



**The Quoted
Companies Alliance**

Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
Tel: +44 20 7600 3745
Fax: +44 20 7600 8288

Web: www.quotedcompaniesalliance.co.uk
Email: mail@quotedcompaniesalliance.co.uk

The European Commission
Rue de la Loi/Wetstraat 200
Brussels
Belgium

markt-g3@ec.europa.eu

10 March 2009

Dear Sirs,

Review of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Prospectus Directive)

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation dedicated to promoting the cause of smaller quoted companies (SQC), which we define as those 2,000+ quoted companies outside the FTSE 350 (including those on AIM and PLUS) representing 85% of the UK quoted companies by number. Their individual market capitalisations tend to be below £250m.

The QCA is a founder member of European**Issuers**, which represents over 9,000 quoted companies in thirteen European countries.

RESPONSE

As well as answering the specific questions raised in the consultation background document, we believe that it is worthwhile outlining the effect of the Prospectus Directive on the ability of smaller companies in the United Kingdom to access capital from the public.

The reduction in the number of offers to the public by companies in the United Kingdom is illustrated by the graphs in Appendix A. We believe that this reduction is directly attributable 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 and that offers to existing holders of securities are exempted from the need for a prospectus. As illustrated by the tables in Appendix B, 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 of a very large administrative burden when seeking to raise funds and will reduce the cost of raising capital.

If this is not acceptable, as an alternative, we would suggest that the relevant competent authority should be allowed to set its own threshold (subject to an overall framework, e.g. the minimum being €2.5 million and the maximum €10 million) below which it does not require a prospectus and to the extent this exceeds the limit set by the Prospectus Directive the document is not passported. This reflects the fact that, to our knowledge, very few smaller companies have sought to passport a prospectus.

Turning to your specific queries, we would respond as follows:

2. General Assessment of the Prospectus Directive: *Do you agree with the Commission services' preliminary assessment of the functioning of the Prospectus Directive?*

We agree with the general assessment, but would note that for smaller companies the administrative burden has been much increased with little practical benefit since these companies do not passport their prospectuses.

3. Changes Proposed

3.1. Article 2(1)(e) – Definition of qualified investors: *Do you agree with this analysis? Do you agree with the changes proposed in Article 2.1(e) of the Prospectus Directive?*

We agree with the analysis and the change will bring the Prospectus Directive in harmony with MiFID's definition of qualified investors.

3.2. Article 3 – Exempt Offers: *Do you agree with this analysis? Do you agree with the change proposed in Article 3.2 of the Prospectus Directive?*

This question is not relevant to the QCA, as most small and medium sized enterprises are currently not involved in debt markets.

3.3. Article 4 – Exemptions for Employee Share Schemes: *Do you agree with this analysis? Do you agree with the change proposed in Article 4(1)(e) of the Prospectus Directive?*

We agree and fully support the proposal to extend the exemption in Article 4(1)(e). However, we have further reservations about the details of the change proposed and have included them in Appendix C.

3.4. Article 10 – Information: *Do you agree with this analysis? Do you agree with the removal of Article 10 of the Prospectus Directive?*

We agree with the removal of Article 10 of the Prospectus Directive as the subject matter is now covered in the Transparency Directive (2004/109/EC).

3.5. Article 16 – Supplement to the prospectus: A. *Do you agree with this analysis?*

We agree.

B. *Do you agree with this analysis? Do you agree with the change proposed in Article 16.2 of the Prospectus Directive?*

Yes, we believe that harmonisation of withdrawal rights across member states is important, especially given the passport regime.

3.6. Modification of thresholds: *Do you agree with this analysis? Do you agree with the change proposed in Article 2(1)(m)(ii) of the Prospectus Directive?*

This question is not relevant to the QCA, as smaller quoted companies are currently not regularly involved in the debt market.

4. Other Issues Identified

4.1. Disclosure obligations: the prospectus and its summary: *Do you agree with this analysis? Do you have any suggestion in this regard?*

We agree that a standard prospectus has now become unnecessarily long and does little to protect the interests of private investors. Indeed recent documents that have been issued in connection with various bank equity issues in the United Kingdom have been incomprehensible to the 'lay man' and posed potentially significant risks to them.

