HM TREASURY: REVIEW OF THE UK'S PROSPECTUS REGIME

UK Finance and AFME response

September 2021

HM Treasury: UK Prospectus Regime Consultation

Jim Moran
Securities and Markets, Financial Services Group
HM Treasury
Horse Guards Road
SW1A 2HQ

Sent via email: UKProspectusRegime@hmtreasury.gov.uk

Dear Jim,

Please find enclosed the collective responses of the member firms of UK Finance and the Association for Financial Markets in Europe ("AFME") to HM Treasury's UK Prospectus Regime: a consultation, produced with the support of Allen & Overy LLP.

We welcome HM Treasury's continued collaboration with the industry with respect to the reform of UK wholesale and capital markets. We believe these initiatives will help drive regulatory efficiencies, tailor the UK's regime to the unique characteristics of the UK market and contribute to an open, proportionate and competitive UK marketplace.

In relation to the UK's prospectus regime, we support the desire to improve the quality of information and effective transparency for issuers of shares, directors, investors and underwriters.

We would like to draw your attention to a selection of the key points within our response:

Importance of the 20 per cent threshold with respect to the admission to trading exemption, and public offer restriction;

- **Overarching requirement for a prospectus:** We consider that there should still be a requirement for a prospectus at launch and pricing for public offers of shares whether the issuer is listed or unlisted where the share capital increase is 20 per cent or more, as an issuance of this size implies a transformative change to the issuer's capital structure, business or balance sheet. This allows any contract to acquire shares to be concluded on the basis of prospectus-calibre disclosure.
- **20 per cent admission to trading exemption:** The current 20 per cent admission to trading exemption is a baseline that provides issuer, director, investor and underwriter protection and is a recognised threshold above which larger size issuances of shares can be assumed to require the publication of a prospectus which presents the prospectus-calibre information necessary for investment decisions in a single location.
- **For public offers by unlisted companies,** a prospectus should be available in the same way as for listed companies.
- **Offers or admission to trading below 20 per cent:** Our members are concerned that the proposed removal of the public offer prospectus for listed issuers could result in offers to retail investors being made without a prospectus, raising the prospect of risks for investors, issuers, directors and underwriters. Our response outlines two possible options which HM Treasury may wish to consider if it is minded to remove the public offer prospectus requirement.

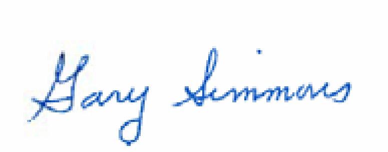
- **Forward looking information:** We welcome HM Treasury's proposal for adjusting the UK liability regime with respect to forward looking information, by amending the UK FSMA to allow a defence to prospectus liability for forward looking information by directors who are not reckless, based on a fraud (rather than negligence) standard of liability

We are encouraged by the open and collaborative approach HM Treasury has taken to industry engagement on changes to the prospectus regime. UK Finance, AFME and our respective memberships look forward to engaging further with HM Treasury and with the FCA on their proposals to support the development of an effective UK prospectus regime.

If you have any questions on the information within our submission, please do not hesitate to get in touch.

Kind regards,

Conor Lawlor
Director, Capital Markets and Wholesale, UK Finance



Gary Simmons
Managing Director, High Yield & Equity Capital Markets, AFME

1. **Do you agree with our overall approach to reforming the UK prospectus regime?**

Yes, subject to an overarching concern that the UK equity capital markets continue to work efficiently and are not subject to unduly prescriptive or onerous requirements, additional costs or any increase in risk for issuers, directors, investors in shares or underwriters. In particular, it will be important to preserve existing widely observed thresholds and common structures for equity capital raising, in particular the well-established role of the 20 per cent admission to trading exemption and a proportionate approach to regulating public offers.

We agree with the proposed grant of powers to the FCA to give it the discretion to determine when a prospectus is required for the admission of securities to a UK-regulated market, subject to a market consultation on the FCA's approach to exercising this discretion, and to consistency with the new competitiveness objective that is envisaged for the FCA by the UK Listing Regime Review.

