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The Quoted Companies Alliance

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cp12_02@fsa.gov.uk

30 April 2012

Dear Sirs,

Financial Services Authority - CP12/2: Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules.

INTRODUCTION

The Quoted Companies Alliance is a not-for-profit membership organisation working for small and mid-cap quoted companies. Their individual market capitalisations tend to be below £500m.

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

The Quoted Companies Alliance Legal Committee, Corporate Governance Committee, Markets and Regulations Advisory Group and Corporate Finance Advisory Group have examined your proposals and advised on this response. A list of committee members is at Appendix A.

RESPONSE

We welcome the opportunity to respond to this consultation and have examined the consultation from the point of view of those issues that may affect small and mid-cap quoted companies. We have therefore focused particularly on:

Chapter 1 – Overview: We have provided detailed comments on Question 1 regarding potential changes to the Premium Listing rules. As a summary, we believe that it is particularly important for the FSA to strike the right balance here – while it is important to address any practices that may be detrimental to London's markets and investors, this must be considered in the context of and balanced with retaining the attractiveness of the premium listing segment to issuers. If the premium listing segment imposes too restrictive requirements, companies will choose the standard listing option, or move to exchange regulated markets or overseas. And this trend has already started – over the last ten years there has been a dramatic fall in the number of companies with a Main Market listing – with 1253 companies on the Main List in 2000 to 587 in 2011.[1]

Chapter 2: Reverse Takeovers: We believe that many of the proposed changes are a codification of general market practice. We note however that these proposals extend the application of the reverse takeover regime to standard listed companies – and would query how this change may erode the FSA's objective of having a 'standard listing', which represents an EU-minimum directive listing option for London. We note that there are very few standard listed companies on the Main List and we would

[1] These numbers exclude convertibles, debentures and loans, company bonds, equity and non-equity investment instruments and preference shares and are based on year-end statistics available from the London Stock Exchange (http://www.londonstockexchange.com/statistics/historic/company-files/company-files.htm)

therefore ask for the FSA to provide some clarity over its view on the purpose of the standard listing category.

Chapter 3: Sponsors: We note that many of the proposed changes here appear to be bringing the sponsor regime closer to AIM's Nominated Adviser regime and would query whether this is an appropriate approach, seeing as NOMADs are required to be retained at all times for AIM companies and a sponsor is only necessary when companies on the Main List are undertaking a transaction. While we support some of the changes, we believe there are areas were the FSA may be taking a too prescriptive approach, such as the revised definition of sponsor services, requiring sponsors to provide explanations of how, or confirmation that, the Listing Rules are being complied to, and the amendments in relation to sponsor communications and standard of care. Finally, we do not agree with the proposal to no longer require sponsors to submit Conflicts Declarations – we believe these are a useful support to the sponsor requirements.

Chapter 4: Transactions: While we have not responded to the individual questions in this section, we agree with the proposed changes as they seem to codify existing guidance.

Chapter 6: Externally Managed Companies: We support these proposals and do not have any strong objections.

We have included detailed responses to the questions in the chapters noted above.

Chapter 1 – Overview (Premium Listing Rules)

Question 1

What, if any, changes to the Listing Rules do you believe may be necessary to provide additional protection to investors?

We understand that there are broadly two concerns which have been raised, first, that the premium listing standard has been tarnished by issuers with lower corporate governance standards obtaining a premium listing and secondly, concerns raised (particularly from buy-side investors) that some companies which have a premium listing do not have adequate standards of corporate governance and that their inclusion in the FTSE indices means that certain types of investors are required to invest in those companies.

