The Quoted Companies Alliance

The Quoted Companies Alliance – Proposed Prospectus Directive Amendment:

Increasing the threshold for exempt offers (Article 1, paragraph 2 – point h)

Amendment 1
Proposal for a directive – amending act
Article 1, paragraph 2 – point h

Text proposed by the Commission	*Amendment*
"(h) securities included in an offer where the total consideration of the offer in the Community is less than EUR 2 500 000, which limit shall be calculated over a period of 12 months;"	"(h) securities included in an offer where the total consideration of the offer in the Community is less than **EUR 10 000 000**, which limit shall be calculated over a period of 12 months;"

Justification

The Quoted Companies Alliance (QCA) has consistently supported the relaxation of requirements of the Prospectus Directive as they apply to smaller companies. The QCA welcomed the initial announcement of the European Commission's proposals for changes to the Prospectus Directive in September 2009.

However, we believe that the proposals will not sufficiently help smaller companies from accessing capital from the public with less administrative burdens, which is one of the objectives of this review of the Prospectus Directive. Although the European Commission has proposed a proportionate disclosure regime for rights issues (Proposal for a directive – amending act, Article 7(2)g) and companies with a reduced market capitalisation (Proposal for a directive – amending act, Article 7(2)e), these amendments are currently drafted to only apply to companies on 'regulated markets', which means smaller companies on exchange regulated (or 'growth markets') throughout Europe[1] will not be able to access these concessions.

In the recovery period from the credit crunch at a time when banks are reluctant to lend, it is vital that smaller companies, regardless of the market they are on, are able to raise capital as easily and efficiently as possible, consistent with investor protection. There is an opportunity to change the threshold under which a prospectus does not need to be produced as part of the current changes to the Directive, and we urge that this opportunity be taken in view of the urgency of this issue to smaller companies.

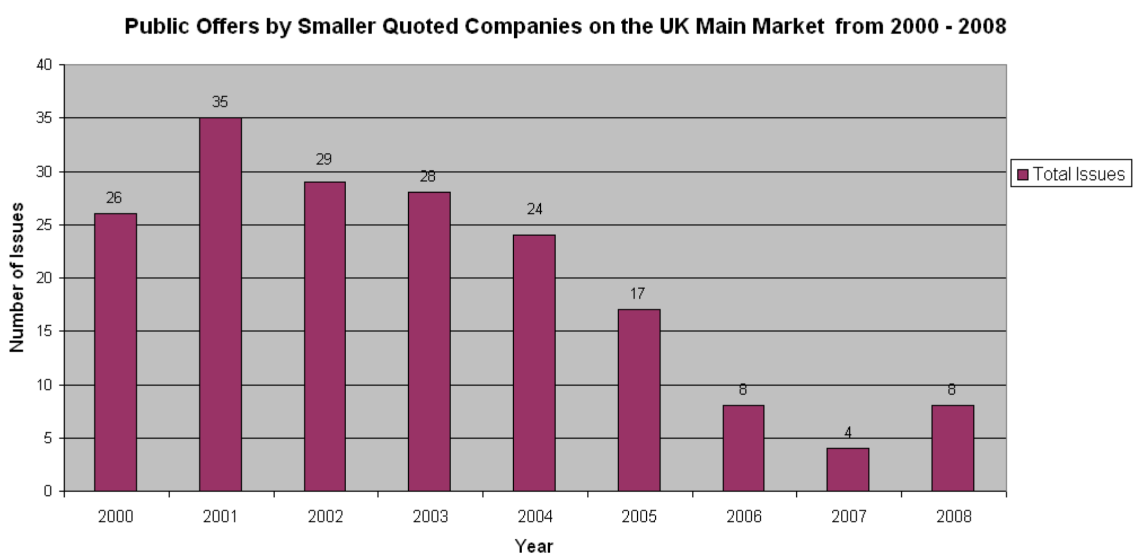
The reduction in the number of offers to the public by companies in the United Kingdom is illustrated by the graphs and tables below. We believe that this reduction is directly attributable

[1] These markets include: Alternext (Amsterdam, Brussels, Paris and Lisbon), Marché Libre in France, the Alternative Investment Market (AIM) and PLUS-quoted market in the United Kingdom, Marché Libre in Brussels, Entry Standard in Germany, Nasdaq OMX First North in the Baltic and Nordic areas, the Athex Alternative Market in Greece, the Irish Enterprise Exchange (IEX) in Ireland, AIM Italia in Italy, New Connect in Poland, and Mercado Alternativo Bursátil (MAB) in Spain.

to the increased costs and administrative burden of producing a prospectus since the introduction of the Prospectus Directive. Under the Prospectus Directive nearly every issue to the public by these companies now requires a prospectus to be approved by the competent authority. This is a process that can result in weeks being added to the timetable and which requires significantly more involvement from the accountants and lawyers to the company due to the additional disclosures required. Both of these factors increase costs to a point where we believe that the exercise ceases to be cost effective. By way of example we have estimated that a fundraising of €5 million where a prospectus is required could cost €600k, which represents well over 10 per cent of the amount raised. Assuming the same cost base for a €10 million fund raising, the amount would fall to €850,000 or 8.8 per cent, which although still a large proportion is more acceptable.