We support the idea that the prospectus should be considered a "tool" and form one part only of the regulatory regime with respect to issuances (or offerings) of shares. Notably, the exemption from the requirement for a prospectus for issuances of less than 20 per cent of the same class as shares already admitted to trading recognises that a prospectus is not necessarily needed for all further issuances given the level of disclosure to which the issuer of shares is subject under continuing disclosure regimes. The 20 per cent baseline provides some investor protection and is a recognised threshold above which larger size new issuances can be assumed to require the publication of a self-contained prospectus which presents the information necessary for investment decisions in a single location.

We support the proposed removal of duplicative measures from the prospectus regime. However, if this results in the broadening of the public offer exemption for all shares admitted to trading and results in retail public offers of shares being made without a prospectus, it will increase significantly the risk profile of underwriters of this type of capital raising. We suggest two options to mitigate this concern, so that changes to the public offer regime are at least neutral or not negative for underwriters. Please see page 9 below for these options.

We also make some headline observations about further changes flagged in historic industry advocacy that might be made to support HM Treasury's key objectives. The topics vary from clarifying statutory provisions (for example, reversing the changes to the "advertisement" regime made in 2019), setting criteria for exemptions (for example, crafting an industry-standard UK takeover disclosure document) to improving prospectus content (for example, the rules on profit forecasts and complex financial histories). We look forward to engaging with HM Treasury and the FCA in formulating these and other improvements.

2. **Do you agree with the key objectives that we are seeking to achieve?**

Yes, noting that:

- We support Objective 1 (in summary, removing disincentives to retail investor access) provided that sufficient and clear disclosure, including relevant risk factors, will still be required to be made available to inform retail investors' investment decisions. Retail and professional investors may have different needs. Thresholds or exemptions to the prospectus regime should be consistent with the regulatory framework for more sophisticated or high net worth investors who are classified as professional clients or who have the option of accessing professional financial advisers. In addition, as the prospectus regime is only one of a number of means of protecting investors, the role that other regimes (such as marketing restrictions under the financial promotion regime, UK MiFIR, the AIFMD, the UK Market Abuse Regulation, the Transparency Rules and other UK laws and regulations) or other tools available to policy makers or regulators may play in providing investor protection should be taken into account.
- We agree with Objectives 2 (removing duplication in the UK prospectus regime), 3 (improving the quality of information), and 4 (making the regulation more agile and dynamic).

- As part of Objective 4, the FCA would acquire full discretion to set content rules for a prospectus. We would be grateful for the opportunity to revisit concerns about prospectus content that we have previously flagged in industry advocacy.
- We agree that a prospectus should remain a key feature of a UK IPO of shares or GDRs and that the "necessary information" test should continue to apply to content in this context. This gives the new applicant a degree of certainty that it has complied with the requirements. This is particularly important as the FCA is also responsible for the decision on admission to listing and the review of the prospectus will help to inform its decision regarding whether the issuer is able to satisfy the requirement to publish an approved prospectus and is eligible for listing.

3. Do you have any views on the underlying purpose of a prospectus when seeking admission to a regulated market?

Yes. It would be helpful to understand how the proposed statement of purpose will be used. Given the importance of an objective disclosure standard, we suggest aligning the statement with Article 6 of the UK Prospectus Regulation to avoid causing uncertainty from the perspective of issuers or underwriters.

Please see our suggestions below on the statement of purpose of a prospectus that is set out in paragraph 3.7 of HM Treasury's paper, to make this consistent with the statutory objectives and Article 6 of the UK Prospectus Regulation:

"A document approved by the Financial Conduct Authority, published and made available free of charge, that provides material information that investors need and that they can rely on to make an investment decision in a security".

4. Do you agree the FCA should have discretion to set rules on when a further issue prospectus is required?

Yes, we agree with this proposal for established listed issuers whose share capital has been listed on a regulated market for at least 12 months, as many of the required contents of a prospectus will already be publicly available in accordance with periodic and ongoing disclosure requirements, albeit these are not typically prepared to a prospectus-calibre standard. These include disclosures under the UK Market Abuse Regulation, the Transparency Rules, UK MiFIR or other provisions of UK law or corporate governance codes, and the secondary market will be informed by, and will be trading on the basis of, that information. Given the availability of such information, there will only be a handful of situations where a prospectus would be required for a further issue of shares below 20 per cent under UK law.

