

3: Equivalent markets

This material is issued to assist firms by setting out how they might approach their assessment of regulated markets, to determine whether they are 'equivalent' for the purposes of the money laundering directive. Although it is not formal guidance that has been given Ministerial approval, it has been discussed with HM Treasury and reflects their input.

The material discusses markets where there may be a presumption of equivalence and those where such a presumption may not be appropriate without further investigation. It then discusses issues that a firm should consider in all cases when coming to a judgement on whether a particular market is, in its view, equivalent.

3.1 What is an "equivalent market" and why does it matter?

The 3rd European Council Directive on prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the money laundering directive) allows firms (article 11) to carry out simplified due diligence (SDD) in respect of customers whose securities are

- listed on a regulated market, which is
- subject to specified disclosure obligations.

The Money Laundering Regulations 2007 (the 2007 Regulations) implement the provisions of the money laundering directive into UK law, and accordingly provide (Regulation 13) that firms may apply SDD to customers whose securities are listed on a regulated market that is subject to specified disclosure obligations [See section 3.2 and Annex 3-II].

Under the 2007 Regulations (and the money laundering directive), a “regulated market”

- within the EEA has the meaning given by point 14 of Article 4(1) of the markets in financial instruments directive (MiFID). [This definition is reproduced in Annex 3-I].
- outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations [see section 3.2 and Annex 3-II]

Markets that meet the definition in the 2007 Regulations are described in the JMLSG Guidance as "equivalent markets". UK firms therefore need to determine whether a particular market is 'equivalent', in order that they may take advantage of the SDD derogation. If a market does not qualify as 'equivalent', or if a firm chooses not to determine whether the market is 'equivalent', full CDD measures must be applied to the customer.

However, 'equivalence' only provides an exemption from the application of CDD measures in respect of customer identification. It does not exempt the firm from carrying out ongoing monitoring of the business relationship with the customer, nor from the need for such other procedures (such as monitoring) as may be necessary to enable a firm to fulfil its responsibilities under the Proceeds of Crime Act 2002.

Although the judgement on equivalence of regulated markets is one to be made by each firm in the light of the particular circumstances of the market, senior management is accountable for this judgement – either to its regulator, or, if necessary, to a court. It is therefore important that the reasons for concluding that a particular market is equivalent (other than those in respect of which a presumption of equivalence may be made) are documented at the time the decision is made, and that it is made on relevant and up to date data or information.

3.2 What are the specified disclosure obligations?

The disclosure obligations that the 2007 Regulations require regulated markets to impose are those consistent with

- Article 6(1) to (4) of Directive 2003/6/EC [the Market Abuse Directive];
- Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC [the Prospectus Directive];
- Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC [the Transparency Directive]; and
- Community legislation made under the above provisions.

These obligations are reproduced at Annex 3-II.

3.3 Categories of market

Markets in EU/EEA member states

All Member States of the EU (which, for this purpose, includes Gibraltar as part of the UK, and Aruba as part of the Kingdom of the Netherlands) are required to enact legislation and regulations in accordance with the specified disclosure obligations. All EEA countries have undertaken to implement the directives from which the specified disclosure obligations flow.

ESMA maintains a database of regulated markets within the EU (this is not, of course, a formal list of “equivalent” markets). The list is published for the purpose of identification of the counterparty to the transaction in relation to transaction reporting. Publication of the identifiers ensures the compliance of ESMA members with Article 13 (2) of the MiFID Level 2 regulation. ESMA has collected this information from its members and will update the list on a regular basis. Some ESMA members will, in addition, publish their own information separately on their websites. Further information is available on the ESMA website at <http://mifiddatabase.esma.eu/>.

Generally, the *principal* markets in EU/EEA member states are likely to be able to be presumed to be ‘equivalent’ for the purposes of the 2007 Regulations. In the 2007 Regulations, however, it was chosen to link the derogation to the admission to listing in a regulated market within the meaning of MiFID. So listing in other markets (such as AIM²) would not be enough qualification for the application of the derogation.