Given these factors we believe that it is imperative that the financial limit above which a prospectus is required is raised to €10 million. As illustrated by the tables below, the majority of further public fund raisings in the last nine years in the United Kingdom have been under £9 million (€10 million), particularly so on the Alternative Investment Market (AIM). Increasing the threshold will relieve smaller companies in the UK and across Europe of a very large administrative burden when seeking to raise funds and will reduce the cost of raising capital.

Chart 1: Public Offers by Smaller Quoted Companies on the UK Main Market from 2000 – 2008

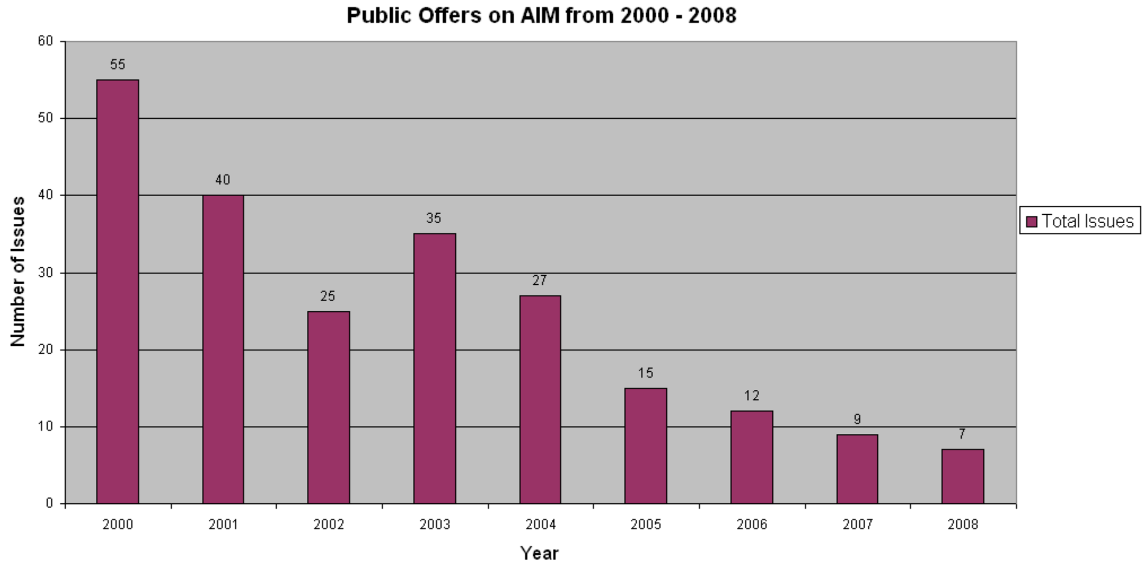


Source: The London Stock Exchange, *Further Issues Summary* (Available: www.londonstockexchange.com/en-gb/about/statistics/)

Notes:
'Total Issues' include the following types of further public transactions that would require a prospectus: Offer for Subscription, Open Offer, Placing & Open Offer, Placing & Offer for Subscription, Placing for Cash & Open Offer, Public Offering, and Rights Issue.

In this chart, 'Smaller Quoted Companies' include those companies that had a market capitalisation below £100m at the time of the further issue.

Chart 2: Public Offers on the UK's Alternative Investment Market (AIM) from 2000 – 2008



Source: The London Stock Exchange, *Further Issues Summary* (Available: www.londonstockexchange.com/en-gb/about/statistics/)

Notes:
'Total Issues' include the following types of further public transactions that would require a prospectus: Offer for Subscription, Open Offer, Placing & Open Offer, Placing & Offer for Subscription, Placing for Cash & Open Offer, Public Offering, and Rights Issue.