For such an established listed issuer, a subsequent issue (representing up to 20 per cent of share capital) should therefore only require a company RIS announcement of the transaction and the disclosure of information specific to the further issuance being made and other information necessary to update or supplement previously published information and otherwise inform investors' investment decisions.

The FCA will want to consider how its requirements for further issuance prospectuses interact with the proposed exemption from the public offer regime for shares admitted to trading, particularly in the case of retail public offers. For example, on a rights issue (of any size) we consider that publication of an FCA approved prospectus should be mandatory in advance of the public offer or admission to trading of the nil-paid rights.

4.1. Maintaining the current 20 per cent threshold exemption

For many listed issuers, the current 20 per cent threshold for undocumented offerings will provide sufficient headroom, and where it does not, we consider that it is important that issuers provide carefully drafted disclosure to investors and the markets via a prospectus, given the relative size of the offering and associated impact on the listed issuer. This is to ensure a fair and clear understanding for investors of the transformative events envisaged for the underlying business and balance sheet, the investment proposition, and to protect the issuer, its directors and the underwriters from the significant litigation risk for claims from investors that disclosure (especially where it is based on disclosure published by the issuer some months prior to the offering) was inaccurate, misleading or incomplete with the benefit of hindsight.

It is in the interests of issuers, directors, investors, underwriters and the market to have specific disclosure for an issuance over 20 per cent to be considered and drafted in one prospectus-calibre document with care and detail to ensure that accurate and complete disclosure of the issuer's business and condition, risks and prospects (pre- and post-capital raise) are properly disclosed in the light of the circumstances requiring the capital raise, along with all the investment considerations that an investor should take account of at such time. Finally, we note that absence of a prospectus is unlikely to be feasible where the relevant offer has a component in a jurisdiction with its own stringent disclosure requirements (e.g. notably, the US), except in circumstances where the rest of the world investors are excluded. Excluding meaningful groups of investors is undesirable for achieving the best price and a successful capital raise for the issuer, and is also undesirable from a shareholder rights' point of view. Other jurisdictions which impose prospectus disclosure requirements for 20 per cent plus capital raises include the EU, Switzerland, South Africa, Middle East and North Africa and Canada.

5. Do you agree the Government should grant the FCA sufficient discretion to be able to recognise prospectuses prepared in accordance with overseas regulation in connection with a secondary listing in the UK?

Yes. We agree with the proposed grant of powers to the FCA to give it the discretion to determine when a prospectus is required for the admission of securities to a UK-regulated market, including by recognising a non-UK prospectus.

However, we would find it helpful to discuss further with the FCA what process it would follow and which factors it would apply in deciding eligibility to apply for recognition of a non-UK prospectus under its "deference" mechanism.

6. Do you agree with our approach to the 'necessary information test'?

Yes. We support the proposal for this test to retain in UK statute, with the approach based on the current "necessary information" test as it is familiar to the market and requires disclosure of information material to the investor's investment decision. In this respect, it would be helpful to discuss and consider with HM Treasury and the FCA whether there is scope to remove some of the existing detailed content requirements listed in the prospectus Annexes where all market participants can agree that a provision is not material for investor investment assessment.

We agree with the proposal to amend the necessary information test to accommodate better further issuances by issuers whose ongoing disclosure standard is sufficient. We agree with the proposal not to include a separate test for secondary issuances and instead to make it clear that one factor considered will be whether an issuer's securities are already admitted to trading (which, in our view, is essentially recognition of the fact that there will already be available to investors information produced by the issuer in accordance with the rules of, and to the standards promulgated by, the listing venue). We understand that the FCA will consult separately on the accompanying amendments to the disclosure annexes to focus disclosure on the content that is relevant to the particular circumstances.

The enlarged role of the FCA

Mandate: it would be helpful for the mandate to the FCA to recognise the need for the FCA to flex their approach to disclosure depending on the audience for the prospectus.

Prospectus content: given that it is envisaged that the FCA would acquire full discretion to set content rules for a prospectus, we would advocate that, in the application of the prospectus requirements to any issuer, the FCA adopt a more flexible approach by reference to the facts and circumstances of each deal and in line with the views of the issuer's third party advisers, as well as the issuer's directors.