We believe that this risk can be mitigated by allowing issuers more discretion in what is included in the summary and how much (i.e. do not limit its length) rather than being prescriptive about its content. We would not support attempts to harmonise the approach across different categories of products, as it is likely that the result will work for no product.

4.2. Disclosure obligations for retail investment products:

We have no comments to make on this subject.

4.3. Disclosure obligation for small quoted companies: *Do you agree with this analysis? Do you support any of the two alternative solutions mentioned? Do you have any other suggestion?*

As set out in the introduction to this letter, we believe that the cost and administrative burden caused by the Prospectus Directive are inappropriate for smaller quoted companies, and that this has directly contributed to a fall in offers to the public by these companies (please see Appendix A and B for quantitative evidence) and a corresponding decrease in retail investor activity, which consequentially impacts on the liquidity of small cap shares.

We fully support the increase in the threshold to €10 million based on our understanding of the costs involved in the production of a prospectus.

If increasing the threshold to €10 million is not acceptable, as an alternative, we would suggest that the relevant competent authority should be allowed to set its own threshold (subject to an overall framework, e.g. the minimum being €2.5 million and the maximum €10 million) below which it does not require a prospectus, and to the extent this exceeds the limit set by the Prospectus Directive the document is not passported.

4.4. Disclosure requirements and Government Guarantee Schemes: *Do you agree with this analysis?*

This question is not relevant to the QCA.

4.5. Rights Issues: *Do you agree with this analysis? Do you have any other suggestion?*

As discussed in the introduction to this letter, we fully support the proposal to exempt offers to existing holders from the Prospectus Directive and instead require the publication of a document stating the reasons for and details of the offer.

4.6. Article 2(1)(d) – Definition of offer of securities to the public: *Do you agree with this analysis?*

We agree. No legislative amendment is needed for the definition of offer of securities to the public. However, there are clear differences in the national implementation of the definition, and as such we would stress the necessity for some guidance on this from the Commission and CESR level 3.

4.7. Liability: *Do you agree with this analysis?*

This question is not relevant to the QCA, as many smaller quoted companies do not participate in the passport regime.

4.8. Equal treatment of shareholders: *Do you agree with this analysis?*

The QCA believes that this question is not very relevant in the context of the United Kingdom.

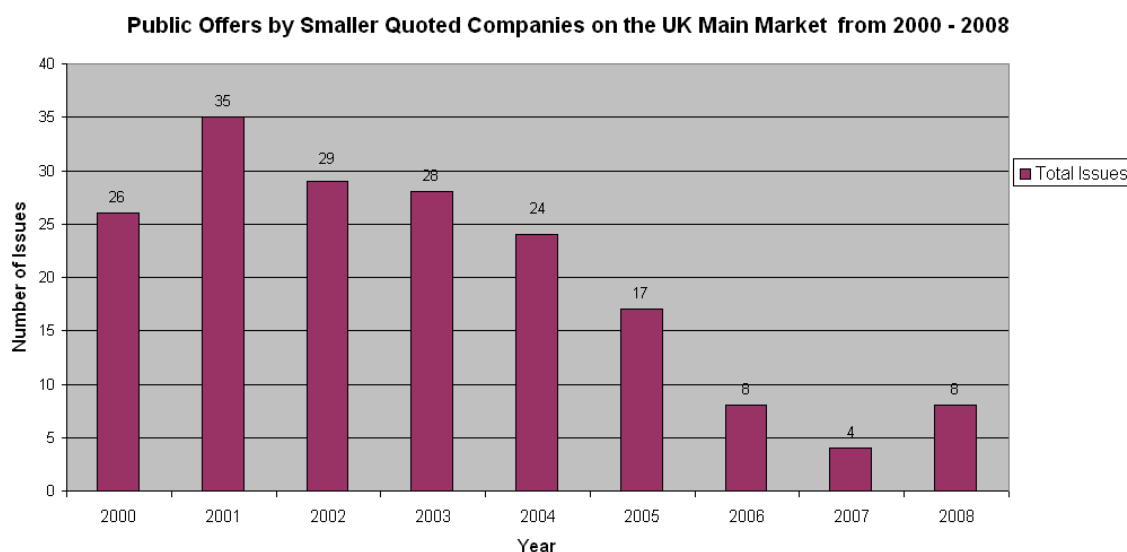
If you wish to discuss these issues with us, we will be pleased to attend a meeting.

