HM Treasury's Prospectus Regime consultation – response to specific questions

From Gavin Oldham – and as published in Share Radio's commentary

September 2021

Q1 We do agree with the overall approach to reforming the UK Prospectus Regime, but we would ask that it goes still further in pursuing convergence with company reporting legislation: in order to provide a single point of reference for all share buyers, whether in primary or secondary markets. This should be available online, and continuously updated with relevant market-sensitive information.

Q2 We agree with the objectives set out on page 7, and the priority given to the first, for wider participation. In line with the convergence with company reporting legislation which we seek, FSMA should be brought into line with Companies Act legislation in order to ensure a coordinated legal framework. However, we support the proposal for an FCA review, and welcome Clare Coles' resolve to make the regime 'fit for purpose'.

Q3 Our views, that the disclosure requirements for listing should be converged into those dealing with company reporting, would render the need for a separate prospectus surplus to requirement when seeking admission to a regulated market. This would achieve very considerable savings for companies seeking a listing: for example, when Share plc was floated in 2008 on the AIM market, its total prospectus preparation costs exceeded £0.5 million.

Q4 Yes, the FCA should have that discretion: but hopefully a further issue prospectus requirement will be very rare - it would be the exception which proves the rule.

Q5 Yes - but such companies should be encouraged to adopt the enhanced company reporting standards which will render such prospectuses unnecessary.

Q6 This necessary information test in section 4.4 is very appropriate for setting the enhancements required for company reporting, which will do away with the need for a separate prospectus.

Q7 As you rightly say in 4.14, the rules on prospectus content are complex. We support the proposal that the FCA should have discretion and responsibility in order to ensure that the enhanced company reporting regime complies with the appropriate rules.

Q8 There will need to be a line of reference between the FCA and BEIS if our enhanced company reporting proposals are adopted. Annex A is a useful set of provisions, and we would draw particular attention to article 22. Personal investors in shares need the information to be intelligible without a law degree, and there should be a presumption in favour of 'plain English' and against measures designed to protect issuers and their advisors to the detriment of ordinary investors, who should not be excluded from participation in any issue going forwards.

Q9 We support the proposals for forward-looking information, and there should be an expectation that its provision will not be omitted simply for issuer and advisor protection. Continually updated online company reporting disclosure will give ample opportunity to make timely adjustments and include market-sensitive information.

Q10 Yes, the balance is good - but please be aware of our concerns about excessive issuer/advisor protection measures/practice.

Q11 The fact that there have not been any rights issues on the AIM market since 2015 is simply appalling. As regards option 1 and 2, under our proposals for enhanced company reporting there would be no requirement for a prospectus in either circumstances.

Q13 We do agree that there should be such a new exemption, but this will be rendered unnecessary under our enhanced company reporting proposals. In passing, it should be noted that there are aspects of shareowner engagement in company law which are in urgent need of updating: in particular, we would draw attention to the nominal share value thresholds which apply for partaking in circularisations, resolutions and requests for independent audit. We can provide further information as required, and we hope that these will be addressed as part of the overall review, since shareowner participation is a key part of an effective listings regime.

Q14 The 150 person threshold will become irrelevant under our proposals: as stated they, along with the €8 million threshold, have served to distort rather than enhance primary capital raising over the years. It is particularly concerning that these measures highlight an underlying rationale that 'loss of investor protection has been a price worth paying in order to reduce the burden of prospectus preparation for small companies'. If the prospectus did in fact provide investor protection, this would be a very serious shortcoming in regulatory standards – since from the personal investor's perspective his or her risk bears little relation to the size of the issuer company (indeed it may be higher for a small, less well-known company). The fact that it does not just goes to illustrate the negligible value of prospectuses.

Q15 Yes, but all shareowners will benefit if the enhanced company reporting arrangements are adopted.

Q16 The crowd-funding distortion is a disgrace, and the fact that it has gone on for so long should encourage an expression of FCA regret in permitting such a chronic lapse in investor protection standards. We strongly support option 2, as most of the over 3,000 'authorised' firms currently able to handle crowd-funding are not in a position to provide an adequate standard of investor protection. Crowd-funding is currently an 'accident waiting to happen'.

Q17 We strongly support option 2 - a new deference mechanism - since it is essential to foster global personal share ownership under an established right and guidelines which should be agreed by the G7 finance ministers.

Q18 The preferred mechanism would be based on the enhanced company reporting arrangements set out in our response above, which would provide the best prospect of universality. This would be a key feature for implementation of **our 'Shares for Data' proposals** for enfranchising the personal customers of tech giants across the world.

Q19 Unless equivalent enhanced company reporting is available for overseas unlisted companies, we would agree that they should be excluded. Any issue of shares not accompanied by secondary trading arrangements should also be accompanied by clear liquidity warnings. However, there is no reason to treat overseas unlisted companies differently to UK unlisted companies provided that these standards are maintained.

Gavin Oldham OBE

and as published in Share Radio's commentary on 20 September 2021

……

(Note : there appears to be some discrepancies between the list of questions in Annex B and those embedded in the main paper; so please let us know if there is anything on which you require further information.)