The UK simplified prospectus for shares in practice

In response to HM Treasury's request for views on the role of the UK simplified prospectus, we note that this regime applies a separate disclosure standard with reduced information requirements. Our experience is that the regime has required adaptation by participants to make it usable on larger size deals.

The current simplified prospectus is only a viable option on larger capital raisings if the statutory simplified prospectus content requirements are enhanced, so the document becomes a hybrid prospectus which, content-wise, sits between the simplified and full requirements. This is because issuers and their boards, as well as underwriters, want the protection of a standalone prospectus that has been prepared to international standards, in order to be able to offer the securities outside the UK, including notably into the US (where the deal includes a distribution into the US, as is often the case on larger size capital raisings) or the EU, Canada, Switzerland, Middle East and North Africa, South Africa or Asia, where relevant. They are therefore expected to continue to require a fuller prospectus, with a full business description, an OFR section, full risk factors and three years' accounts incorporated by reference.

While the alleviations provided by the simplified prospectus regime are helpful (in particular, it has facilitated a slimming down of the additional information section), there are also some flaws that could be addressed by the FCA under its proposed new powers. For example, the requirement to include a summary of information disclosed under UK MAR over the last 12 months presents an additional barrier to use of this regime given the extra time and cost likely to be involved in drafting the summary. It is also of questionable utility given that UK MAR disclosures are already publicly available for investors.

7. Do you agree the FCA should have discretion to set out rules on the review and approval of prospectuses?

Yes. As noted above, we consider that on an IPO of shares or GDRs it is important for the FCA to review in advance the prospectus and approve it, for the reasons stated. As noted in Answer 1, we welcome the flexibility envisaged by HM Treasury for the FCA in setting FCA rule making and review processes.

In general, we consider that a review of a prospectus for an issuance of shares above the 20 per cent threshold by the FCA is critical, as it provides the market with reassurance and the consistent standards that the UK needs to maintain its attractiveness globally, and to issuers, investors and banks in their capacity as sponsors, underwriters or financial advisers with some protection from litigation and regulatory breach by assisting them in demonstrating that the offering did comply with reasonable disclosure standards and the prospectus requirements.

We would find it helpful to understand if any changes to the prospectus review or approval process are proposed that might impact the role or work of a sponsor.

Much will depend on the rules which the FCA adopts on the circumstances in which a prospectus is required and the content requirements applicable to those fact patterns. However, it seems that a prospectus should not be required for many sub-20 per cent issuances of shares, and prior approval ahead of launch may be less important for any such issuances that would require a prospectus, depending on the purpose of the equity capital raising, level of transformation of the business and capital structure, perceived risks, and complexities needing description and explanation.

8. Do you have any comments on what ancillary powers the FCA will need in order to ensure admissions of securities to Regulated Markets function smoothly? (See list of potential powers in Annex A.)

We note that these rules would be consulted on separately by the FCA. Even so, we would note the desirability of restoring the well understood definition of a prospectus-related "advertisement" that applied in the UK prior to reforms made in 2019 and, in addition, simplifying the onerous and prescriptive requirements applicable to advertisements that came into effect then.

We would recommend clarifying the circumstances in which the FCA requires a power with respect to withdrawal rights, as these would appear to become relevant only on public offers by private companies, whereas Annex A of HM Treasury's paper is broader in scope.

We would suggest that the power to incorporate information by reference should be extended to include the incorporation of forward looking (as well as historic) information by reference.

9. Do you agree with our proposed change to the prospectus liability regime for forward looking information?

Yes, we would agree with this proposal. We welcome HM Treasury's proposal for adjusting the UK liability regime with respect to forward looking information, by amending the UK Financial Services and Markets Act 2000 to allow a defence to prospectus liability for forward looking information by directors who are not reckless. We agree that this may encourage the greater provision of forward looking information in this context. Directors are currently potentially liable (and underwriters are persons who are at risk of being found liable) to investors under UK law for misleading statements in prospectuses, unless they can show that they have taken reasonable care. Their reluctance to include forward looking information, such as projections or forecasts in prospectuses, arises because of the potential difficulty in establishing the reasonable care defence against investors. The latter will have the benefit of hindsight where the forward looking information turns out to be wrong.

