

# WRIGLEYS

— SOLICITORS —

Your ref

Our ref MJL/SP

19 Cookridge Street  
Leeds LS2 3AG

DX: 12020 Leeds 1

Tel: 0113 244 6100

Direct: 0113 204 5724

Fax: 0113 244 6101

[malcolm.lynch@wrigleys.co.uk](mailto:malcolm.lynch@wrigleys.co.uk)

## E-Mail

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1 February 2005

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

**By E-Mail** [simon.cubley@hm-treasury.x.gsi.gov.uk](mailto:simon.cubley@hm-treasury.x.gsi.gov.uk)

Dear Mr Cubley

### UK Implementation of the Prospectus Directive - Consultation Document

I noticed a reference to the implementation of the Prospective Directive in yesterday's Financial Times, which goaded me into seeking whether a consultation document had been issued regarding the Prospectus Directive. I have therefore found HM Treasury's document of October 2004, which had not previously reached my attention.

I recognise that I am outside the time limits for consultation but trust that this letter might be considered nonetheless.

Wrigleys are a charity and private client firm which is authorised and regulated by the Financial Services Authority for non-mainstream investment business in order to approve financial promotions by charities and other social economy organisations.

We have advised a number of organisations over many years on the issue of financial promotions, including financial promotions by community development finance institutions which have received funding from the Phoenix programme of the Department of Trade and Industry and community investment tax relief introduced by HM Treasury.

Most of the financial promotions we are involved with are in respect of social enterprises seeking to raise no more than £1 million from offers to the public, although the largest offer to the public with

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*Partners:* R M AINSCOE · J E BOYES · P R P CHADWICK · D A COLDRICK · A S DUCHART · P G GRESWOLD · V M JAMES  
M J LYNCH · P S NASH · G J SMALLMAN · R M SUTTON · D J WIGHTMAN · A D WRIGLESWORTH · W M WRIGLEY  
*Consultants:* J R ARCHER · T B KNIGHT · S J ROSEVINGE

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which we have been involved with was issued by Cafédirect plc, with an offer of up to £5 million in 2004.

I have the following comments on questions raised in the Consultation Document:

#### Question 3 and 4

The €2.5 million threshold is an appropriate level at which the approval of the FSA for an offer to the public should be made. Below that level, the cost of obtaining the approval of the FSA before the issue of a financial promotion would be prohibitive. Nonetheless, it is recommended that the current requirement for filing of the prospectus should continue for public offers below that threshold.

It is clear, that there are some business advisors who are more concerned with the fee which they can obtain from advising companies on financial promotions than they are on the content of the financial promotion and whether the company should be making the issue or not. This is regrettable.

One of the more significant costs in issuing a prospectus is the verification undertaken to ensure that a document is fair, clear and not misleading.

Content requirements for a Prospectus under the Public Offers of Securities Regulations provide a useful guidance to accompany an advisor on requirements for a public offer of securities, even below the €2.5 million threshold, but where that information is already publicly available, for example in audited accounts which have been filed with the Registrar of Companies, it is not essential that it is repeated in a financial promotion. Movement to a regime where the existing content of a prospectus might be guidance for issues below €2.5 million may be an appropriate way forward.

#### Question 5

It will be helpful to permit an offer of securities addressed to fewer than 100 natural or legal persons over a 12 month period.

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

I do agree that there should be a qualified investor regime but I am concerned that this is not suitable for the charity and social economy sector where people might invest much smaller amounts of money and have less assets available themselves. Such investors are perhaps better organised through an investment club for that specific purpose.

#### Question 8

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I do not believe that there should be an obligation that a prospectus is made available on an issuer's website in addition to printed form, since an issuer may wish to restrict the issue to the UK only and it is more difficult to do so if the document is published on a website. In this respect, I believe the directive goes too far in requiring an approval of prospectus where the issue is only to persons in the UK. Approval should only apply where a prospectus is published throughout the European Union. I recognise it is too late to amend the Directive.

## Question 9

I agree that a notice should be published stating how the prospectus has been made available and where it can be obtained by the public.

## Regulations

### Schedule 13 (section 84) (b)

The prospectus rules should take the opportunity to use the maximum period in the directive of 12 months as a period of validity. It should be the function of the issuer to decide whether it wishes to adopt a lesser period.

It is understood by virtue of the definition of securities in the proposed section 103 Financial Services and Markets Act 2000, the new public offer regime will only relate to transferable securities and not withdrawable shares in an industrial and provident society. The proposed schedule 11(a) paragraph 6 refers to transferable securities which are outside the definition of securities. However, this omits a provision which is contained within Article 2(2)(k) of Directive 1989/298 which were shares or transferable securities equivalent to shares, ownership of which entitles the holder to avail himself of the services of an industrial and provident society or to become a member of such a body. This is wider than the provision in paragraph 6(d) of Schedule 11(a). It is appropriate to retain such a provision to permit persons seeking to become members of co-operative organisations in order to obtain their services, which is different to an offer to the public purely for the purposes of investment. It is my understanding that agricultural co-operatives, as well as some consumer co-operatives, make use of these membership provisions to encourage membership of such co-operative societies and issue transferable securities for this purpose.

## Qualified Investors Register

I believe that there should be self-certification by the qualified investor rather than certification by solicitors or accountants. It is unnecessarily burdensome for solicitors and accountants to make a

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judgement as to whether a person has satisfied the requirements or not. I do not believe it will be attractive for qualified investors to register with the FSA since they will wish to keep their privacy.

I hope these comments may be taken into account.

Yours sincerely

MALCOLM LYNCH  
Partner