Yours sincerely,



John Pierce
Chief Executive

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



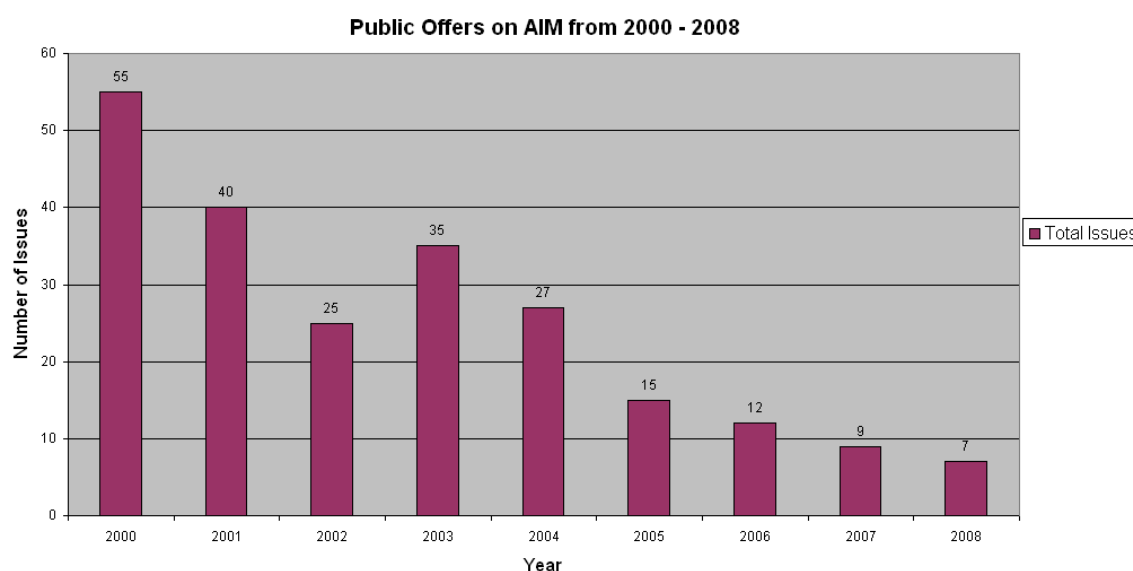
Source: The London Stock Exchange, *Further Issues Summary* (Available: www.londonstockexchange.com/en-gb/about/statistics/)

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.

FURTHER COMMENTS ON EXEMPT OFFERS: EMPLOYEE SHARES SCHEMES

(3.3. Exempt Offers: Do you agree with this analysis? Do you agree with the change proposed in Article 3.2 of the Prospectus Directive?)

The current exemption for employee share schemes set out in Article 4(1)(e) of the Prospectus Directive only applies to companies that are fully listed within the EU. As has been well documented, this puts companies who are not fully listed within the EU at a major disadvantage: any company that is private, listed outside the EU or on a market such as the Alternative Investment Market of the London Stock Exchange must bear the disproportionately high administrative and financial costs of issuing a prospectus, if it wishes to offer share-based incentives to its employees and other exemptions are not available. This most commonly arises when they wish to operate all-employee plans where employees acquire shares - principally the tax-favoured share incentive plan - under which employees can receive shares free of tax, which make it a particularly attractive share plan to operate.

For the above reasons, we fully support the proposal to remove the phrase “already admitted to trading on a regulated market” from Article 4(1)(e) as this immediately eliminates the problems outlined above.

