



**The Quoted  
Companies Alliance**

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European Securities Market Experts Group (ESME)  
European Commission

Email: [Malgorzata.FELUCH@ec.europa.eu](mailto:Malgorzata.FELUCH@ec.europa.eu)

4 January 2008

Dear Ms Feluch,

**REPORT ON DIRECTIVE 2003/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE OFFERED TO THE PUBLIC OR  
ADMITTED TO TRADING**

***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 €500m.

Together SQCs employ over 2 million people and make a major contribution to the UK economy.

The QCA is a founder member of UNIQUE, the Union of Issuers Quoted in Europe, which represents over 3,500 quoted companies in seven EU member states.

***COMMENTS ON THE REPORT***

We welcome ESME's Report on Directive 2003/71/EC.

We are broadly very supportive of the findings of the Report and most of the proposals relating to our constituency: small quoted companies issuing equity via a prospectus and their advisers.

**Extending the exemptions to the requirement for a prospectus**

In particular, we agree that access by retail investors to quoted companies has been restricted because the prospectus requirement leads to a decision to raise funds via an

institutional placing, precluding participation by retail investors. The costs involved in producing a prospectus have resulted in companies and their advisers seeking to issue shares in a manner which ensures that the offer falls within one of the exemptions of the Prospectus Directive.

Furthermore we agree that different levels of disclosure in prospectuses should be permitted in different circumstances.

For the reasons you state, we therefore strongly support your proposals that:

- the range of exemptions to publication of a prospectus should be extended to cover all issues of shares to existing shareholders e.g. rights issues, open offers and share offerings for employees of companies, whether quoted or not.
- the threshold for issuing a prospectus should be increased to 20-25% from 10% of the value of shares already traded. In our view, given the varying market valuations of companies, a percentage threshold would be preferable to a fixed financial threshold. This would ensure a consistent impact across companies, regardless of their size: transactions that are significant to any given company would be caught by the requirement to publish a prospectus. The threshold mentioned in the report of say Euro25m would be higher than the entire market capitalisation of many companies quoted on the UK's AIM, increasing the risks of this approach with respect to small companies.

With regard to threshold values stated in Euros, it would be helpful if there could be clarity on which exchange rates should be used when determining these levels in other currencies.

We would not welcome the creation of a lighter standard set of equivalent information for issues that qualify for an exemption to publish a prospectus as suggested in Section 3.4 of the Report. The information that investors require is already in the public domain and readily accessible, so any disclosure requirements in such instances should not be prescriptive, beyond requiring a description of the reasons for the share issue and intended use of proceeds.

With regard to your proposal that the Prospectus Directive should be amended to clarify the meaning of a public offer (including timing questions), (Section 2.3), we believe that any amendments should ensure consistency and compatibility with MIFID.

### **Need for further harmonisation across the EU**

We also agree with the Report in that the different ways in which the provisions of the Prospectus Company Directive are interpreted by member states means that it can often be difficult for companies to smoothly "passport" their prospectuses into other jurisdictions.

We agree that maximum harmonisation is necessary across the EU in terms of liability standards, enforcement (see further below) and who is responsible for the prospectus.

### **Prospectus clarity and role of the Competent Authority**

In our experience, prospectuses for share issues are not considered to be as complex and unclear as indicated in ESME's report. We presume therefore that ESME's findings with regard to the lack of clarity of prospectuses and criticisms of the scrutiny of these by Competent Authorities do not apply to UK prospectuses for small companies or to the UKLA.

It is inevitable and understandable that prospectuses contain legal disclaimers but we do not believe that these interfere with the overall clarity of these prospectuses. In practice prospectuses tend not to be used as selling documents, but the summary that is required to be included in prospectuses is considered to be user friendly for investors. We believe that where improvements could be made to the clarity of UK prospectuses for small companies, this is best left to market-driven sharing of best practice through, for example, avoiding unnecessary duplication and organising risk factors into specific risks relating to a company's business and generic risks relating to the sector.

### **Enforcement**

There is minimal reference to enforcement within this Directive. We believe that to achieve the Directive's objectives it is essential that there is a clear basis for ensuring timely and proportionate enforcement in the circumstances that are being addressed. Enforcement actions taken long after the event would be ineffective.

### **Marketing material**

The Report states that because of the lack of clarity of prospectuses, 'most retail investors rely only on the marketing material prepared' and that Competent Authorities should restrict their role to an *ex post* observation rather than an *ex ante* control. In UK equity issues for small companies, retail investors do not see any / much marketing material during the fund raising process, given that the current regulatory framework encourages placings to institutional and qualified investors. The marketing material is normally limited to the investor presentation which is given to institutional fund managers, and retail investors simply do not see this.

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

Yours sincerely,

A handwritten signature in black ink that reads "John Pierce". The signature is written in a cursive style and is underlined with a single horizontal line.

John Pierce  
Chief Executive