

# 14

Financial Services Authority

## Review of the listing regime

July 2002



# Contents

1	Executive Summary	7
2	Introduction	12
3	Regulatory environment	14
4	Themes for discussion	20
5	Organisational issues	30
6	Structure of the Review	34
7	Summary of questions	36
	<b>Annex A:</b> Primary market comparative regulation study – Key Themes Report	
	<b>Annex B:</b> Table of super-equivalent provisions	
	<b>Annex C:</b> Timetable for the Listing Regime Review	
	<b>Annex D:</b> Membership of Consultative Committee	

The Financial Services Authority invites comments on this Discussion Paper. Comments should reach us by 15 October 2002.

Comments may be sent using the form on the FSA's website (at [www.fsa.gov.uk/discussion/dp14\\_response.html](http://www.fsa.gov.uk/discussion/dp14_response.html) ).

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**It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.**

## Glossary

<b>Accountancy Foundation</b>	The new oversight organisation set up by the DTI for the auditing and accountancy professions.
<b>AIM</b>	Alternative Investment Market.
<b>ASB</b>	Accounting Standards Board.
<b>CARD</b>	Consolidated Admissions and Reporting Directive. CARD consolidated the Listing Particulars Directive, Admission to Listing Directive, Interim Reports Directive and the Major Shareholding Directive in July 2001.
<b>CESR</b>	Committee of European Securities Regulators, formerly known as FESCO.
<b>COMC</b>	Code of Market Conduct gives guidance to market participants to help determine whether or not their behaviour amounts to market abuse. (Broadly speaking, market abuse is defined as the misuse of information, the giving of false or misleading impressions and market distortion.)
<b>Combined Code</b>	The Combined Code: Principles of Good Governance and Code of Best Practice.
<b>Competent Authority</b>	The authority designated under Schedule 8 of FSMA (Transfer of Functions under Part VI (Official Listing)) as responsible for admitting securities to, and for removing securities from, the official list; for the time being, the FSA in its capacity as such.
<b>CordealMTS</b>	CordealMTS is a Recognised Investment Exchange for corporate debt securities.
<b>European passport</b>	The ability once authorised in one Member State to passport services or documents to other Member States without having to meet any other regulatory requirements.
<b>FAQs</b>	Frequently Asked Questions.
<b>FRC</b>	Financial Reporting Council.
<b>FSMA</b>	Financial Services and Markets Act 2000.
<b>GAAP</b>	Generally Accepted Accounting Principles.
<b>IAS</b>	International Accounting Standards to be known as International Financial Reporting Standards.

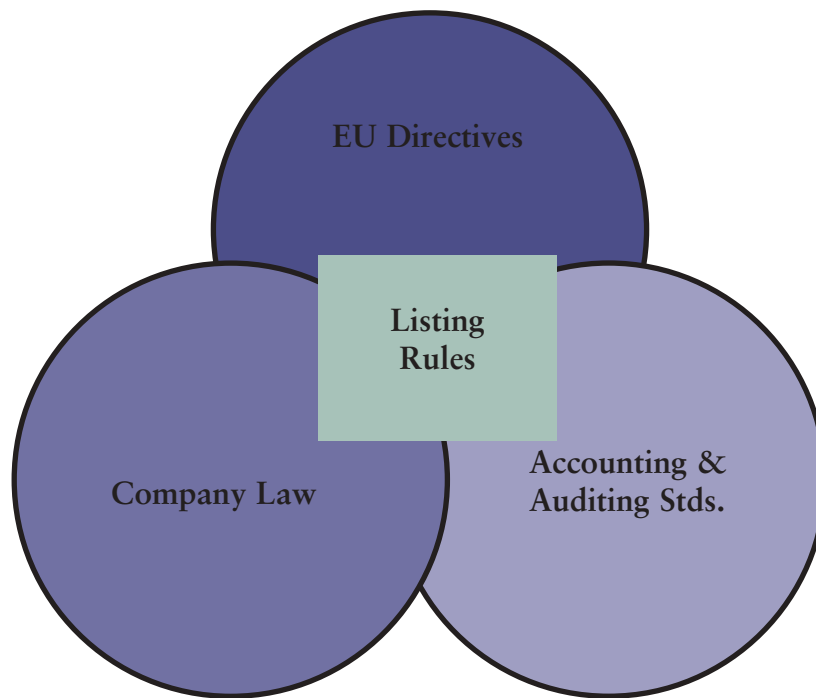
<b>IOSCO</b>	International Organisation of Securities Commissions.
<b>IOSCO Disclosure Standards</b>	International disclosure standards for cross border offerings and initial listings by foreign issuers.
<b>ISD</b>	Investment Services Directive.
<b>Lamfalussy Process</b>	The ‘Lamfalussy’ approach has a four level approach – level 1 is legislation that sets the key political direction; level 2 sets out, through Comitology, the detailed implementing measures in EU law; level 3 provides for regulatory standards and guidance; and level 4 delivers better enforcement of the EU regime.
<b>LSE</b>	London Stock Exchange.
<b>MAD</b>	Market Abuse Directive – draft directive dated 30 May 2001 on insider dealing and market manipulation.
<b>Model Code</b>	The model code on directors’ dealings in securities, as set out in the appendix to chapter 16 of the Listing Rules.
<b>OFEX</b>	Ofex plc is a market providing a share trading platform for unlisted and unquoted securities off exchange.
<b>Official List</b>	(a) the list maintained by the FSA in accordance with section 74(5) of the Act for the purposes of Part VI of the Act (b) any corresponding list maintained by a competent authority for listing in another EEA State.
<b>OFR</b>	Operating and Financial Review.
<b>PD</b>	Prospectus Directive – Harmonising requirements for the drawing up, scrutiny and distribution of prospectuses to be published when securities are offered to the public or admitted to trading.
<b>PwC Report</b>	Report commissioned by the FSA from PricewaterhouseCoopers entitled ‘Primary Market Comparative Regulation Study – Key themes’ see Annex A.
<b>Regulated Market</b>	The following UK markets are classed as regulated markets: the Domestic Equity Market, the European Equity market, the Gilt Edged and Sterling Bond Market, AIM all operated by the LSE, LIFFE, OM London, virt-x, and CoredealMTS.

<b>Related Party</b>	A substantial shareholder or director.
<b>Reverse Take-over</b>	An acquisition by a listed company of a business, an unlisted company or assets (see listing rule 10.39).
<b>RIE</b>	Recognised Investment Exchange. The relevant RIEs in this context are the London Stock Exchange's main market, virt-x and CordealMTS.
<b>RIS</b>	Regulatory Information Service, a service by which issuers disclose information to the public.
<b>SEC</b>	US Securities and Exchange Commission.
<b>SMEs</b>	Small and Medium sized Enterprises.
<b>Split Capital Investment Trust</b>	Investment companies that issue shares of different classes such as capital shares, income shares and zero dividend preference shares.
<b>Sponsor</b>	An adviser to a listed company, whose approval, function and appointment is as set out in chapter 2 of the Listing Rules.
<b>Super-equivalent provisions</b>	Provisions of the Listing Rules that are in addition to the requirements imposed by CARD.
<b>Take-over Panel</b>	Panel on Takeovers and Mergers.
<b>TOD</b>	Transparency Obligations Directive – consultation papers on which were published on 11 July 2001 and 8 May 2002 by the Commission entitled 'Towards an EU regime on transparency obligations of issuers whose securities are admitted to trading on a regulated market'.
<b>UK Issuers</b>	An issuer incorporated in the UK.

# 1 Executive summary

## CONTEXT

- 1.1 In the last few years the major driving force in the capital markets has been a move towards globalisation. The introduction of the Euro has forced changes in restrictions previously in place on foreign investments for entities in many Member States and this has led to an increase in the volume of cross border capital flows. International mergers and acquisitions have also increased despite the legal complexities of such transactions, and this has led to an increasing demand for standardising and simplifying the rules and procedures for bringing securities to market.
- 1.2 The implications of the collapse of companies such as Enron and Global Crossing, and the problems raised by the accounting errors at WorldCom, have attracted both regulatory and media attention. In a regulatory environment where the standards of corporate governance of certain entities are having a damaging effect on market confidence, it is appropriate for the FSA to review the ability of the Listing Rules to continue to provide sufficient protection to investors.
- 1.3 A number of significant changes in the EU and UK regulatory environments, which provide the framework for the listing regime, are in prospect. It is essential, in the light of these changes, to reassess the effectiveness of the current listing regime.
- 1.4 The UK Listing Rules sit at the centre of a complex legal and regulatory structure. They implement the requirements set by the EU directives and incorporate rules and standards set, and sometimes monitored, by bodies such as the Financial Reporting Council (FRC).



### European and UK regulatory dimensions

- 1.5 In Europe, the current EU directives, which provide the over-arching framework for the listing regime, are being overhauled. The strategic objective of this process is to implement a single market in Europe for financial services.
- 1.6 The Prospectus Directive (PD), the Transparency Obligations Directive (TOD), the Investment Services Directive (ISD) and the Market Abuse Directive (MAD) are all in varying stages of development. The Admission to Listing Directive, which covers the concept of admission to listing, is also expected to be amended at some time in the future. Depending on the form in which the directives are eventually adopted, they may have a radical impact on the UK listing regime, which would necessitate a review of the role of the competent authority for listing.
- 1.7 To date, EU policy has been to set core standards and generally not to provide prescriptive requirements as to how individual Member States should implement such standards. This has meant that there has been substantial freedom for individual Member States to add additional requirements if they so wished.
- 1.8 The current draft of the PD is intended to harmonise the contents of every prospectus produced in the EU. It is stated to be a “maximum harmonisation” directive. The Commission’s objective is to enable issuers to obtain a European passport. This means that once an issuer’s prospectus is approved by its home state, their securities may be admitted to trading on a “regulated market” in the EU country of its choice without further scrutiny or additional obligations relating to the prospectus.

- 1.9 If the PD were to be agreed as a maximum harmonisation directive, this would mean the ability that we have used to create additional ‘super-equivalent’ provisions, covering the contents of a prospectus for UK issuers, will disappear.
- 1.10 If the Commission were to continue with the maximum harmonisation approach it has adopted for the PD in subsequent directives, and if this were to be accepted by the Council (i.e. the Member States) and the EU Parliament, Member States would be unable in future to impose additional requirements on companies raising capital within their jurisdiction, over and above those provided for in these EU directives. However, these EU directives were conceived before recent growing concerns surrounding financial disclosure and accounting practices and we do not know whether concerns raised by these issues will affect the final text.
- 1.11 In the light of these proposed changes to the EU regulatory framework and the responses to this discussion paper, we will review all the options available to us to retain those super-equivalent provisions which the FSA and respondents believe help to ensure the maintenance of market confidence and the protection of investors.

### **Company law**

- 1.12 In the UK, the Government published a White Paper on 16 July 2002 responding to the final report of the Steering Group of the Company Law Review. The White Paper stated that the Government plans to simplify and modernise company law for all companies. The provisions of the new Companies Bill will also have a significant impact on the work we are undertaking, as there are important areas of overlap between company law and the Listing Rules.

### **International Auditing and Accounting Standards**

- 1.13 In response to the collapse of Enron, international public debate on the effectiveness of auditing, accounting and corporate governance standards has intensified. Although the role of the competent authority does not encompass the regulation of accountants and auditors, we are interested in promoting high standards of disclosure and conduct in this area.
- 1.14 The Government has set up a group chaired by Department of Trade and Industry (DTI) and HM Treasury (HMT) ministers to co-ordinate work being undertaken to review the UK’s arrangements for financial reporting and auditing. This group brings together the DTI, HMT, the Financial Services Authority (FSA) and other interested regulators such as the Accountancy Foundation and the FRC. The group’s interim report notes that this Review may provide a suitable mechanism for examining issues related to auditor independence.

- 1.15 At the same time the EU has agreed a Regulation on the application of International Accounting Standards (IAS). This will require all EU companies admitted to trading on a regulated market in a Member State to use IAS in their consolidated accounts from 2005. Some issuers may be given an extension to 2007, but there are unlikely to be many UK companies affected. The DTI will be consulting on the various options available under this Regulation later this summer. The Commission is also considering whether to require the use of International Standards on Auditing by EU companies from 2005.

## **OBJECTIVE**

- 1.16 The market is developing and new products are being introduced. So it is important that the UK continues to offer a regime that provides an appropriate level of regulation and the flexibility and transparency demanded by those wishing to raise capital on the London markets.
- 1.17 This objective is reflected in the FSA's strategic aim for markets as laid out in the Plan and Budget 2002/03:
- “to ensure the continuing development of deep and liquid markets which facilitate the capital raising process while maintaining investor confidence.”
- 1.18 In conducting the Review we will need to consider the implications for the listing regime of the proposed changes to the UK and EU regulatory frameworks. We need to ensure that there is a clear understanding of the boundaries of the listing regime and the effect that changes in the regulatory environment will have on the ability of the competent authority to set and monitor rules going forward.

## **CONSUMERS**

- 1.19 The outcome of the Review will be of interest to all those who participate in the capital raising process, to companies seeking access to capital markets and their advisers, and to investors (both institutional and retail), including those consumers whose interests are represented by institutions.
- 1.20 The potential changes to the regulatory environment could have a wide-ranging effect on all participants and could entail substantial changes to areas of the Listing Rules. The areas that would be substantially affected are detailed in Section 4 of the discussion paper.
- 1.21 This is an opportunity to contribute your views to the development of policy that will dictate the regime going forward and to express your views on the level of protection provided by the Listing Rules.

## STRUCTURE OF THE PAPER

- 1.22 Following the Executive Summary is Section 2, the introduction and background to the Review. This explains the objective of the listing regime and provides some background to the process for reviewing the rules.
- 1.23 Section 3 describes the current regulatory environment and highlights areas which are super-equivalent to current EU directives, and which may be affected by the changes to them. It also lists some of the changes that potentially might need to be made because of the Government's response to the Company Law Review and the changes to International Accounting and Auditing Standards.
- 1.24 Section 4 details the themes and areas of our rules that we believe require policy development. It also solicits views on whether there are other areas that the market believes we should address to ensure that market confidence is maintained and that investors are sufficiently protected. The replies to the questions raised in this section will assist us in developing our contributions to the process of preparing the Committee of European Securities Regulators (CESR) implementation measures.
- 1.25 Section 5 covers the organisational issues which need to be considered and explains how the consultation process will work, and how we intend to ensure that all interested parties are involved.
- 1.26 Section 6 explains the internal processes involved in undertaking such a Review.
- 1.27 Finally, the annexes include:
  - the Executive Summary of a report commissioned from PricewaterhouseCoopers entitled "Primary market comparative regulation study - Key Themes" (the PwC report);
  - a table outlining the areas of the regime which are super-equivalent to the existing EU directives;
  - a timetable for the Review; and
  - a list of the members of the Consultative Committee.

# 2 Introduction

- 2.1 In May 2000 the function of competent authority for listing together with the responsibility for the Listing Rules were transferred from the LSE to the FSA<sup>1</sup>.
- 2.2 The competent authority now forms an integral part of the FSA, whose purpose can be summarised as aiming to provide:  
**a cost effective regime which facilitates access to capital markets by a broad range of businesses, and to operate that regime so as to maintain market confidence and to protect investors.**
- 2.3 Major overhauls of the regime are extremely time consuming and costly. Therefore, they are not undertaken lightly. The last one was completed in December 1993, the primary purpose of which was to codify existing market and regulatory practices to create a more transparent regime.
- 2.4 As a first stage in the Review, and to establish where the UK regime presently sits within the global primary market regulatory environment, the FSA commissioned a report from PricewaterhouseCoopers. The report was entitled 'Primary market comparative regulation study - Key Themes' (the PwC report) and the Executive Summary is attached at Annex A. The PwC report highlights that, in general, the market appears to be relatively content with the UK regime, although there are significant differences of opinion in certain areas.

## **Purpose of the paper**

- 2.5 This discussion paper aims to solicit the views of all interested parties in respect of a number of specific areas of the regime, some of which are super-equivalent to the existing EU directives. In some cases these areas have been highlighted by the PwC report as being highly valued by participants. In others, we do not as yet have a sufficiently detailed view as to the opinion of the market on their value in maintaining market confidence and protecting investors.

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<sup>1</sup> Although the UK Listing Authority is an integral part of the FSA, the Financial Services and Markets Act (FSMA) provides a separate statutory framework within which the FSA must operate when it acts in its capacity as competent authority for listing.

- 2.6 At the same time, the Review gives us the opportunity to gather views on the value of the existing regime in the context of a changing economic and regulatory environment.
- 2.7 We need to ensure that the overall regulatory framework enables the London market to remain an attractive place to raise capital, whilst also ensuring that investors get the information they require. In undertaking this Review we will set the boundaries of the listing regime and review where the FSA will need to hold detailed discussions with the other regulatory and standard setting bodies involved, such as, the DTI, LSE and the FRC.
- 2.8 The Review will also allow us to explore how and whether we can continue to provide some of the investor protection provisions currently embedded in the Listing Rules in the context of the proposed changes to the EU directives.
- 2.9 The Review will also help us contribute to the European consultation process through CESR working groups on all five of the directives mentioned in paragraph 1.6. This will ensure, as far as possible, that we continue to provide a regime that satisfies the FSA's strategic aim (see paragraph 1.17).
- 2.10 In undertaking this review we are aiming to build a consensus, and so we are keen to ensure that the widest possible range of participants are involved in the consultation process. We have set up a Consultative Committee comprising representatives from investors, issuers, sponsors and trade associations to provide advice on policy development to the working groups and to review their proposals before publishing the consultation papers. (A list of the representatives on this committee is provided at Annex D.)

