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Your ref: CP11/28

Jonathan Rees
Market Infrastructure and Policy
The Financial Services Authority
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Dear Mr Rees

CP11/28 UK implementation of Amending Directive 2010/73/EU

ICAEW welcomes the opportunity to comment on the consultation paper *UK implementation of Amending Directive 2010/73/EU* published by HM Treasury and FSA in December 2011, a copy of which is available from this [link](#).

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 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

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.

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 draws on the views of faculty members including reporting accountants, corporate finance advisers and lawyers.

We believe that, on the whole, investor protection has been strengthened through changes to the Prospectus Directive and our members welcome the alignment of the Directive with subsequent EU legislation. Our comments on specific questions are set out in the Appendix.

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

Yours sincerely



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APPENDIX

RESPONSES TO SPECIFIC QUESTIONS

FSMA Implementation

Retail cascades

Q3: Do you believe the consent of the issuer, individual responsible for drawing up the prospectus (if not the issuer), or both of the above, should be sought for subsequent resales of securities through intermediaries?

1. The consent of the issuer should be sought for subsequent resales of securities through intermediaries in order to capture information on any significant changes in the twelve month period of a prospectus' validity.
2. Ownership of the prospectus belongs to the issuer and where an individual who is not the issuer is responsible for drawing up the prospectus, that individual will wish to perform a minimum amount of work to ascertain any significant changes and this will have cost implications. It is unlikely the individual will be able to do this without contacting the issuer so there seems no merit in obtaining their consent.

Prospectus summaries

Q4: Will investor protection be increased in the prospectus regime through comparability and the creation of 'key information' for summaries?

3. We believe that investor protection will be increased as a result of the creation of 'key information' for summaries, because of the qualitative and flexible approach that issuers and their advisers are encouraged to adopt when drafting summaries.
4. Where the specific circumstances enable meaningful comparability between summaries then this will also enhance investor protection.

Q5: Has summary liability altered significantly through the changes to the prospectus regime?

5. We are not aware of such a change.

Q6: Do the changes regarding supplements in the prospectus regime codify existing market practice, or will they have a more significant effect on issuers and investors?

6. We believe that these changes do codify existing market practice.

Alignment with EU legislation

Q8: How will issuers be affected by the alignment of the Prospectus Directive with other EU legislation?

7. The alignment of the definition of 'qualified investor' with the MiFID classification of 'professional' client can be expected to be helpful in practice in that it will remove a layer of bureaucracy for intermediaries when allocating new issues, as they will not need to check whether any clients they have already classified as a professional are also on the list of Qualified Investors (ie if they only allocate to their professional clients the prospectus exemption will apply). As the MiFID definition is also slightly broader this will be an additional benefit to issuers.

Costs and impact of the new regime

Q13: How helpful is the greater legal clarity being given to issuers? Will this reduce the costs or make equity finance more attractive, or do the changes simply codify current market interpretation of the Directive?

8. Aside from the extension of the employee offer exemption to cover unlisted EU companies and overseas listed entities and the 150 person / €5m threshold changes that were implemented in the UK last year, the changes are mainly of a clarification nature and we do not expect them to have a significant impact on equity financing.

Q16: The Government's objective is to copy out EU legislation. Do you have any comments on the way the Amending Directive has been implemented in the draft regulations, taking into account the existing implementation of the Prospectus Directive in 2005?

9. We agree with this approach as it helps achieve consistency across Member States and are not aware of negative experiences from the implementation of the Directive in 2005.

Prospectus Rules Implementation

Q18: Do you have any comments on our proposals relating to implementation of the amendments to the Prospectus Directive?

10. We agree with the approach.

Q19: Do you agree with our transitional provisions for changes to the DTRs as set out in paragraph 3.23?

11. Yes, we agree.