

PROSPECTUS DIRECTIVE

The Prospectus Directive came into force on 31 December 2003. EU Member States are required to implement the Directive at national level by 1 July 2005. The Prospectus Directive is a framework directive. On 29 April 2004 the European Commission adopted a technical regulation implementing the Prospectus Directive. This Regulation will apply from 1 July 2005. In the future, the Committee of European Securities Regulators ("CESR") will work with the FSA to ensure a consistent interpretation and implementation of the Directive and the Regulation in the UK. It is intended that CESR will produce common guidelines and interpretative recommendations not specifically covered in the Directive or Regulation.

Its Purpose

The purpose of the Directive is to:

1. harmonise the requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market in the EU; and
2. to create a "single passport" regime whereby an issuer

making an offer of securities to the public or whose securities are being admitted to trading on a regulated market in the EU must publish a prospectus and get it approved by the competent authority in the home Member State. However, once it has been so approved, it may then be used for offerings or admissions to regulated markets in all EU Member States without the issuer having to publish any further information or having to seek further approval for the prospectus in those Member States.

Its Application

The Directive applies where securities are being offered to the public in the EU or admitted to a regulated market in the EU.

However, there are exemptions from the whole Directive. The most important being securities included in an offer where the total consideration of the offer is less than €2,500,000 (approximately £1,650,960 at the date of this note) which limit is calculated over a period of twelve months.

Offers to the Public

Where the Directive applies (ie the issue or securities are not exempt from the whole Directive) then, unless the issuer is exempt from the obligation to publish a prospectus, an offer to the public may not be made without the prior publication of a prospectus.

An offer of securities to the public is a communication in any form presenting sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe to those securities. Consequently, prospectuses prepared in connection with an admission to the Official List, admission to AIM (but see below) or an offer to the public of unlisted securities are all subject to the Directive.

Admission to trading

Even where there is no offer to the public, there is an obligation to publish a prospectus on the admission of securities (subject to certain exceptions) to trading on a regulated market. The London Stock Exchange and virt-x are regulated markets under the Investment Services Directive.

From 12 October 2004, ahead of the implementation by the UK of the Prospectus Directive, AIM will relinquish its "regulated market" status and operate as an exchange-regulated market overseen by the FSA. The intention behind the change of regulatory status is to avoid the application of certain provisions of the Prospectus Directive and also the Transparency Directive (which imposes continuing disclosure requirements on issuers, including financial reporting and the disclosure of major shareholdings) and the Market Abuse Directive (which aims to harmonise the rules on the prevention of insider dealing and market manipulation and will govern the dissemination of price sensitive information). In particular, AIM wishes to avoid the requirement to publish a prospectus on the admission to trading on a regulated market, although it may still be obliged to publish a prospectus if it makes an offer of securities to the public. However, because the Prospectus Directive sets out only the minimum standards to be applied, the UK government could adopt a wider or more onerous regulatory regime. Therefore, until the UK government, in consultation with the FSA has decided how to implement the Prospectus Directive, it is not known the extent to which AIM will enjoy a less onerous regulatory regime than the Official List. Further, the London Stock Exchange is considering specific rule changes in respect of AIM.

OFEX is not a "regulated market" under the Investment Services Directive and should be unaffected by the Directive save that a prospectus may be required to be published by a company applying

for admission to its market if it makes a public offer raising at least €2,500,000.

An admission of securities to trading on a regulated market where there is a public offer of securities at the same time will need to fall within one of the available exemptions for the offer and the admission to avoid the obligation to publish a prospectus.

Technical Regulation implementing the Prospectus Directive

The Regulation lays down:

1. the format of the prospectus;
2. the minimum information requirements to be included in a prospectus adapted to the particular nature of the different types of issuers and/or the different securities involved (these requirements are contained in Annexes I to XVII of the Regulation);
3. the method by which information can be incorporated in the prospectus by reference to previously or simultaneously published documents;
4. the publication methods of a prospectus in order to ensure that a prospectus is publicly available;
5. the methods of dissemination of advertisements.

UK Listing Rule Review

The FSA is currently carrying out a fundamental review of the Listing Rules against the background of the changes that will be introduced by the Prospectus Directive, the Transparency Directive and the Market Abuse Directive and the requirement for most UK listed

issuers to use IAS in preparing their consolidated financial statements for accounting periods beginning on or after 1 January 2005. Draft rules are expected in the third quarter of 2004 with finalised rules in Spring 2005 for implementation to tie in with implementation of the Prospectus Directive in the UK prior to 1 July 2005. The FSA is entitled, with regard to certain requirements and criteria, to impose higher standards than those required by the European legislation. The extent to which the FSA may impose higher standards or leave the London Stock Exchange or other market to impose them should shortly be made public.

If you would like to discuss any of the issues raised in this update, please contact :

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