# 3 Regulatory environment

- 3.1 As mentioned in paragraphs 1.5-1.7 above, the legislative framework that underpins the role of the competent authority for listing is under discussion in both the EU and the UK. It is therefore important to understand how the likely changes to that framework may affect that role.
- 3.2 Under Part VI of FSMA, the competent authority is obliged to maintain the official list of securities. Section 75 states “Admission to the official list may be granted only on an application made to the competent authority in such manner as may be required by the listing rules”. Applicants for listing are obliged to provide a number of documents including a prospectus. Once their securities have been accepted to the official list, they have to fulfil a number of on-going disclosure obligations such as producing regular financial statements, disclosing directors’ dealings, and ensuring that all price-sensitive information is available on a timely basis to all shareholders.
- 3.3 The competent authority is responsible for ensuring that standards are met both at admission to the official list and on a continuous basis through the disclosure of all relevant information.
- 3.4 Currently, there is a distinction between ‘admission to listing’ and ‘admission to trading’. The competent authority is responsible for admission to listing. Securities cannot be admitted to the official list without also being admitted to trading on a stock exchange. In the UK, officially listed securities are traded on the London Stock Exchange’s main market, virt-x and CoredealMTS. These exchanges choose whether or not they wish to admit an officially listed security to trading on their market, but have no role in the admission of securities to the official list.

## **EU DEVELOPMENTS**

- 3.5 The Consolidated Admission and Reporting Directive (CARD) provides the existing EU framework for listing. The Listing Rules are derived, in the main,

from the requirements and powers as laid out in CARD. Most of CARD is expected to be replaced by the PD and the TOD by mid 2004.

- 3.6 If an issuer's prospectus meets CARD's requirements, as well as any additional national standards that the competent authority may impose, an issuer's securities are admitted to the official list. CARD allows the competent authority to set additional or more stringent conditions than those set out in CARD itself, both in relation to the contents of a prospectus and additional obligations on issuers whose securities are listed. In the UK, we have gone further than the requirements in CARD, and impose additional super-equivalent provisions. These are included in the summary of super-equivalent provisions in Annex B.
- 3.7 The draft PD does not contain an explicit provision giving competent authorities the ability to impose super-equivalent provisions. In fact, it makes it clear that the purpose of the directive is to harmonise prospectus contents requirements. If the Commission's approach were to be followed in relation to the other directives there might well be no power for the competent authority to impose super-equivalent provisions in respect of admission or on-going disclosure obligations.
- 3.8 The draft directives are still under discussion and it is therefore too early to clarify whether this is likely to be the case. However, it is worth noting that such a decision would have significant implications for many of our rules in areas such as corporate governance, corporate communication and financial information. So it is possible that we would not be able to require issuers to comply with such obligations in the future.
- 3.9 We need to assess the importance of these rules in relation to the current regulatory regime, and consultation responses will inform our approach both during the development of the European legislative framework and subsequent to the finally agreed directives.

### **The Prospectus Directive**

- 3.10 The stated objective of the draft PD is to create a set of harmonised prospectus contents standards based on the IOSCO disclosure standards<sup>2</sup>, and provide an EU wide passport to enable issuers, once their prospectus has been approved, to be admitted to trading on a regulated market in any EU jurisdiction.
- 3.11 A key proposal of the draft PD is that a prospectus must be produced to a single standard, irrespective of whether the securities are being admitted to a regulated market or offered to the public. This aims to ensure that equivalent protection is provided to all investors no matter how a company's securities are made available to the public.

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2 The IOSCO international disclosure standards for cross-border offerings and initial listings by foreign issuers have been endorsed by the FSA.

- 3.12 In the UK this would mean the competent authority would be responsible for vetting and approving all prospectuses whether the company wishes its securities to be traded on the London Stock Exchange's main market, virt-x, CoredealMTS, AIM or OFEX.
- 3.13 The EU Commission's approach suggests that it may change the concept of listing at some time in the future, with the regulatory focus shifting to the concept of admission to trading on a regulated market. In practice, if this approach were to be adopted, the competent authority's role might not include the setting of qualitative standards or hurdles that a potential issuer needs to meet prior to being accepted to trading on a regulated market. If this were to be the case such standards could only be set either at an EU level, or by the regulated market itself or by adherence by issuers to voluntary industry codes.
- 3.14 It might be possible to introduce new UK legislation giving powers to a regulatory body, such as the FSA (but acting in a different capacity from that of competent authority for listing) to impose such obligations on UK companies. It is important to point out however, that any new UK legislation could not go against the provisions of any relevant EU legislation.

### **The Transparency Obligations Directive**

- 3.15 On 11 July 2001 the Commission published a consultation paper entitled 'Towards an EU regime – On transparency obligations of issuers whose securities are admitted to trading on a regulated market'. The paper provided first indications of the Commission's views about the possible structure and content of a new directive covering disclosure requirements. This was followed by a further consultation paper on 8 May 2002.
- 3.16 This directive will deal with the on-going disclosure obligations for companies. In this area the FSA, as competent authority for listing, has imposed a number of super-equivalent provisions such as those relating to directors' remuneration, directors' dealings and class test provisions (concerning major transactions and shareholder votes). In the past we considered that such super-equivalent provisions provided a useful additional level of protection for those investing in officially listed securities.
- 3.17 The first TOD consultation paper indicated that the Commission wanted to "enhance the quality and comparability of financial statements" produced by companies whose securities are admitted to trading on a regulated market. It proposed a consolidated text of all current directive disclosure requirements and proposed broadening the scope of the current regime to include all securities of issuers admitted to trading on a regulated market. The second consultation focuses on particular aspects such as quarterly reporting and the disclosure of voting rights.

- 3.18 CARD requires that issuers with officially listed securities produce a financial report on their activities on a half-yearly basis no later than four months after the end of the first six months of the issuer's financial year. One of the key proposals of the TOD consultation paper is that all issuers with securities traded on regulated markets should produce financial reports on a quarterly basis, 60 days after the relevant financial period.

### **The Investment Services Directive**

- 3.19 The existing ISD sets out requirements for firms wishing to undertake investment business in the EU. This directive provides the framework for regulated markets and allows firms to provide their services throughout the EU on the basis of a single passport.
- 3.20 The Commission is consulting on amending the ISD although its current proposal implies that the basic regulatory structure of the existing ISD and the principles underlying it are likely to be retained. However, the Commission is proposing to update the concept of regulated market and to impose several high-level core standards.
- 3.21 If the concept of official listing were to undergo a fundamental change, some of the current admission to listing conditions might become requirements for admission to trading on a regulated market. They could take the form of basic criteria for regulated markets and could be expressed as such in the ISD. If this were to be the case, the primary responsibility for implementing and monitoring such requirements would pass from the competent authority to the regulated market concerned.
- 3.22 The revised draft of the ISD is expected to be issued in November 2002. The current text of the PD requires a prospectus to be approved before securities can be admitted to trading on a regulated market. It is assumed that the definition of regulated market used by the PD, TOD and the MAD will be updated when the revised ISD is brought into force.

### **The Market Abuse Directive**

- 3.23 On 30 May 2001, the European Commission presented a proposal for a directive on insider dealing and market manipulation (MAD) and published a draft of this directive. Although the final text has not been approved it would appear to be unlikely that it will change significantly from the current text.
- 3.24 The draft directive requires a Member State to ensure that issuers inform the public as soon as possible of inside information. The option to delay publishing such information, if it would not mislead the public to do so, is available but at the issuer's own risk. The Commission has asked CESR to provide technical advice on appropriate level 2 implementing measures for this provision. CESR's proposed advice is set out in the Consultation Paper published on 5

July 2002. CESR suggests that it should be made clear that issuers can delay disclosure of inside information where it relates to matters in the course of negotiation. Any issuer choosing to delay disclosure however, must ensure that the information is kept confidential to reduce the possibility of insider dealing.

- 3.25 Clearly this will have implications for the Listing Rules dealing with the disclosure of price sensitive information.

### **International Accounting and Auditing Standards**

- 3.26 On 7 June 2002, the EU Council and Parliament agreed a Regulation which will require all companies incorporated under the law of a Member State and admitted to trading on a regulated market in the EU to prepare consolidated accounts in accordance with International Accounting Standards (IAS) from 2005.
- 3.27 The Listing Rules currently require financial accounts to be prepared in accordance with the applicant's national law and in all material respects with UK Generally Accepted Accounting Principles (GAAP), US GAAP or IAS. These requirements may be varied for companies incorporated outside the UK if accounts have been prepared to a standard at least as high as those set out above. All EU companies admitted to trading in the UK will be required, from 2005, to prepare consolidated financial accounts in accordance with IAS. Transitional arrangements may be in place for certain issuers until 2007. It should be noted that non-EU companies admitted to trading on a regulated market in London are not covered by the Regulation.
- 3.28 This has far-reaching implications for all listed companies and CESR will be consulting on these changes in due course.

## **UK DEVELOPMENTS**

### **Company Law Review**

- 3.29 The Government published a White Paper, responding to the final report of the independent Company Law Review, on 16 July 2002, containing the first tranche of clauses of a draft Companies Bill. Work on this project is continuing, and further clauses will be consulted on in due course.
- 3.30 There is some overlap between company law and the Listing Rules, which apply only to listed companies, in areas such as corporate governance standards (as set out in the Combined Code), directors' remuneration and financial information disclosure.
- 3.31 The Combined Code sets the principles and provisions of good corporate governance for UK listed companies. It is included as an appendix to, but does not form part of, the Listing Rules. The Listing Rules impose a disclosure

requirement on companies to set out in their annual report and accounts how they have applied the principles of the Combined Code and whether or not they have complied with its provisions.

- 3.32 The Government has laid draft legislation before Parliament that would require quoted companies to publish a report on directors' remuneration as part of the company's annual reporting cycle and put an annual resolution to shareholders on the remuneration report. The current requirements in the Listing Rules on the disclosure of directors' remuneration will be amended at the time the new legislative requirements come into force.
- 3.33 The Final Report of the Steering Group of the Company Law Review recommended that a rule-making Standards Board should be responsible both for keeping the Combined Code under review and for setting the related disclosure requirements<sup>3</sup>. The Government has said that it agrees with these recommendations.
- 3.34 The Government has accepted the Company Law Review's recommendation that quoted public companies should be required to publish their annual reporting documents on the internet as soon as practicable after they have been approved and the audit report issued, and that such publication should occur in any event within four months of the year-end.
- 3.35 To summarise, the Company Law Review's proposals, if implemented, will impact the Listing Rules by requiring the following changes:
- the deadline for publication of full annual report and accounts by UK issuers will be reduced from the current six month deadline to a 120 day deadline; and
  - the Standards Board or a similarly designated body will take over responsibility for setting the disclosure requirements under the Combined Code.

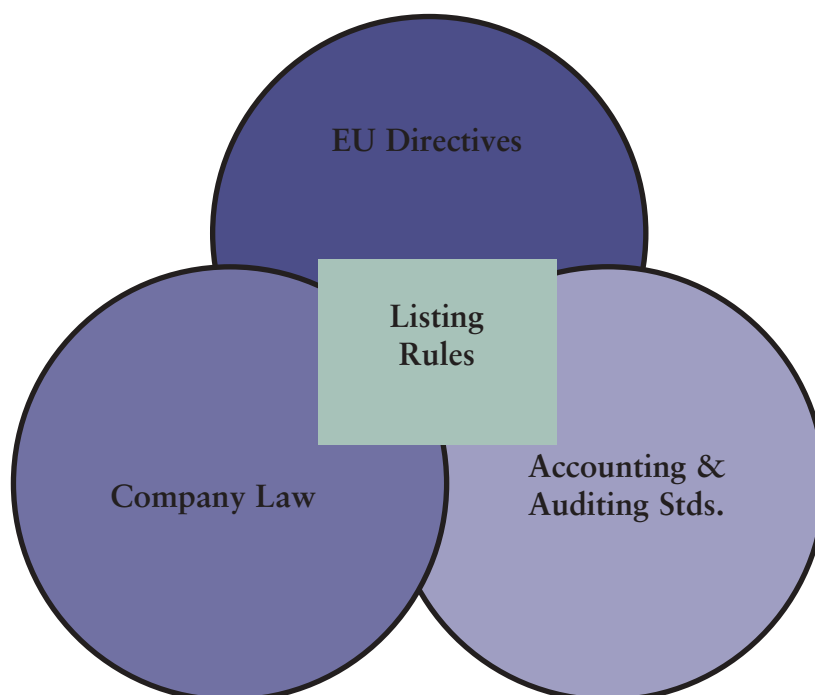
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3 Modern company law for a competitive economy: Final report 01/942 and 01/943, paragraph 5.42

# 4 Themes for discussion

- 4.1 The main objective of the Review is to ensure that the FSA continues to provide: **a cost effective regime which facilitates access to capital markets by a broad range of businesses, and to operate that regime so as to maintain market confidence and to protect investors.**
- 4.2 We discharge this role by setting, monitoring and enforcing a combination of qualitative and disclosure standards both at admission and on an on-going basis.
- 4.3 The aim of this section is to explain in more detail the five key themes that we believe deserve further policy development: corporate governance; corporate communication; shareholders' rights and obligations; financial information; and the sponsor regime.
- 4.4 As explained in Section 3, our ability to keep some of the current rules in these areas may be constrained once the EU directives are implemented. To help you understand the possible impact of the potential changes we attach a table at Annex B laying out which areas of the rulebook may be affected.
- 4.5 Under each of the themes, we mention some of the key issues that we intend to consider and what might be the potential effect of the proposed regulatory changes. As we develop our policy work in the subsequent consultation papers, we will need to consider, under each individual theme, whether high level principles or more prescriptive rules provide the most appropriate method of ensuring the protections and clarity demanded by the market. This is particularly relevant at a time when all market participants are demanding greater transparency.
- 4.6 The Listing Rules sit at the centre of a complex regulatory framework and many of the areas we believe require further policy development are areas where other organisations and regulatory authorities have a role and responsibility. We therefore will ensure that issues that are raised in these areas are fully discussed with the other organisations concerned. We will also

consider whether some of these issues could be addressed by the FSA facilitating production of industry best practice codes.



### **Corporate governance**

- 4.7 Corporate governance standards have moved to centre stage following the collapse of Enron. We do not intend to duplicate the work being undertaken by other interested parties, but it is appropriate to consider the role of the listing regime in setting and applying standards of corporate governance for listed issuers.
- 4.8 The role of the competent authority in setting standards for corporate governance is currently limited and is not well understood. The Listing Rules require the directors and senior management of listed companies to have appropriate expertise and experience to manage their business but, unlike firms regulated by the FSA in its other capacities, the competent authority does not approve the directors of listed companies. A company's Articles of Association determine the manner of appointment of directors; in almost all cases, the Articles of a listed company will give the company power to make and confirm the appointment of directors at its general meetings.
- 4.9 Further to this, it should be noted that the Maxwell report<sup>4</sup> also raised particular concerns about the assessment of an issuer's management and its governance arrangements prior to flotation. The Inspectors noted that the Council for the Securities Industry had proposed the formulation of a Code of Conduct in relation to flotations and other new issues. The proposal met with opposition from the City and was not implemented. The Inspectors

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<sup>4</sup> Mirror Group Newspapers plc, Investigations under Sections 432(2) and 422 of the Companies Act 1985.

stated that they looked to the FSA to facilitate the production of appropriate industry guidance in this area.

- 4.10 Governance issues are addressed in a number of distinct areas in the Listing Rules. These include those standards set out in the Combined Code, the Model Code on directors' dealings and a number of other rules relating to directors.
- 4.11 The Government, in its response to the Company Law Review, has suggested that the Combined Code should remain a non-statutory document, but has stated that it intends to designate the Standards Board to make rules requiring companies to disclose whether they have complied with the Code. It is possible that EU developments might restrict the competent authority's ability to retain the Listing Rules' requirement that an issuer states whether or not it abides by the Combined Code.
- 4.12 Several issues have recently arisen, for example in the Split Capital Investment Trust sector. These issues have highlighted the conflicts of interest that can arise when directors serve on several different boards and where the demands of such responsibilities can affect their ability to act in the best interests of the company concerned. The Listing Rules do not provide any guidance on how to deal with these conflicts. Nor do they lay down a limit on the number of directorships that a director can hold in other companies, be they independent or subsidiaries. So we believe it is appropriate for us to review whether the Listing Rules should provide guidance in this area to avoid such problems occurring in the future. This will also give us the opportunity to review the disclosure requirements for such investment entities.
- 4.13 We have noted that the Chancellor of the Exchequer and Secretary of State for Trade and Industry have asked Mr. Derek Higgs to review the role and effectiveness of non-executive directors on companies' boards. We intend to contribute to that review.
- 4.14 The other code that establishes rules on best practice is the Model Code. This is particularly concerned with potential or perceived abuse during the periods leading up to the announcement of financial results or other significant announcements of price-sensitive information. The Model Code is considered to have an important preventative function in encouraging directors and key employees not to engage in improper conduct. With the introduction of the FSA's Code of Market Conduct (COMC) and the MAD due for implementation in 2004, there are two regimes that provide significant rules and guidance on the misuse of information. In light of the scope of the COMC and the draft provisions of the MAD, it is important that we review whether the Model Code is still an effective preventative measure to combat market abuse and if so, whether and how it should be retained.

## **Corporate Governance**

- Q1. Do you feel that the disclosure requirement imposed on issuers in the Listing Rules to state whether or not they have abided by the Combined Code is valuable?
- Q2. Do the provisions of the Model Code still add value in the modern regulatory framework?

