



21 May 2013

Our ref: ICAEW Rep 79/13

Regulation Department
ICAP Securities & Derivatives Exchange Limited
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London EC2M 7UR

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Dear sirs

Consultation on proposed amendments to the ISDX Rules for Issuers, the Corporate Adviser Handbook & Draft Rulebooks

ICAEW is pleased to respond to your request for comments on *Consultation on proposed amendments to the ISDX Rules for Issuers, the Corporate Adviser Handbook & Draft Rulebooks*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW REPRESENTATION

CONSULTATION ON PROPOSED AMENDMENTS TO THE ISDX RULES FOR ISSUERS, THE CORPORATE ADVISER HANDBOOK & DRAFT RULEBOOKS

Memorandum of comment submitted in May 2013 by ICAEW, in response to ICAP Securities & Derivatives Exchange's consultation Proposed Amendments to the ISDX Rules for Issuers, the Corporate Adviser Handbook & Draft Rulebooks published in April 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Proposed amendments to the ISDX Rules for Issuers, the Corporate Adviser Handbook & Draft Rulebooks* published by ICAP Securities & Derivatives Exchange on 4 April 2013, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. The Corporate Finance Faculty is the voice of corporate finance within ICAEW. The faculty is responsible for submissions to regulators on behalf of ICAEW. It provides a range of services to its members including a monthly magazine, *Corporate Financier*. This response reflects consultation with corporate finance advisers, including Corporate Advisers, and members with experience in corporate governance.

RESPONSES TO SPECIFIC QUESTIONS

Qi: Do you have any comments as regards the conclusions of ISDX's review of the ISDX Growth Market? Please provide a detailed explanation for any response?

5. We broadly agree with many of the conclusions of the review of the ISDX Growth Market.
6. However we believe that the new standards for issuers admitting securities are complicated and could result in the ISDX Growth Market becoming a market predominantly for investment vehicles and mineral companies (for whom those standards will not apply) or for larger companies. The information set out in the Introduction to the consultation paper is not, in our view, a persuasive explanation of how the proposed points system will determine the suitability of applicant companies.
7. We also feel that little evidence is provided to support the proposed caps on the number of directorships held by directors at the same time and on the number of clients for a Corporate Adviser.

Qii: Guidance Note to Rule 3: Is the proposed guidance on suitable arrangements for allotting shares on a non pre-emptive basis helpful?

8. We believe that the guidance is helpful.

Qiii: Rule 4: Do you have any comments on the free float requirement? Do you agree that investment vehicles should be excluded from the free float requirement?

9. We agree with the proposals.

Qiv: Rule 5: ISDX intends to prescribe additional requirements and standards for issuers applying for the admission of equity securities where issuers will be required to demonstrate compliance with certain standards based on issuer free float, revenue, EBITDA, an issuer's track record of generating revenue and balance sheet assets (excluding intangible assets). ISDX would be grateful for feedback. Are there any perceived issues on legal certainty arising from (new) Rule 5? Please provide a detailed explanation for any response?

10. We support the objective of enhancing the admission standards and requirements for issuers.
11. We are not convinced that the proposed points system will best serve that objective as the result will not be transparent. It could also conflict with the view of the corporate adviser and this risks undermining market confidence. The points system is likely to favour larger, longer established companies over growth companies to the extent that good quality companies and certain technology companies are excluded.

Qv: Rule 6: Is the requirement for investment vehicles to raise a minimum of £500,000 upon, or immediately preceding admission pitched at the right level to achieve ISDX's stated objectives (as set out in the Introduction)?

12. We agree with the proposed requirement.

Qvi: Rule 5 and 6: ISDX would be grateful for feedback concerning our intention to conduct an assessment of existing issuers 18 months from the date of the implementation of the Rules with a view to withdrawing issuers which cannot meet the additional requirements for equity securities. Please provide an explanation for any response?

13. We believe that retrospectively imposing eligibility requirements could risk undermining confidence in the operation of the market. ISDX might consider a case by case assessment together with investor engagement.

Qvii: Rule 7: Do you have any comments relating to the additional requirement for mineral exploration companies? Please provide a detailed explanation for any response?

14. We support the additional requirement but it would be helpful to clarify that the figure of £200,000 excludes the cost of the expert or technical report required under Rule 16.

Qviii: Is there support for a carve-out for early stage technology companies from the requirement of Rule 5 along the lines of the carve-out for mineral exploration companies (per Rule 7)? If so, what requirements are appropriate for early stage technology businesses?

15. We would not support a carve-out for early stage technology companies. We note that no specific rules apply to scientific-research based companies on AIM or the new High Growth Segment.
16. Notwithstanding our comments above on proposed Rules 5 and 6, an early stage technology company may struggle to achieve the minimum total of points to meet the suitability test. Schemes such as those of the Technology Strategy Board that are designed to support technology-led innovation in pre start-ups, start-ups and SMEs exist to serve very early stage technology companies.

