

13 January 2005

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

Dear Mr Cubley

### **IMPLEMENTATION OF PROSPECTUS DIRECTIVE 2003/71/EC**

The IMA is the trade body representing the UK asset management industry. IMA Members include independent fund managers, the asset management arms of banks, life insurers, investment banks and occupational pension scheme managers. They are responsible for the management of approximately £2 trillion of funds (based in the UK, Europe and elsewhere), including institutional funds (for example, pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members manage 99% of UK-authorized investment funds (collective investment schemes).

In managing assets for both retail and institutional investors, IMA Members are major investors in companies whose securities are traded on regulated markets. Our interest in the Listing Rules and the Prospectus Directive is from the standpoint of institutional investors.

Many of the changes in the consultation document result from the Prospectus Directive and as it is a maximum harmonization directive, there has been limited scope for the Treasury to exercise its discretion in the way it is implemented. In this respect in general, we welcome the changes proposed but set out in the attached annex our comments on the questions in the consultation document.

Please call me on 020 7269 4668 if you would like to discuss any of the points in this letter or the attached or if you would like to discuss any issues further.

Yours sincerely

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## **IMA RESPONSE TO THE CONSULTATION DOCUMENT ON THE UK IMPLEMENTATION OF PROSPECTUS DIRECTIVE 2003/71/EC**

The IMA's detailed comments on the questions in the consultation document are set out below.

### **Definition of a public offer**

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

The IMA agrees that the Directive's definition of a public offer benefits from this clarification.

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

As regards the definition of a public offer, the text in the consultation document is inconsistent with the appendix setting out proposed changes to legislation. The draft legislation excludes a communication in connection with *trading* on the three markets whereas the consultation document specifically excludes *screen trading*.

We support the exemption as stated in the draft legislation in that it should cover all trading and not be limited to screen trading.

### **Public offer of securities regulations**

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

This question has limited relevance for IMA members. In practice, increasing this limit may not have any effect because issues between £100,000 and EU2.5million are already likely to exempt by virtue of the other exemptions.

*Q4. If not, what form of additional UK prospectus regime should apply below €2.5million threshold?*

See response to question 3 above.

### **Other implementation issues**

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

The IMA agrees with the Treasury's approach to implementing the exemption where the offer of securities is addressed to fewer than 100 persons.

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

The IMA agrees with the Treasury's proposed approach as regards responsibility for the prospectus.

*Q7. Do you agree that the UK should have a qualified investor regime?*

The IMA agrees that the UK should have a qualified investor regime. However, it is not clear given the criteria that many private investors would be eligible and as a result, the regime may not be used much. In addition, the first and third criteria are not necessarily synonymous with having the requisite skills to appraise investment opportunities without a prospectus. Furthermore, qualified investors are

unlikely to want to register until they have identified a specific investment opportunity. Such an investment may already benefit from another exemption such as the raised threshold of €2.5 million and the 100-person limit.

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

The IMA agrees that a prospectus should be made available on an issuer's website as well as in printed form. It should be easily accessed, i.e. without significant delay and at little cost and putting it on an issuer's website is the most immediate and cheapest method.

*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?*

The IMA agrees that a notice should be published stating how the prospectus has been made available and where the public can obtain it.