## **Corporate communication**

- 4.15 Some of the key disclosure requirements of the Listing Rules are intended to ensure that listed companies provide adequate and timely information both to the market and to their investors. Corporate communication is therefore an essential part of the regime.
- 4.16 There are two major areas of corporate communication that, in our view, require particular attention. These are the rules covering price sensitive disclosure and the publishing of forward-looking information.
- 4.17 The recent introduction of the COMC and the new fining powers for breaches of the Listing Rules have led a number of market practitioners to seek guidance on issues covering the practice of pre-briefing prior to an announcement being made to the market. It is therefore important that we address these concerns.
- 4.18 In order to obtain the exemption from the disclosure of price-sensitive information afforded by the Listing Rules, recipients of such information must be confined to specific categories such as advisers or the party with whom the issuer is negotiating.
- 4.19 From discussions with practitioners we have established that it is market practice, in certain circumstances, to disclose price-sensitive information to institutions and professionals prior to the notification of that information to a Regulatory Information Service. In many cases, both the circumstances and the individuals to whom the information may be disclosed go beyond those that are strictly permitted by the Listing Rules. This raises the issue of whether the current restriction on pre-briefings to ‘advisers’ is appropriate. Our view is that the existing practice of briefing a wide range of advisers helps to maintain orderly markets and that there may be good reasons for us to accept a broader definition of adviser in order to encompass analysts, rating agencies and investment banks’ salesmen, but only in certain defined situations.
- 4.20 In this context, it is important to note that the draft MAD requires all inside information to be disclosed. The option to delay the publication of such information, if it would not mislead the public to do so, is available where it relates to matters in the course of negotiation, but this is at the issuer’s own risk. As noted in paragraph 3.24, this is a topic on which CESR has been asked to provide advice as to appropriate level 2 measures. The draft directive

also makes clear that inside information, in certain circumstances, can be disclosed to others without making a simultaneous public disclosure. This appears to be similar in principle to the exemptions provided in the Listing Rules. The draft directive provides for further detail regarding appropriate ‘selective disclosures’ to be set at level 2. Although, to date, the Commission has not asked CESR to give advice on this matter. In reviewing our rules on selective disclosure, we will need to ensure that the market is fully aware of whatever changes emerge from the MAD discussions.

- 4.21 Due to the level of enquiries we have received on this subject and in order to enable us to ensure that the market’s views are duly reflected in the EU negotiations, we have decided to address this issue as soon as possible and we will be accelerating this stream of the Review’s work.
- 4.22 We intend to contribute fully to the discussion at level 3 of the Lamfalussy process to set appropriate standards about who should receive the inside information and in what circumstances. The UK legislative implementation of MAD will also clarify the extent to which the FSA can make rules in this area.
- 4.23 Our experience in interpreting the rules relating to the timeliness and content of disclosure has highlighted certain common features and concerns. We have noted that deficiencies in governance arrangements and in financial controls and reporting systems has had a detrimental effect on the timely flow of information to the market. We believe that we may need to amend our rules and/or provide additional guidance. We intend to address this issue as soon as possible and we will be accelerating this as part of the Review’s work.
- 4.24 Investors have frequently expressed dissatisfaction with the quality of forward-looking information and the way that it is communicated to the market. Many companies find it easier to allow analysts to communicate their views on future profits to the market believing that this reduces their liability should they prove to be inaccurate. We will review how we can improve the quality of information given to the market to ensure that it is clear and relevant. We will also consider whether the Listing Rules can be modified to ensure that such forecasts are properly prepared and provide the appropriate level of disclosure for investors. The Government has separately proposed that, in line with the Company Law Review’s recommendation, the largest UK companies should have to provide an Operating and Financial Review (OFR), that is, a narrative report on the company’s business, its performance and future plans.

### **Corporate communications**

- Q3. Have we identified the key issues that we should review in the area of corporate communication or are there other areas that you feel merit our attention?
- Q4. Do the current corporate communication rules deliver all the necessary disclosures to maintain market confidence and protect investors?

## Shareholders' rights and obligations

4.25 The UK is the only European jurisdiction that provides detailed listing rules to reinforce shareholders' rights in potentially dilutive activities to ensure their equal treatment. These are known as pre-emption rights and ensure that all existing shareholders have the right to subscribe to additional shares, in the case of a rights issue, in proportion to their existing shareholding. These rights are extended under the Listing Rules to cover certain types of major transactions and transactions with related parties:

- major transactions – these are graded into four classes depending upon size (class test provisions). A company is required to disclose a greater level of information for larger transactions. For large transactions (class 1 transactions and reverse takeovers) shareholder approval must be obtained. A circular must be sent to shareholders by the company and the FSA must approve it before it is published;
- reverse takeovers – these are defined in chapter 10 of the Listing Rules. The securities of the listed company involved are normally suspended on the announcement of a reverse takeover and are not restored until the class 1 circular and new listing particulars are published;
- related party transaction disclosures;
- directors' dealings – the dealings of a company's directors may indicate to other investors the degree of confidence these key personnel have in a company's prospects. Public disclosure of all directors' dealings can also reassure other investors that a director is not dealing at a time when he/she is in possession of privileged information (e.g. ahead of reporting financial information). Company Law<sup>5</sup> requires a director to disclose dealings in his/her own company's securities to the company and the company to notify the relevant stock exchange. The Listing Rules also require listed companies to publish this information; and
- major shareholdings disclosures – CARD sets out a requirement for notification and publication of information when major holdings in a listed company are acquired or disposed of. The initial trigger is reaching a 10% holding with further triggers at 20%, 33%, 50% and 66%. In Great Britain, company law sets out requirements for notification to public companies of information about a person's material interests (3%) and other interests (equal to or more than 10%) in their relevant share capital. Once the initial threshold has been passed, there are further triggers at every 1% thereafter. Notification to the competent authority and publication to the market is implemented under the continuing obligations of the Listing Rules.

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5 Companies Act 1985, sections 324-328

- 4.26 The Company Law Review concluded that the class test provisions in the Listing Rules were important in safeguarding shareholders' rights but, on the basis that the current arrangements operated satisfactorily, did not propose that additional provisions were needed. The application of class tests means that the obligations imposed on larger transactions are more onerous than on others.
- 4.27 In an increasingly global market, where UK companies often compete against overseas companies to make an acquisition, there is some concern that these measures slow the process of completing transactions and that they are an uncompetitive feature of the UK regime. This view is frequently heard where the prior approval of shareholders is obligatory.
- 4.28 As mentioned above the UK is the only European jurisdiction that reinforces shareholders' rights to such an extent. Such reinforcements are therefore super-equivalent to the existing EU directives. If such reinforcements were to be excluded by the PD we would need to discuss with our regulatory colleagues whether these could or should be retained in another manner.
- 4.29 Shareholder circulars are costly and time consuming to produce. So we will review how companies can inform their shareholders of proposed transactions and will consider the advantages of encouraging an alternative means of communication between companies and their shareholders including using electronic communication methods.

### **Shareholders' rights and obligations**

- Q5. What are your views on the contribution that the shareholder rights' provisions make to market confidence and investor protection?

### **Financial information**

- 4.30 Relevant and accurate financial information is an essential feature of the disclosures required of all listed companies, both at the time of admission to the official list and on a continuous basis. This is to ensure that investors have available all information that can be considered relevant to enable them to make an informed investment decision.
- 4.31 The Listing Rules require an applicant for listing to have sufficient working capital for at least twelve months following admission. Whilst there is no explicit requirement in other jurisdictions for a working capital statement of this kind, it is generally expected that the lead advisory role during the IPO process is performed by the applicant's commercial bankers who will have sufficient knowledge of that company's business to assure themselves that the business is a going concern.
- 4.32 The admission of start up companies to the official list has highlighted the question of what should be expected of companies that do not have a sufficiently long history to provide a three-year trading record. This has been

dealt with in various ways in other jurisdictions, but it raises the relevance of differentiating between the admission requirements for start up companies and those set for companies with an established trading record.

- 4.33 The UK regime is based on facilitating access to capital markets for a wide range of companies from multi-nationals to small and medium sized companies (SMEs). We will consider the admission and disclosure requirements for start up companies in light of the restrictions that the PD will impose.
- 4.34 The importance of the accuracy and timeliness of financial reporting has been highlighted recently as the changing economic conditions have caused companies to issue trading statements more frequently. We believe we should have a clear policy on the frequency, quality and timeliness of financial reporting.
- 4.35 It is clear that financial reports are considered an essential tool for investors when assessing the merits of investing in a particular company. Both the work on Company Law being undertaken by the DTI, and the TOD consultation paper, have indicated that, with the improvements in electronic communication, the current deadline for the publication of the full annual report and accounts is too long.
- 4.36 The view is widely held that this time lapse means that the information provided by issuers is frequently out of date and therefore provides less surety to investors than is appropriate. The TOD consultation paper proposes that issuers of equity securities be required to report on a quarterly basis. The consultation paper also proposes that the deadline for the publication of quarterly and annual reports be reduced to 60 days and 90 days respectively.
- 4.37 It is clear that a major concern that has affected market confidence recently is the question of auditor independence and how such independence can be effectively regulated. The FSA does not regulate the conduct of auditors and a substantial amount of work is being carried out by a variety of organisations in this area following the collapse of Enron. We are keen, however, to ensure that conflicts of interest do not affect market confidence and we are contributing to the work being carried out by the committee set up by the government to consider the merits of options such as:
- *rotation of auditors* – a requirement on an issuer to change its auditors after a defined period;
  - *regular re-tendering of contracts for audit work* – a requirement for an issuer to force its current auditor to re-apply for contract work annually in competition with other audit firms;
  - *split between audit and non-audit services* – a restriction on an issuer regarding the amount or type of work it can require of its auditor, or increased disclosure requirements regarding non-audit services performed by the external auditor.

- 4.38 The Review will consider how these or other possible options might promote high standards of care in the preparation and auditing of financial statements and significant financial disclosures required under the Listing Rules. We will consider whether and how the FSA can contribute to implementing the recent EU Commission Recommendation on auditor independence to ensure the integrity of financial information provided to investors.
- 4.39 The UK regime aims to provide a flexible and transparent framework to facilitate access to capital for a wide range of businesses. With this aim in mind, we would be interested to receive your views as to whether we should be facilitating access to the market for a wider range of size and type of company. If we were to do this we would need to find out what standards you believe should be established for such companies and whether a prescriptive regime would be appropriate.

### **Financial information**

- Q6. What role should the FSA as competent authority play in ensuring that financial information is of sufficiently high quality for investors?
- Q7. How significant is the contribution that the current requirement for a working capital statement makes to maintaining market confidence and protecting investors?
- Q8. Should the rules recognise the particular needs of SME's and provide a framework for a wider range of size and type of company?

### **Sponsors**

- 4.40 Every market has a role for a professional adviser. In the UK this role has been formalised under the sponsor regime. The sponsor regime has developed over a long period and although it has its critics, it fulfils a role which provides benefits for issuers and some comfort for the competent authority.
- 4.41 Before submission of documentation to the competent authority, sponsors ensure that a high level of due diligence is undertaken. The FSA does not currently set any criteria for the due diligence it expects a sponsor to undertake, or have undertaken on its behalf, although it does establish criteria for the approval, function and appointment of a sponsor. The FSA may refuse a sponsor's application for approval or cancel a sponsor's approval if it considers that the sponsor has not satisfied the criteria set out in the Listing Rules.
- 4.42 Under the draft PD it is the competent authority's responsibility to approve each prospectus and to assure itself that it contains all the necessary information to provide adequate protection to investors as expressed in Article 5 below:
- “all the information which, according to the particular nature of the issue and of the securities offered to the public or admitted to trading, is necessary for investors and their investment advisers to make an informed assessment of the

assets and liabilities, financial positions, profits and losses, and prospects of the issuer....and of the rights attaching to the securities”.

- 4.43 There is no express provision that covers the role of the sponsor. However, in most jurisdictions an adviser carries out this role. In light of the above, we will review where the role of the sponsor sits and whether the requirement to have a sponsor adds an unnecessary burden to the overall cost of raising capital. We will review whether the role of the sponsor, if retained, should result in a requirement to have a sponsor at all times or whether the current arrangements are sufficient. In trying to ensure a cost-effective regime for issuers we need to assure ourselves that the role of the sponsor cannot be provided in a different and more cost-effective manner.

### **Sponsors**

- Q9. Do you consider the sponsor regime provides a cost-effective method of ensuring appropriate due diligence is undertaken before an issuer is admitted to the official list?

# 5 Organisational issues

- 5.1 The regime's processes and procedures have developed in line with the organic growth of the rulebook. In undertaking a detailed review of the principles and rules, we will consider the impact of any changes in policy on the effectiveness of the organisational structure of the competent authority.
- 5.2 Our objective in this regard is to ensure that any changes we propose enhance the transparency of the regime. It is therefore paramount that we ensure that our role is understood and our decision making process in no way hinders the competitiveness of the UK regime.

## **Clarity of role**

- 5.3 The PwC report comments that there remains a degree of uncertainty in the corporate sector about the role of the competent authority. It appeared that many participants were unclear, following the separation of the competent authority from the LSE, about the boundaries between those functions carried out by the LSE and those performed by the FSA as competent authority for listing.
- 5.4 We intend to explain what we consider to be the role and responsibility of the competent authority within the context of the changing UK and EU regulatory environment. The changes taking place both in UK Company Law and in Europe have implications for the role of the competent authority as it currently stands, and we intend to clarify what effect this may have on the regime going forward.

## **Accessibility**

- 5.5 The FSA wishes to be a transparent and responsive regulator. It makes particular efforts to be open to suggestions and criticisms, to be scrupulous in explaining its decisions to customers and institutions, and to respond promptly and fully to complaints and requests.

- 5.6 As part of the FSA, the competent authority is keen to ensure that it responds to criticisms in all areas of its operations, and so we seek views on how we might improve our accessibility and responsiveness.
- 5.7 In this context we have set up a helpdesk and, more recently, a market user forum to provide stakeholders with a means of expressing their views and ensuring that potential issues are dealt with as quickly and efficiently as possible.

### **Transparency**

- 5.8 It is generally perceived that the SEC, through public disclosure of its precedents, provides a greater degree of transparency in terms of its interpretation of its decisions than that available in other jurisdictions. The FSA does not provide such information to the market, although in areas where we encounter significant concerns regarding interpretation we do publish written guidance.
- 5.9 It should be noted that if we were to move to a principles based regime the need for transparency in the decision making process would become paramount. In considering whether to publish such guidance, possibly as regular FAQs, we would obviously need to analyse the additional costs involved and review what level of detail would need to be included. The costs which would be incurred would need to be weighed up against any benefits that might accrue from such a change.

### **Risk-based approach**

- 5.10 As an integrated part of the FSA, the competent authority is committed to the new risk-based approach to regulation<sup>6</sup>. This means that we will assess the probability of an incident occurring and the impact that an incident might have on the FSA's ability to meet its statutory objectives when deciding what we do and in allocating our resources.
- 5.11 As a first stage in the process of introducing a risk-based approach to the work of the competent authority, we have completed a pilot study in which documents were vetted in a risk-based manner.
- 5.12 We will review the success of this pilot study and to assess whether other areas of the competent authority's work can be dealt with in a similar manner. This should help us use our resources in the most cost-effective manner whilst ensuring appropriate investor protection.

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<sup>6</sup> The risk-based approach to regulation focuses regulatory attention on institutions and activities likely to pose the greatest risk to consumers and markets. Further details can be found in the FSA publication *The New Regulator for the New Millennium*.

## **Listing fees**

- 5.13 In undertaking a full and detailed review of all aspects of the current regime, we need to ensure that we have adequate resources to implement any changes that may be proposed.
- 5.14 The level of listing fees charged to issuers depends on the amount and type of work required of the competent authority. We therefore propose to review the basis on which listing fees are charged. The outcome of the Review may result in significant changes to the scope of the work undertaken by the competent authority. The potential changes to the EU directives could have significant implications for our workload. Under the current draft proposals we are likely to see an increase in the number and scope of the documents submitted to us. Any such changes will need to be reflected in appropriate modifications to the listing fees to reflect any organisational changes made as a result of the Review and the implications of the EU directives.

## **Publication of documents**

- 5.15 CARD requires listing particulars and their supplements to be made available free to the public at the offices of the stock exchange or stock exchanges on which the securities are being admitted to official listing. These particulars are currently made available at the offices of the FSA.
- 5.16 In the FSA Plan and Budget 2002/03 we stated that we would review the information systems used at each stage of our approval process, including further development of electronic submission of transaction documents. We also stated that we would assess the demand for and feasibility of providing a single repository for the documents issued by listed companies.
- 5.17 As a first part of that process in February 2002, the FSA introduced an electronic submission system to allow a company and its advisers to send draft listing particulars and other draft documentation to the FSA in electronic format so as to reduce delays and improve efficiency.

## **Form and design of the listing sourcebook**

- 5.18 The FSA is committed to integrating the listing sourcebook into the FSA Handbook. In CP8 'Designing the FSA handbook of rules and guidance' the FSA discussed the creation of the FSA Handbook. The FSA identified three sets of objectives that should underlie the design of the Handbook. These are communication, consistency and implementation.
- 5.19 The final document will therefore be presented in a style that is consistent with other FSA sourcebooks.

Q10. Do you have any suggestions as to how the competent authority could improve the transparency of its decision making process? Would any of the following suggestions be useful?

- Publication of guidance or FAQs.
- More detailed conferences explaining the key issues round areas of the rulebook.
- A regular newsletter highlighting issues which have been brought to our attention.

Q11. What additional issues merit attention in the Review?

# 6 Structure of the Review

## **Financial Services and Markets Act (FSMA)**

- 6.1 FSMA sets out several provisions to which we must adhere when making changes to rules and guidance. We must:
- publicly consult on any proposed changes;
  - provide an assessment of the expected costs and analyse the expected benefits arising from any proposed policy changes where the costs arising from the policy changes are deemed to be material; and
  - set out how the changes fall within our powers under the Act.