Table 1: Further Public Fund Raisings by Smaller Quoted Companies on the UK Main Market from 2000 – 2008

Further Public Fund Raisings by Smaller Quoted Companies on the UK Main Market				
Year	Total Issues	Average Amount Raised (£m)	Issues Raising Under £9m (€10m)	Percent Raising Under £9m (€10m)
2000	26	8.08	16	62%
2001	35	12.47	18	51%
2002	29	13.05	14	48%
2003	28	10.83	13	46%
2004	24	11.62	12	50%
2005	17	15.87	5	29%
2006	8	23.21	2	25%
2007	4	13.76	2	50%
2008	8	23.94	3	38%

Source: The London Stock Exchange, *Further Issues Summary* (Available: www.londonstockexchange.com/en-gb/about/statistics/)

Notes:

'Total Issues' include the following types of further public transactions that would require a prospectus: Offer for Subscription, Open Offer, Placing & Open Offer, Placing & Offer for Subscription, Placing for Cash & Open Offer, Public Offering, and Rights Issue.

In this table, 'Smaller Quoted Companies' include those companies that had a market capitalisation below £100m at the time of the further issue.

Table 2: Further Public Fund Raisings on the UK's Alternative Investment Market (AIM) from 2000 – 2008

Further Public Fund Raisings on AIM				
Year	Total Issues	Average Amount Raised (£m)	Issues Raising Under £9m (€10m)	Percent Raising Under £9m (€10m)
2000	55	8.11	35	64%
2001	40	5.71	34	85%
2002	25	7.54	18	72%
2003	35	4.09	31	89%
2004	27	5.45	24	89%
2005	15	7.77	11	73%
2006	12	28.66	7	58%
2007	9	81.92	5	56%
2008	7	3.74	6	86%

Source: The London Stock Exchange, *Further Issues Summary* (Available: www.londonstockexchange.com/en-gb/about/statistics/)

Notes:

'Total Issues' include the following types of further public transactions that would require a prospectus: Offer for Subscription, Open Offer, Placing & Open Offer, Placing & Offer for Subscription, Placing for Cash & Open Offer, Public Offering, and Rights Issue.

For 2006, three outliers distort the 'Average Amount Raised (£m)'. There were three large public offers on AIM: one raised £111.65m, one raised £84.90m, and one raised £100m. Excluding these offers, the 'Average Amount Raised (£m)' is £5.27m.

For 2007, two outliers distort the 'Average Amount Raised (£m)'. There were two large public offers on AIM: one raised £570.23m and the other raised £136m. Excluding these offers, the 'Average Amount Raised (£m)' is £4.44m.

The Quoted Companies Alliance

The Quoted Companies Alliance – Proposed Prospectus Directive Amendment:

Exempting Rights Issues and extending this exemption to Multilateral Trading Facilities (MTFs)

Amendment 1
Proposal for a directive – amending act
Article 1 – point 3 – point a a (new)
Directive 2003/71/EC
Article 3 – paragraph 2 – point e a (new)

Text proposed by the Commission	*Amendment*
	(aa) The following point is added: "(ea) rights issues of companies whose securities are already admitted for trading on a regulated market. **Member States may also choose to extend this exemption to offers of equity securities by companies whose equity securities are admitted to trading on a Multilateral trading facility (MTF) as defined in Article 4(1)(15) of Directive 2004/39/EC**."

Amendment 2
Proposal for a directive – amending act
Article 7 – paragraph 2 – point e

Text proposed by the Commission	*Amendment*
"(g) a proportionate disclosure regime shall apply to rights issues of companies whose shares are admitted to trading on a regulated market."	**DELETED**

Justification

The Quoted Companies Alliance (QCA) has consistently supported the relaxation of requirements of the Prospectus Directive as they apply to smaller companies. The QCA welcomed the initial announcement of the European Commission's proposals for changes to the Prospectus Directive in September 2009.

We further welcome the amendment proposed in the Rapporteur's, Wolf Klinz MEP, draft report (11 January 2010, 2009/0132(COD)) regarding exempting issues to existing shareholders from the requirement to produce a prospectus. Rights issues should be fully exempt as information on the company is already available to existing shareholders. This is not an investor protection issue as investors have already made an informed decision to invest in a company, prior to a rights issue.

However, as the amendment is drafted in the Rapporteur's draft report, this concession would not be available to companies on exchange regulated (or 'growth markets') throughout Europe. It does not appear to us that there is any basis for this approach, particularly where the competent authority in the relevant Member State is satisfied that the relevant exchange imposes appropriate transparency, disclosure and market abuse obligations to ensure investor protection and the orderly operation of that market. The Prospectus Directive provides for a prospectus when there is (i) an application to join a regulated market, and (ii) an offer made to the public. These concepts should be kept separate.

The reference to 'regulated markets' ignores the fact that there are many smaller companies on other growth markets throughout the European Union, who also should be able to raise capital from existing shareholders with less administrative burdens. These markets include: Alternext (Amsterdam, Brussels, Paris and Lisbon), Marché Libre in France, the Alternative Investment Market (AIM) and PLUS-quoted market in the United Kingdom, Marché Libre in Brussels, Entry Standard in Germany, Nasdaq OMX First North in the Baltic and Nordic areas, the Athex Alternative Market in Greece, the Irish Enterprise Exchange (IEX) in Ireland, AIM Italia in Italy, New Connect in Poland, and Mercado Alternativo Bursátil (MAB) in Spain.