The consultation paper sets out certain suggestions for remedying the above perceived faults, to which we respond in detail below. However, in terms of general comments, we believe that the premium listing standard is of value to the UK market and we agree that if there are practices which are in danger of tarnishing the attractiveness of a premium listing to investors that these should be carefully considered. However, it is also important that this is balanced against the need to retain the attractiveness of the premium listing segment to issuers, particularly in the light of increased global competition amongst overseas exchanges. A functioning market must be attractive to all types of issuers (assuming that they meet the criteria for listing in a particular segment) and, given the broad range of issuers, it seems to us that it is dangerous to try to impose a one size fits all regime, particularly in respect of corporate governance. If the premium listing standard becomes one which imposes inflexible requirements, it may result in issuers (who would otherwise be suited for premium listings) to seek a standard listing, or a listing of GDRs or an admission to the AIM, or, of course, to seek a listing on an overseas exchange. This may result in being more detrimental for investors as fewer companies will be listed with the higher standards that a premium listing provides.
On the specific suggestions raised in the consultation paper:

1. *Enhancing the rights of minority shareholders by giving them rights of veto over particularly important resolutions such as the election of directors.*

We do not support the proposal to give minority shareholders the rights of veto over important resolutions.

There is an implicit assumption in suggestions of granting greater powers to minority shareholders that doing so will have the effect of raising corporate governance standards whereas majority shareholders with the same powers abuse corporate governance standards. This is a difficult assumption to prove.

There is no guarantee that minority shareholders, given powers of veto, will act in a way that is "better" than a majority shareholder will in terms of corporate governance matters. Indeed, given the minority shareholder's lower economic stake in the company, there may well be a risk that they are incentivised to act more in their own short-term interests than in the company's interest.

There is also a concern that granting such rights to minority shareholders will lead to an increase in shareholder activism motivated by political or environmental concerns, particularly in companies engaged in sensitive industries. Many minority shareholders are passive investors and granting veto rights to minority shareholders may simply result in decisions being made in respect of the company by shareholders who are motivated by extraneous concerns. In addition, such an amendment would cut across shareholder rights of ownership and would appear to be a fundamental departure from principles outlined in company law.

2. *Reinstating / strengthening the previous LR 3.12 requirements that as conditions of listing that companies with controlling shareholders must be capable of carrying out their business independently of the controlling shareholders.*

We believe that it is appropriate that a listed company should be able to carry out its business independently of the controlling shareholders. We believe that in practice, however, that despite the removal of the LR 3.12 provisions, the majority of listed companies with controlling shareholders do have some type of relationship agreement in place and such an agreement is often required to be put in place by the sponsor to ensure that the corporate governance arrangements described in the prospectus remain in place post listing. The content of relationship agreements does vary so if the Listing Rule requirements are to be reintroduced, we think that it is important that guidance is given as to the minimum content of such an agreement. Again, however, a balance needs to be struck to ensure that any minimum content requirements are sufficiently flexible to take into account the differing characteristics of issuers.

3. *Introducing a new free float requirement that effectively allows minority shareholders to determine the governance arrangements of the company.*

The comments made above in respect of the assumption that minority shareholders will use their powers to enhance corporate governance standards apply equally to this suggestion. Given that many companies seek a premium listing due to the benefits of being included in the FTSE index, it seems to us that the better route is for amendments to be made to the criteria for inclusion in the FTSE indices rather than granting additional minority shareholder rights to determine corporate governance arrangements. It seems to us that this is a more effective way of ensuring that majority shareholders are incentivised to comply with an effective corporate governance regime rather than assuming that minority shareholders will act in a way that enhances corporate governance.

It may also be useful to provide additional disclosure in respect of non-UK applicants to summarise what rights shareholders have in the issuer's country of incorporation so that potential minority shareholders have a better idea of what they are investing in.

4. *Strengthening the related party transaction requirements / disclosures*

Whilst it is sensible to impose approval and disclosure requirements in relation to some related party transactions, we think that it is important that a balance is retained. It should be borne in mind that some companies with controlling shareholders benefit from being able to enter into transactions with their shareholders and it should not be the case that all companies with controlling shareholders are penalised because there are concerns over a few companies. We think that there are adequate protections within the current Listing Rules. We think that it would be overly burdensome, for example, to extend the related party transaction approval and disclosure requirements to all transactions between a company and its related parties. It is notable that recent amendments to these rules have

tended to relax rather than strengthen them (for example, removing 50/50 joint venture parties from the definition of a related party).