Of the possible solutions to the issue that have been discussed in the market and in trade associations, our preference is for HM Treasury's proposal. It is based on the regime that currently applies to information published under the continuing obligations of publicly traded companies (under Schedule 10A FSMA). Putting it in place would involve amending Section 90 and Schedule 10A FSMA to protect directors in their personal capacity from liability and to provide that issuers would not be liable if a director or other responsible person was reckless or fraudulent in the preparation of the forward looking information. Given that the purpose of the Schedule 10A FSMA regime was to provide a defence to liability for forward looking information in a listed company's financial statements, the existing provision is naturally designed for this purpose, is well understood, and its scope has been tested to some extent in the Courts.

This approach would apply the same purpose as, and mimic the effect of, the widely used equivalent US rules in creating a defence to UK prospectus liability for directors with respect to forward looking information, to permit more extensive use of guidance on their projected/targeted future financial position and performance on primary and further capital raising. This would allow investors to make a more meaningful assessment based on management's view of the future financial performance of the issuer. It would also be helpful to modernise the FCA handbook provisions. Examples where updated guidance would be helpful include that:

- a soft aspiration/target that an issuer is working towards, that is not 'likely' to denote a figure for profit, is not a profit forecast even if the issuer uses the verbs "hope", "aim" or "target";
- "medium term" financial objectives are not automatically forecasts, where timing is uncertain; and
- where a statement does not create a number, floor, ceiling or range with respect to any measure of profitability, there is no baseline from which it is possible to calculate a forecast.

It would be necessary to delineate the scope of the term "forward looking information". We would be pleased to work with HM Treasury to suggest wording for this purpose. We would suggest that such a UK definition might be based on the "Guidance for preparers of prospective financial information", published by the Institute of Chartered Accountants in England and Wales, given that industry experts were involved in its preparation and the guidance is directed at the preparers of financial statements. Its scope is wide ranging and extends to internally and externally published information and qualitative as well as quantitative financial information. There is guidance given on core topics around the preparation of working capital, profit forecast and synergy/cost saving statements. (We would also suggest that key outcomes from UK audit reform be taken into account, once these are finalised). Please see link to ICAEW guidance Tech 04/20:

https://www.icaew.com/-/media/corporate/files/technical/technical-releases/corporate-finance/tech-0420-prospective-financial-information.ashx

10. Do you think that our proposed changes strike the right balance between ensuring that investors have the best possible information, and investor protection?

Yes, we consider that they strike the right balance.

11. Which option for addressing companies admitted to MTFs do you favour and why?

This is not an area of focus for UK Finance or AFME members and so we express no view on this question.

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General remarks – UK public offer rules (there is no specific question regarding this, save for Question 1)

- We note that offers of securities admitted to trading would be fully exempt from the UK public offering rules as per paragraph 2.16 of HM Treasury's consultation paper. Amongst other things, this means that the current monetary (€8 million) and numerical (150 persons) exemptions would cease to be relevant to UK-listed or UK AIM-traded companies, and so would be relevant for non-traded UK companies only. We disagree and consider that there should still be a requirement to produce a prospectus for offers to the public of shares listed on a regulated market (subject to exemptions) . HM Treasury's approach gives rise to a significant risk management concern for issuers, directors and underwriters of non-IPO equity capital raising if they are then made available to retail, with increased risks to retail investors. There is a risk of counsel acting for aggrieved investors finding errors or omissions in public information in hindsight. This arises as there will not be a prospectus that permits general issuer-related risk factors and the usual OFR and other disclosure to supplement pre-existing public disclosure which would have been published in different circumstances prior to the making of the investment decision. This is in contrast to the current preferable structure under which a prospectus is published prior to the making of the public offer and the investment decision. We expand on the risk issue below and suggest two potential solutions.
- Rights issues and open offers
  - » A consequence of HM Treasury's/FCA's proposal to exempt listed or traded securities from the UK public offer restriction is that these would become undocumented transactions, by which we mean either where there is no disclosure document at all, or there is a prospectus prepared solely for the purpose of a post-closing listing of the new shares (assuming the 20 per cent admission to trading exemption survives in its current form). Either option presents risk management challenges for issuers, directors and underwriters of non-IPO equity capital raising, as we note above, in contrast to the current structure under which a prospectus is published prior to the public offer and the investment decision.
  - » We (banks acting in their capacity as underwriters), as well as directors and issuers, will need to consider sub-20 per cent rights issues or open offers on a case-by-case basis and assess for which issuer and investor base and in what circumstances a no-prospectus capital raise would be a suitable approach. We note that the availability of litigation funding has led to a rise in class action suits and the importance of the role of disclosure in successfully defending these claims. A key example is the significant litigation arising in EMEA in relation to rights issues and add-on equity offerings which were undertaken in the period from 2007 to 2011.
- Potential risk mitigants
  - » Therefore, to mitigate the significant increase in UK underwriter risk profile, we suggest two solutions. The first option