Markets in some third countries

Outside the EEA, a regulated financial market is ‘equivalent’ for the purposes of the 2007 Regulations if it subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations. Article 19(6) of MiFID [see Annex 3-I] requires the Commission to publish a list of third country markets that are ‘equivalent’ under MiFID.

A firm might reasonably conclude that a regulated market that is equivalent for MiFID purposes will be equivalent for the purposes of the 2007 Regulations. Some other third country markets might still meet

² But see paragraph 5.3.135 in Part I of the Guidance, which suggests that the due process for admission to AIM may give equivalent comfort.

the requirements of the money laundering directive, however, even although they do not meet all those required by MiFID.

The Commission has not yet published a list of equivalent third country markets for MiFID purposes; when it does, these may reasonably be regarded as equivalent for the purposes of the 2007 Regulations, whilst leaving it open for other individual markets also to be recognised for the purposes of the 2007 Regulations.

Caveat... ..

Although firms may rely on the presumption of equivalence, in respect of certain markets significant variations may exist in the precise measures (and in the timing of their introduction) that have been taken to transpose the obligations under the various directives into national laws and market regulations. Moreover, the standards of compliance monitoring in respect of particular markets will also vary. Where firms have substantive information which indicates that a presumption of equivalence cannot be sustained, either in general or for particular markets, they will need to apply full CDD measures to customers listed on these markets.

The status of implementation of the relevant directives across the EU is available at http://ec.europa.eu/internal_market/securities/transposition/index_en.htm.

Other markets

Although markets in other countries and territories cannot be presumed to be “equivalent”, this does not necessarily mean that the legislation and disclosure obligations in those countries are lower than those in “equivalent markets”. However, standards vary significantly, and firms will need to carry out their own assessment of the transparency and disclosure obligations in these particular markets. In addition to a firm's own knowledge and experience of the market concerned, particular attention should be paid to any evaluations or analyses of disclosure obligations that have been undertaken.

3.4 Factors to be taken into account when assessing other markets

The primary consideration that firms should address initially as part of their assessment is whether the disclosure and other obligations in a particular market meet the disclosure obligations specified in the directive.

Do the obligations in the particular market meet the specified disclosure obligations?

The money laundering directive is open on the extent to which disclosures in third countries must be sufficiently consistent with Community legislation to enable them to be regarded as ‘equivalent’. On one interpretation, a firm could require that *all* provisions in the relevant directives must be faithfully reflected in the third country market obligations. However, a more workable interpretation is that it is enough to satisfy the major provisions in the relevant directives.

Commission Directive 2007/14/EC (the MiFID Implementing Directive) contains some provisions (Articles 13 to 23) on how to judge the equivalence of third country rules regarding some obligations of the Transparency Directive. Recital 18 of this directive provides a helpful definition of equivalence:

(18) Equivalence should be able to be declared when general disclosure rules of third countries provide users with understandable and broadly equivalent assessment of issuers’ position that enable them to make similar decisions as if they were provided with the information according to requirements under Directive 2004/109/EC, even if the requirements are not identical.

It is important to note that the country of incorporation of the company is of little relevance. What counts is that it is subject to appropriate disclosure requirements in an equivalent market, which may well be in a different jurisdiction.

Other relevant matters to consider

Other relevant factors in making an assessment of ‘equivalence’ include:

- Membership of groups that only admit those meeting certain criteria
- Contextual factors – political stability; level of (endemic) corruption etc
- Evidence of relevant (public) criticism of a market
- Independent and public assessment of the market’s overall disclosure and transparency standards
- Need for any assessment to be recent
- Implementation standards (including quality and effectiveness of supervision)

Membership of an international or regional ‘group’

There are a number of international and regional ‘groups’ of markets that admit to membership only those markets that have demonstrated a commitment to high standards of disclosure and transparency, and which have an appropriate legal and regulatory regime to back up this commitment. Where a market is a member of such a group, there may be a presumption that the market is likely to be ‘equivalent’.

Contextual factors

Such factors as the political stability of the jurisdiction within which a market is located, and where it stands in tables of corruption are relevant to whether it is likely that a market will be ‘equivalent’. It will, however, seldom be easy for firms to make their own assessments of such matters, and it is likely that they will have to rely on external agencies for such evidence – whether prepared for general consumption, or specifically for the firm.

