



**The Quoted
Companies Alliance**

27 January 2005

HM TREASURY

**UK IMPLEMENTATION OF THE PROSPECTUS DIRECTIVE
2003/71/EC**

**Response to consultation
from the
Quoted Companies Alliance**

January 2005

A company limited by
guarantee registered in
England
Reg No: 4025281

CONTENTS

1. Introduction
2. This Paper
3. Overview
4. Response to specific questions raised

Appendix

About the Quoted Companies Alliance

1. INTRODUCTION

The **Quoted Companies Alliance** (QCA) is a non-profit organisation dedicated to promoting the cause of **smaller quoted companies** (“SQC’s”), which we define as those 2,000 quoted companies outside the FTSE 350 (including those on AIM and OFEX) representing 85% of the UK quoted companies by number. Their market capitalisations tend to be below €500m.

The authors of this response have the objective of ensuring that the voice of SQCs is heard in debates about the legal and governance issues which may affect them.

The appendix to this paper gives more detail about the QCA.

2. THIS PAPER

The HM Treasury issued a consultative document dated October 2004. This paper constitutes the reply of the QCA to that consultative document. The response has been prepared by the QCA’s Legal Committee with help from their Markets & Regulations Committee.

3. OVERVIEW

HM Treasury should press the EU to resolve the current ambiguity for non-EU issuers whereby an inappropriate “home member state” may be inadvertently “chosen” in the period before the Prospectus Directive becomes effective in any EU member state.

4. RESPONSE TO SPECIFIC QUESTIONS RAISED

Q1 **Do you agree that the Directive definition of a public offer benefits from this clarification?**

We agree with the view expressed that the definition in the Directive “is capable of a wide variety of interpretations and is potentially ambiguous”. It is important to clarify the definition where possible.

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

Clear explanations of the effect of the new definition of “public offer” will be required, where market practices may need to be changed. For example:

- It is usual for placing letters to be issued (for commitments to be made) with a pathfinder or P proof of a prospectus. Presumably, this will no longer be possible.
- Shares placed with brokers are distributed to the brokers’ clients. Presumably this will require a prospectus to be sent to the clients, where the clients are non-discretionary.

Q3 **Do you consider the 2.5 million euro threshold to be an appropriate level at which the production and approval of a prospectus is required under UK law?**

Yes. This threshold will be welcomed by the smaller company as it will assist the making of smaller secondary issues to shareholders without the expense of publishing a full prospectus. It may also assist some smaller secondary issues to be

made by way of rights to existing shareholders rather than by a placing to a small number of new places.

and if not

Q4 What form of additional UK prospectus regime should apply below the 2.5 million euros threshold?

None.

Q5 Do you agree with our approach to implementing the exemption where the offer of securities is addressed to fewer than 100 persons?

Yes, it seems reasonable to aggregate the "100 persons" test over a 12 month period, particularly as a prospectus will have validity for 12 months from publication.

Q6 Do you agree with our proposed implementation approach for attaching responsibility to the prospectus?

Yes.

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

Yes. Although the formality of a list held by the FSA may deter some investors from putting themselves onto the list, it is appropriate to go further than the current self-certification basis for sophisticated investors, given that it will operate as an exemption from publication of a prospectus.

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

We agree with the concept of making an electronic copy of a prospectus available. The cost implications in most cases should be minimal, although there may be some additional initial costs of ensuring that the necessary measures are taken to avoid targeting residents in member states where the offer is not taking place. We note that market announcements will also need to be available on issuers' websites.

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?

Yes.

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit association funded by its membership, the QCA represents the interests of smaller quoted companies (SQC), their advisers and investors. It was founded in 1992 and originally known as CISCO.

The QCA has over 200 members. 60% of these are smaller companies quoted on the stock market, or companies with aspirations to join. 40% are drawn from the full range of professional advisory firms whose business is either wholly or significantly derived from servicing smaller companies.

The QCA is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- introduction of, or changes to, legislation affecting SQCs
- corporate governance
- share schemes for employees
- trading, settlement and custody of shares
- structure and regulation of stock markets for SQCs; Financial Services Authority (FSA) consultation
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from the Accounting Standards Board
- company law reform

QCA's AIMS

As the only organisation dedicated solely to the particular interests of the SQC sector, the QCA has three primary goals:

Identification

To create a distinct identify for the SQC sector, and demonstrate its value to the stock markets and the UK and European economy.

Representation

To pro-actively pursue and represent the interests and requirements of the SQC sector to enable it to increase its contribution and ensure that its specific needs are addressed.

Affiliation

To build a strong and vocal collective body of support from within the SQC sector, among corporate directors and securities industry leaders. Through a coalition with quoted company representative groups in the European Union, the QCA participates in the formulation of changes at a European level.

DEFINITION

The Quoted Companies Alliance definition of Smaller Quoted Companies (SQC) is:

- all fully listed companies – excluding the top 350 ie with market cap of €500m+
- plus companies quoted on AIM
- plus companies quoted on OFEX

The QCA also represents companies planning to float.

SQCs contribute to the UK economy:

- there are approximately 2,000 SQCs
- they represent around 85% of the total of quoted companies by number
- they employ 2 million people
- this figure represents around 10% of total private sector employment
- every 5% growth in the SQC sector could reduce UK unemployment by a further 100,000
- They generate:
 - corporation tax paid of £2.0 billion pa
 - income tax paid of £5.0 billion pa
 - social security paid of £2.0 billion pa

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

John Pierce
Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
020 7600 3745
www.qcanet.co.uk

-o0o-