

New Prospectus Regulations - in the nick of time will (just about) do

Just a few weeks before the 1 July deadline for the new regime for share issues was due to take effect, The Prospectus Regulations 2005 and new AIM Rules implementing the EU Prospectus Directive were finally made available. We set out the pre-consultation proposals for the new prospectus rules in our March issue of Update. So what has changed as a result of the consultation period?

100 person exemption

Under the EU Prospectus Directive, offers made to fewer than 100 persons are exempt from the obligation to publish a prospectus. The Treasury suggested aggregating the number of offerees over a 12 month period but most respondents to the consultation objected. The final position is that there will be no formal aggregation over 12 months for the purposes of the exemption. Instead it will be for the regulator to monitor whether a number of successive offers should be regarded as one single offer or a series of different offers.

Electronic copy of prospectus

Following concerns that issuers may not have a website as well as concerns about breaching foreign security laws, it has been decided to remove the requirement for an electronic copy of a

prospectus to be placed on an individual issuer's website.

Notification

It is not now necessary for an issuer to publish a notice stating how the prospectus has been made available and where it can be obtained by the public.

Private client brokers

After rigorous submissions and lobbying by the QCA and APCIMS, the Treasury has clarified the Prospectus Regulations to ensure there will be no change to the current position: offers to discretionary brokers are treated as addressed to the brokers themselves and not to the clients they represent. This means that offers to

"the deadline has caused much huffing and puffing"

brokers will be covered by the qualified investor

exemption (offers to qualified investors are exempt from the requirement to publish a prospectus). Had the status quo not prevailed, there was the horrible prospect that offers to retail investors through their brokers would simply not happen due to the cost and effort of complying with the regulations.

Too much too late?

The practical problem of ensuring IPOs comply with a new set of rules introduced only four weeks before the deadline has caused much huffing and puffing from practitioners, including ourselves. Some comfort has been

proffered by the Stock Exchange. For a limited period, and on a case by case basis, the Exchange may accept admission documents which contain the information required by the POS Regulations (rather than the new prospectus rules) but this relaxation is only available if there is no offer to the public. If there is an offer to the public then the Exchange has no discretion and an admission document complying with the new rules will need to be produced for every offer made after 1 July 2005 even if work has already started on the project.

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