is a request for HM Treasury to consider amending the UK Financial Services and Markets Act 2000 (and common law) to recognise that underwriters are not persons liable for misleading statements or omissions in information published by an issuer via a recognised information service. Such a regime would permit underwriters greater flexibility in supporting different models for undocumented deals with retail participation, including prospectus-free alternatives such as the Australian accelerated equity entitlement models, including the "RAPIDs" model.

» The second option to mitigate underwriters' liability concerns would give issuers of shares the discretion (in order to take advantage of an exemption from the public offer prospectus requirement) of complying with an ongoing share disclosure regime which will have been tightened up to make it closer to or consistent with prospectus-calibre disclosure standards or to facilitate use of a UK equity shelf prospectus. Giving UK issuers of shares the option of providing more fulsome prospectus-compatible disclosure in their periodic reports or their disclosure under the Transparency Rules, UK MAR and other rules that could obviate the need for a prospectus or be incorporated by reference into their equity shelf prospectus would allow them to go to the market quickly to raise secondary equity capital, as required, largely on the basis of these improved ongoing share disclosures. This would involve amending the "universal registration document" concept in the UK Prospectus Regulation and related rules. We note that the US and French shelf registration systems, which are widely used for equity issuance, are well accepted, in particular in the US because of the US integrated disclosure system. It also benefits from the confidential pre-filing system under Edgar. The FCA may wish to consider mimicking the latter system in the UK.

» If a UK issuer wants or needs to offer and sell shares into the US in a Rule 144A offering and this goes beyond the issuer itself placing directly to a very limited number of QIBs who are existing holders, this would increase the US underwriter risk profile, and the need to mitigate US liability exposure would lead to the need for an international standard prospectus. Similarly if the offering had to be made to any retail investors in other countries outside the UK, such as in the EEA, Switzerland, Canada, South Africa, Middle East and North Africa, or Asia, then an international prospectus would also be needed.

- IPOs: as noted in our response to Question 2, we support HM Treasury's approach that a prospectus should remain a key feature of a UK IPO of shares or GDRs. This gives the new applicant a degree of certainty that it has complied with the requirements. This is particularly important as the FCA is also responsible for the decision on admission to listing and the review of the prospectus will help to inform its decision regarding whether the issuer is able to satisfy the requirement to publish an approved prospectus and is eligible for listing. For those IPOs involving public offers, we welcome that this approach will mean that a prospectus will be published in any event before the making of the offer or any investment decision.
- We note that HM Treasury would be given the power to vary the exemptions to the public offer rules by means of secondary legislation, as set out in paragraph 7.17 of HM Treasury's paper. We assume that in practice this power would mainly be used by non-traded companies (to align it with the FCA's power to make exemptions for traded companies).
- We note that non-UK issuers (unless UK-traded) would have to rely on the new concept of regulatory deference to avoid the need to publish a prospectus in the UK if they wished to make an offer into the UK or rely on the numeric, monetary or Qualified Investors exemption.
- We recommend that careful consideration be given to the interaction of the financial

promotions regime and the proposed changes to arrangements for public offers.

