Jonathan Rees
Market Infrastructure and Policy
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

7th March 2012

Dear Mr Rees

Investor Relations Society response to CP11/28 Financial Services Authority and HM Treasury on UK implementation of Amending Directive 2010/73/EU

I have pleasure in enclosing The Investor Relations Society's response to the above consultation.

The Investor Relations Society's mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community.

The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective two way communication with the markets and to create a level playing field for all investors. It has over 600 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

The implementation of the Prospectus Directive in 2005 with cross EU capital markets passport was a landmark initiative that we feel has been of benefit to issuers and investors. Our members issue prospectuses on an on-going basis inviting offers for share capital or debentures and are bound to the Transparency Directive setting out disclosure requirements

once securities are admitted to trading. As the professional body representing investor relations in the UK we regard clarity and openness within corporate communication as of the utmost importance and transparency is at the heart of best practice investor relations. A company's Board should provide the lead with the IR team acting as a conduit and not as a gatekeeper. The Society supports the current disclosure and transparency regime and is a rigorous upholder of the principles of universal, proactive and prompt dissemination of information to shareholders. Where the opportunity arises to improve upon this and align these directives with existing regulation in the interests of the end participant (be it issuer or investor - naturally we are issuer-focussed in our consultation responses) we support this, while reserving the right to question elements we consider superfluous or counterproductive. For example we voice concerns that the amending directive proposal to notify ESMA following prospectus approval in addition to the host competent authority could cause delay by adding a level of bureaucracy and we note with interest at the time of writing that ESMA has postponed this recommended initiative until further notice.

We note some of the amending directive relates to investments on a smaller scale that would typically concern retail rather than institutional investors. Our members are investor relations officers (and their advisors) working for high market capitalisation companies and will typically communicate with institutional investors, hedge funds and sovereign wealth funds in addition to analysts, as well as at times 'retail' investors of higher net worth. Where we feel questions relating to thresholds and issues are not relevant to our members we state this. We also want iterate that the prospectus process is typically handled in large part by investment bankers and in-house treasury. The IR role during the process is to ensure the company message remains consistent and clear by tying together the strands and inputs in such a way as to make the investment case while reducing the cost of attracting new investors both during prospectus and once securities are admitted to trading. We have responded to this consultation accordingly.

Our detailed response to your individual questions is attached below. If you have any further maters which you would like to discuss with us please do not hesitate to contact me.

Yours sincerely,

Michael Mitchell
General Manager
The Investor Relations Society

3 Bedford Street
London WC2E 9HD

020 7379 1763
michael.mitchell@irs.org.uk

CP11/28 - UK implementation of Amending Directive 2010/73/EU Simplifying the EU Prospectus and Transparency Directives

Q1: How significant are the various threshold increases for industry? Which of these will be most used by the UK market, and are any not relevant to UK practice?

Our members are investor relations professionals dealing with large scale investors (institutional investors, hedge funds, SWFs). While retail investors are investors like any other in general our members will not engage in great discussion with retail shareholders who will typically invest following advice from a financial adviser so this question is not a major area of concern for our members.

Q2: Of the stricter thresholds introduced, what effect and what costs (if any) will be imposed on the UK market?

Please see our response to Q1.

Q3: Do you believe the consent of the issuer, individual responsible for drawing up the prospectus (if not the issuer) or both of the above, should be sought for subsequent resales of securities through intermediaries?

We support the Government's position that both parties provide consent.

Q4: Will investor protection be increased in the prospectus regime through comparability and the creation of 'key information' for summaries?

The addition of key information is helpful for investor protection. We would expect however that prospective investors or their advisors were already asking the types of questions listed prior to investing.

Q5: Has summary liability altered significantly through the changes to the prospectus regime?

We feel that this is a significant alteration given that previously summary liability was attached unless the summary was misleading whereas now liability will be stated whereby key information as defined by Article 5(2) and Article 2(1)(s) is not met as part of the prospectus-i.e. if key information is judged to be a significant change to the Prospectus Directive then so must summary liability be.

Q6: Do the changes regarding supplements in the prospectus regime codify existing market practice, or will they have a more significant effect on issuers and investors?

One of the stated objectives of the changes to the Prospectus Directive is to enhance investor protection and current market developments have been moving in this direction following the financial crisis. However the Prospectus process is already a huge undertaking for issuers and we would be keen to ensure that the proposed changes to the provision for supplements did not result in supplements becoming an entrenched element in the Prospectus in place of initial investor questions meeting requirements – so we welcome Article 16(2) protecting issuer rights.

