



## Minutes of the QCA Legal Expert Group (the "Committee")

**Held on:** Tuesday 21 May 2019, 9.00am-10.30am

**Venue:** Blake Morgan, 6 New Street Square, London, EC4A 3DJ

### Present:

Maegen Morrison (Co-Deputy Chair)	Hogan Lovells International LLP	MM
Daniel Bellau	Hamlins LLP	DB
Andrew Chadwick	Clyde & Co LLP	AC
Paul Cliff	Gately PLC	PC
Claudia Gizejewski	Lexis Nexis	CG
Sarah Hassan	Practical Law Company Limited	SH
David Hicks	Charles Russell Speechlys LLP	DH
Kate Higgins	Mishcon de Reya LLP	KH
Martin Kay	Blake Morgan LLP	MK
Jonathan King	Osborne Clarke	JK
Nicola Mallet	Lewis Silkin	NM
Nicholas McVeigh	Mishcon de Reya LLP	NMV
Catherine Moss	Shakespeare Martineau LLP	CM
Richard Phillips	KPMG UK LLP	RP
Jaspal Sekhon	Hill Dickinson LLP	JS
Harriet Serpis	CMS	HS
Tim Ward	Quoted Companies Alliance	TW
Anthony Robinson	Quoted Companies Alliance	AR
Jack Marshall	Quoted Companies Alliance	JM

### In attendance:

Helen Boyd	FCA	HB
Babatunde Carew	FCA	BC
Reena Dattani	FCA	RD
Frances Hutchinson	FCA	FH

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## 1. WELCOME TO Helen Boyd, Babatunde Carew, Reena Dattani and Frances Hutchinson of the FCA.

MM welcomed HB, BC, RD and FH to the Legal Expert Group meeting.

The FCA proposed to cover the following topics during the meeting:

- SME growth market regulations;
- The future of regulation;
- Issuer event; and
- MAR review.

### SME growth market regulations

BC gave an update on the SME growth market regulations. He explained that the FCA were attempting to reduce the administrative burden for SMEs and increase their growth. As such, the FCA intends to make amendments to the Market Abuse Regulation. The scope of the regulation would be amended in the following areas:

- Delayed disclosure – lighten the burden on SMEs and monitor disclosure;
- Insider lists – to maintain only a list of those who regularly have access to information as it is too much of a burden to keep updating the list; and
- PDMRs – revision of the disclosure of transactions.

### The future of regulation

BC highlighted that the FCA are currently running a podcast with FCA Chief Executive, Andrew Bailey, and that he recently delivered a speech at Bloomberg, both on the future of regulation. The current emphasis was on the FCA's duty of care. The duty of care was echoed within the FCA's 2019/20 Business Plan that was published on 17 April 2019. Within the Business Plan, it was outlined that the FCA would review the costs and benefits of regulation for SMEs to acquire an understanding of how companies interact with regulation. In terms of the FCA's priorities, there may be some scope to assess the listing rules.

### Issuer event

The FCA were hoping to hold an event for issuers by the end of the year, which would predominantly be for small and mid-size companies. The overarching aim of the event would be to increase contact and provide guidance in order to help issuers understand regulation. In order to increase the awareness surrounding MAR and address the issues companies face when complying with MAR, the FCA are likely to include this as one of the topics that the event will cover.

The possibility of having a QCA and FCA event on MAR was discussed. It was proposed that the event would target both companies and their advisers. In order to advertise the event, information could be sent out through law firms and registrars, as well as ICSA and company secretaries. The ICSA/GC100/QCA dealing code was highlighted as a potential topic to discuss during the event.

The following ideas were proposed by LEG members to include within the event:

- Running through case studies;
- Having a broker as a speaker;
- Making a decision tree; and

- Having an inside information test.

FH outlined the areas the FCA were proposing to cover within the event:

- Why MAR is important
  - Disclosure Guidance and Transparency Rules
  - SME regulations
- Consequences of Brexit
- How the FCA work with AIM
- Statistics
  - Delayed disclosures
  - Enforcement action
- Monitoring and common non-compliance
- Premium listing and sponsors
- Developments, cyber issues, social media policy
- MAR systems and controls

### MAR review

As the work on SME growth market regulations is nearing completion, the FCA will switch its focus to a review of MAR, where they will review its fundamental concepts. It was asked what the Committee would like to see changed in relation to MAR. TW explained that if there were FCA/UK perspectives, the QCA could help to push these in the direction of the EU through European Issuers.

It was mentioned that the FCA had not found it easy to engage with smaller issuers on MAR, particularly in relation to their questionnaire. The QCA/Thomson Reuters survey on MAR was highlighted and offered to be shared with the FCA. Acquiring the engagement of smaller companies was raised as an issue, due to their proclivity to overlook the FCA and go straight to the London Stock Exchange.

FH asked whether the introduction of a moral code or an industry standard would be useful for helping companies with MAR. It was explained that there already was a dealing code, which had been produced by the ICSA, GC100 and the QCA. Other areas that the review would focus on will be making the dealing periods work better, as well as improving market soundings and, specifically, identifying those who are open to receive soundings.