## **Proposed timetable for the Review**

- 6.2 The timetable for the Review is closely linked to the published timetable for the implementation of the Prospectus Directive, which is currently expected in June 2004. In carrying out the Review at a time of such major change in the EU regulatory environment it could be argued that we are duplicating work that is being undertaken elsewhere. We believe, however, that an advantage of the proposed timetable is that it enables us to use the results of our consultation process to inform the UK approach to the level 2 and level 3 European discussions. So the Review is due to be completed at approximately the same time as the Prospectus Directive is implemented.
- 6.3 With this in mind we propose to issue a series of initial consultation papers on individual themes, together with feedback on the discussion paper responses by March 2003. These will be followed by a second series of consultation papers setting out detailed proposals including draft rules and guidance by June 2003. The second series of consultation papers will also provide feedback on the responses to the first consultation papers. A timetable including that for the relevant EU directives is included at Annex C.

## **Consultation Process**

- 6.4 This discussion paper forms the first part of the consultation process in which we will seek the views of retail and institutional investors, issuers, market practitioners, sponsors and trade associations on the process and proposed changes to the listing regime. The consultation process is vital to ensure that the finalised rules and guidance provide appropriate levels of investor protection and help to maintain market confidence.
- 6.5 We will set up a series of working groups that will be responsible for investigating and developing alternative policy approaches to the issues raised under each theme and for making policy recommendations. This work forms an important part of the Review and will involve various experts from the FSA and external organisations.
- 6.6 A Consultative Committee has been set up to give advice on policy development to the working groups and to review their proposals before the publication of the consultation papers. This is a broad-based committee with a wide range of representatives from issuers, retail and institutional investors, sponsor firms and legal advisers. A list of the representatives on this committee is provided at Annex D.
- 6.7 To provide for greater transparency, we will publish all consultation responses on our website unless a respondent asks for their response to remain confidential.

# 7 Summary of questions

- Q1. Do you feel that the disclosure requirement imposed on issuers in the Listing Rules to state whether or not they have abided by the Combined Code is valuable? (paragraphs 4.7-4.15)
- Q2. Do the provisions of the Model Code still add value in the modern regulatory framework? (paragraphs 4.14-4.15)
- Q3. Have we identified the key issues we should review within the area of corporate communication or are there other areas which you feel merit our attention? (paragraphs 4.16-4.25)
- Q4. Do the current corporate communication rules deliver all the necessary disclosures to maintain market confidence and protect investors? (paragraphs 4.16-4.25)
- Q5. What are your views on the contribution that the shareholder right's provisions make to market confidence and investor protection? (paragraphs 4.26-4.30)
- Q6. What role should the FSA as competent authority play in ensuring that financial information is of sufficiently high quality for investors? (paragraphs 4.31-4.40)
- Q7. How significant is the contribution that the current requirement for a working capital statement makes to maintaining market confidence and protecting investors? (paragraphs 4.31-4.40)
- Q8. Should the rules recognise the particular needs of SME's and provide a framework for a wider range of size and type of company? (paragraphs 4.31-4.40)
- Q9. Do you consider the sponsor regime provides a cost effective method of ensuring appropriate due diligence is undertaken prior to an issuer being admitted to the official list? (paragraphs 4.41-4.44)
- Q10. Do you have any suggestions as to how the competent authority could improve the transparency of its decision making process? Would any of the following suggestions be useful? (paragraphs 5.8-5.9)
  - Publication of guidance and FAQs.
  - More detailed conferences explaining the key issues round areas of the rulebook.
  - A regular newsletter highlighting issues which have been brought to our attention.
- Q11. What additional issues merit attention in the Review?

# Annex A

# Primary market comparative regulation study Key Themes

April 2002



## Foreword

Although capital markets have become increasingly global in recent years, primary capital market regulation has tended to remain largely local in nature, with significant differences between the major capital markets, often reflecting the particular culture and history of the countries concerned. In Europe there are a series of major initiatives underway to harmonise primary capital market regulation which are designed to make it easier and more cost effective for companies to raise capital across the European Union markets. The objectives of these initiatives are to be welcomed, although the implication for the UK market is that primary market regulation will increasingly be determined by decisions made on a pan-European basis. Another feature affecting the future development of capital markets worldwide is the influence of the major United States investment banks and lawyers, which has been seen in the increasing application of United States custom and practices in areas such as prospectus content and due diligence in relation to capital raisings.

The UK, together with the United States, has the most developed and sophisticated capital market in the world. Our study has focussed on comparing primary market regulation in London, the second largest capital market in the world, with other markets and highlighting those areas where UK practice is markedly different and also those areas where we consider that noteworthy themes exist across the markets studied. We were struck by the strong support which London received as a high-quality market from the perspective of investors and by the view of all participants that the current framework of UK primary market regulation does not require radical surgery.

Against this background, we believe that a degree of care is required to avoid the risk of amending or removing any of the rules which form part of the bedrock on which London's reputation as a high-quality market has been built over many years. Equally, it must be appropriate to review those areas where UK practice differs from elsewhere in order to understand the importance and relevance of such areas to the future UK regulatory framework. Such a review will also be vital in understanding the implications for the UK capital market of the proposed changes emerging from the current European Union initiatives.

A message that emerged consistently from our work was that transparency and consistency were the key qualities that investors looked for in a high-quality capital market. The challenge for all market participants and, in particular, for the regulators, is to continue to develop a regulatory framework which meets these objectives in a balanced and cost effective manner. Market events such as the collapse of Enron, which occurred after the majority of our work was complete, inevitably result in intense scrutiny of the regulatory framework to ascertain what went wrong. Whilst it is too early to identify all the lessons to be learned from Enron, the outcome of the various enquiries in the United States and elsewhere will need to be carefully considered in any forthcoming debate regarding the future direction of capital market regulation.

This study of primary market regulation for the Financial Services Authority has proved to be a challenging piece of work as we have needed to work through the complexities of the regulatory frameworks of seven major markets and to compare them with the regime in the UK. Over the last twelve months a large number of people have assisted us and we are very grateful for the time and insights of the many market participants we interviewed. Many of the themes we identified emerged from these discussions as well as from our own detailed analysis of the listing rules, corporate law and market practices underpinning each regulatory framework.

We would also particularly like to thank Ursula Newton of our London Capital Markets Group, for her support in managing this project and Simon Walker of our correspondent law firm, Landwell who, together with his team, advised us on legal matters in the different countries. Finally, we would like to thank Richard Williams at the Financial Services Authority, who has been a source of wise counsel throughout this study.

Kevin Desmond  
Tom Troubridge  
Richard Weaver

PricewaterhouseCoopers, London

April 2002

# Contents

1.	Introduction and overview	1
1.1	Introduction	1
1.2	Timing of interviews	1
1.3	Scope of work	2
1.4	The markets in context	2
1.5	The position of the UK as a large and sophisticated market	4
1.6	The relative position of the UK regulatory model	4
1.7	Globalisation of United States practices	5
1.8	European Commission primary market proposals	5
1.9	The importance of the history and culture of each market	6
1.10	Overview of study countries	7
1.11	European Directives and their application	8
2.	Regulatory responsibilities	10
2.1	Introduction	10
2.2	Allocation of responsibilities	10
2.3	Approaches of regulators	10
2.4	Use of advisors to support the regulatory model	11
2.5	Due diligence varies widely across countries	11
3.	Assessment of suitability	14
3.1	Introduction	14
3.2	The UK and Hong Kong regulators assess eligibility of issuers	15
3.3	United States model based on disclosure requirements	16
3.4	Stock exchanges assess suitability in Continental Europe	16
3.5	The Admissions Directive	16
3.6	A question of investor protection	17
4.	Sources of information at IPO	18
4.1	Central legal importance of the prospectus	18
4.2	The “roadshow” process	18
4.3	Reliance upon non-independent analyst reports	19
4.4	Views on summary documentation vary widely	19
4.5	Level of prescribed disclosures	19
4.6	The UK’s experience of AIM disclosures	20
4.7	Hong Kong’s experience of GEM disclosures	20

5.	Communication with shareholders	21
5.1	Introduction	21
5.2	Continuous disclosure	22
5.3	Equality of disclosure to all investors and Regulation - FD	23
5.4	Confirmation of the ability to report continuously	23
5.5	Quarterly reporting	24
5.6	Disclosure of major transactions	25
5.7	Strong focus on directors' disclosures	26
5.8	The use of pro forma financial information	27
5.9	Forward looking information	28
5.10	Involvement of regulators in financial reporting	29
6.	Shareholders' rights	31
6.1	A highly developed corporate governance structure in the UK	31
6.2	Focus on role of directors in United States	31
6.3	Shareholder approval in Australia and Hong Kong	32
6.4	No shareholder approval needed in Continental Europe	32
6.5	Mandatory retail investment	32
6.6	Further issues of securities	32
7.	The working capital requirement	34
7.1	The UK and Hong Kong have specific requirements	34
7.2	No requirement in Continental Europe	34
7.3	United States practice	34
8.	Differential regulation for securities	36
8.1	Introduction	36
8.2	Prospectus approval	36
8.3	Markets imposing additional requirements	36
8.4	Markets where there is no distinction	37
8.5	Approach to qualified investors	37
8.6	Specialist debt securities regulation	37
8.7	Wider range of offerings	37
8.8	GDR and equivalent instruments	38
9.	Regulatory approval of documents	39
9.1	Incorporation by reference in the United States	39
9.2	Detailed prospectus approach in the rest of the world	39
9.3	"Document de référence" in France	39
9.4	Shelf registration unpopular in the UK	39

# 1. Introduction and overview

## 1.1 Introduction

The purpose of our work has been to provide the Financial Services Authority (“FSA”), in its capacity as the competent authority for listing in the UK (the UK Listing Authority), with:-

- information regarding primary market regulation in the study countries, both as to the rules and their practical application;
- high-level comparison with the existing equivalent UK regulatory regime; and
- an analysis of themes arising from the information gathered.

The background to our work was founded on the publicly stated intention of the FSA to carry out a “root and branch” review of the UK primary market regulation regime. That review will be carried out in the context of the FSA’s main aim of identifying, prioritising and addressing its statutory objectives.

The FSA, as the UK Listing Authority, has regulatory objectives to formulate and enforce listing rules that:

- provide an appropriate level of protection for investors in securities;
- facilitate access to listed markets for a broad range of enterprises; and
- seek to maintain the integrity and competitiveness of UK markets for listed securities.

The study has required analysis of and comment on the rules and regulations governing the primary equity capital markets of the agreed study countries: the United States, France, Germany, Holland, Australia and Hong Kong. Our study on Luxembourg has focused on its specialist debt securities market.

Our work has identified a large number of variations, as well as similarities, in the primary market regulations in the countries in the study. The themes have been determined through analysis of the detailed rules in each market, the results of market participant interviews and consultation with the FSA, who have attended all significant interviews. We have sought to focus upon a number of those variations and similarities which, the FSA had advised us, have most relevance for them. These key themes, together with our comments thereon, are summarised below.

## 1.2 Timing of interviews

The market participant interviews were carried out between August 2001 and January 2002.

The content and tone of many of the interviews we carried out was significantly influenced by the consequences of, and reaction to, the collapse in investor confidence in and valuation of internet-related stocks. Certain markets, such as the Neuer Markt, have amended their rules following well-publicised corporate failures. In addition, investors’ scepticism resulting from the perceived conflicts around the roles of underwriters and “sell-side” analysts has been heightened.

Furthermore, we would note that the timing of our interviews and therefore the contents of this report did not allow discussion of recent developments in primary markets such as the collapse of Enron. Given both the magnitude of the impact of Enron's collapse and the range of potential issues arising therefrom, there are likely to be significant implications for a number of matters discussed in this report.

The context within which our study has been completed has been flavoured by the publication of major proposals for amending the European Union Directives relating to primary market regulation and we have commented where appropriate below.

### 1.3 Scope of work

The scope of primary regulation reviewed has been set by reference to the remit of the FSA, as the UK Listing Authority. Consequently, we have analysed those areas where the UK imposes requirements over and above the minimum standard set by the EU Directives. In addition, we have commented on themes arising where other regulators impose requirements unique to their markets.

Our study has focused on the key themes emerging from our work and comments thereon. We have made observations regarding the approach adopted by individual countries where relevant to those themes.

In order to gain an understanding of market practice and interpretation of rules, we have conducted some fifty interviews with market participants, involving over one hundred interviewees, in the following countries: the UK, the United States, France, Germany, Holland and Luxembourg. The market participants included representatives of regulators, listed companies, stock exchanges, lawyers, investment bankers and investors. As agreed with the FSA, we have not carried out any interviews with market participants in either Australia or Hong Kong.

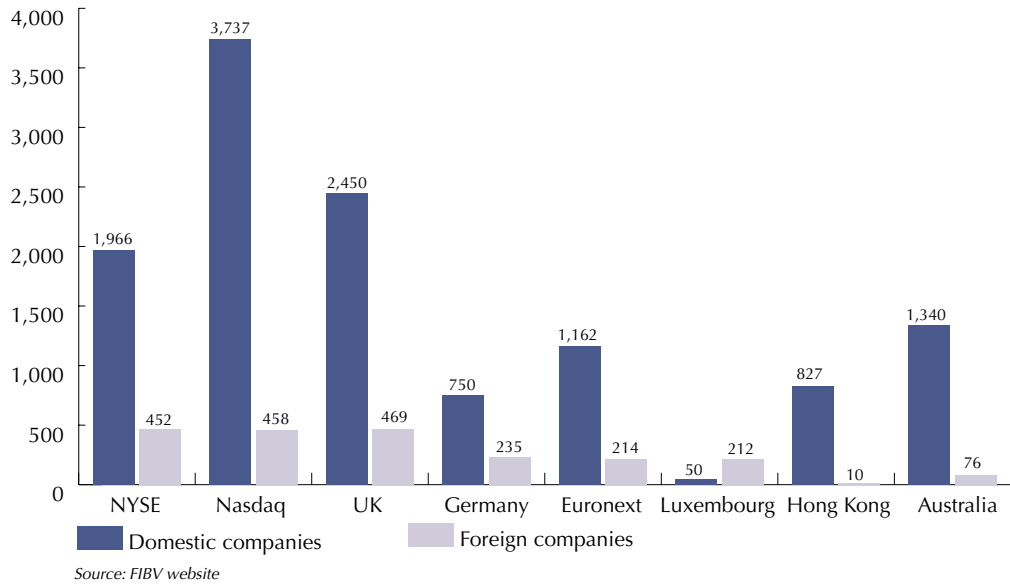
We would note that the views expressed to us by market participants were those of the individuals concerned, were expressed in a personal capacity and do not necessarily reflect the views of their organisations. We are extremely grateful for the co-operation and time given to us by the individuals concerned.

### 1.4 The markets in context

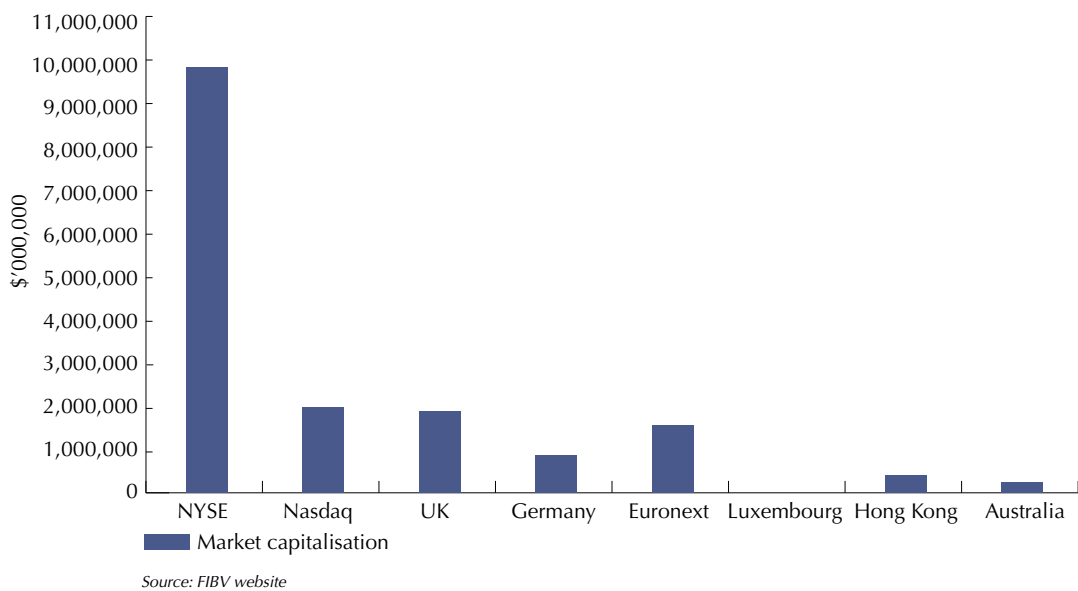
In order to put the markets in the study countries into context we have charted on the following page the number of domestic and foreign companies listed on the main and parallel markets and the capitalisation of those markets. The Euronext statistics combine Amsterdam, Paris and Brussels.

These charts illustrate the large size of the United States markets reflecting the relative size of that economy. The UK's market size demonstrates the importance of London as a centre for listed companies when compared with Continental European countries.

Number of companies with equity shares listed on main and parallel stock exchanges as at 30 September 2001



Market capitalisation of shares of domestic companies on main and parallel stock exchanges as at 30 September 2001



## 1.5 The position of the UK as a large and sophisticated market

For the purposes of this study the UK market is the benchmark against which other markets are compared and contrasted. The UK has the largest and most highly developed capital market in the world outside the United States. Against this background, the UK has developed a sophisticated regulatory environment reflecting an interaction of the law, Listing Rules, guidelines and market practices. This environment has evolved over a number of decades, responding to market and other pressures as appropriate.