Q7: What data protection legislation is relevant to take into account when applying the duties on investment firms set out in the Prospectus Directive?

We do not feel this is within our remit.

Q8: How will issuers be affected by the alignment of the Prospectus Directive with other EU legislation?

We feel that reducing the cost and complexity for issuers in needing to cross-reference investor status by aligning the Prospectus Directive with MiFID is beneficial to investors and therefore issuers (in theory). It is to the benefit of the issuer that investors on request of the issuers will confirm client classification as professional on non-professional (although again our members' are dealing with largely non-retail shareholders). The deletion of Article 10 of the Prospectus Directive removing the requirement for issuers to publish an annual information update is positive for issuers – we support this. By applying exemptions to MiFID defined investor categories Article 2(1)(e) this reduces financial intermediaries costs in cross-referencing investor status that could be passed onto investors therefore encouraging

investment in addition to more investors being eligible inclusion for private placement of securities. It is beneficial to issuers that investors under the revision will communicate professional/non-professional status to issuers. We hope there will an overall cost save to issuers resulting from shorter and proportionate prospectus'.

We are concerned that the proposal to file responses with ESMA would add a new level of bureaucracy to issuers and that ESMA approval would potentially delay matters. (NB-we now note that this proposal has been postponed until further notice..).

Q9: How significant are the changes being made to the prospectus regime, and in what areas?

The implementation of the Prospectus Regime in 2005 and the establishment of the EU wide capital market passport were highly significant – we see the changes proposed as relatively restrained. The changes are significant in particular for smaller companies seeking well-informed creative retail investors. Simplifying prospectus' through key information etc will assist lower-cap issuers gain liquidity. The proposal to notify ESMA when a prospectus is approved in addition to host competent authority is a significant amendment – as is revised Article 18 whereby issuers are to be notified of approval.

Q10: Is the time and £0.4m familiarisation cost estimate accurate? Are there further costs incurred on UK business and on what scale – for example, non-wage costs, or costs faced by non-issuers in familiarising themselves with the new regime?

Implementing the Amending Directive by 1 July 2012 is a realistic timetable although overall costs of £0.4m worked out as two hours compliance time per company strikes us as underestimating the time required. Difficult to say regarding further costs – costs likely to be tied to work hours. We suspect costs will fluctuate depending on size. Companies must never be put off raising capital due to administration costs.

Q11: Do you consider the cost-saving for business of a proportionate disclosure regime to be in the region of the Commission's estimate? What level of cost saving will issuers experience?

Cost saving depends on size of company, number of offers. Hard to say. Currently there are relatively low numbers of offers in any case. Any cost saving is welcome.

Q12: Do you agree with the overall costs and benefits outlined in this consultation paper and the impact assessment? Are there further costs and benefits and of what scale?

Cost for implementation too low (see Q10).

Q13: How helpful is the greater legal clarity being given to issuers? Will this reduce the costs or make equity finance more attractive, or do the changes simply codify current market interpretation of the Directive?

Legal clarity is useful and keeping costs down is desirable – whether the cost of transactions are the key driver when raising equity finance is doubtful. When companies take a strategic decision to raise equity finance they unlikely to be put off by transaction costs (providing they are not unrealistically prohibitive!)

Q14: Has investor protection been altered or strengthened through changes to the Directive?

Yes, we consider investor protection will be strengthened by the directive. By upping the exception threshold from €50,000 - €100,000 retail investors will get better understanding of investment via prospectus. The addition of 'key information' is beneficial to investors.

Q15: On balance, will investors and issuers benefit from the changes to the regime?

On balance yes. We would like to be sure that additional investor protection measures will not come at a high financial/time cost to issuers. We think aligning the Prospectus Directive with MiFID is sensible.

Q16: The Government's objective is to copy out EU legislation. Do you have any comments on the way the Amending Directive has been implemented in the draft regulations, taking into account the existing implementation of the Prospectus
Directive in 2005?

No

Q17: Do you have any other comments on the changes to the prospectus regime?

No

Q18: Do you have any comments on our proposal relating to implementation of the amendments to the Prospectus Directive

No further comment

Q19: Do you agree with our transitional provisions for changes to the DTRs as set out in paragraph 3.23

We see this as debt focussed question – not relevant to us.