- We anticipate that HM Treasury will wish to consider streamlining the public offer regime into one statute to avoid the potential for inconsistency that arises as a result of the provisions being contained in both FSMA and the onshored UK Prospectus Regulation. For example, there are duplicate prospectus regime provisions set out in both FSMA and the UK Prospectus Regulation. One example of inconsistency under the current approach is the EUR 8 million public offer exemption noted in the consultation paper as originating from Article 3(2)(b) of the Prospectus Regulation. While Section 86 of FSMA currently sets this threshold at EUR 8 million, the exclusion in Article 1(3) has been retained, and may therefore cause confusion, as it sets the threshold at EUR 1 million over a 12-month rolling period.

Note: The question numbers in the body of the consultation paper do not match the question numbers set out in the annex to the consultation paper from this point onwards. The following UK Finance/AFME responses use the numbers set out in Annex B to the consultation paper.

12. Do you agree there should be a new exemption from the public offer rules for offers directed at existing holders of a company's securities?

Please see our "General remarks – UK public offer rules" section above as we consider that there should still be a requirement to produce a prospectus for offers to the public of shares (subject to exemptions).

Under HM Treasury's paper, as written, a prospectus would still be required for an intermediaries offer or an offer for subscription by a private company, but not for a rights issue, placing or open offer. We wonder if this approach is intentional.

13. Do you agree we should retain the 150-person threshold for public offers of securities and the 'qualified investors' exemption? Do you have any comments on whether they operate effectively?

150 persons

Our view is that the limit of 150 persons works well in practice and we support retaining it.

"Qualified investor" exemption

We support retaining the existing "qualified investor" exemption in Article 2(e) of the UK Prospectus Regulation and extending it to cover investors in growth companies by modernising the definition. We agree with HM Treasury's assessment that the exemption is fundamental to ensuring UK institutional investors participate in UK private markets and in overseas stock markets without imposing additional undue obligations on issuers. Retaining it may help issuers to structure an exempt offering of unlisted shares on a pan-European basis.

14. Does the exemption for employees, former employees, directors and ex-directors work effectively?

No. Prior to the implementation of the Prospectus Directive in the UK in 2005, a prospectus was not generally required where shares were offered by a listed employer to existing or former directors or employees in the UK and we recommend revisiting that regime as it worked well for market participants. We do not think investor protection suffered then because a prospectus was not required for these offers.

The position under the pre-2005 regime was clearer and more efficient in comparison to the solutions adopted as workarounds to meet the challenges of the Prospectus Directive regime (and its successor, the Prospectus Regulation).

15. Which option for accommodating the right of private companies to offer securities to the public do you favour?

We consider that private companies should be allowed to raise larger amounts of capital via public offers of securities if they publish a full prospectus ahead of making any public offer.

16. Which of the options above do you prefer? (Please state reasons)

We agree that it would be sensible for any proposals for issuers with securities admitted to overseas markets apply equally, regardless of whether they are incorporated in the UK or overseas. We understand the proposals in Chapter 9 of the consultation paper are intended to apply in this way.

Of the three options outlined in the consultation paper, we support Option 2 (a new "deference" mechanism) on the basis that it could facilitate offers of shares that are listed on non-UK regulated markets and non-UK MTFs to UK investors.

17. Do you have any further thoughts or considerations over how a new deference mechanism (Option 2) should operate?

Yes. We support a mechanism that allows for the recognition of non-UK prospectuses in the UK and we welcome Option 2 (a new "deference" mechanism) as an intended replacement for the UK "equivalence" mechanism in Articles 29 and 30 of the UK Prospectus Regulation. Deference appears to involve the FCA "blessing" a prospectus approved under the rules of a non-UK regulator for use in the UK without any formal review by the FCA. We note that the UK equivalence mechanism is still available, although it is unused, and we support a replacement for it.

We note the suggestion that the FCA could have an existing reserve power to close an offer to the UK public where it is satisfied that completion of the offer would be detrimental to the interests of persons in the UK. However, an existing power under the Listing Rules to refuse listing on the same basis has very rarely been used, and the criteria for its use may be unclear, so we suggest adopting a transparent solution for the "deference" mechanism.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. Further information is available at **www.ukfinance.org.uk**.

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About AFME

AFME (Association for Financial Markets in Europe) advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on its strong and long-standing relationships, its technical knowledge and fact-based work. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information please visit the AFME website: **www.afme.eu**.

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