Evidence of relevant (public) criticism

Commercial agencies and the media also produce reports and lists of markets, entities and individuals that are involved, or that are alleged to be involved, in activities that cast doubt on their integrity. Such reports lists can provide some useful and relevant evidence – which may or may not be conclusive – on whether or not a particular market is likely to be equivalent.

Independent reports on disclosure and transparency standards

Particular attention should be paid to assessments of particular markets, including their disclosure and transparency standards, which have been undertaken by respected third party agencies. Where the firm looks to publicly available evidence, it will be important that it has some knowledge of the criteria that were used in making the assessment; the firm cannot rely solely on the fact that such an assessment has been independently prepared.

It should be noted that, under the Transparency Directive framework (notably Article 23(1)), declaring equivalence of third country regimes is a task for the national financial services supervisors: i.e., FSA in the UK.

Implementation standards (including effectiveness of supervision)

Information on the extent and quality of supervision of markets may be published by the competent authorities – whether in annual reports or otherwise.

ANNEX 3-I

RELEVANT PROVISIONS OF MiFID**Definition of ‘regulated market’*****Point 14 of Article 4(1):***

“Regulated market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III [of MiFID]

Title III includes the following (Article 40):

- | | |
|--|--|
| <i>Markets must have clear and transparent rules</i> | 1. Member States shall require that regulated markets have clear and transparent rules regarding the admission of financial instruments to trading. Those rules shall ensure that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable. |
| <i>Design of contracts must allow for orderly pricing</i> | 2. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions. |
| <i>Markets must establish arrangements to verify issuers’ compliance with disclosure obligations</i> | 3. In addition to the obligations set out in paragraphs 1 and 2, Member States shall require the regulated market to establish and maintain effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under Community law in respect of initial, ongoing or ad hoc disclosure obligations. Member States shall ensure that the regulated market establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under Community law. |
| <i>Markets must be subject to regulatory oversight</i> | 4. Member States shall ensure that regulated markets have established the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading. |

Commission obligation to publish a list of third country markets considered as equivalent

Article 19:

...

(6) Member States shall allow investment firms when providing investment services that only consist of execution [.....] to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 5 [*appropriateness test*] where all the following conditions are met:

- the above services relate to shares admitted to trading on a regulated market or in an equivalent third country market, [.....]. A third country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title III. The Commission shall publish a list of those markets that are to be considered as equivalent. This list shall be updated periodically.

ANNEX 3-II

DETAILS OF THE “SPECIFIED DISCLOSURE OBLIGATIONS” REFERRED TO IN 2007 REGULATIONS***DIRECTIVE 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on insider dealing and market manipulation (Market Abuse Directive)***

Article 6

All relevant inside information must be disclosed

1. Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers. Without prejudice to any measures taken to comply with the provisions of the first subparagraph, Member States shall ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly.

Delay in publishing inside information must not mislead the public

2. An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. Member States may require that an issuer shall without delay inform the competent authority of the decision to delay the public disclosure of inside information.

Inside information disclosed to a third party must be published simultaneously

3. Member States shall require that, whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3(a), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure. The provisions of the first subparagraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract. Member States shall require that issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.

Transactions of individual members of management in an issuer's shares must be publicly disclosed as soon as possible

4. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them. Member States shall ensure that public access to information concerning such transactions, on at least an individual basis, is readily available as soon as possible.

DIRECTIVE 2003/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

(Prospectus Directive)

Public offerings of a security must not be allowed without prior publication of a prospectus

Types of offer that do not need to be accompanied by a prospectus

Admission of securities to trading on a regulated market must be subject to publication of a prospectus

Article 3

Obligation to publish a prospectus

1. Member States shall not allow any offer of securities to be made to the public within their territories without prior publication of a prospectus.

2. The obligation to publish a prospectus shall not apply to the following types of offer:

(a) an offer of securities addressed solely to qualified investors; and/or

(b) an offer of securities addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors; and/or

(c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50000 per investor, for each separate offer; and/or

(d) an offer of securities whose denomination per unit amounts to at least EUR 50000;

and/or

(e) an offer of securities with a total consideration of less than EUR 100000, which limit shall be calculated over a period of 12 months.

