



The Quoted
Companies Alliance

QCA Legal Committee

Minutes of the meeting held on: Thursday 26 April 2012 at 8:45am

Speechly Bircham LLP, 6 New Street Square, London EC4A 3LX

Present:	Tom Shaw (in the Chair)	TS
	Tim Ward	TW
	Kate Jalbert	KJ
	Jacques Sultan	JS
	Simon Cox	SC
	Donald Stewart	DS
	Christian Lowes	CL
	Martin Kay	MK
	Ross Bryson	RB
	Susan Hollingdale	SH
	Bernard Wall	BW
In attendance:	Jaspal Sekhon (Minutes)	JSS
	David Hicks	DH

ACTIONS

1. Apologies

Apologies were received from Maegan Morrison, June Paddock, Jai Bal, Madeleine Cordes, Stephen Hamilton, Carol Kilgore and Gary Thorpe.

2. Approve the minutes of the previous meeting (29 March 2012)

The minutes of the last meeting were approved.

3. Current consultations

a) **FSA - CP12/2: Amendments to Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules (RD: 26 April 2012)**

KJ had not received any comments from committee members on the draft response she circulated. KJ thought that most of the responses were uncontroversial except perhaps in relation to Question 1 which deals with additional protections for minority investors. KJ felt that the response – which opposes giving minority shareholders veto rights – captured the general view of the QCA's membership but clearly investors were likely to take a different view. KJ also noted that there is very little support elsewhere for introducing veto rights.

KJ noted that the corporate finance advisory community is opposed to the suggested changes to the sponsor regime.

There was a discussion about the proposal to reinstate the previous LR 3.12 requirements about relationship agreements. Committee members questioned the enforceability of relationship agreements. SC thought that relationship agreements have some value effectively as a public declaration by controlling shareholders to behave in a certain way and to give some comfort to investors. RB said in his experience a relationship agreement can be useful to trigger dialogue in a dispute and to reach a commercial settlement.

KJ thought that the proposals about reverse takeovers were difficult to argue against but there was a danger of bringing the Standard Listing regime into a super-equivalence regime which should be resisted as the Standard

Listing regime is intended to offer the minimum standards. TS agreed it was important to maintain the distinction between Premium and Standard Listings. For example, a Standard Listed company should be able to reverse into another Standard Listed company but a Standard Listed company should not be allowed to reverse into a Premium Listed company without complying with the standards of a Premium Listed company. It was agreed that KJ will insert an additional paragraph to the response supporting the proposal but asking the FSA what its intentions are as regards Standard Listings (i.e. are the FSA trying to gold plate Standard Listings?).

KJ

b) European Commission: Consultation on the future of European Company Law (RD: 14 May 2012)

KJ explained that she has not spent much time looking at the consultation due to a heavy workload on other more urgent consultation responses.

DS said he had looked at the consultation with EuropeanIssuers. Overall there is not too much to get excited about, although there are a few specific areas to be mindful of. DS thought a key message to get across (as regards what the purpose of European company law should be) is that it should not be focussed on issues such as protecting employment rights and creditors etc.

DS highlighted question 20 in the consultation which deals with the capital regime (e.g. capital maintenance). There is a desire to move away from the current regime which requires sufficient distributable reserves before a company can make a distribution to a regime requiring a directors' solvency statement which would work better with IFRS accounting. SC thought the new regime could be useful but queried how many directors would be prepared to give a solvency statement unless they could reasonably rely on advice from a company's auditors.

DS volunteered to draft the QCA consultation response.

DS

c) Joint Committee – Draft Financial Services Bill Report

This is not urgent and it was agreed to hold over this item for the next meeting.

4. QCA update on European Directives and Regulations under review

a) MiFID II/MiFIR – MiFID II 2011/0298 (COD), MiFIR 2011/0296 (COD)

KJ reported that the draft report has been published and there are three different groups looking at the proposals. The current proposals include an amendment to the definition of "SME" (i.e. which differs from the definition used in the Prospectus Directive). The new definition (proposed as amendment number 39 in the paper) is more restrictive than the definition contained in the Prospectus Directive. A new category of "SME Growth Market" has been proposed for MTFs which is rather vague. In order to qualify as an "SME Growth Market", more than half of the companies listed on that market must fall within the proposed definition of "SME". There is significant opposition to the proposed definition.

TS noted that one aspect of the proposed definition (i.e. that SMEs are subject to a maximum number of employees) could lead to perverse results. For example, an SME that was close to exceeding the employee threshold could be deterred from recruiting new employees, which would cut across the Commission's stated aim of encouraging SME growth and job creation.

