



APCIMS

EASD
Working for the
Investment Community

114 Middlesex Street
London E1 7JH
Tel: +44 (0) 20 7247 7080
Fax: +44 (0) 20 7377 0939
email: info@apcims.co.uk

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

Dear Mr Cubley

UK Implementation of the Prospectus Directive (PD)

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation that represents those firms who act for the private investor and who offer them services that range from no advice or 'execution only' trading through to portfolio management for the high net worth individual. Our 217 member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands and following the merger of EASD into APCIMS, increasingly in other European countries as well. APCIMS members have under management GBP 240 billion for the private investor and undertake some 13 million trades for them annually.

In spite of APCIMS' focus on the private client arena, a number of our members are also active in the primary markets fulfilling the role of sponsor under the Listing Rules and, more significant in terms of business volumes, acting as nominated advisers to companies quoted on AIM. As a result of this, we would like to offer the following comments.

- Q3. *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***
- Q4. *And if not - What form of additional UK prospectus regime should apply below the 2.5 million euros threshold ?***

APCIMS members active in the primary markets have told us that EUR 2.5m actually represents a small fund raising for most AIM and Official List companies and that, as a consequence, the PD's EUR 2.5m prospectus exemption threshold is only likely to be of practical benefit for a relatively limited number of smaller companies. For companies of this sort, however, the extended exemption offers two distinct advantages - they avoid (1) the cost burdens associated with producing a prospectus and (2) the need to go through the process of having a prospectus vetted and approved by the UKLA.

At present, even if an unlisted company making a public offer of its securities is unable to take advantage of the £100,000 exemption, the prospectus it produces in accordance with the POS Regulations does not need any formal or official/regulatory approval but need only be filed with Companies House. This fact alone accounts for the decision taken by many companies in conjunction with their advisers to raise finance via AIM rather than via the Official List - the general view seems to be that not only is the process of securing UKLA approval for a prospectus both time-consuming and costly (specifically because it requires much greater input from professional advisers) but also that the UKLA-imposed timetable for approving a prospectus, being both specific and extended, takes control over the timing of an issue out of the company's hands.

With the demise of the POS Regulations, prospectuses for the public offer of unlisted securities will have to be vetted/approved by the UKLA for the first time – we believe that the additional costs and loss of control that will result from this are of themselves serious disincentives for small companies raising equity finance. It has been suggested to us that, in an effort to avoid the need for UKLA vetting/approval, companies will avoid placings, open offers and rights issue and will carry out fund raising by way of institutional placings not requiring prospectuses. This trend is apparently already evident and putting further pressure upon companies in the form of an additional prospectus regime would, we believe, only serve to exacerbate this trend and, as a consequence, deprive private investors of the right to participate in issues by companies in which they are shareholders.

We also believe that introducing “an additional UK prospectus regime beneath the 2.5 million euros threshold” will inevitably further complicate the requirements to which companies and their advisers are already subject, effectively creating a three-tier regime – exempt, prospectus regime for offers below EUR 2.5m and prospectus regime for offers above EUR 2.5m. In considering the desirability of such a structure, HM Treasury should bear in mind that –

- exemption from the requirement to produce a prospectus is not a “free ticket” - while undoubtedly beneficial from the perspective of both cost and time savings, companies and their advisers have to make considerable efforts to ensure that exemptions are properly used and that the conditions attached to them are complied with.
- so far as investor protection is concerned, companies quoted on AIM are subject to detailed rules imposed by the London Stock Exchange – as well as requiring the provision of information about the company’s directors, promoters, business activities and financial position upon admission, the AIM rules impose ongoing disclosure requirements and an obligation for an AIM company to retain a nominated adviser at all times.
- if the UK decides not to implement the PD’s EUR 2.5m exemption level, many market participants would prefer a two-tier regime where offers are effectively either in or out of the prospectus requirements with no “half-way house” creating additional complications in respect of the relatively small number of offers likely to fall between the current and the new exemption levels.

Finally, we query whether any additional regime could be put in place which would not put UK companies at a competitive disadvantage to their EU counterparts operating in member states where the PD’s EUR 2.5m exemption had been given full effect. In particular, if a company from such another state wished to offer its securities to UK-based investors while taking advantage of the exemption not to produce a prospectus, would the UK actually be able to impose additional requirements upon it under the PD ?

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

We agree that the UK should take up the option afforded by the PD to set up a Qualified Investor regime. We also consider that individuals meeting the PD criteria should be able to certify themselves as qualified investors – this seems particularly appropriate in light of the changes recently announced to the Financial Promotions Order simplifying the promotion of certain types of investments to individuals self-certificated as “high net worth” or “sophisticated”.

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

We support the FSA’s proposal to require an issuer which has published its prospectus in a newspaper or other printed form to also publish the document on its website or on that of its financial intermediary. Not only is this consistent with the general objective of accommodating and encouraging increased use of electronic communication but it is also likely to make such documents more readily available to the public and to relieve brokers to the obligation to obtain and send on paper copies.

An area for further clarification ?

Finally, we would like to mention a point which is not covered by the consultation document but which is relevant to the exemptions in both the POS Regulations and the PD which rely on an offer being addressed/promoted to a restricted number of persons.

At present, there is some debate amongst firms relying on the POS Regulations exemptions in respect of securities offered to (i) investment professionals only and/or (ii) no more than 50 other people as to whether they are required to effectively “look through” a private client broker to whom securities are offered and count the individuals with whom such securities are ultimately placed. A view seems to be forming that there is a requirement to “look through” and that, in such circumstances, while a broker’s underlying discretionary clients may be taken collectively as representing one investment decision on the part of the broker, each underlying non-discretionary customer should be counted separately. While this leads to some practical difficulties – e.g. how a firm seeks to ensure that the brokers with whom it places securities do not distribute them any more widely – it also seems that those firms which take a stricter view of their responsibilities in this area may be placed at a competitive disadvantage to those which do not. We believe that this is a subject upon which HM Treasury should consider providing guidance in connection with the implementation of the PD exemption for offers addressed to fewer than 100 natural or legal persons per Member State.

We hope that the comments above are of assistance to HM Treasury in determining its approach to the implementation of the PD. If there are any points in relation to which further information is required, please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sarah McGuffick". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sarah McGuffick
Policy Adviser