However, any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in this paragraph shall be regarded as a separate offer and the definition set out in Article 2(1)(d) shall apply for the purpose of deciding whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus if none of the conditions (a) to (e) are met for the final placement.

3. Member States shall ensure that any admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.

Article 5

Prospectuses shall contain all the information necessary to enable investors to make informed decisions

The prospectus

1. Without prejudice to Article 8(2), the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.

Prospectuses must contain a summary in brief and non-technical language...

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary. The summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The summary shall also contain a warning that:

with appropriate warnings...

- (a) it should be read as an introduction to the prospectus;
- (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
- (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
- (d) civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50000, there shall be no requirement to provide a summary except when requested by a Member State as provided for in Article 19(4).

A prospectus may be a single document or three separate documents

3. Subject to paragraph 4, the issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

4. For the following types of securities, the prospectus can, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:

(a) non-equity securities, including warrants in any form, issued under an offering programme;

(b) non-equity securities issued in a continuous or repeated manner by credit institutions,

(i) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;

(ii) where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (14). The information given in the base prospectus shall be supplemented, if necessary, in accordance with Article 16, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market. If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each public offer is made as soon as practicable and if possible in advance of the beginning of the offer. The provisions of Article 8(1)(a) shall be applicable in any such case.

In certain cases, a prospectus can be a 'base prospectus'

5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the format of the prospectus or base prospectus and supplements.

The Commission shall adopt implementing measures concerning the format of a prospectus

Article 7

Minimum information

The Commission shall adopt implementing measures regarding the specific information to be included in a prospectus

1. Detailed implementing measures regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2). The first set of implementing measures shall be adopted by 1 July 2004.

Specific matters to be taken account of in various models of prospectus.....

2. In particular, for the elaboration of the various models of prospectuses, account shall be taken of the following:

(a) the various types of information needed by investors relating to equity securities as compared with non-equity securities; a consistent approach shall be taken with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;

(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 50000;

(c) the format used and the information required in prospectuses relating to non-equity securities, including warrants in any form, issued under an offering programme;

(d) the format used and the information required in prospectuses relating to non-equity securities, in so far as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivative instruments, issued in a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;

(e) the various activities and size of the issuer, in particular SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;

(f) if applicable, the public nature of the issuer.

The Commission's implementing measures shall be based on IOSCO standards....

3. The implementing measures referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive.

Article 8

Omission of information

Conditions under which certain information may be omitted.....

1. Member States shall ensure that where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus: (a) the criteria, and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, are disclosed in the prospectus; or (b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and amount of securities which will be offered to the public have been filed. The final offer price and amount of securities shall be filed with the competent authority of the home Member State and published in accordance with the arrangements provided for in Article 14(2).

Circumstances under which the competent authority may authorize omission of certain information.....

2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the implementing measures referred to in Article 7(1), if it considers that: (a) disclosure of such information would be contrary to the public interest; or (b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or (c) such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

Conditions to be met where certain information required by implementing measures is inappropriate....

3. Without prejudice to the adequate information of investors, where, exceptionally, certain information required by implementing measures referred to in Article 7(1) to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.

The Commission shall adopt implementing measures concerning circumstances where omissions may be authorized...

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 2.

Article 10

Information

Issuers must provide an annual document referring to all information published in compliance with their obligations.....

1. Issuers whose securities are admitted to trading on a regulated market shall at least annually provide a document that contains or refers to all information that they have published or made available to the public over the preceding 12 months in one or more Member States and in third countries in compliance with their obligations under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets. Issuers shall refer at least to the information required pursuant to company law directives, Directive 2001/34/EC and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (15).

such document to be filed with the competent authority....

2. The document shall be filed with the competent authority of the home Member State after the publication of the financial statement. Where the document refers to information, it shall be stated where the information can be obtained.

circumstances where such a document is not required...