Qix: Rules 54 and 55: In effect ISDX proposes to introduce a maximum "shelf life" for investment vehicles (2 years) and cash shells (6 months) that have not undertaken a transaction amounting to a reverse takeover or substantially implemented the investment strategy. Do you consider this proposal to be a reasonable period of time?

17. We support the introduction of a maximum 'shelf life' for investment vehicles and cash shells together with regular periodic disclosure of progress against the investment strategy. We

believe that a 1 year shelf life for cash shells would provide a more realistic timeframe for investments to be identified and for due diligence to be performed.

Qx: Rule 57: Do you have any comments concerning disclosure of related party transactions?

18. We have no comments.

Qxi: Rule 63: Do you agree that issuers allotting shares at a significant discount to the price available on the market is a material issue on ISDX and public markets generally? Do you consider the proposed Rule 65 to be workable and if not, is there an alternative? Please provide a detailed explanation for any response?

19. We agree.

Qxii: Rule 72: ISDX intends to introduce provisions limiting the number of directorships held by directors at the same time to ensure that an issuer's directors are enabled to dedicate sufficient time to their duties and to progress an issuer's business. Please provide feedback on these proposed restrictions and the transitional period of 6 months for existing issuers to comply with this rule?

20. We agree with the proposal in new Rule 71 that an issuer 'should have due regard for the principles laid down by the UK Corporate Governance Code published by the Financial Reporting Council, insofar as appropriate in relation to the nature and size of the issuer'. The relevant Main Principle of the Code, B3, is that all directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

21. We believe that setting prescriptive limits to the number of directorships will not necessarily address the ISDX perception that 'the inability of individual directors to dedicate sufficient time commitment to their responsibilities and positions on the board of issuers is a reoccurring issue for small- and mid-cap issuers across the public markets'. For principle B3 of the Code to be effective, the issuer needs to be clear about the terms and expected time commitment when it appoints directors. This, together with support from the Corporate Adviser, is more likely to help address the problem perceived by ISDX than are limits that could in fact be too high.

Qxiii: Rule 78: Do you agree that issuers should be expected to make available minimum categories of information for the benefit of investors on websites?

22. We agree.

Qxiv: Rule 84: Please provide feedback on ISDX's intention to require issuers to consult shareholders concerning proposals to withdraw from the ISDX Growth Market.

23. We support the intention.

Qxv: Handbook, paragraph 33: Do you have any comments on ISDX Permissioning ISDX Corporate Adviser's activities? Please provide a detailed explanation for any response?

24. We believe that placing a limit on the number of clients a Corporate Adviser is able to act for at any one time unnecessary given the existing principles-based requirements in Rules 12 and 13 for staffing levels to be commensurate with the number and type of client issuers and the firm's plans. As we mentioned in our comments on the proposed limit to directorships, there is a risk that a limit is too high depending on the nature and business complexity of the client issuers.

Qxvi: Handbook, paragraph 35 and Appdx. B: Do you have any comments on ISDX's intention to introduce a more standardised approach to the determination by ISDX Corporate Advisers of issuer suitability?

Qxvii: Paragraph 36 and Appdx. C: Please provide feedback on ISDX's proposal to provide ISDX Corporate Advisers with responsibility to oversee the due diligence process and ensure that an appropriate scope of legal and financial due diligence is performed by appropriate professional advisers acting on the issuer's behalf.

25. We support the proposal to provide Corporate Advisers with responsibility to oversee the due diligence process.

26. We note the proposed introduction of minimum standards for due diligence as set out in Appendices B and C. We note also the provision in both of Rules 35 and 36 for a Corporate Adviser to derogate from the items in Appendices B and C to modify its approach to due diligence. We believe this is an important provision as it recognises the significance of a risk-based approach, tailored to the circumstances of the company. We believe this could be usefully repeated in Appendices B and C.

27. In B8, Appendix B we do not think that the specific reference to Kroll is appropriate and suggest that it is removed.

Qxviii: Appendices B and C: Do you have any comments or suggestions concerning the prescribed minimum checks to be conducted by an ISDX Corporate Adviser or indeed, the prescribed minimum categories of legal and financial due diligence? Please provide a detailed explanation for any response.

28. We believe that more emphasis should be given to the adviser adopting a risk-based approach. Indeed an adviser may decide that the minimum standards are insufficient in an individual case and should be encouraged to modify their work as appropriate.

Qxix: Appendix D: Please provide feedback on the form of the Declaration by ISDX Corporate Advisers set out at Appendix D of the Corporate Adviser Handbook.

29. We have no specific comments.

Qxx: Do you have any other comments or suggestions for rule amendments? Please provide a detailed explanation for any response.

30. We note that several rule amendments are of a prescriptive nature and we would encourage ISDX to ensure that the amendments adopted do not collectively act as a disincentive to the Corporate Adviser making professional judgements appropriate to growth companies.

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