A consultation paper has been drafted and will go out shortly through ESMA. The consultation will not just be a homogenous consultation and will include questions directly applicable for SMEs.

The FCA's capacity following the MAR review will depend on the political front, and, in particular, the level of equivalence post-Brexit. One potential area to visit would be that of standard listing.

MM thanked HB, BC, RD and FH for their time. HB, BC, RD and FH left the meeting.

## **2. APOLOGIES**

Apologies for absence were received from Danette Antao, Paul Arathoon, Ashmi Bhagani, Phillipa Chatterton, Simon Cox, Murdoch Currie, Tunji Emanuel, Kate Francis, Francine Godrich, Stephen Hamilton, Alex Iapichino,

Nicholas Jennings, Julie Keefe, Nicholas Narraway, Kieran Rayani, Donald Steward, Kierna Stone, Mark Taylor, Gary Thorpe, Jane Wang, Robert Wieder and David Willibe.

### 3. MINUTES OF LAST MEETING

The minutes of the meeting of the Committee held on 19 March 2019 were tabled and approved without amendment.

### 4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p><b>General market review. Invitation for expert group members to share views and experiences of the market.</b></p> <p>The group discussed their experiences and opinions of the market over recent months.</p> <p>The following views were raised by the group:</p> <ul style="list-style-type: none"> <li>• M&amp;A activity of listed companies had decreased considerably in recent months and it was unlikely that there would be a spike in public M&amp;A.</li> <li>• The general consensus was that the markets were currently very quiet.</li> </ul>	None.
b)	<p><b>Chairs to feedback to the group on the proposed draft wording to submit to the Pre-Emption Group for inclusion in the next statement on the application of its Statement of Principles</b></p> <p>MM led a discussion about the proposed draft wording to submit to the PEG for inclusion in the next statement on the application of its Statement of Principles.</p> <p>A point was raised that there was no reference to cash positions and the amount being raised. The amount of fund-raise and the working capital position of the company should be included alongside “market capitalisation, stated growth objectives and shareholder profile” for the factors determining what is reasonable.</p>	<p><b>ALL</b> to submit comments on the draft to <b>JM</b>.</p> <p><b>JM</b> to amend the draft wording to submit to the PEG.</p>
c)	<p><b>Recently submitted and outstanding consultations:</b></p> <ol style="list-style-type: none"> <li>i. <b>NEX Exchange – Proposed amendments to the NEX Exchange Growth Market for issuers (deadline 31/05/19)</b></li> <li>ii. <b>BEIS – Independent review of the FRC: initial consultation on the recommendations (deadline 11/06/19)</b></li> </ol> <p>AR gave a brief overview of the consultations the group are responsible for.</p>	<p><b>ALL</b> to submit comments on outstanding consultations to <b>JM</b>.</p>
d)	<b>Future meetings and speaker priorities for 2019.</b>	

	The group proposed to seek discussions with Jonathan Rees, Senior Associate at the FCA, with a focus on the structure of the markets and standard listing, as well as the prospectus regulation.	<b>JM</b> to contact potential guest speakers.
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## 5. COMMUNICATIONS AND PUBLICATIONS

	ITEM	ACTION
a)	<b>The project for updating the QCA Audit Committee Audit Guide is progressing and is on course for release in June.</b>  This was tabled for information only and not discussed.	None.
b)	<b>YouGov are surveying companies that adopted the QCA Corporate Governance Code to identify any ways in which we might be able to improve the Code and see if we can find evidence that following the QCA Code has helped companies. This will be published in May/June.</b>  This was tabled for information only and not discussed.	None.
c)	<b>Henley Business School have been commissioned by the QCA and Downing LLP to undertake a research project to understand the role that NEDs play in smaller growth companies. They are currently in the process of collating the findings from the interviews and focus groups they conducted and will be released in May/June.</b>  This was tabled for information only and not discussed.	None.
d)	<b>The bi-annual QCA Small &amp; Mid-Cap Sentiment Index survey is currently in the field and is being administered by YouGov. This is the 22<sup>nd</sup> wave of the survey going back eight years. All QCA members are encouraged to contribute their views.</b>  This was tabled for information only and not discussed.	None.

## 6. ANY OTHER BUSINESS

AR mentioned that Hardman & Co. had recently published a report in cooperation with the QCA that analyses the contribution made by small and mid-size quoted companies. The key findings of the report are as follows:

- Small and mid-size companies account for 93% of all companies on UK public equity markets, but just 20% of market capitalisation;
- They employ over 3 million people - an estimated 11% of total UK private sector employment; and
- Contribute over £26bn in taxes - about 5% of total UK tax take.

## 7. NEXT MEETING

Tuesday 9 July 2019, 9.00am – 10.30am (Venue: Clyde & Co LLP, St. Botolph Building, 138 Houndsditch, London, EC3A 7AR)