The concentration of major institutional investors and the depth of analysis and research in London results in a powerful appetite for company information in comparison to other countries in this study.

The degree of informality and ad-hoc decision-making that is possible (and occurs) in other markets would be difficult, if not impossible, to effect in the UK market. As a consequence, the UK regulator has tended to incorporate as much as possible of the rules and the interpretation thereof into formal guidance.

## 1.6 The relative position of the UK regulatory model

The UK environment is perceived by market participants as having a high standard of regulation. Our work has indicated that there is no widespread appetite for any significant relaxation of the rules or approach of the UK regulator or market. However, there were calls for a modernisation of the rules, such as restructuring the rules into clear principles supported by more detailed rules.

In contrast to other major Continental European counterparts, the UK and France have separated the roles of the Regulator and the Exchange, with resultant clarity on their respective areas of responsibility and authority. Market participants generally viewed such separation very positively.

The number of commentators who were able to provide a comprehensive contrast between primary market regulation across different markets was relatively few, save that almost everyone had had some exposure to United States custom and practice.

Those participants who had a view as to the merits, or otherwise, of different regimes were either at global investment banks or global investors. Their views can be summarised as being that the United States regime was the “gold standard” against which others should be measured. The standards of disclosure or transparency and, most importantly, the consistency of information presented, were seen to be the highest amongst all major markets.

Those participants with a deeper understanding of UK primary market regulation generally considered that it was close to the United States standard in most respects and had a perceived superiority in the area of corporate governance.

Those commentators able to articulate a global view generally viewed the Continental European regulatory environments as relatively weak and, by virtue of the comparatively small size of their markets, at risk of being influenced by major participants. Some market participants believed that Hong Kong suffered from

the perception of the risk of disproportionate influence being exercised by a small number of market players. A few commentators had experience of the Australian environment, which they viewed as having similar standards to the UK regulatory environment.

One area that did generate particular comment from market participants was the relative responsiveness of different regulators. In this regard, the SEC was viewed by companies as being the most approachable and pro-active regulator. Company interviewees generally found the FSA more difficult to communicate with directly, perhaps reflecting the history of the role of the corporate broker in the UK as the conduit for such communications. As the FSA modernises its regulatory model, market participants commented that consideration should be given as to how the FSA can communicate a culture of openness with companies.

## 1.7 Globalisation of United States practices

A number of factors have led to the increasing internationalisation of securities offerings. These include businesses seeking to develop internationally rather than through their local markets and broader portfolio analysis by investors requiring exposure to a wider range of markets and issues.

As capital markets have become more globalised the investment banks and fund managers have also sought to expand their reach in order to be able to better serve their clients. This expansion has inevitably been accompanied by consolidation, which has resulted in the concentration of transactions in the hands of a relatively small number of large international organisations, primarily of United States based origin.

These developments have led to United States practices being largely adopted in international securities offerings, particularly regarding the use of legal counsel and due diligence.

## 1.8 European Commission primary market proposals

The European Commission published, in Summer 2001, proposals for new Directives on prospectuses, market abuse and investment services. It has also consulted on proposals for changes to the regular reporting regime in new transparency obligations proposals. We have commented on these proposals where appropriate in the context of the particular themes identified in this report. These proposals, if enacted as initially drafted, would eliminate a number of the differences in the primary market regulations applied across the EU. Such increased harmonisation of regulation would result in a number of changes in each of the EU countries covered by the study.

One key theme of these proposals was the mechanism for the implementation of a new capital market regime. The Directives have been drafted as high level principles with detailed rules being defined by the European Commission. This framework can be seen to mirror practice in France where high level principles are set out in law with the detailed instructions on their application issued by the COB.

The current proposals, which were intended to be in force in member states by 31 December 2003, incorporate a number of principles that could have a major impact on the UK's primary market regulation. These proposals include requiring all UK issuers, whether officially listed or quoted on AIM, to

be regulated by the UK competent authority irrespective of where in the European Union the securities are traded. Specifically, all issuers would be required to prepare an annual registration document and be required to report quarterly.

The European Commission's views would appear to leave little flexibility for any UK interpretation as regards when a prospectus is required to be published or as to the content of a prospectus. However, there remain large parts of the UK Listing Rules which are not affected by this Directive, principally in relation to transparency obligations and corporate governance and, in these areas, the FSA may have some flexibility in considering its future direction.

## 1.9 The importance of the history and culture of each market

An important element of assessing primary market regulation and its application in different markets is understanding the history of the market concerned as well as the culture driving its regulatory environment.

This is perhaps best illustrated by the United States where the development of primary market regulation has its roots in the 1929 Wall Street crash which was, in part, blamed on securities fraud. The resultant focus on investor protection, together with the highly litigious environment in the United States, heavily influences securities market behaviour. Some commentators have advocated the application of much of the United States model to other jurisdictions. In our view, all regulation models need to be viewed in the overall context of the local capital market. Consequently, cherry picking elements of the United States model would not necessarily achieve an effective regulatory outcome without the equivalent legal environment.

The history of UK capital markets has its share of corporate failures and fraud which have influenced primary market regulation, from the South Sea bubble, the railway mania of the 19th Century to Polly Peck and Maxwell more recently. In assessing current UK primary market regulation it is important to recognise that rules may outlive their usefulness.

Generally, the Continental European capital markets are much younger than the UK market, particularly in relation to the use of equity capital as a source of business finance. In addition, the relatively small sizes of those markets, with far fewer issuers, has not demanded the clarity or detail of rules necessary in larger markets such as the UK or United States. Consequently, one would need to be wary of drawing conclusions from the experiences of the Continental European markets.

The Australian and Hong Kong models have their roots in the UK model (from which they were originally derived) but have been substantially adapted to address local market conditions.

The UK initiated a process of codifying and disseminating its previously unwritten rules and processes when it substantially revised the then "Yellow Book" some ten years ago. Some commentators consider that such a formalisation of listing rules should be adopted in other less codified regimes.

## 1.10 Overview of study countries

### UK

As the baseline against which the other markets are being compared, the UK should be considered as a well-regulated market with a set of primary market regulations developed over many years reflecting issues which have arisen. The perception of the market participants regarding the FSA varied, often depending upon the relative seniority and experience of the FSA's staff in the particular circumstance. The strong focus on a codified regime can lead to a perception of the UK regulator being relatively inflexible in comparison to other regulators when reacting to market developments.

### United States

The 1933 Securities Act and 1934 Securities and Exchanges Act introduced following the 1929 Wall Street crash continue to provide the basis for primary market regulation some 70 years later. The manner in which the legal system operates interacts with the approach of the regulator, for example the anti-fraud laws tend to condition the approach of companies to disclosure. The SEC would be considered as one of the most active regulators in its market place with a history of high profile chairmen who seek to set the agenda for listed companies.

The SEC has a strong interest in the importance of financial reporting as the medium by which companies account for their performance. In addition, the SEC perceives the auditor as having a primary role in protecting investors.

### France

The French regulatory regime provides significant latitude to enable the COB to respond to individual circumstances rather than being bound by prescriptive regulation. This approach is possible as a result of the relatively small number of listed companies, however, it can lead external observers to perceive an apparent lack of consistency of the treatment of issues. Regulatory effort is focused on disclosure at the time of initial public offering as well as protecting investors in the offering process. Through its annual “document de référence” filing regime the COB is taking a more proactive role in monitoring financial reporting practices. The COB is also fairly active in setting the agenda for primary market regulation.

### Germany

Primary market regulation in Germany was described by market participants as a largely legally based compliance approach. Unlike the UK and France where the primary market regulators set detailed requirements, the German regulations are largely set out in law which, it is perceived, has made it difficult to modify the rules, such as when designing the framework for the Neuer Markt. Market participants noted a comparative lack of clarity as to the role of the market operator compared to the statutory regulator. German primary market regulation was perceived to be comparatively passive, in what is also a relatively small equity capital market.

## Holland

Unusually, the market operator in Holland, Euronext Amsterdam, acts as the principal primary market regulator with formal contracts specifying the regulatory relationship with issuers rather than a highly legislative framework. Consequently, certain participants noted that the Dutch regime has faced challenges in seeking to respond to market developments due to the difficulty in requiring existing issuers to amend or implement their practices. Dutch regulation is perceived as having a tendency to be somewhat reactive to market developments, perhaps understandably, given the size of the market.

## Hong Kong

The Hong Kong regime, reflecting its strong historical links with the UK, is largely based on the UK's Listing Rules. At a practical level, the Hong Kong regulator also operates in a manner substantially similar to the regime in the UK, for example with a formalised sponsor role. As with certain other smaller markets, Hong Kong is dominated by a small number of powerful groups who are able to influence market behaviours.

## Australia

The Australian regime places a strong emphasis on disclosure with comparatively little regulatory involvement in securities offerings. Notwithstanding this, the Australian regulator, ASIC, carries considerable influence in the market through its oversight of the market. The Australian stock exchange, ASX, also plays an active role in monitoring continuing obligations.

## Luxembourg

The Luxembourg market, in parallel with the UK, has developed a “light touch” regime for the listing of specialist debt and related instruments which are offered to sophisticated investors. Market participants considered the Luxembourg market to be responsive to market developments given its focus in this area.

## 1.11 European Directives and their application

One specific aspect of our study has been the assessment of the application of the existing European Directives which provide the basis for primary market regulation in Europe. A further aspect has been to examine the areas where the UK has applied additional requirements over and above the minimum prescribed by the current Directives – the “super-equivalence” requirements.

The UK is the only market in which a direct reference to the underlying Directive requirement is identified in the detailed primary market regulations, being the Listing Rules. Other study countries within the European Union adopt a less structured approach to the detailed linkage of their regulations to the Directives.

The UK is prescriptive as to its definition of “listed” securities and the rules governing these reflect past UK practice of maintaining an officially listed market. In contrast, for example, the French determination of what is “listed” is much less clear in that the Nouveau Marché is not governed by the French equivalent of the Public Offers Directive, but under a specific set of rules adapted from those of the Listing Particulars Directive.

Amongst the Continental European study countries there was a notable absence of additional requirements over and above a Directive-derived core minimum. One particular exception to this is the strong emphasis on protecting retail investors in public offerings in France, resulting in the creation of additional rules relating to the operation of public offers.

The UK’s Listing Rules contain a number of specific rules regarding disclosure requirements, ranging from addressing specialist industry sectors to the form of financial reporting. In the other European study countries, such requirements are determined on an ad hoc basis.

The European Commission’s proposals relating to a new Prospectus Directive would prevent Member States from imposing additional requirements over and above those prescribed under the Directive. We understand that a number of detailed disclosure schedules will be issued under the framework established by the new Prospectus Directive to cover specific types of issuer. A number of market participants consider that the UK is well placed to have a leading role in defining these requirements, given that it has the most codified regime at present.

## 2. Regulatory responsibilities

### 2.1 Introduction

An overriding feature emerging from our study is the disparate range of regulatory frameworks across the countries reviewed. One would anticipate fundamental differences between the United States and European practices given the nature of the different markets; however, it is clear that Europe cannot be viewed as an homogenous entity, notwithstanding the effects of relevant EU directives and the more recent development of Euronext.

### 2.2 Allocation of responsibilities

The responsibilities for regulating primary stock markets rest with a number of different parties in the countries in our study. In most countries, such as the United States, France and Germany, the stock exchange is responsible for assessing the eligibility of an issuer to be listed whilst the regulator is responsible for information disclosed to the market by the issuer. The UK places all responsibility for primary market regulation with the regulator. This clear delineation of responsibility was valued by a number of our interviewees.

### 2.3 Approaches of regulators

It is possible to distinguish those regulators who actively regulate their primary markets and who are active participants in the securities offering process from those whose role is carried out in a less interventionist manner.

A more interventionist approach is adopted by the SEC in the United States, the FSA in the UK and the COB in France. The SEC consistently demonstrates a commitment to proactively police its capital markets, employing the substantial resources it possesses. In the UK an active regulatory approach has developed hand in hand with the strength of the financial markets. In France, the focus on ensuring that protection is afforded to retail investors underpins a number of the policies and practices of the COB. Hong Kong's regulatory approach has developed based on the UK model, both in terms of securities regulation and responsibilities of the regulator.

Holland, Germany and Luxembourg could be characterised as adopting a less interventionist approach. This may be attributed, partly, to the lower volumes of IPOs and the resultant ability of regulators and stock exchanges to satisfy market needs by responding on a more informal, adhoc basis.

The regulator in Australia, ASIC, whilst not directly active in the regulation of securities offerings, significantly influences the behaviour of the Australian capital markets through its powers of oversight.

## 2.4 Use of advisors to support the regulatory model

The UK and Hong Kong regulatory models have the most defined and extensive role for an advisor to a listed company to act as an intermediary between the company and the regulator - the “sponsor” role. The requirement for a sponsor is set out in the Listing Rules, although the role is also defined in UK law and by market practice. In Hong Kong the requirement for, and role of, the sponsor is also set out in the Listing Rules. Hong Kong has also developed a separate code of conduct for sponsors (“Model Code for Sponsors”). There was no strong desire evidenced by market participants to seek significant changes to the existing UK sponsor regime.

Market practice in the Continental European markets included in the study is for a new applicant to be advised by an investment bank, although none of the markets surveyed required formal reporting by the sponsor to the regulator. A role, similar to the UK sponsor, exists in Holland although it is less prescribed and is a stock exchange requirement. The Dutch sponsor is required to sign a specific listing agreement prior to IPO together with the company and Euronext Holland, specifying the terms of the company’s listing.

In France, the COB requires all Nouveau Marché and foreign companies to retain an advisor for a period of three years after listing. Euronext in France appears to place significant reliance upon the investment bank acting as a “sponsor” of an offering, particularly in assessing the general suitability of an issuer. There is no equivalent role to the UK sponsor in Germany; instead, the main role of the lead bank is to ensure market liquidity post IPO.

In the United States, the investment bank has no direct obligations to the SEC. The Australian market has no defined sponsor role, relying instead on the market participants such as the banks and lawyers to ensure appropriate procedures are carried out.

## 2.5 Due diligence varies widely across countries

Securities laws tend to provide that, where a person who takes responsibility for all or part of a prospectus can demonstrate that they undertook “due diligence”, they have a potential defence against litigation for omissions or errors in a prospectus for which they were in whole or in part responsible.

The manner in which due diligence is demonstrated varies widely across the study countries. This variation derives heavily from the perceived risk of litigation in that country, market practices and from local regulations imposing responsibilities on the parties involved.

The focus on obtaining a due diligence defence is at its most apparent in the United States which has very actively used securities laws. In contrast, in Germany, for domestic offerings, the lead bank has some responsibility for the accuracy of the prospectus but there is little litigation experience and there are no specific local responsibilities imposed. Consequently, less focus is placed on due diligence, as the perceived risk of litigation (particularly to parties such as the investment banks) is typically limited.

The effect of local regulation is evident in the UK regime and also in Holland where the local market rules explicitly require a “sponsor” to confirm that it has undertaken due diligence.

The due diligence defence adopted by an underwriter in the United States is very much legally-driven, and will include attendance by the underwriter's counsel and investment bankers at due diligence meetings with the issuer's management. The result is a letter from counsel to the underwriter, known as the "10b-5" letter. The role of other parties in broader commercial or financial due diligence is typically limited to focused verification work.

The increasing prevalence of securities being offered globally, particularly those in the United States under Rule 144A, has led to United States due diligence practice being applied in other countries, regardless of the size of the United States element of the offering.

Due diligence practice in the UK has evolved differently from that in the United States, partly as a result of market practice and partly in response to the requirements of the sponsor regime. The sponsor will instruct third parties, invariably reporting accountants and lawyers, and other experts such as valuers where appropriate, to carry out specified due diligence on its behalf.

Market perceptions of the purpose of due diligence in the UK are somewhat different from the United States model. Due diligence has been developed in the UK to investigate the company for the purpose of assessing eligibility for listing. In the United States the emphasis is more on providing a defence mechanism to protect the company and investment banks against any liability arising from disclosures omitted from the prospectus.

The existence of specific obligations on the UK sponsor in relation to working capital statements and financial reporting procedures leads to significant focus in these areas. Views were expressed by market participants, including companies and investment banks, that significant value was attributable to this work and there was an implicit acknowledgement that UK practice was more thorough than that adopted in other markets, including the United States.

Sponsors in Holland are required to carry out due diligence and a statement affirming that the sponsor has performed such work is required to be included in the prospectus. There are no formal due diligence requirements in Germany, although, as elsewhere in Continental Europe, market practice would typically involve extensive due diligence carried out by lawyers in relation to the prospectus. In addition, the lead bank would carry out commercial or financial investigations to the extent that it felt that these were necessary.

In France, the COB requires the lead bank to confirm in the prospectus that they have conducted due diligence but only for new applicants to the Nouveau Marché. A bank is also required to be retained by new issuers on the Nouveau Marché for three years from listing to assist with compliance with regulatory requirements such as the document de référence.

Market practice in Australia is that a due diligence committee comprising, amongst others, the underwriters, lawyers and auditors, together ensure that the prospectus has been verified.

Whilst maintaining a sponsor regime, Hong Kong practices are increasingly being influenced by the impact of offerings into the United States, leading to the import of the influence of United States based banks and their securities counsel.

The institutional investors we interviewed maintained that they perform their own due diligence, including meeting the management of a new issuer. There was evidence of some scepticism as to the independence and hence the quality of the information provided by the banks outside of the prospectus (including sell-side analysts) and by the companies themselves. Some market participants mentioned the importance of the prospectus as being the only document they could rely on. Others mentioned the importance of there being some genuinely independent research available.