Chapter 2 - Reverse Takeovers

Question 2

Do you agree with the proposal to amend the Listing Rules (LR 5.6.2R) to narrow the reverse takeover exemption so that it only applies to listed issuers acquiring another listed issuers listed within the same listing category?

While we support this proposal and understand that this change is being made to avoid companies from obtaining a listing without being subject to full regulatory requirements, it will have the effect of reducing flexibility in that companies with standard listings are now brought into the reverse takeover regime and therefore subject to more regulation.

As noted in our introduction, the standard listing segment was apparently created to develop an EU-minimum directive listing category. By bringing these companies into the reverse takeover regime, it seems as though standard listed companies will be subject to more than EU-minimum directive requirements and the original intention for this category may be being eroded. Therefore, as outlined in our introduction, we would ask the FSA to provide clarity on the purpose of the standard listing category.

Question 3

Do you agree that the proposed guidance on a fundamental change (LR5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?

We are not certain that adding key indicators are going to help in making the assessment of a 'fundamental change.' There is always a danger that by setting out guidance as to what constitutes fundamental change, this risks becoming prescriptive and/or subject to subjective assessment. In particular the reference to the "impact on end users and suppliers" is uncertain. For example, would a major change to the board of directors constitute a fundamental change?

Question 4

Do you agree with the proposed changes to codify within the Listing Rules (LR5.6) the existing practice to contact the FSA as soon as possible once a takeover is agreed or details of the transaction have leaked, to discuss whether a suspension is appropriate?

We support this proposal to codify the existing practice.

Question 5

Do you agree with the proposal to amend the Listing Rules (at LR5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

We agree.

Question 6

Do you agree with the proposal to amend the Listing Rules (at LR 5.6) to allow a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without rendering the enlarged group ineligible?

We agree.

Question 7

Do you agree with the proposal to amend the Listing Rules (LR5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?

We agree with the proposal. However, we do have some concern about the timing requirements in relation to the submission of an eligibility letter. We believe that requiring the eligibility letter to be submitted not less than 20 business days before an announcement could give rise to leakages of information, which may have an adverse effect on the market.

Question 8

Do you agree with the proposal to delete LR 10.2.3R allowing an issuer with a premium listing undertaking a reverse takeover, to be treated in certain circumstances as a class 1 transaction?

No, we do not agree. Although there are circumstances when the satisfaction of eligibility criteria would enable a company to avoid suspension and cancellation of the listing, the existing provisions have merit where the conditions are met and allow a company to progress with a small reverse takeover, where there is no change in board and voting control. As such, we believe there is merit in having this exemption retained.

Chapter 3 - Sponsors

Question 9

Do you support the proposal to amend the Listing Rules (LR8.2.1R(6)) so that for smaller related party transactions a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

We support this proposal, as it makes the rules around sponsors consistent.

Question 10

Do you support the proposal to amend the Listing Rules (LR 8.2.1R(7)) so that for Related Party Circulars a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

We support the proposal for the same reasons above.

Question 11

Do you support the proposal to amend the Listing Rules (LR 8.2.1(9)) to require a premium listed company to appoint a sponsor to discuss with the FSA whether a suspension of the listing is appropriate, before announcing a reverse takeover (that has been agreed or is in contemplation or where details of the reverse takeover have been leaked)?

We support this proposal, as it will reinforce the need to consult with the FSA appropriately.

Question 12

Do you support the proposal to amend the Listing Rules (LR 8.2.1R(10) and LR8.2.1R(11)) so that where the target of a reverse takeover is not subject to a public disclosure regime, the premium listed company is required to appoint a sponsor in order to make a confirmations regarding the issuer's declarations, to the FSA?

We support this proposal, but note that sponsors will also require specialist advisors (e.g. reporting accountants) to support their confirmations to the FSA.

