head of AIM
Ph: 020 7797 2110

Appendix: Responses to the detailed questions

Q1: Do you agree that the Directive definition benefits from this clarification (that a public offer does not include a communication in connection with screen trading)?

We believe that this is an important clarification to make. However, our view is that the clarification should refer to “trading on the markets” rather than specifically to “screen trading on the markets”, in order that all on-exchange secondary market activity that is not driven by the issuer is not inadvertently captured within the requirements of the Prospectus Directive.

Q2: Do you anticipate particular issues regarding the application of a public offer in other circumstances?

There may be a need to amplify the exemption from the definition of public offer to include, for example, articles by journalists, or brokers’ circulars. See also the answer to Question 8 below, dealing with publication of prospectuses on issuers’ websites.

Q3: Do you consider the €2.5m threshold to be an appropriate level at which the production and approval of a prospectus is required under EU law?

And if not:

Q4: What form of additional UK prospectus regime should apply below the €2.5m threshold?

We believe that the de minimis threshold of €2.5m, as set out in the Directive, is appropriate, and that there should be no superequivalent UK prospectus regime for public offers under this amount. The costs in both resources and time of producing a prospectus, even one to lower standards than those prescribed in the Directive, would be prohibitive to issuers making such small offers.

In addition, any imposition of superequivalence would limit pan-European regulatory harmonisation and hence hinder cross-border capital raising in Europe, which is the *raison d’être* of the Financial Services Action Plan.

Q5: Do you agree with our approach to implementing the exemption where the offer of securities is to fewer than 100 persons (i.e. on an aggregated basis over a 12 month period)?

We do not believe that the principle of aggregation should apply in respect of offers to fewer than 100 persons. This is superequivalent to the requirements of the Directive, and therefore leads to a potential lack of harmonisation across EU member states.

Q6: Do you agree with our proposed implementation approach for attaching responsibility to the prospectus (i.e. the status quo)?

There appears to be no case for changing the current responsibility procedures, as these are acceptable to the market.

Q7: Do you agree that the UK should have a Qualified Investor regime?

We are supportive of the introduction of an EU qualified investor regime, in order that issuers are not put to the considerable time and expense required to produce a prospectus when there is no corresponding need to produce one on the grounds of investor protection. The existing UK regime has worked well.

We support the Treasury's intention to avail the UK of the option within the Directive to authorise natural persons and SMEs as qualified investors, as this increases the likelihood of smaller issuers being able to raise sufficient capital for their business needs without compromising investor protection.

Q8: Do you agree that a prospectus should be available on an issuer's website in addition to in printed form?

We believe that prospectuses should be made as widely available as possible, and that therefore it is a positive step that prospectuses should be available on the issuer's website. However, such publication runs the risk of breaching the securities laws of other jurisdictions, such as the US, and issuers should be allowed to put measures into place, such as logical security over the pertinent area of their website, in order to avoid this. We believe that issuers should have the choice as to whether they publish their prospectus on their own website or that of a third party, as long as the location of the prospectus is clearly signposted

In addition, the definition of "public offer" should be clarified in order that the posting of a prospectus on a website in itself should not be seen as a public offer, as otherwise this could mean that whilst the prospectus remains on the issuer's website, it is treated as a continuous public offer.

Q9: Do you agree that a notice should be published stating how the prospectus has been made available and where it can be obtained by the public?

This is clearly a sensible proposal, in that greater transparency as to the availability of a prospectus is of particular benefit to retail investors.