## Commentary

A number of market participants commented favourably on the vigour and scope of due diligence associated with the formal UK sponsor role. There was no suggestion from interviews that the operation of the current sponsor role requires significant change, although the UK is out of line with most international practice in this area. We believe that the FSA should carry out an assessment of the net benefits of the sponsor regime as it is currently operated. Such an assessment should take account of what alternative regulatory procedures might be required in the event that the sponsor role were to be reduced.

A number of regulators in Continental Europe also expressed the view that codification of due diligence practices would be beneficial. We believe that there is merit in the FSA tabling codification of existing UK due diligence practices.

### 3. Assessment of suitability

#### 3.1 Introduction

The issue as to whether an issuer is suitable for listing and therefore to offer securities to the public arises in all capital markets and practices in making this assessment differ markedly. This is one area where the approaches adopted in the UK, United States and Continental European models can be clearly distinguished.

One complication arises in the use of the terms suitability and eligibility. In most markets no distinction is drawn and the terms are used interchangeably. However, the FSA has sought to define suitability as a wider concept – whether the securities are suitable for the public to invest in – with eligibility being narrower – whether the securities are eligible for admission to listing by reference to specified criteria, the FSA’s role being to determine eligibility.

The following tables provide a high level overview of the differing criteria for listing applied in both the main and junior or growth markets of the study countries.

##### Admission criteria for shares – main markets

	UK Official List	United States NYSE	France	Holland	Germany	Hong Kong	Australia
Minimum period of existence and/or operating history	●	●	◐	◐	◐	●	◐
Minimum net assets criteria	○	○	○	◐	◐	○	◐
Minimum profitability criteria	○	●	○	◐	○	●	◐
Shares publicly held	●	●	●	◐	◐	●	●
Minimum market value of securities to be listed	○	●	○	●	○	●	◐
Specific details relating to securities and their rights	◐	○	◐	○	○	◐	○
Working capital adequacy disclosure and assessment	●	◐	○	◐	◐	◐	◐
Capability of directors and management	●	◐	○	◐	○	●	○
Specific audited track record and GAAP / GAAS requirements	●	●	◐	◐	◐	●	◐
	● Significant requirements	◐ Some requirements	○ Minimal / no requirements				

Admission criteria for shares – junior or growth markets

	UK AIM	United States NASDAQ	France Nouveau Marché	Holland	Germany Neuer Markt	Hong Kong GEM	Australia
Minimum period of existence and/or operating history							
Minimum net assets criteria							
Minimum profitability criteria							
Shares publicly held							
Minimum market value of securities to be listed							
Specific details relating to securities and their rights							
Working capital adequacy disclosure and assessment							
Capability of directors and management							
Specific audited track record and GAAP / GAAS requirements							
Significant requirements                           Some requirements                           Minimal / no requirements							

### 3.2 The UK and Hong Kong regulators assess eligibility of issuers

The structure in the UK and Hong Kong whereby the assessment of the eligibility of a company to list its securities is determined by the market regulator, is unique amongst our other study countries. Further, the setting of qualitative criteria, which are not necessarily factually verifiable, such as the relevant experience of the management team, is also unique to the UK and Hong Kong markets.

One significant result of the UK's and Hong Kong's assessment criteria is that they are the only markets with rules governing reverse take-overs. This situation arises because eligibility criteria, such as to the existence of a trading record, could otherwise be avoided by using a listed shell company to acquire a business that might not otherwise be eligible for listing.

### 3.3 United States model based on disclosure requirements

The SEC considers that it has no part to play in the exercise of any judgement as to eligibility and the stock exchanges, NYSE and NASDAQ, assess eligibility simply against verifiable, largely quantitative, criteria. In contrast with the general rule on the UK main market, the NASDAQ market in the United States permits an issuer to raise capital at IPO without a trading history.

In general terms, the United States model is one based on the principle of “caveat emptor”, with a strong emphasis on the importance of disclosure within the prospectus rather than a qualitative assessment of suitability. The role of the investment bank in protecting its reputation is also an important balance in the United States model. A similar approach is adopted in Australia.

### 3.4 Stock exchanges assess suitability in Continental Europe

Continental European regulators are not generally involved in assessing the suitability of an issuer for listing. In those markets where an assessment is made, it is carried out by the stock exchange, generally against measurable quantitative criteria. A typical view is that, once the company has met the required objective criteria, it is not appropriate to require additional hurdles to be passed. Nonetheless, in Germany, a committee of independent practitioners has been set up to assess the suitability of companies wanting to list on the Neuer Markt.

However, in Continental Europe the lead investment bank is often local and has a strong interest in maintaining its market reputation in the event that an IPO is perceived as a “failure”. Consequently the role of the lead investment bank in “sponsoring” a potential candidate is understood to involve an implicit assessment of the suitability of the company for listing.

### 3.5 The Admissions Directive

The conditions for the official listing of securities within EU member states are set out in the Admissions Directive (now part of the “Consolidated Admissions and Reporting Directive”). The Directive permits member states to both waive – “derogate” – conditions and impose additional conditions, as long as these are applied equally to all equivalent issuers.

The UK has taken advantage of these provisions in listing specialist types of issuers such as investment companies, bio-technology companies and mineral companies, where additional disclosure requirements are imposed in compensation for waiving the requirement for a three year financial history.

None of the other European markets studied address the Directive and its application in such an explicit way. The practice in France, for example, appears to be to treat special situations on a case by case basis. In Germany, the Neuer Markt was created as a market operated by contract with the issuers. This permits issuers that would not have been eligible for listing to have their securities traded on a regulated market. However, securities eligible for listing are able to elect to be admitted to the Neuer Markt.

The overarching desire in the UK is to codify practice in order that issuers can see that they are being treated equitably, whereas the smaller scale of the Continental European markets requires less codification.

### 3.6 A question of investor protection

The underlying question is the extent to which the existence of regulatory review can, or should, give investors confidence to invest in an issuer's securities.

The existence of qualitative admission criteria, as explicitly set out in the UK's Listing Rules, could be argued to be protecting investors by not permitting investment in companies which do not meet these criteria. We note that there has been some attempt to narrow the scope of the FSA's role in response to this concern by referring to "eligibility" for listing rather than "suitability". However we would question whether this distinction would be widely understood in the market place.

Almost all investment banks we interviewed, whether international or domestic, considered that they had a reputational risk when bringing a company to the equity capital markets and that they employed due process, albeit of a varying nature, in managing that risk. We would note that institutional investors were generally highly sceptical as to the investment banks' independence in this regard, as the investment bank is perceived as taking into account its other interests.

Market participants' views ranged from little reliance on the investment banks in the United States to more reliance by UK based investors on the comfort provided by regulatory requirements such as the working capital requirement.

#### Commentary

We believe that the FSA should assess the merits of retaining qualitative admission criteria and whether market operators should be allowed to set quantitative criteria, to the extent permitted by European Union Directives.

Certain Continental European primary market regulators, and market operators carry out interviews and visit candidates seeking admission. In addition, the Chapter 25 Listing Rules in the UK give the FSA the power to interview prospective admission candidates. We were unable to discern any objective criteria against which these interviews were conducted and, in our view, this potentially increases the risk of investor misconception as to the regulator's responsibility for suitability. Consequently, we believe that the regulator should not carry out admission interviews.

Certain regulators outside the UK seek to highlight to investors the limitations in their role in relation to prospectuses by requiring explicit disclaimers to be prominently displayed therein. We believe that the FSA should consider adopting such an approach.

## 4. Sources of information at IPO

### 4.1 Central legal importance of the prospectus

All the regimes in our study countries have an over-arching requirement that a prospectus should contain all the information necessary for an investor to assess the issuer and its securities. However, the practices adopted by the various regulators in overseeing this requirement differ significantly.

All regulators seek to ensure that the prospectus is the sole source of information on which investors can base their investment decision. Regulators need to be satisfied that the prospectus is subject to extensive due diligence (although the mechanisms for achieving this may differ) with the consequent assurance that potential investors will not be misled or will have recourse if they are.

The United States market is dominated by the approach of the SEC and its review process which, given the level of its resource together with the size of its market, can be more focused than other countries, whether by type of issuer or other topical area. Amongst the European countries, the review processes undertaken by the FSA and the COB are more extensive than those carried out elsewhere.

Australia is notable in having recently adopted a regime which does not involve the regulator in pre-vetting or indeed approving an IPO prospectus. The regime relies on self-regulation by the issuer and its advisors, underpinned by the ability of ASIC to require changes in a prospectus, or even suspend an offering, if major omissions are drawn to its attention.

### 4.2 The “roadshow” process

Notwithstanding the importance of the prospectus from a legal and regulatory standpoint, the marketing of securities can and does involve more direct selling, for example, through presentations to investors either individually or in groups – “the roadshow”.

In the United States, any advertising which could be construed as promoting an offering is not permitted by the SEC in the pre-IPO period, including the publication of research by analysts connected to the issuer. However, it is understood that the roadshow process can be used to impart certain additional data as long as it is not published in printed form or distributed.

In France, the COB attends roadshows to ensure that no additional information is imparted beyond that in the prospectus. The COB has recently advocated dividing an IPO prospectus into an information document and a securities note. The information document would have to be approved before any marketing, including roadshows, could commence in order to provide institutional and, most particularly, retail investors with information at the same time. The securities note would provide details of the securities being offered.

In Germany and Holland, the roadshow process is also an integral part of the marketing of securities and additional information is provided to institutional investors beyond that contained in the prospectus. There is no involvement by Euronext Holland or Deutsche Börse in the operation of roadshows.

The UK market also uses the roadshow medium to sell securities and whilst care is generally taken to ensure that roadshow material is not inconsistent with the prospectus, it may contain additional detail and be amplified by management's responses to questions.

### 4.3 Reliance upon non-independent analyst reports

The UK market, while applying voluntary, unspecified, "black-out" periods, does use connected analysts' research to convey additional analysis. Such analysis, whilst technically independent of the issuer, has a degree of review applied by the issuer. There is an inevitable risk, associated with this process, of a lack of objectivity and independence by these connected analysts, which was a concern expressed to us during interviews with investors.

### 4.4 Views on summary documentation vary widely

The view of the SEC is that there is no need for summary documentation and, indeed, there is no market demand in the United States for such. In contrast, the marketing of securities in Holland and Germany through the retail banks, is often carried out through a short summary as part of the application form.

The UK has seen particular interest in summary documents for those issuers with large shareholder bases, such as former nationalised industry companies or those who have demutualised.

### 4.5 Level of prescribed disclosures

The level of detail prescribed in each regime varies quite considerably, from Australia where there are few prescribed disclosures, to the content requirements in Continental Europe and the UK which are driven by the Consolidated Admission and Reporting Directive.

Amongst the study countries, the UK is unique in the range of specific guidance on additional disclosures for specialist industry issuers, although other markets do have some rules. The COB stands out in requiring prospectuses to include a generic disclaimer as to the COB's role but also in requiring specific "health warnings" on business areas identified by it.

In Hong Kong, there are additional disclosures for specialised industry issuers, People's Republic of China companies, related party transactions and different security types.

In Germany, there are additional disclosures required under the rules governing the Neuer Markt. Similarly, in the light of concerns expressed by investors, Euronext Holland now requires additional disclosures to be made regarding directors' interests and lock-in periods.

In both the UK and Continental Europe, there is evidence that an international offer element to the IPO increases the level of disclosure, to include areas such as risk factors and management's discussion and analysis, based on United States practice.

## 4.6 The UK's experience of AIM disclosures

Disclosure requirements for an AIM listing are based on the less comprehensive Public Offers Directive, although market practice has developed that disclosures tend to be consistent with equivalent main market requirements. The absence of a regulatory review process is mitigated by the requirement for a nominated advisor, "nomad", to act in a capacity equivalent to that of a main market sponsor.

## 4.7 Hong Kong's experience of GEM disclosures

A GEM listing is based on the Hong Kong listing rules, together with additional requirements designed to manage the risk associated with the type of companies that may seek a GEM listing.

### Commentary

We have noted that significant concerns were expressed regarding the use of connected analyst research and investor roadshows to convey additional information not included in the prospectus. We believe that the FSA should review the form of information distributed as part of the IPO process outside the formal prospectus and how it is used by the market. This review should address the extent to which the distribution of such information should either be prohibited, as in the United States, or subject to formal regulation.

We believe that the FSA should consider adopting what is perceived as international best practice, by requiring disclosure of risk factors and an operating and financial review in prospectuses.

## 5. Communication with shareholders

### 5.1 Introduction

The broad area of general communication with shareholders was one which addressed a large number of interviewees comments and concerns and is hence best illustrated by a comparative analysis. The table below illustrates whether or not the countries in our survey had regulatory requirements in each of the areas identified. We have provided a commentary in relation to each area discussed in this section on the basis that these discrete areas merit individual comment.

Subject	UK	United States	France	Holland	Germany	Hong Kong	Australia
Continuous disclosure obligation	√	x Stock markets encourage companies to do so but no formal enforcement mechanism	√	√	√	√	√
Regulation on dissemination of price sensitive information	√	Some rules in Regulation –FD, arguably less strict than UK	√	√	√	√	√
Requirement regarding adequacy of financial reporting systems	√ Required at initial listing and can be requested by FSA at any time	x	x	x	x	Equivalent requirement obtained indirectly through the Model Code for Sponsors	x
Prompt disclosure of directors’ dealings	√	x 10 days after month end in which transaction occurs	x Disclosure in annual “document de référence”, if prepared	x	x No ad hoc disclosure requirement. Only need disclosure on initial/further issues of shares	√ Under Listing Agreement and Model Code of HKSE	x
Prompt disclosure of changes major shareholdings	√	x 10 days after month end in which transaction occurs	√	√	√	√	√
Major transactions disclosures	√	√	x Unless issue of shares	x	x	√	√
Related party transaction disclosure	√	x Unless a major transaction	x	x	x	√	√
Quarterly reporting	x Unless high growth company with limited history at initial listing	√	x Although limited quarterly trading data is required	x	x Except Neuer Markt	x Except GEM	x

## 5.2 Continuous disclosure

In the majority of markets in our study there exists an over-arching requirement for listed companies to disclose information likely to affect their share price as soon as it is available. Whilst the basic requirements within Europe are based on the EU Admissions Directive, there is perceived to be a degree of divergence in practice across Europe. The UK is viewed by investors as having more comprehensive and regular disclosure than Continental Europe.

The UK and Hong Kong have the most extensive involvement of the regulator in ensuring disclosure by listed companies on an ongoing basis. This practice reflects a more active regulatory stance, focusing on encouraging listed companies to respond to market rumours and price movements.

The comparatively high incidence of disclosure in the UK market may also be attributable to the relative size and maturity of that market compared with those elsewhere in Continental Europe. Our view is that the number of companies meriting analysts' research and the sophistication of the investor community drives greater demand for increased information disclosure.

The SEC's regulatory framework only requires listed companies and certain other companies to make defined disclosures within defined time limits being quarterly and annually and within specific time limits of completion of major transactions. The SEC has acknowledged that it had considered a continuous disclosure requirement but that it had concluded it would be extremely difficult to police and enforce this in a practical manner.

The United States stock exchanges do encourage listed companies to keep the market informed, as part of the channel of information on which investor activity is founded, although there is no enforcement mechanism. Companies with United States listings expressed views that decisions to make additional disclosures were, at times, influenced by fears of litigation as a result of incomplete disclosure.

### Commentary

We found no support from market participants for any relaxation to the FSA's approach to its regulation of the continuous disclosure requirements. We believe, given the perceived effectiveness of the UK approach, that the FSA should take a leading role in developing a more active approach in this area of regulation on an international basis.

### 5.3 Equality of disclosure to all investors and Regulation - FD

The UK has for some years had guidance on the dissemination of price sensitive information which has recently been revised. This guidance is unequivocal about the need for equitable disclosure.

The United States has introduced similar fair disclosure rules in Regulation-FD. These are arguably less strict than those in the UK, for example, in that they accept that providing a journalist with information can constitute, in some circumstances, fair disclosure.

A certain degree of inequality between information provided to institutional and retail investors appears to be accepted in the German market, including informal briefings to analysts on future prospects and results.

One other aspect of continuous disclosure is the role played by intermediaries such as sell-side analysts in disseminating information to the market. The market participants interviewed acknowledged that the FSA's Guidance on Price Sensitive Information, and the SEC's Regulation – FD (Fair Disclosure), both act as strong influences on corporate behaviour in this area.

#### Commentary

Following the implementation of the Financial Services and Markets Act 2000 there will inevitably be a period of assessment of appropriate practices and procedures. Consequently we believe that it is appropriate for the FSA to continue to monitor this area rather than consider change, until practice is more clearly defined.

### 5.4 Confirmation of the ability to report continuously

The UK is notable for its eligibility requirement, Listing Rule 2.15 (rule 2.11 before 1 December 2001), that issuers are able to represent that they have adequate financial reporting procedures, most particularly, at the time of initial admission to listing.

The UK's requirement for listed companies to be able to confirm that they have adequate financial reporting procedures has to be viewed against a background of the continuous disclosure obligations.

The United States market sees no need for an equivalent requirement to 2.15 as it does not have the continuous disclosure obligation; instead, its market requirements are met by quarterly reporting and the necessary procedures related thereto.

Whilst the other study countries do have a continuous disclosure requirement, none have introduced an obligation similar to 2.15, although we are aware that such a requirement exists in Italy.

It is of note that the European Commission, in its proposals in May 2001 to revise the Investment Services Directive, advocates requiring regulated markets to "verify" the ability of applicants to their markets to meet their ongoing financial reporting obligations.

## Commentary

Our interviews with investment banks that act as sponsors in the UK market, indicated the usefulness of the regulatory requirement to report continuously in ensuring that companies considered their responsibilities appropriately, including undertaking the due diligence necessary to support the requirement. None of our interviewees indicated that this requirement was a particular obstacle to effective market operation.