However, we further submit that the requirement for a document to be “made available containing information on the number and nature of securities and the reasons for and details of the offer” should also be removed. There is no guidance as to what purpose this document serves, or on how and where it should be “made available”, and we submit that it creates an unnecessary administrative burden for the company with no proportionate benefit for employees. This is particularly so given the existing reporting requirements for companies on a national level. In addition, there is no guidance as to how it is to be enforced.

For these reasons, we propose that the document requirement is also removed. If the requirement for a document is still proposed by the Commission, however, we strongly disagree with the suggestion in the last paragraph of 3.3 of the background document that the information to be contained in the proposed "short-form" disclosure regime (pending an amendment of the Prospectus Directive) should constitute a suitable reference for establishing the set of information to be provided to employees.” This would seem to us to be increasing the disclosure threshold when the whole point of the change is to reduce it for offers to employees. Such a change would risk completely undermining the proposed change in legislation set out above, make it harder rather than easier for EU listed companies to operate share schemes, and finally is as a matter of law inconsistent with the legislation proposed and with guidance produced on page 43 of CESR's recommendations on the consistent implementation of the Prospectus Regulation (February 2005) (CESR/05/054b).

THE QUOTED COMPANIES ALLIANCE MARKETS AND REGULATIONS COMMITTEE

Stuart Andrews (Chairman)*	Evolution Securities LTD
Peter Allen	DWF LLP
Satty Bains	London Stock Exchange plc
Andrew Collins	Speechly Bircham LLP
Jonathan Eardley	Share Resources
Farook Khan	Pinsent Masons LLP
Linda Main	KPMG LLP
Richard Metcalfe	Mazars LLP
Craig Nimmo	Brewin Dolphin Securities
Simon Rafferty	Winterflood Securities
Chris Searle	BDO Stoy Hayward LLP
Peter Swabey	Equiniti
Theresa Wallis	LiDCO Group plc
John Pierce	The Quoted Companies Alliance
Kate Jalbert	The Quoted Companies Alliance
Nicholas Stretch**	CMS Cameron McKenna

* Main Author

** Chairman of The Quoted Companies Alliance Share Schemes Committee and provided comments in the response on employee share schemes

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of SQCs, their advisers and investors. It was founded in 1992 and originally known as CISCO.

The QCA has nearly 400 members. 75% of these are smaller companies quoted on the stock market, or companies with aspirations to join. 25% are drawn from the full range of professional advisory firms whose business is either wholly or significantly derived from servicing smaller companies.

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
- introduction of, or changes to, legislation affecting SQCs
- corporate governance
- share schemes for employees
- trading, settlement and custody of shares
- structure and regulation of stock markets for SQCs; Financial Services Authority (FSA) consultation
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from the Accounting Standards Board
- company law reform

The QCA is a founder member of **EuropeanIssuers**, which represents over 9,000 quoted companies in twelve EU member states.

QCA's AIMS

As the only organisation dedicated solely to the particular interests of the SQC sector, the QCA has three primary goals:

Identification

To create a distinct identify for the SQC sector, and demonstrate its value to the stock markets and the UK economy.

Representation

To pro-actively pursue and represent the interests and requirements of the SQC sector to enable it to increase its contribution and ensure that its specific needs are addressed.

Affiliation

To build a strong and vocal collective body of support from within the SQC sector, among corporate directors and securities industry leaders.

DEFINITION

The Quoted Companies Alliance definition of Smaller Quoted Companies (SQC) is:

- all fully listed companies – excluding the top 350 ie with market cap of £340m+
- plus companies quoted on AIM
- plus companies quoted on PLUS

The QCA also represents companies planning to float.

SQCs contribute to the economy:

- there are approximately 2,000 SQCs
- they represent around 85% of the total of quoted companies by number
- they employ 2 million people
- this figure represents around 10% of total private sector employment
- every 5% growth in the SQC sector could reduce UK unemployment by a further 100,000
- They generate:
 - corporation tax paid of £2.0 billion pa
 - income tax paid of £5.0 billion pa
 - social security paid of £2.0 billion pa

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

John Pierce
The Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
020 7600 3745
www.quotedcompaniesalliance.co.uk