



FINAL NEWSLETTER 2015

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If you need any help with the Alternative Asset Class, whether this be Venture Capital, Private Equity or Hedge Funds as well as Family Office structures, we will be delighted to help you. We are now a group of approximately 30 consultants across Europe, the US and Asia. We will be looking to expand with partners and/or business affiliates in the Middle East for 2016, as well as consolidating our positions in both the US and Asia where we continue to see and find growth.

We take this opportunity to wish all of you a wonderful Christmas holiday and a fabulous start to 2016!

The Team
JAG Capital Advisors

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Proposed new regulations for Capital Raising in Europe

The European Commission published its proposals for reforming the European prospectus regime. These proposals follow a consultation launched by the Commission earlier this year and are designed to improve access to the European capital markets. The changes focus on giving companies more freedom to raise capital without having to publish a costly and time-consuming prospectus.

At this stage the Commission has only published its proposed rules in draft, and much of the detail is still to come. This Newsletter focuses on certain specific changes:

No prospectus requirement

1) *Small capital raisings.*

Currently, companies can raise up to €5 million from the general public without having to comply with EU prospectus rules, but national regulators can still require a prospectus for public offers above an EU-wide threshold of €100,000. One important aspect of the new regime is to raise the €100,000 threshold so that "over-protective" EU countries can no longer require a prospectus for offers of up to €500,000. At the same time, the Commission is proposing to replace the €5 million limit with a new discretion allowing individual countries to set their own financial limits for public offers that are only made within their borders, up to a maximum offer value of €10 million. These prospectus exemptions will continue to sit alongside the existing carve outs for private placings of shares to professionals ("**qualified investors**") and to less than 150 non-professional investors per EU state, or where the minimum payment per investor is at least €100,000.

2) *Takeovers and mergers.*

A potentially helpful change will allow companies to issue shares or other securities as part of a takeover or merger without having to produce a full prospectus or equivalent document, even if it involves a public offer, or the issue of more than 20% of a listed company's shares. The only requirement will be making a document available "containing information describing the transaction and its impact on the company". Depending on the content that regulators prescribe for this document, this could cut down very significantly on the paperwork (and time) required for M&A activity.

3) *Raising the threshold for listed companies.*

Except in some exceptions, a company with shares traded on an EU regulated market has to publish a prospectus if it plans to issue a further 10% or more of its shares, whether or not it offers these shares to the public. The Commission intends to give companies more flexibility by raising this threshold to 20%.

4) *AIM and other junior markets.*

The Commission appears to have abandoned its unpopular suggestion of requiring companies to publish a full prospectus in order to float on junior markets such as AIM in the UK.



Prospectus requirement

Prospectus summary and risk factors are still seen to be overly-long and the Commission proposes to itemise the specific content of summaries and restrict them to six sides of A4. Companies will have to limit risk factors to those which are material and specific to the company and, in a new and unwelcome challenge for companies and their advisers, to grade them into two to three categories based on materiality (although further guidance on this will be issued).

Recognising that the existing content concessions have not worked, the EU regulators plan to revisit the area regarding smaller companies and secondary issues with a view to creating two new reduced disclosure regimes, the first for a prospectus produced by a small or medium-sized company, and the second for an existing listed company that is issuing further shares (via a rights issue or in any other way). The threshold for SME qualification will also be increased from €100 million to €200 million market capitalisation. While these are welcome changes, their value will depend on the scope of the concessions, details of which are still awaited.

A listed company that regularly has to publish a prospectus will instead be able to publish a "universal registration document" ("URD") every year, leaving it with only the prospectus summary and details of the share offering to produce when required. Although "shelf registration" regimes are nothing new in themselves, a potentially interesting development is the ability for a company to replace its annual reports and accounts with a URD. However, the need for regulatory approval of the URD is likely to be a stumbling block for many companies (although the new rules dispense with this requirement after a company has published a URD for three years).

One of the challenges for regulators is to shift market practice, where 250-page prospectuses have become the norm including for rights issues. This reflects regulatory changes over the last decade as well as the need to comply with global offering standards. However, it also stems from concerns over the liability risks for those responsible for a prospectus, including directors, if the document does not meet the general disclosure standard that applies on top of the specific content requirements. In a helpful new development that may go some way towards addressing these fears, the draft rules indicate that the general disclosure standard for secondary offerings will focus instead on the company's prospects based on its most recent financial year only, and the reasons for and impact of the share offering. (Less helpfully, the Commission does not appear to be extending a similar concession to the reduced prospectus regime for SMEs.)

Companies will welcome most of these changes, however these are still early days and without the detailed rules, the resulting time and costs savings cannot be assessed at this stage. The proposed new regime will not be available before 2017, as the rules still need to pass through the usual EU legislative process. But since it is the time of happy Season's greetings, and we are feeling merry, we wished to bring a little light and positive regulatory prospective news! Ho! Ho!