DH asked whether the definition of SME in the Prospectus Directive was likely to be amended but KJ thought not.

b) The Prospectus Directive – ESMA technical advice and delegated acts

KJ reported that the Commission has published the delegated acts. The view seems to be that the Commission has not differed that much from ESMA's technical guidance, however, KJ has not looked at the act in detail. KJ noted that there will no longer be the usual six-month objection period and it looks like the delegated act will be in force by July this year. KJ asked all committee members to review the delegated act to discuss at the next meeting.

All

c) The Market Abuse Directive and Regulation – MAR 2011/0295 (COD), MAD 2011/0297 (COD)

KJ noted that the proposals now include a requirement for every public company (i.e. including AIM companies) to maintain insider lists. TW thought that it was important for the QCA to be quite vocal in opposing this proposal. Requiring small-cap companies to maintain an insider list at all times is an unnecessary burden. The current regime under which the FSA can require companies to submit an insider list retrospectively within a certain time limit is adequate. DS said that a wider issue is whether the requirement would also extend to the advisory community which would potentially mean huge lists having to be maintained by those organisations.

KJ noted that the pressure for mandatory insider lists is coming from other competent authorities in the EU which find them a useful tool for their investigations. In contrast, the FSA has much stronger powers in a number of areas (which many other competent authorities do not have) and, therefore, the FSA do not often need to rely on insider lists. TW has spoken to the Treasury and they are sympathetic to the QCA's position and it has been pushing back on the proposal.

KJ noted that, in terms of the status of the proposals, there will be a further meeting on the draft report on 10 May 2012 and, therefore, it is important for the QCA to submit a response in the next few weeks and then to lobby some MEPs. Accordingly, all committee members should provide any feedback on mandatory insider lists to KJ.

All

KJ intends to produce a briefing note on the subject also including a discussion on MiFID. KJ will update the committee at the next meeting.

KJ

d) The Transparency Directive – COM(2011)683/2

KJ said there was not much to report generally. Issuers will no longer have to produce interim management statements. The directive is currently in a parliamentary draft. KJ noted that overall the directive appears to be reasonable.

5. Communications

a) QCA Guidance Note – Disclosure and Transparency Rules

Philip Lamb (PL) had volunteered at the last committee meeting to update the QCA Guidance Note regarding the Disclosure and Transparency Rules. As PL was unable to attend the meeting, this item would be held over until the next meeting.

b) Guest invitations

KJ reported that guest invitations had been sent to representatives from:

- The Takeover Panel
- The Growth Fund (someone would hopefully be attending in May)
- The Treasury
- AIM Regulation (specifically Nilam Statham, Head of AIM Regulation)

c) QCA/BDO Small and Mid-Cap Sentiment Index¹

Committee members should have received a request to complete the latest survey of the QCA/BDO Small and Mid-Cap Sentiment Index. KJ asked members to complete the survey and to pass the link onto colleagues and other contacts. KJ will send further details following the meeting.

All, KJ

¹ <https://start.yougov.com/refer/vLMD8HX8GZtzZR>

d) QCA Conference – Engineering Growth for Small and Mid-cap companies – 27 June 2012²

TW and KJ outlined the inaugural QCA conference and encouraged committee members to attend (who receive discounted rates). The keynote speaker will be David Gauke MP, Exchequer Secretary to the Treasury and there will be sessions throughout the day focused on issues that are key to small and mid-caps (e.g. the future of equity markets, the role of reporting in helping companies grow, corporate governance, a fund manager debate, and alternatives to equity finance for growing companies). KJ will send further details following the meeting.

KJ

6. Review of actions from the last meeting (to the extend not already covered)

N/A

7. Any other business

None

Information for noting

- Consultation Update – Responses submitted:
 - None
- Next meeting(s)
 - 8.45am Thursday 31 May 2012 (Venue: Speechly Bircham LLP)
 - 8.45am Thursday 28 June 2012 (Venue: Speechly Bircham LLP)

8. Actions

Action	Person	Timing
Make the agreed changes to the draft response to CP12/2	KJ	26.04.12
Draft a response to the EC Consultation on the future of European Company law	DS	14.05.12
Review the delegated acts on the Prospectus Directive for discussion	All	31.05.12
Provide any feedback on proposals for mandatory insider lists to KJ	All	31.05.12
Produce a briefing note on MAR 2011/0295 (COD), MAD 2011/0297 (COD) and MiFID and update the committee at the next meeting	KJ	31.05.12
Complete the QCA/BDO Small and Mid-Cap Sentiment Index survey and forward to contacts	All	ASAP
KJ to send details of the above survey	KJ	ASAP
KJ to send details of the QCA conference on 27.06.12	KJ	ASAP

² <http://www.theqca.com/events/annual-events/conference-2012/>