

Lalitha Colaco-Henry
Primary Markets Policy Department
The Financial Services Authority

March 12, 2008

CP 07/24: IMPLEMENTATION OF THE 8TH COMPANY LAW DIRECTIVE

Dear Ms Colaco-Henry

The International Capital Market Association (**ICMA**) is pleased to respond to the Consultation Paper 07/24: Implementation of the 8th Company Law Directive (the **Consultation Paper**).

ICMA is the self-regulatory organisation and trade association representing constituents and practitioners in the international capital market worldwide. ICMA's members are located in 49 countries across the globe, including all the world's main financial centres, and currently number some 400 firms in total.

We attach our response as **Annex** to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,



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ANNEX

General comments

We recognise the importance of a modern regulation of the audit profession introduced by the 8th Company Law Directive (the **Directive**) and welcome the opportunity to comment on the proposals for its implementation.

We have participated in the various consultations leading up to the adoption of the Directive as well as in the work done on EU and national level on its proper implementation and application. We refer in particular to our submissions:

- to the European Commission regarding the treatment of non-EEA auditors of March 2007¹;
- to the European Commission regarding possible limitation of auditors' liability of March 2007²; and
- to the DTI (as it then was) regarding the UK implementation of the Directive of May 2007.³

We have been focusing only on certain aspects of the Directive which are of key importance to the operation of the international securities markets and are broadly satisfied with the way they have been, or are proposed to be, implemented in the UK. We support the proposals made in the Consultation Paper and comment only on certain technical aspects of these proposals.

Specific comments: Registration of non-EEA auditors

Certainty regarding registration or non-registration of a non-EEA auditor and transparency of a regime applicable to a particular auditor is of key importance to non-EEA issuers, banks arranging their securities offerings and investors. This is because of the sanction imposed by the Directive for non-registration, i.e., loss of legal effect of audit reports issued by such auditors. Such a sanction – which effectively closes European regulated markets to such an issuer – should be triggered only in limited, clearly specified and predictable circumstances.

We believe that the unqualified requirement for a non-EEA auditor of a non-EEA issuer admitted to trading on a UK regulated market to be registered in the UK may need to be reconsidered. This is a reflection of the difficult discussions which we understand are ongoing on the EU level about:

- Declaring audit regimes of some non-EEA countries as equivalent or granting them a transitional period during which some of the Directive requirements will not apply. This might result in the registration requirement being disapplied or simplified for auditors from such countries, something which the FSA rules should accommodate. We refer in particular to the draft Commission decision published on 28 January 2008.⁴ The language of the draft decision also raises, among other things, the question of (i) how the market participants will be able to ascertain that an auditor from a non-EEA country subject to the transitional regime has provided to the competent authority the information required to disapply Article 45 of the Directive and (ii) whether the UK will impose national registration requirements permitted by

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http://www.icmagroup.org/market_practice/Advocacy/eu_statutory_audit/eu_statutory_audit.Par.0001.ParDownloadFile.tmp/ICMA%20Response%20to%20EC%20CP%20re%20Non-EEA%20auditors.pdf

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http://www.icmagroup.org/market_practice/Advocacy/eu_statutory_audit/eu_statutory_audit.Par.0002.ParDownloadFile.tmp/ICMA%20Response%20to%20EC%20CP%20re%20Auditors%20Liability.pdf

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http://www.icmagroup.org/market_practice/Advocacy/eu_statutory_audit/eu_statutory_audit.Par.0003.ParDownloadFile.tmp/ICMA%20Response%20to%20DTI%20CP%20re%20Statutory%20Audit%20Directive.pdf

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http://ec.europa.eu/internal_market/auditing/docs/revisions/17_01_08_en.pdf

the draft decision and what the consequence will be of potential non-compliance with such registration requirements. If these are not answered in the final Commission decision, the FSA – in co-operation with the other UK agencies involved – may need to address them locally. The register of auditors, for example, will need to indicate whether a particular auditor has provided the information required to disapply Article 45 of the Directive or not.

- Co-operation between Member States where a non-EEA audit firm should fall to be registered in several Member States. This might lead to introduction of a kind of a “home Member State” concept where other Member States would to a certain degree defer to such a Member State.