These markets have been designed specifically to create an environment for equity finance for growing companies, and are provided and run by Market Operators or Recognised Investment Exchanges, which are regulated by the competent authority in the relevant Member State.

There appears to us to be no reason in principle for any differential to exist between companies whose securities are traded on regulated markets and those whose securities are traded on these alternatively-regulated markets. They are the same from the perspective of the investor. The perceived lack of investor protection is misguided and is not sufficient to justify the 'two tier' approach that is being proposed. If this amendment were to come into force as drafted by the Rapporteur, it would present an uneven playing field for companies quoted on these other markets in the European Union.

In the recovery period from the credit crunch at a time when banks are reluctant to lend, it is vital that smaller companies, regardless of the market they are on, are able to raise capital as easily, efficiently and timely as possible, consistent with investor protection.

The Quoted Companies Alliance

The Quoted Companies Alliance – Briefing Paper on the Prospectus Directive Review:

Proportionate Disclosure Regime for Companies with Reduced Market Capitalisations

The Quoted Companies Alliance (QCA) has consistently supported the relaxation of requirements of the Prospectus Directive as they apply to smaller companies. The QCA welcomed the initial announcement of the European Commission's proposals for changes to the Prospectus Directive in September 2009.

In particular, we welcomed the European Commission's proposal for a proportionate disclosure regime under the Prospectus Directive for companies with reduced market capitalisation, indicating a move away from the one-size-fits-all approach.

However, we are disappointed with the reference to 'regulated markets' in Article 2(1) – point t in the most recent Presidency compromise text of the proposals (11 December 2009, doc. 17451/09), as it will limit the use of the proposed proportionate disclosure regime for companies with reduced market capitalisations to only those companies listed on "regulated markets".

In addition, we see no justification for the three year "track record" required to satisfy the "reduced market capitalisation" test, as drafted in Article 2(1) – point t of the Presidency compromise text of the proposals. Imposing this qualification will deprive growth companies from raising capital, on a cost effective basis, during their early, formative years. We would propose that "company with a reduced market capitalisation" be determined by the average market capitalisation in the 6 month period immediately prior to the date of the offer.

The reference to 'regulated markets' in the most recent Presidency compromise text ignores the fact that there are many smaller companies on other growth markets throughout the European Union, who also should be able to raise capital from the public with less administrative burdens. These markets include: Alternext (Amsterdam, Brussels, Paris and Lisbon), Marché Libre in France, the Alternative Investment Market (AIM) and PLUS-quoted market in the United Kingdom, Marché Libre in Brussels, Entry Standard in Germany, Nasdaq OMX First North in the Baltic and Nordic areas, the Athex Alternative Market in Greece, the Irish Enterprise Exchange (IEX) in Ireland, AIM Italia in Italy, New Connect in Poland, and Mercado Alternativo Bursátil (MAB) in Spain.

These markets have been designed specifically to create an environment for equity finance for growing companies, and are provided and run by Market Operators or Recognised Investment Exchanges, which are regulated by the competent authority in the relevant Member State.

There appears to us to be no reason in principle for any differential to exist between companies whose securities are traded on regulated markets and those whose securities are traded on these alternatively-regulated markets. They are the same from the perspective of the investor. The perceived lack of investor protection is misguided and is not sufficient to justify the "two tier" approach that is being proposed. If the current compromise text were to come into force, it would present an uneven playing field for companies quoted on these other markets in the European Union.

We urge MEPs **not** to support the Swedish Presidency Working Party on Financial Services' proposals on limiting the proportionate disclosure regime for companies with reduced market capitalisations to those listed on a regulated market. In the recovery period from the credit crunch at a time when banks are reluctant to lend, it is vital that all smaller companies, regardless of the market they are on, are able to raise capital as easily, efficiently and timely as possible, consistent with investor protection.

APPENDIX A

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The QCA is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies; Financial Services Authority (FSA) consultations
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The QCA is a founder member of European**Issuers**, which represents quoted companies in fourteen European countries.

QCA's Aims and Objectives

The QCA works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
    - corporation tax payable of £560 million per annum
    - income tax paid of £3 billion per annum
    - social security paid (employers' NIC) of £3 billion per annum
    - employees' national insurance contribution paid of £2 billion per annum

The tax figures <u>exclude</u> business rates, VAT and other indirect taxes.

For more information contact:

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