Question 13

Do you support the proposal to amend the Listing Rules (LR8.2.1R(12)) to require a premium listed company to appoint a sponsor for the purpose of submitting the eligibility letter required as a result of a reverse takeover?

We support this proposal.

Question 14

Do you support the proposal to amend the Listing Rules (LR8.2.1R (13)) to require a sponsor to be appointed in relation to severe financial difficulty letters?

We support this proposal.

Question 15

Do you support the proposal to amend the Listing Rules (LR8.2.1R(14)) to require a sponsor to be appointed in relation to the acquisition of a publicly traded company?

We support this proposal.

Question 16

Do you support the proposal to amend the Listing Rules in respect of the definition of sponsor services to include all sponsor communications with the FSA in connection with the sponsor service?

We have concerns over this proposal, primarily around extending the definition to include more informal consultation and communication with the FSA (such as calls to the UKLA Helpdesk, assuming this service is retained going forward). At the time of these informal conversations, a sponsor may not be in a position to take 'all reasonable steps' to ensure that the communication or information is, to the best of its knowledge and belief, accurate and complete in all material respects.

As such, we believe that LR8.3.1AR(2) should be amended so that the scope does not apply to all information, but only information material to the sponsor service being provided, and that the timing requirement for relevant information be amended to require it to be provided on a timely basis, rather than immediately. Sponsors may need time to verify information ahead of a conversation with FSA and the proposed wording does not leave room for delay.

Question 17

Do you support the proposal to amend the Listing Rules (LR8.3.1R(1A)) so that a sponsor is required to provide any explanation or confirmation as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company?

While we understand that this proposal is attempting to codify existing practice, we do not support the new wording of the proposal. The inclusion of 'any…confirmation' goes beyond existing practice and allows the FSA excessive scope to require confirmations from sponsors not currently specifically required under the Listing Rules. The proposal also notes that sponsors should 'provide' details, rather than 'obtain' details, and assumes that the sponsor is in possession of the information, which is often not the case – they are often reliant on issuers and other advisors for information.

For instance, in relation to a transaction not requiring admission of new shares, the scope of responsibility by the Sponsor for the issuer is greatly expanded to compliance with all the Listing Rules, when a Sponsor has previously been reviewing the compliance of the circular and not necessarily all continuing obligations compliance. This may cause issuers concerns with appointing new Sponsors as the associated costs will be higher to satisfy this type of responsibility. This may make the market less competitive to the detriment.

Question 18

Do you support the proposed amendments to the Listing Rules (LR8.3.1AR) in relation to sponsor communications and standard of care?

As stated in our response to Question 16, informal communications may be difficult to meet the standard of taking "all reasonable steps" and to meet the test of completeness.

Question 19

Do you support the proposed amendments to the Listing Rules (LR 8.3.2AG) in relation to sponsor communications that seek to reinforce the responsibility of the sponsor for communications with the UKLA, in instances where a sponsor relies on representations made by the listed company or applicant or a third party?

We support the proposed amendments, but we note our response to Question 16 where we believe the wording should be altered to decrease the scope of LR8.3 and allow for more flexibility.

Question 20

Do you support the proposal to amend the Listing Rules (LR 8.3.5BR) to introduce a Principle of Integrity for sponsors?

We support this proposal.

Question 21

Do you support the proposal to amend the Listing Rules (LR8.3) to clarify that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions under LR8?

We support the proposal. However, the proposed addition of LR8.3.12AG is confusing. We believe the FSA should add more guidance on when, before providing a sponsor service, the obligations commence. We believe that requiring conflicts checks when sponsors are just generally advising on the application of the Listing Rules or performing very early stage class tests would seem to be disproportionate to the risk posed. More importantly adding further process at such an early stage could discourage issuers from seeking early planning or advice from sponsors on possible transactions, which would not be promoting best practice on the market.

Question 22

Do you support the proposal to amend the Listing Rules (LR8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?