We believe that the FSA should consider requiring an explicit disclosure in prospectuses by an issuer's directors in relation to the ability to report continuously, similar to the working capital statement.

## 5.5 Quarterly reporting

The UK, in common with most of the major markets outside the United States, does not generally require listed companies to report quarterly.

One recent development in Europe has been the setting of quarterly reporting requirements for certain categories or types of company; the UK's Chapter 25 and Chapter 27 rules, the Neuer Markt rules in Germany and the EuroNM rules in Holland. There is further evidence of a move in that direction with Euronext and the Deutsche Börse seeking to impose a quarterly reporting requirement as a condition of admission to trading on certain segments of their markets.

Australia has also recently imposed a quarterly cash flow reporting requirement on "technology" companies. In France, whilst full interim reporting is only required half-yearly, there is a requirement that a trading statement giving turnover information is made every intermediate quarter. In Hong Kong, the GEM rules require quarterly reporting.

A number of companies interviewed expressed concern regarding the volume of work required to support formal quarterly reporting. Indeed, views were expressed that, with the development of pre-close analyst briefings, major companies were being required to produce, in effect, eight announcements per year.

The latest draft proposals from the European Commission on transparency obligations advocate that quarterly reporting should be required of all listed companies and that such quarterly reports should be subject to auditor review.

In the context of the United States model, it is certainly arguable that high quality market regulation does not require both a continuous disclosure requirement and full quarterly reporting. Certainly, comments by Harvey Pitt at the SEC suggest that the SEC will be looking at its disclosure system, including "real-time" rather than "periodic" reporting.

There was some notable support amongst UK based market participants interviewed for requiring "trading statements" to be made codifying what, at least as far as AGM statements are concerned, is now becoming

reasonably common practice in the UK. This could be analogous to the requirement in France for turnover figures to be disclosed for the first and third quarters of any period.

Some interviewees suggested that the UK together with its fellow European markets may be more successful in attracting significant United States based investor interest by requiring quarterly reporting as this is seen as an essential cornerstone of a transparent market by United States based investors.

## Commentary

The majority of UK based market participants interviewed considered that the overall net benefit of full quarterly reporting was insufficient to merit its imposition at this stage, but that some form of intermediate update requirement in relation to a broad commentary on say sales, margins and gearing would be a realistic and appropriate proposition. We believe that the FSA should seek market views regarding a range of options concerning interim reporting, ranging from the status quo through to comprehensive quarterly reporting.

We also believe that, given developing market practice, the FSA should investigate the possibility of permitting summary interim reports to be published or distributed to shareholders as a response to the volume of information now expected in interim announcement.

## 5.6 Disclosure of major transactions

Existing UK practice requiring comprehensive disclosure regarding major acquisitions, disposals and related party transactions is representative of the best standards of transparency in a capital market. UK practice is substantially the same as that in the United States and mirrored in Australia and Hong Kong.

Depending upon the size of a transaction the UK Listing Rules specify the detailed disclosures to be included in an announcement or, for larger transactions, a circular to be sent to shareholders to seek approval of the transaction. The UK's thresholds are 5% and 25% of certain balance sheet and profit and loss account items, although the Listing Rules permit the FSA to exercise some discretion.

The UK Listing Rules also require related party transactions to be covered by an independent advisor's fair and reasonable opinion and for larger, that is greater than 5% thresholds, be subject to shareholder approval.

Similarly, the SEC requires companies to use a Form 8-K to report the occurrence of any material events or corporate changes. This would include details of major acquisitions and disposals. The forms should be filed and made available to shareholders but only after completion of the transaction. The level of detail required to be provided varies, depending upon the size of the transaction. Although the SEC does not require any prior approval of transactions, state law or the company's charter documents often impose particular shareholder and/or director approval requirements.

Hong Kong retains similar class test requirements to those in the UK, although the thresholds are 15% and 50%. The ASX in Australia also operates class tests, although it retains discretion over the level of information required to be disclosed to shareholders.

Continental European practice, however, contrasts with this by typically restricting disclosure to compliance with the basic price sensitive information disclosure requirement by issuing minimal announcements. The only circumstance where disclosure would be made is where acquisition consideration is in the form of shares of the issuer for which its shareholders' approval is required.

The COB has noted a concern that the securities note element of its “document de référence” system is becoming too loaded with additional information including details of major acquisitions.

As an indicator of developing international thinking, the OECD in its principles of corporate governance advocates that shareholders should be explicitly informed as to major acquisitions and disposals of substantially all of a listed company's business or assets.

The European Commission's recent transparency proposals did not advocate comprehensive disclosure. However, the proposals for shelf registration with an annual filing document would require disclosure of details of major acquisitions, including financial histories, albeit somewhat belatedly in the annual filing.

## Commentary

We support the view expressed by market participants that there appear to be no grounds for major relaxation of UK practice in this area. Market participants believe that the FSA should be seeking to lead its European counterparts to this standard.

The one area where we believe that the FSA should consider reviewing its current practice is the thresholds at which the disclosure requirements apply. Any changes to the disclosure requirement should however be viewed in the light of the impact of any potential change to the requirement for shareholders pre-approval of major transactions, as discussed in section 6.

## 5.7 Strong focus on directors' disclosures

Transparency is seen as the key by all investors to a liquid efficient capital market. One fundamental aspect where the UK, along with Hong Kong, leads the world is in the prompt disclosure of directors' dealings in their company's securities. Indeed the dealings of these “insiders” is an active driver of retail investor behaviour. Similar interest is taken in dealings by major shareholders where in the UK, company law requires shareholders to notify significant holdings and changes therein. The Listing Rules then require a listed company to release that information to the market.

Consequently both the UK and Hong Kong markets have developed rules over and above core insider trading legislation, for example in the rules contained within the UK's Model Code on dealings by Directors and relevant employees.

In the United States director and major shareholder dealings disclosures are required to be filed 10 days after the end of the month in which the dealing occurs. There was no evidence of any suggestion that more timely reporting was being demanded. The United States also has provisions precluding directors from making gains by buying and selling shares within short periods, so called "short swing" trading.

There is no equivalent to the Model Code in the United States although there is a deterrent effect of insider dealing legislation.

Unlike in the UK, there are no extensive director or major shareholder disclosure requirements, beyond the minimum required by the Major Shareholdings Directive, in much of Continental Europe. In addition, there is no comprehensive framework equivalent to the Model Code in the UK. This is an area where practice in Europe is developing, for example in Germany, changes in the Neuer Markt rules will result in additional directors' disclosures being required within the next year. Rules requiring significant shareholder dealings to be disclosed have been implemented recently in the Neuer Markt.

### Commentary

We would support the view expressed by market participants that there are no grounds for any relaxation of the UK's requirements. We believe, given the perceived effectiveness of the UK approach, that the FSA should take a leading role in influencing international regulatory developments in this area.

## 5.8 The use of pro forma financial information

The UK relaxed its previous limited acceptance of pro forma financial information in prospectuses a few years ago to allow information relating to the most recent financial periods to be adjusted to show the effect of a transaction. This relaxation was subject to detailed disclosure requirements as well as public reporting by the issuer's reporting accountants.

The SEC has specific rules requiring pro forma financial information to be presented, illustrating the effect of major transactions. The UK's pro forma rules were initially based on those in the United States. However, differences in interpretation do now exist particularly with respect to the timing of recognition of items included in the pro forma, for example, the SEC requires management's publicly stated intentions to be taken into account whereas these would not be accepted as adjustments in the pro forma under the UK's model.

Whilst pro forma financial information is included in prospectuses in Continental Europe, practice varies as to their content. For example in Germany, the Deutsche Börse has required issuers, particularly on the Neuer Markt, to present pro forma information for each of the three year's results where businesses are being brought together at IPO.

In France, due to the lack of a carve out accounting framework, financial histories of businesses being separated from larger entities are described as pro forma financial information rather than historical financial information as would be the case in the UK or United States.

## Commentary

Market participants commented that inconsistencies in the basis of preparation of pro forma financial information led to difficulties in interpreting the underlying financial information.

We believe that the FSA should take a leading role in developing a common European practice in the presentation of pro forma financial information particularly with the impending implementation of International Accounting Standards throughout the European Union.

## 5.9 Forward looking information

Despite the need for such information, practice as to the inclusion in prospectuses of profit forecasts or other explicit forward looking information is quite varied across all markets. We believe this is an area of particular importance to the smooth operation of equity capital markets.

The vast majority of companies quoted on primary markets around the world do not publish explicit forward looking information. Our interviews indicated that this is primarily as a result of the perceived threat of litigation should the forward looking view not be achieved.

In the United States, where the threat of litigation acts as a deterrent to the disclosure of any forward looking statements, extensive disclaimers covering the use of words which could be construed as being forward looking are included in any prospectus. However, we understand that in the United States forecasts can form part of the IPO roadshow material presented to potential investors.

The United States does operate a “safe harbor” regime post IPO that has encouraged some major companies to make outlook statements principally as regards the current year’s expected performance.

In contrast, in Australia, market practice is that the disclosure of an issuer’s prospects is given by way of a profit forecast included in the prospectus. Where management are unable to give a forecast, practice is to include less specific projections.

Market practice in Holland is that forecasts for the current year are used as part of the prospectus to provide information on the issuer’s prospects and are not reported on, whereas in France, the COB would require any profit forecast made as part of the IPO process to be included in the prospectus. Such a forecast would then be covered by the accountants’ attestation certificate which addresses the financial content of the prospectus.

German prospectuses typically contain fairly bland comments on recent and future performance without any numerical content. Forecast information tends to be provided informally, if given at all.

UK market practice tends to be to avoid the inclusion of explicit profit forecasts in a prospectus. This approach is due, partly, to importing United States practices and partly to avoid producing information to the standard of care required by the public reporting obligations of the sponsor and reporting accountant.

The UK market often relies on the use of implicit or euphemistic language in a prospectus, supported by analysts' research, to communicate a view of the issuer's prospects.

Where a forecast is made in the UK, market practice is to make the forecast on a conservative basis, rather than a best estimate thereby minimising the need for potential revision, whether upwards or downwards.

## Commentary

We believe that there is a role for regulators to take a lead in supporting the development of frameworks designed to assist investors and companies to gain confidence in the quality of forward looking disclosures. We also believe that consideration should be given by regulators to analysing the benefit which could accrue from introducing a "safe harbor" regime consistent with that in the United States.

We believe that the FSA should seek to lead the debate in this area, in particular having regard to the recent framework for reporting prospective financial information published by the Institute of Chartered Accountants in England and Wales.

## 5.10 Involvement of regulators in financial reporting

In the UK, the form and content of financial reporting is within the scope of UK company law and, for listed companies, is overseen by the Financial Reporting Council ("FRC"). The FSA has historically taken the view that the responsibility for maintenance of, and adherence to, standards of financial reporting resides with the accounting profession and the reporting accountant in particular at IPO. A similar approach is adopted in Holland, Germany and Hong Kong.

In contrast, the SEC takes an active role in the setting of financial reporting standards, as to both accounting and disclosure. The SEC actively challenges accounting practices through its on-going document review process.

The COB comments on annual financial statements in the "document de référence" and there is some evidence that companies are now seeking to pre-clear accounting treatments with it.

ASIC takes an active role in financial reporting standard-setting through working with the Australian Accounting Standards Board. In this it is closer to the approach taken by the SEC than any of the other market regulators.

Many primary market regulators including the SEC, the COB in France and ASIC in Australia consider that regulating financial reporting is a fundamental element of primary market regulation as financial reporting is seen as the principal ongoing reporting medium by listed companies.

### Commentary

The agreed scope of our review did not include the proposed role of the FRC under the new Companies Commission. We would note that the FSA is represented on the FRC. Given the continuing debates regarding responsibility for financial reporting, we believe that the FSA should consider the interaction of its role with that of the FRC.

## 6. Shareholders' rights

### 6.1 A highly developed corporate governance structure in the UK

Governance standards are imposed by a variety of means - company law, primary market regulation, stock exchange rules or codes of practice.

The UK has sought to introduce indirect governance standards in terms of a minimum number of independent non-executive directors and audit and remuneration committees through voluntary codes (such as Cadbury and Greenbury) backed up by disclosure about compliance required by the Listing Rules.

In the UK, direct governance is also imposed through the Listing Rules requiring that, depending upon the size or nature of the transaction, shareholder approval is obtained in advance of completion. The UK stands out amongst major capital markets in this area.

In overall terms the corporate governance approach in the UK was largely commended by market participants as providing a good combination of stakeholder involvement together with a degree of flexibility. The interaction of formal regulation and the guidance issued by Non-Government Organisations such as the Association of British Insurers ("ABI") and the National Association of Pension Funds ("NAPF") was seen, generally, as a positive feature.

Several participants believed that the UK was leading the world in this context (including the United States) in balancing the interest of stakeholders with the needs for a flexible and reactive corporate environment.

UK investors appear comfortable with the current transaction regime, although certain UK companies have argued that the uncertainty arising from needing to obtain shareholder approval has restricted their ability to compete in certain business situations, such as acquisitions in international markets. Furthermore some interviewees believed that it was anachronistic and would be lost in due course.

### 6.2 Focus on role of directors in United States

In the United States the SEC does not require the pre-approval of a transaction by shareholders, although there are specific requirements regarding further share issues.

The United States' market view is that management should be left to manage the business without being required to revert to shareholders. The disclosure based nature of the regime provides shareholders with sufficient information to take action by buying or selling shares. It is worth noting that the United States legal environment tends to act to temper corporate behaviour, with the threat of, particularly, anti-fraud litigation, potentially dissuading management from acting without careful consideration.

The SEC does not directly impose governance obligations on companies. However, it has sought to influence the debate regarding governance and has encouraged the stock exchanges, NYSE and NASDAQ, to amend their rules to require companies to create audit committees and make related disclosures.

## 6.3 Shareholder approval in Australia and Hong Kong

Australia and Hong Kong both impose similar requirements to the UK in requiring major and related party transactions to be subject to shareholder approval before they can be completed. The ASX rules in Australia are unusual in that the criteria against which transactions will be measured are prescribed but the percentages at which the consequences will take effect are not specified.

## 6.4 No shareholder approval needed in Continental Europe

The Continental European regulators and exchanges do not impose any governance obligations on listed companies, such as requiring shareholder approval of transactions, nor have our discussions indicated that there is any intention to do so. However, we understand that company law in Holland is likely to be changed within the next year to impose an approval obligation.

The Continental European model does however include the direct participation of major shareholders through board representation. The composition and remit of the elected Supervisory Board in Germany, for example, provides a potentially powerful challenge to the Executive Board.

## 6.5 Mandatory retail investment

The UK abolished its requirements concerning allocations to the retail market some years ago. Similarly in the United States, the attitude is one of allowing the market to determine the appetite for retail investor involvement. In contrast, in France, maintenance of a healthy involvement of retail investors in the IPO market is considered to be a priority. Consequently, the COB mandates that a minimum of 10% of an IPO must be offered directly to the retail market. The COB regulations include limits on the range of price permitted in a price range offering and has also sought to impose limits on the extent to which pre-IPO share issues can be at a discount to the IPO price.

In Hong Kong, the stock exchange regulates the placing and subscription of shares. A minimum of 25% must be offered to retail investors, and where there is a subscription tranche, minimum allocation rules apply.

## 6.6 Further issues of securities

Throughout Continental Europe and in the UK, company law provides shareholders of a company with a legal pre-emption right over further issues of the same class of securities. However in all countries, this right may be waived by shareholders in general meeting. The extent to which these rights are waived varies in practice across Europe.

In the United States there are no pre-emption rights for shareholders of public companies. However, shareholders are generally required by local state legislation to vote on significant increases in capital, typically, in excess of 20%.

One argument that has been put forward is that the absence of pre-emption rights makes the issue of further tranches of equity share capital post IPO more attractive to company management, as it provides them with flexibility and rapid access to finance. This is balanced by the priority the UK has historically given to minorities and shareholder protection.

The concept of a rights issue whereby existing shareholders are entitled to compensation for accepting dilution of their interest on a further issue at a discount to the prevailing market price is not recognised in the United States market.

It was the strong view of a number of market participants that the availability of access to sub-underwriting had been severely limited by consolidation in the institutional investment market. Consequently participants commented that the execution of rights issues under existing practices, except at a relatively deep discount, was increasingly difficult to achieve.

## Commentary

Unlike the US and Continental Europe the UK has a number of requirements regarding shareholder approval of major transactions.

As noted above, whilst market participants' views were divided with both support for and opposition to the existing regime of shareholder approval, we believe that the FSA should obtain evidence regarding the merits and demerits of elements of the existing system and make changes where considered appropriate.

Market participants in the UK indicated no support for the FSA revisiting the question of whether a minimum proportion of an initial public offering should be made available to be retail investors.

Pre-emption rights stem from European company law requirements and, as a result, are outside the scope of any review of the Listing Rules. Our interviews, however, indicated that European investors would be reluctant to sacrifice these rights.

## 7. The working capital requirement

### 7.1 The UK and Hong Kong have specific requirements

The requirements of the FSA in relation to working capital have been in existence for many years and, apart from Hong Kong, are unique amongst the major markets. These requirements are threefold, firstly in relation to assessing eligibility, secondly as to the disclosure in prospectuses and thirdly the obligation imposed on the sponsor in relation to that disclosure. When creating its rules for AIM, the London Stock Exchange encountered strong market participant interest in maintaining a specific working capital obligation.

Australian practice is closest to that of the UK and Hong Kong in that, on IPO, a working capital adequacy statement is required to be included in the prospectus. However, market practice does not require specific due diligence in this area as, in practice, reliance is placed upon the forecasts produced by the company. ASIC now requires technology type companies with little or no history to publish quarterly cash flow data.