3. The obligation set out in paragraph 1 shall not apply to issuers of non-equity securities whose denomination per unit amounts to at least EUR 50000.

The Commission may adopt implementing measures relating to the method of publication of the document.....

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 1. These measures will relate only to the method of publication of the disclosure requirements mentioned in paragraph 1 and will not entail new disclosure requirements. The first set of implementing measures shall be adopted by 1 July 2004.

Article 14

Publication of the prospectus

Prospectus shall be filed with the competent authority and made available to the public....

1. Once approved, the prospectus shall be filed with the competent authority of the home Member State and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.

Meaning of 'available to the public'....

2. The prospectus shall be deemed available to the public when published either:

- (a) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought; or
- (b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
- (c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- (d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
- (e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service. A home Member State may require issuers which publish their prospectus in accordance with (a) or (b) also to publish their prospectus in an electronic form in accordance with (c).

Member states may require publication of a notice stating where a prospectus may be obtained

3. In addition, a home Member State may require publication of a notice stating how the prospectus has been made available and where it can be obtained by the public.

Competent authority must publish all prospectuses approved, or a list with hyperlinks....

4. The competent authority of the home Member State shall publish on its website over a period of 12 months, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

Each document making up a prospectus may be published separately...

5. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public, in accordance with the arrangements established in paragraph 2. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.

The text and format of the prospectus made available to the public must be the same as that filed...

If published electronically, paper copies must also be available...

The Commission shall adopt implementing measures concerning the publication of a prospectus

6. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the competent authority of the home Member State.

7. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

8. In order to take account of technical developments on financial markets and to ensure uniform application of the Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2, 3 and 4. The first set of implementing measures shall be adopted by 1 July 2004.

Article 16

Supplements to the prospectus

Certain events taking place between publication of the prospectus and final closing of the offer must be mentioned in a supplement to the prospectus.....

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

Investors may withdraw their agreement to purchase if a supplement is published....

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.

DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive)

Article 4

Annual financial reports

Publication deadline for annual financial reports

1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.

2. The annual financial report shall comprise:

Documents that shall comprise the annual financial report

(a) the audited financial statements;
(b) the management report; and
(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

Where consolidated accounts are required.....

3. Where the issuer is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [15], the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated. Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated.

Requirement for financial statements to be audited....

4. The financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies [16] and, if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Directive 83/349/EEC. The audit report, signed by the person or persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.

*Requirement for a
management report...*

5. The management report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.

*The Commission shall
adopt implementing
measures concerning
the publication of
annual financial
reports*

6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. The Commission shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public. Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.

Article 5

Requirement for half-yearly financial reports....

Half-yearly financial reports

1. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest two months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.

Documents that shall comprise the half-yearly financial report.....

2. The half-yearly financial report shall comprise:

(a) the condensed set of financial statements;

(b) an interim management report; and

(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 4.

Where consolidated accounts are required....

3. Where the issuer is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002. Where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.

4. The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.

Minimum contents of interim management reports...

5. If the half-yearly financial report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

Requirements where half-yearly report is, or is not, audited...

6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 5 of this Article. The Commission shall, in particular:

*The Commission shall
adopt implementing
measures concerning
half-yearly reports*

- (a) specify the technical conditions under which a published half-yearly financial report, including the auditors' review, is to remain available to the public;
- (b) clarify the nature of the auditors' review;
- (c) specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with the international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002. Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.

Article 6

Interim management statements

1. Without prejudice to Article 6 of Directive 2003/6/EC, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year. Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. It shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement. Such a statement shall provide:

- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
- a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

2. Issuers which, under either national legislation or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules shall not be required to make public statements by the management provided for in paragraph 1.

3. The Commission shall provide a report to the European Parliament and the Council by 20 January 2010 on the transparency of quarterly financial reporting and statements by the management of issuers to examine whether the information provided meets the objective of allowing investors to make an informed assessment of the financial position of the issuer. Such a report shall include an impact assessment on areas where the Commission considers proposing amendments to this Article.

Requirements for interim management statements: timing and content....

Interim management statements not required where quarterly financial reports published...