We support this proposal.

Question 23

Do you agree with the proposal to amend the Listing Rules (LR 8.7.8) so that sponsors are required to notify the FSA of matters that would be relevant to the FSA in respect to: market confidence; reorganisations; and, ongoing approval as sponsor?

We support this proposal.

Question 24

Do you support the proposal to amend the Listing Rules (LR 8.7.21AG) so that sponsors are required to submit a cancellation request in the event that they are unable to provide the requisite assurance of ongoing eligibility?

We believe the wording in LR8.7.21AG is too prescriptive. Wording should be added so that the requirement to submit a sponsor cancellation request is required unless agreed with the FSA.

Question 25

Do you support the proposal to amend the Listing Rules (LR8.7 and LR 8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?

We do not support this proposal, as we believe that the current Conflicts Declarations are sufficient in relation to the ongoing obligation to comply with overarching conflicts identification and management principle. We believe that Conflicts Declarations are a useful support to the sponsor requirements, which emphasises and reminds of the need to consider conflicts.

Question 26

Do you support the proposal to amend the Listing Rules (LR8.6.17R and LR 8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

We support this proposal as it removes the duplication requirement for sponsor's annual confirmation.

Question 27

Do you support the proposal to amend the Listing Rules (LR8.6.5R) to introduce a specific obligation on premium listed companies and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA?

We support this proposal.

Question 28

Do you agree with the proposed amendments set out in paragraph 3.45?

We have added some comments below on the minor proposed drafting changes:

(a) We support the change to LR8.3.2G.

(b) The change to LR8.3.5AR clarifies the sponsor's whistleblowing responsibilities. As stated above, we believe this should be highlighted by the UKLA to issuers to support sponsors' compliance with this rule.

(c) We support the addition of LR8.4.1R(4) covering when listing particulars are issued (mirroring requirements for when prospectuses are issued).

(d) We support this amendment if the proposed LR6.1.1AR is added, as it serves to make the rules consistent.

(e) – (j) We support these amendments.

(k) With regard to the change to the rules around the sponsor annual confirmation, requiring the provision of "evidence of the basis upon which [a sponsor] considers that it meets [a] criterion", we

believe this does not adequately capture the need for sponsors to explain the basis on which the sponsor meets the criterion. We would propose this should be re-worded to require that sponsors "properly explain the basis upon which" they comply with requirements. If this does not capture the FSA's intention in making this amendment, we would welcome further explanation around this change.

(l) We do not support the deletion to references to Conflicts Declarations, given the views expressed in our response to Q17, but support the deletions to regular reviews given the views expressed in our response to Q18.

(m) We support these amendments.

Chapter 6 - Externally Managed Companies

Question 67

Do you support the proposals to amend the Prospectus rules (PR 5.5.3) and the Disclosure rules and Transparency rules (DTR 3.1) to ensure the principals of the advisory firm are responsible (in addition to the company and its directors) for any prospectus the company publishes in the UK and to clarify that they are subject to transparency rules in their share dealings?

We support the changes. Given that the Principals of the advisory firm are in effect those performing the function of officers of the issuer, we do not see any reason not to treat them as such from the point of view of accountability.

Question 68

Do you support the proposals to amend the Listing Rules (LR6.1) so that commercial companies featuring this structure do not qualify for the premium listing accreditation?

We do not have a strong view on this, but understand and do not disagree with the rationale that a Premium listing should be reserved for companies with high standards of governance and accountability.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

THE QUOTED COMPANIES ALLIANCE CORPORATE FINANCE ADVISORY GROUP

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APPENDIX B

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the Quoted Companies Alliance represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The Quoted Companies Alliance is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

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

Quoted Companies Alliance's Aims and Objectives

The Quoted Companies Alliance works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
    - corporation tax payable of £560 million per annum
    - income tax paid of £3 billion per annum
    - social security paid (employers' NIC) of £3 billion per annum
    - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

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