### 7.2 No requirement in Continental Europe

None of the Continental European markets have a requirement as to the adequacy of a listed company's working capital. However, it is relatively common for an issuer's sponsoring bank to be the same as its corporate lending bank and there is often a consequent knowledge about that company's financing needs.

In both Holland and Germany, the view was expressed by several market participants that the lead bank would be expected to understand the working capital position of the company and to ensure that appropriate disclosures were made in the prospectus.

The Continental European markets also appear to rely on the fact that financial statements are prepared on a going concern basis with the auditors' opinion providing assurance in this regard.

### 7.3 United States practice

The United States has no working capital requirements equivalent to those in the UK, however, there are a number of other provisions in the United States which can be viewed as addressing this issue. The requirement for an audit in the United States is only mandatory for listed companies and an audit is often carried out for the first time at IPO. As in Continental Europe, reliance is placed upon this audit opinion to provide assurance with regard to a company's working capital at the time of its listing. Consistent with a disclosure-based regime, it is possible to list a company in the United States with a going concern qualification.

In addition, the SEC's requirement for a Management's Discussion and Analysis ("MD&A") section within a prospectus ensures that a commentary on a company's financing needs is available to investors.

We understand that the view of the SEC is that the issue of working capital is adequately addressed by these requirements. However, it is clear that the degree of focus of the regulator regarding the future viability of the company is stronger in the UK than in the United States.

## Commentary

The working capital disclosure requirement was strongly supported by UK based market participants, including investment banks. A number of participants commented that the disclosure requirement and the related sponsor's obligations brought helpful additional structure and rigour to this area.

In general, the market participants viewed the working capital requirement as an important element of UK primary market regulation and one which should be retained.

## 8. Differential regulation for securities

### 8.1 Introduction

The approach to regulation of equity securities traded on junior markets varies markedly. In certain countries, junior markets are allowed to operate with limited regulatory involvement, whereas elsewhere additional requirements are imposed over and above those required on the main market.

### 8.2 Prospectus approval

The UK and Holland both operate formally unregulated junior markets. However, with AIM, the London Stock Exchange imposes a high standard of self-regulation through the role of the Nominated Advisor (“nomad”).

The role of the nomad is akin to the role of the sponsor on the main market, although the nomad is a continuing role which is required by the Exchange to be filled at all times.

UK primary market regulation is distinguished by not requiring all prospectuses to be vetted by a regulator before issuance - being those issued under the auspices of the Public Offers of Securities Regulations, where a mutual recognition passport is not required, such as for admission to AIM.

All Continental European markets studied required all prospectuses to be approved before issue and the United States pre-vets all initial registrations. Australia is unusual in that its model does not require any prospectuses to be approved.

Under the European Commission’s Prospectus Directive proposals all prospectuses would be subject to formal regulatory approval. Whilst this is not an issue for the FSA in its wider review of the Listing Rules the wider UK market will be impacted as AIM prospectuses would require regulatory approval, increasing the cost of raising capital for companies quoted on AIM.

### 8.3 Markets imposing additional requirements

In France, Germany and Hong Kong the junior markets are more heavily regulated than their primary markets. France requires Nouveau Marché companies to operate the “document de référence” system, report quarterly, and have prospectuses attested by an investment bank and approved by the COB.

The Deutsche Börse also imposes additional conditions on Neuer Markt companies, such as quarterly reporting. The Deutsche Börse has recently announced proposals to tighten further the regulation of the Neuer Markt in areas such as directors’ disclosures.

Hong Kong also has a quarterly reporting requirement together with additional corporate governance obligations for companies on the GEM market.

## 8.4 Markets where there is no distinction

Australia and the United States do not differentiate regulation regardless of the issuers, the type of investor or the market on which the securities are to be traded.

## 8.5 Approach to qualified investors

All markets do however, permit securities to be offered to “professional” or “sophisticated” investors without any regulatory intervention, for example the United States with Rule 144A and the various exemptions under the Public Offers Directive as applied across Europe. These rules permit “international” offers to be made based on a listing and regulations in one country without further regulatory interference in other countries where professional investors are located.

## 8.6 Specialist debt securities regulation

The approach taken by the UK and Luxembourg in developing a limited disclosure and light touch regulatory framework for specialist debt securities is unique in the global capital markets. This approach does depend on the fact that debt securities are only available to sophisticated investors. Other markets have maintained one level of disclosure and regulation for both debt and equity issuers.

It could be argued that the UK and Luxembourg debt model was originally developed for the same reasons that the French are now developing their “document de référence” system, that is, to permit the rapid issue of further securities. The model has been extended to apply to special or single purpose vehicles, established for the purpose of raising debt finance.

We would note that market interviewees recorded a perception that the Luxembourg regulator was more flexible in its approach to dealing with individual circumstances which results in issuers listing debt securities in Luxembourg rather than London.

## 8.7 Wider range of offerings

There has been an increasing trend towards the development of more innovative instruments being designed and being made available to sophisticated investors. Such instruments include those securitising classes of assets, such as mortgages and securities issued under Medium Term Note programmes or, indeed, the extension of the securitisation concept to a whole business.

The issue is whether these offerings should be treated under the specialist debt regime. The United States approach is to treat such an issuer as no different to an equity IPO. Luxembourg and London have accepted that they can be treated as specialist securities. There is some evidence that the “lighter” regulatory touch of Luxembourg is currently attracting the majority of these issues.

## 8.8 GDR and equivalent instruments

The extension of the specialist regime to equity based instruments like Global Depository Receipts has also created tensions between the desire to facilitate access to sophisticated investors at relatively low cost against the need for regulatory involvement in the disclosure process to earn the “listing” kite mark suitable for all investors including retail investors.

Euronext France does have rules permitting European Depository Receipts to be listed. However, their application is purely theoretical as no issuers have taken advantage of them since their introduction.

### Commentary

The use of specialist securities has expanded beyond the traditional debt security to cover such issues as whole business securitisations. Certain market participants raised the question as to whether the “lighter touch” regime in the UK is appropriate for such instruments. Such a regime was predicated on there being a listed equity issuer either as parent or guarantor for the Eurobond market or there being a primary regulator of the underlying equity securities as in the case of Global Depository Receipts. We believe that the FSA should consider the continued appropriateness of this approach given the development noted.

We believe that the FSA should obtain evidence, including the views of advisors to issuers, in relation to the degree to which London’s competitive position is being eroded by the burden of regulation.

## 9. Regulatory approval of documents

### 9.1 Incorporation by reference in the United States

The United States' model is based on a concept of registration by which a company files an initial registration which is then updated by subsequent quarterly reports and transaction circulars and fully refreshed each year in the annual filing. The subsequent reports, together with the latest annual accounts are then "incorporated by reference" into any securities issue document. As a consequence, the United States market does not generally require the issue of a full prospectus on the issuance of further tranches of equity securities.

The SEC reviews all initial registration statements prior to them being declared effective. Filings of existing SEC registered companies are generally reviewed on a selective basis, and those reviews may be done at any time.

### 9.2 Detailed prospectus approach in the rest of the world

In the majority of the rest of the world a material further issue of equity securities must be supported by the issue of a prospectus containing information equivalent to that at IPO. Under the European Directives, prospectuses for listed companies must be approved by the regulator (as competent authority) before they can be used.

The Australian regulator no longer approves any prospectus before it is issued, although it does have the power to order a prospectus to be withdrawn in a short period after its issue. The Hong Kong requirements mirror those in the UK.

### 9.3 "Document de référence" in France

The COB has a model based on the registration concept, whereby issuers are required on the Nouveau Marché (and encouraged on the official markets), to prepare an annual "document de référence" which is similar to a prospectus. The COB's aim in creating this system was to improve annual reporting quality and to facilitate the expeditious further issue of securities.

The French system does not necessarily result in a simpler process for further issues, in that, for example, the securities note needs to include any new information since the date of the "document de référence". The COB are currently addressing how to ensure that the "document de référence" is kept up to date, in order to include the additional disclosures required at the time of any further issue.

### 9.4 Shelf registration unpopular in the UK

The UK rules permit issuers to adopt a shelf registration system but only a handful of issuers have taken advantage of this. This may be due to the 10% threshold below which listing particulars are not required, together with pre-emption rights requiring larger issues to be offered to existing shareholders unless explicitly waived.

We gathered little evidence of a strong desire for a shelf registration system, on the contrary, concerns were expressed over the potential increased costs, together with the related legal verification that would be required in preparing a shelf registration document.

We believe that the existing UK regime is quite efficient particularly for a simple further issue of securities – a “plain vanilla” rights issue can be approved within a week of initiation. Further, the continuance of the requirement for regulatory approval, at least under the prospectus directive proposals, would inevitably slow the process. It is worthy of note that the SEC does not pre-vet further issue prospectuses.

### Commentary

Our interviews with market participants identified no strong support for a mandatory registration system on the contrary, interviewees expressed a belief that the associated costs outweighed any potential benefits.

# Glossary

AIM	The Alternative Investment Market; a market operated by the London Stock Exchange for companies not wishing to seek official listing.
ASIC	Australian Securities and Investments Commission; the Australian stock market regulator.
ASX	Australian Stock Exchange.
COB	Commission des Operations de Bourse; the French stock market regulator.
Deutsche Börse	The operator of the main stock exchange in Germany.
Euronext	The stock exchange created by the merger of the Paris, Brussels and Amsterdam exchanges.
FRC	Financial Reporting Council; the UK's body responsible for oversight of the financial reporting regime.
FSA	Financial Services Authority; the UK's overarching financial services regulator that is the competent authority for listing in the UK.
GEM	A market for growth companies operated by the Hong Kong Stock Exchange.
IPO	Initial Public Offering or flotation; the initial offer leading to listing of securities on a stock exchange.
NASDAQ	The Stock Exchange in the United States operated by the National Association of Securities Dealers, Inc.
Neuer Markt	The market operated by Deutsche Börse AG for growth companies.
Nouveau Marché	The market based in France for growth companies, now operated by Euronext.
NYSE	New York Stock Exchange
Rule 144A	Rule 144A provides an exemption from the registration requirement under the United States Securities Act of 1933 for original offerings and resales of certain securities to Qualifying Institutional Buyers.
SEC	Securities and Exchange Commission; the body responsible, amongst other matters, for the regulation of securities markets and registered issuers in the United States.

The key themes of the primary market comparative regulation study (the “Study”) has been prepared by PricewaterhouseCoopers (“PwC”) for the Financial Services Authority (“FSA”) alone in order to analyse and comment on the rules and regulations governing primary equity capital markets in the United States, France, Germany, Holland, Australia and Hong Kong (the “Primary Markets”). The Study also considers junior and growth markets in France (Nouveau Marché), Germany (Neuer Markt) and Hong Kong (Growth Enterprise Market) and Luxembourg’s debt securities market to the extent that rules and practices in these markets differ from those of the Primary Markets (the “Junior Markets”). The Study is not intended to be a comprehensive examination of the rules and regulations of any of the Primary Markets or Junior Markets and the results of the Study should not be used by or relied upon by any third party.

The information contained in the Study has been obtained from a number of sources which are believed to be reliable but no independent verification of any statements has been made nor has any comment or verification been made in relation to statements or expressions of opinions made in the Study. Neither the FSA nor PwC accept any liability in relation to any information from third party sources or any statement of opinion set out in the Study. Readers of the Study must form their own opinion as to the nature of the information contained in the Study.

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## SUPER-EQUIVALENT PROVISIONS

<b>Super-equivalent Provisions</b>	<b>Listing Rules</b>
<b>Corporate Governance</b>	
Disclosure of compliance with the Combined Code	12.43A
Model Code	Model Code (Appendix to Chapter 16) and 15.1, 16.18, 16.19, 21.20(j), and 21.20A
Experience and expertise of directors	3.8
<b>Corporate Communications</b>	
Price sensitive disclosure	Model Code (Appendix to Chapter 16) and 9.1 and 9.2
Forward-looking information	12.21 to 12.27, 12.43(b), 6.G.2, 6.N.2, 17.16 and 2.19
<b>Shareholders rights and obligations</b>	
Pre-emption Rights	6.B.15, 9.18, 9.19, 9.20, 12.43(o), 14.8 and 17.8
Class Test driven disclosures	Chapter 10 generally and 12.9 to 12.13, 12.21(b), 13(App 1 para 23), 14.1(b), 18.3 and 18.4, 19.7 to 19.10 and 21.23 to 21.24.
Controlling shareholder disclosures	3.12, 3.13, 6.C.23, 6.J.17, 9.34, 12.42(s) and 12.43(r).
Shareholder approval	Throughout the Listing Rules there are various references to this area, as for example, shareholders approval for Class 1 transactions - 10.37; AGM resolutions, change of name, etc.
<b>Financial information</b>	
3-year track record	3.3(a), 3.4, 3.6, 3.6A, 19.2, 19.3(a), 20.3, 20.4, 21.9(a), 23.4, 25.3 and 26.3

## Annex B

<b>Super-equivalent Provisions</b>	<b>Listing Rules</b>
Working capital adequacy statement	2.18, 3.10, 3.11, 5.9(h), 6.E.16, 6.L.10,10.41, 10.47(c), 10(App), 14.2(a), 17.15, 19.4(g), 20.8(c), 21.9(b), 25.6(e), 26.6
Differentiation for different types of companies e.g. start-ups, SMEs	Chapter 12 continuing obligations are modified for overseas companies with a secondary listing in London, investment entities, companies with specialist securities listed and companies with miscellaneous securities by Chapters 17, 21, 23 and 24
<b>Sponsors</b>	
Approval	2.4 and Chapter 2 generally
Letters from Sponsors	5.9, 5.12 and 14.2(a)

**Timetable for the Listing Regime Review**

The timetable set out below lays out the current EU timetable for the directives alongside the proposed timetable for the Review. As mentioned in paragraph 5.2 above the timetable for the Review is dependent on the Prospectus Directive being implemented in June 04. If for any reason the EU timetable slips the timetable for the Review will be adjusted accordingly.

<b>Date</b>	<b>Outcome</b>	<b>Areas covered</b>	<b>Prospectus Directive</b>	<b>Transparency Obligations Directive</b>	<b>Market Abuse Directive</b>	<b>Investment Services Directive</b>
Jul 02	Discussion Paper (DP)	Listing regime review discussion paper.		Further EU CP on TOD was published in May. No other timetable has been set.		.
Aug 02	DP Consultation					
Sep 02	DP Consultation					
Oct 02	DP Consultation period closes	Period for submitting responses to the discussion paper closes.				
Nov 02						
Dec 02			Finalisation of Level 1 PD			
Feb 03	Initial Consultation Papers issued				CESR technical advice on Level 2 to Commission	Final directive published.

Annex C

Date	Outcome	Areas covered	Prospectus Directive	Transparency Obligations Directive	Market Abuse Directive	Investment Services Directive
Mar 03	Initial Consultation Papers issued	<p>A number of consultation papers will be issued which explore in more detail each theme:</p> <ul style="list-style-type: none"> <li>• Corporate governance</li> <li>• Corporate communication</li> <li>• Shareholder's rights and obligations</li> <li>• Financial information</li> <li>• Sponsors</li> </ul>	CESR technical advice on Level 2 to Commission			
Apr 03	Consultation period					
May 03					Commission produces Level 2 legal text	
Jun 03	End of consultation period.		Commission produces Level 2 legal text			
Sep 03	Second raft of Consultation Papers issued.	Consultations papers will be released in respect of each of the above theme areas providing detailed proposals on rule and guidance changes together with feedback in relation to the responses to the initial consultation papers.				
Oct 03	Consultation period					Final Directive published
Nov 03	Consultation period					

Annex C

Date	Outcome	Areas covered	Prospectus Directive	Transparency Obligations Directive	Market Abuse Directive	Investment Services Directive
Dec 03	Consultation period closes					
Mar 04	Policy Statements issued	Issue Policy Statements providing feedback on the second raft of consultation papers together with finalised rules and guidance.				
Jun 04		Revised rules and guidance become effective as required by the directives.	Implementation Level 3 PD		Implementation of Level 3 MAD.	

## CONSULTATIVE COMMITTEE

The Consultative Committee will be chaired by Ken Rushton, director of listing and will include the following organisations:

<b>Representative body</b>	<b>Member</b>
Accountancy Foundation Review Board	Colin Reeves
Association of British Insurers	Michael McKersie
Association of Private Client Investment Managers and Stockbrokers	Catriona Shaw
Barclays plc	Howard Trust
BP Amoco plc	Judith Hanratty
Cinven	Andrew Joy
Corporate Governance Forum	Paul Lee
Department of Trade and Industry (Observer)	Robert Burns
Deutsche Bank	James Agnew
Dresdner Kleinwort Wasserstein	Jim Hamilton
Freshfields Bruckhaus Deringer	Charles ap Simon
HM Treasury (Observer)	David Lawton
Hoare Govett	Andrew Chapman
HSBC Holdings plc	Ralph Barber
IPMA	Mary Hustings
KPMG	Neil Austin
Lexicon Partners	Sir Laurie Magnus
Linklaters & Alliance	Lachlan Burn
London Investment Banking Association	John Serocold
London Stock Exchange	Sue Moreman
Manganese Bronze Holdings plc	Jamie Borwick
M & G Investment Management	Huw Jones

**Annex D**

National Association of Pension Funds	Martyn Hole
Norton Rose	Barbara Stephenson
Old Mutual	Nicholas Donaldson
Pensions Investment Research Consultants	Alan MacDougall
Formerly of Powergen plc	David Jackson
PricewaterhouseCoopers	Tom Troubridge
ProShare	Diane Hay
Quoted Companies Alliance	Christopher Searle
Schroders Salomon Smith Barney	Patrick Drayton
SG Investment Management Ltd	Ian Salter

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