Commission to report to the European Parliament and to the Council by 2010 on the transparency of quarterly financial reporting....

Article 14

Publication requirements where an issuer acquires or disposes of its own shares...

1. Where an issuer of shares admitted to trading on a regulated market acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the home Member State shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

The Commission shall adopt implementing measures concerning the publication of this information

2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1.

Article 16

Additional information

Issuers' obligation to make public any changes in rights attaching to various classes of shares.....

1. The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.

Issuers' obligation to make public any changes in rights attaching to holders of securities other than shares.....

2. The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

Issuers' obligation to make public any new loan issues.....

3. The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Without prejudice to Directive 2003/6/EC, this paragraph shall not apply to a public international body of which at least one Member State is member.

Article 17

Information requirements for issuers whose shares are admitted to trading on a regulated market

Issuers to ensure equal treatment of all holders of shares....

1. The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.

Issuers' obligations to make available to shareholders information regarding annual meetings, proxy arrangements, etc...

2. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated. In particular, the issuer shall:

(a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;

(b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;

(c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and

(d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

Member states to allow issuers to use electronic means of conveying information to shareholders.....

3. For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (h), of the natural persons or legal entities;

(b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;

(c) shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and

(d) any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

*The Commission shall
adopt implementing
measures concerning
the above....*

4. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).

Article 18

Information requirements for issuers whose debt securities are admitted to trading on a regulated market

Issuers to ensure equal treatment of all holders of debt securities....

1. The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking pari passu are given equal treatment in respect of all the rights attaching to those debt securities.

Issuers' obligations to make available to holders of debt securities information regarding annual meetings, proxy arrangements, etc...

2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the issuer is incorporated. In particular, the issuer shall:

(a) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;

(b) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and

(c) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.

In certain circumstances, issuers may hold an annual meeting in another member state...

3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

Member states to allow issuers to use electronic means of conveying information to holders of debt securities.....

4. For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;

- (b) identification arrangements shall be put in place so that debt securities holders are effectively informed;
- (c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and
- (d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

5. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).

*The Commission shall
adopt implementing
measures concerning
the above....*

Article 19

Home Member State control

Any information disclosed publicly must also be filed with the competent authority

1. Whenever the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the competent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site. Where an issuer proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

2. The home Member State may exempt an issuer from the requirement under paragraph 1 in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of this Directive.

Exemptions from above.....

3. Information to be notified to the issuer in accordance with Articles 9, 10, 12 and 13 shall at the same time be filed with the competent authority of the home Member State.

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures. The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:

- (a) enable filing by electronic means in the home Member State;
- (b) coordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive 2003/71/EC.

The Commission shall adopt implementing measures concerning the above....

Article 30

Transitional provisions

*Transitional provisions:
exemptions from
disclosing financial
statements....*

1. By way of derogation from Article 5(3) of this Directive, the home Member State may exempt from disclosing financial statements in accordance with Regulation (EC) No 1606/2002 issuers referred to in Article 9 of that Regulation for the financial year starting on or after 1 January 2006.

Transitional provisions:

2. Notwithstanding Article 12(2), a shareholder shall notify the issuer at the latest two months after the date in Article 31(1) of the proportion of voting rights and capital it holds, in accordance with Articles 9, 10 and 13, with issuers at that date, unless it has already made a notification containing equivalent information before that date. Notwithstanding Article 12(6), an issuer shall in turn disclose the information received in those notifications no later than three months after the date in Article 31(1).

Transitional provisions:

3. Where an issuer is incorporated in a third country, the home Member State may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from drawing up its financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as

(a) the competent authority of the home Member State acknowledges that annual financial statements prepared by issuers from such a third country give a true and fair view of the issuer's assets and liabilities, financial position and results;

(b) the third country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and

(c) the Commission has not taken any decision in accordance with Article 23(4)(ii) as to whether there is an equivalence between the abovementioned accounting standards and

- the accounting standards laid down in the law, regulations or administrative provisions of the third country where the issuer is incorporated, or

- the accounting standards of a third country such an issuer has elected to comply with.

Transitional provisions:

4. The home Member State may exempt issuers only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities.