



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

10 March 2009

Our ref: ICAEW Rep 26/09

Directorate General Internal Market and Services
Unit G3 - Securities Market
European Commission
Rue de Spa 2
1000 Brussels
BELGIUM

By email markt-g3@ec.europa.eu

Dear sirs

CONSULTATION ON THE REVIEW OF THE PROSPECTUS DIRECTIVE (DIRECTIVE 2003/71/EC)

The Institute of Chartered Accountants in England and Wales (identification number 7719382720-34) is pleased to respond to your request for comments on *Consultation on the review of the Prospectus Directive (Directive 2003/71/EC)*.

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

ICAEW REP 26/09

CONSULTATION ON THE REVIEW OF THE PROSPECTUS DIRECTIVE (DIRECTIVE 2003/71/EC)

Memorandum of comment submitted in March 2009 by The Institute of Chartered Accountants in England and Wales, in response to Directorate General Internal Market and Services, Unit G3 - Securities consultation paper Consultation on the review of the Prospectus Directive (Directive 2003/71/EC) published in January 2009

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper *Consultation on the review of the Prospectus Directive (Directive 2003/71/EC)* published by Directorate General Internal Market and Services, Unit G3 - Securities Markets.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 750,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.
4. The ICAEW's Corporate Finance Faculty (the Faculty) is a network of over 6,000 corporate finance professionals. This response draws on the expertise of Faculty members, which include sponsors and reporting accountants and our comments concentrate on specific questions in the consultation paper.

MAJOR POINTS

Support for the initiative

5. We support the European Commission's aim to identify and reduce unnecessary administrative burdens on EU companies and unjustified costs for companies and intermediaries and to simplify the Prospectus Directive.
6. We agree with the general assessment of the effectiveness and efficiency resulting from the application of the Prospectus Directive.
7. We agree that in the context of both rights issues and open offers there should be an exemption from the obligation to publish a prospectus but that the working capital statement should be retained in a document containing information on the reasons for and details of the offer.

RESPONSES TO SPECIFIC QUESTIONS

Consultation paper part 2. General assessment of the Prospectus Directive

Do you agree with the Commission services' preliminary assessment of the functioning of the Prospectus Directive?

8. We agree.

Consultation paper part 3. Changes proposed

Article 10 – Information

Q: Do you agree with this analysis? Do you agree with the removal of Article 10 of the Prospectus Directive?

9. We agree with the analysis and the proposed removal of Article 10.

Article 16 – Supplement to the prospectus

Q: Do you agree with this analysis? Do you agree with the change proposed in Article 16.2 of the Prospectus Directive?

10. We agree with the analysis and with the proposal for harmonising the time frame for investors to exercise their right to withdraw their previous acceptances.

Consultation paper part 4. Other issues identified

Disclosure obligations: the prospectus and its summary

Q: Do you agree with this analysis? Do you have any suggestions in this regard?

11. In our view, it is difficult to generalise on the question of whether prospectuses are too long or too complex as, to a great extent, the nature and complexity of an issuer's business and track record influence how lengthy or detailed, and accordingly how accessible the prospectus is for retail investors. Whatever the length of the document, we consider that there continues to be a strong case for keeping the requirement for a prospectus summary.
12. We are however aware of the concern that the 2,500 word limit can make inclusion of all appropriate information quite difficult. We note that the Commission is open to further debate on this point and so may wish to consider whether there should be more discretion about what information is included in the summary and where cross references to the main document could be used.

Disclosure obligations for smaller companies

Q: Do you agree with the analysis? Do you support any of the two alternative solutions mentioned? Do you have any other suggestions?

13. We have encountered support for the analysis among smaller quoted companies and sponsors who have experience of smaller quoted companies that actively avoid the public offer route.
14. We consider there are some grounds for raising the exemption threshold for quoted companies, including companies quoted on unregulated (or otherwise designated) markets as this would address a perceived 'pre-emption gap' between the €2.5m threshold and a viable level for raising funds via the Prospectus Directive route.
15. We also note the analysis of the impact on small and medium size enterprises of the disclosure requirements linked to the issuance of a prospectus. In general, for

further issues by companies that are already listed or quoted on unregulated (or otherwise designated) markets we would support a relaxation of certain disclosure requirements, but retention of the working capital statement.

Disclosure requirements and Government Guarantee Schemes

Q: Do you agree with the analysis?

16. We agree.

Rights issues

Q: Do you agree with the analysis? Do you have any other suggestions?

17. We agree with the analysis in the context of both rights issues and open offers and consider that the exemption from the obligation to publish a prospectus should apply in both types of pre-emptive offer.

18. However, notwithstanding the need to balance the cost to issuers and investor protection, we believe that the working capital statement should be retained as part of the document 'containing information on the reasons for and details of the offer'.

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