

Ms X
Department for Business, Energy and Industrial Strategy
1 Victoria St
London
SW1H 0ET

[Email address]

[Date]

Dear Ms X,

Amending the company law requirement relating to employees' share schemes to pay nominal value for shares

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of **EuropeanIssuers**, which represents over 9,000 quoted companies in fourteen European countries.

We write to highlight concerns with regards to the company law requirement relating to employees' share schemes to pay nominal value for shares.

The Quoted Companies Alliance Share Schemes Expert Group has contributed to drafting this letter. A list of members of the Expert Group is at Appendix A.

Our members' concerns

We believe that the Government should consider, for the purposes of employees' share schemes only, removing the requirement stated in company law to pay at least the nominal value on the issue of shares. The primary reason for this is to reduce the administration and regulatory hurdles on employee share participation in companies of all sizes, thus making the awarding of shares easier. We believe that a change to this fundamental principle would support our members, small and mid-size quoted companies, although we believe that this change would also help SMEs more generally.

Many companies wish to allow employees to acquire 'free shares' in the company. This might be achieved by the award of options under an Enterprise Management Incentive (EMI) or by a Share Incentive Plan (SIP), both of which benefit from statutory tax advantages, primarily under the Income Tax (Earnings and Pensions) Act 2003, Part 7.

Company law, however, prohibits the 'free' issue of shares requiring a nominal payment. This might be fractions of a penny per share and so add little to the capital resources of a company. An employees' share scheme is likely to be resourced by the company directly or indirectly paying the sums due to satisfy the

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nominal value requirement. We also note that Sections 542 and 580 of Companies Act 2006 require shares in a limited company to have a fixed nominal value and not at a discount.

The solution to issuing 'free shares' is typically to create an employee trust that buys and holds the shares prior to distribution to employees. Trusts can have additional benefits at times but frequently they are an additional cost and administrative burden to solve a technical issue.

We believe that if this requirement was altered, it would remove a lot of unnecessary administrative and regulatory burden for small and mid-size quoted companies seeking to provide share incentives for their employees.

Our suggested solution

We propose to retain the longstanding legal concept of share capital and the requirement for that to be paid-up, but to include a deeming provision. Where shares are issued for the purposes of an employees' share scheme, according to the definition in section 1166 of Companies Act 2006, it is deemed that sufficient non-cash consideration has been provided by employees to satisfy the nominal value without the requirement for any further formalities, including a requirement to value the non-cash consideration for these purposes.

If you would like to discuss our suggestions in more detail, we would be very happy to attend a meeting and see if there might be an opportunity for such an amendment to the legislation.

Yours sincerely,



Tim Ward
Chief Executive

Quoted Companies Alliance Share Schemes Expert Group

Fiona Bell (Chairman)	RSM
Emma Bailey (Deputy Chairman)	Fox Williams LLP
Philip Fisher	BDO LLP
Andy Goodman	
David Daws	Blake Morgan
Caroline Harwood	Burges Salmon
David Fuller	CLS Holdings PLC
Nicholas Stretch	CMS Cameron McKenna LLP
Juliet Halfhead	Deloitte LLP
Danny Blum	Eversheds LLP
Rory Cray	FIT Remuneration Consultants
Shofiq Miah	Fox Williams LLP
Isabel Pooley	Grant Thornton UK LLP
Matthew Ward	Hewitt New Bridge Street
Sara Cohen	Lewis Silkin
Liz Hunter	Mazars LLP
Stephen Diosi	Mishcon De Reya
Stuart James	MM & K Limited
Graham Muir	Nabarro LLP
Andrew Quayle	Olswang
Karen Cooper	Osborne Clarke
Sue El-Hachmi	
David Firth	Penna Consulting PLC
Stephen Chater	Postlethwaite Solicitors
Robert Postlethwaite	
Daniel Hepburn	PricewaterhouseCoopers LLP
Jennifer Rudman	Prism Cosec
Martin Benson	RSM
Dave Bareham	Smith & Williamson LLP
Barbara Allen	Stephenson Harwood
Anika Chandra	
Justin McGilloway	Wedlake Bell LLP