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Simon Cubley
HM Treasury
Capital Markets & Governance Team
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Our ref ph/dc

26 January 2005

Dear Sir

UK Implementation of the Prospectus Directive 2003/71/EC

We welcome the opportunity to comment on HM Treasury's consultation document on the UK implementation of the Prospectus Directive.

We set out our comments in respect of the questions raised in the Appendix to this letter.

If you would like to discuss further any aspect of this response, please contact David Cattermole on 020 7311 8346 or Peter Hughes on 020 7311 8281.

Yours faithfully

KPMG LLP

Q 1. Do you agree that the Directive definition of a public offer benefits from this clarification?

We welcome the proposed clarification.

Q 2. Do you anticipate particular issues regarding the application of the definition of a public offer in other circumstances?

We agree that it is undesirable to have a definition which is capable of a wide variety of interpretations; we have not, however, identified any specific common circumstances other than that highlighted in the consultation paper which would give rise to issues.

Q 3. Do you consider the 2.5 million euros threshold to be an appropriate level at which the production and approval of a prospectus is required under UK law?

We do not have particular concerns over the EU decision to set a 2.5 million euro threshold for the purposes of the prospectus regime. We would note that communications of offers below that level would constitute financial promotions requiring approval by an authorised person (unless benefiting from an exemption from the financial promotion regime). The Financial Services Authority supervises authorised persons and can monitor approvals of financial promotions as part of its enforcement regime. We consider that in practice this already provides a mechanism to protect investors in relation to small offerings. We would not view the creation of a further protection regime as a necessary or cost efficient step.

And if not:

Q 4. What form of additional UK prospectus regime should apply below the 2.5 million euros threshold?

See our response to Q3.

Q 5. Do you agree with our approach to implementing the exemption where the offer of securities is addressed to fewer than 100 persons?

We note that the approach adopted is also similar to that contained within the POS Regulations. We would, however, welcome some clarification of the expression “addressed to” (the POS Regulations merely refer to securities being “offered to” persons). Does the term mean the same as “made to”, or is the person making the offer required to identify in each document through which the offer is made the person to whom the document is addressed?

Q 6. Do you agree with our proposed implementation approach for attaching responsibility to the prospectus?

We agree with the proposed approach.

Q 7. Do you agree that the UK should have a Qualified Investor regime?

We agree with the proposal to have a Qualified Investor regime, but we do not consider that the regime will be of great practical application unless revisions are also made to the financial promotion regime to ensure that communications with Qualified Investors are exempt financial promotions.

Q 8. Do you agree that a prospectus should be made available on an issuer's website in addition to in printed form?

Yes, in general, although there may be cases where this causes practical difficulties. For example, an issuer which is a new company undertaking a relatively small marketing to the 'public' (where the offering is just above the 100 person threshold) without the use of a financial intermediary and having no intention to seek admission to trading may not have its own website at the relevant time.

In the light of this, we consider that a more practical approach would be for all prospectuses to be published on a website maintained by the competent authority. Such an approach would also make public access easier and more efficient (since it would not be necessary to access a whole series of company sites if searching for a number of documents, and there would also be a time saving in relation to identifying where on the relevant site the prospectus was located).

Q 9. 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?

If all prospectuses are required to be published on a website maintained by the competent authority, as suggested above, we would consider that a requirement to publish a notice in a newspaper explaining where a prospectus had been made available would become redundant. Even in the absence of such an approach we are somewhat sceptical as to the value of publication in a newspaper, given the relatively limited circulation of any particular national newspaper.