



The Quoted  
Companies Alliance

## QCA Legal Committee

Minutes of the meeting held on: Thursday 26 May 2011 at 8:45am

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

<b>Present:</b>	Tom Shaw (in the Chair)	TS
	Richard Beavan	RB
	Madeleine Cordes	MC
	Jonathan Deverill	JD
	Jeanette Gregson	JG
	Susan Hollingdale	SH
	Naomi Johnson	NJ
	Martin Kay	MK
	Philip Lamb	PL
	Maegan Morrison	MM
	Ed Rand (in place of Julie Keefe)	ER
	Donald Stewart	DS
	Chris Owen	CO
	Tim Ward	TW
	Chris Stapeley	CS
<b>In attendance:</b>	Jaspal Sekhon (Minutes)	JS
	Paul Arathoon	PA

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## ACTIONS

### **1. Apologies and welcome to new members**

Apologies were received from Jai Bal, Chris Barrett, Ross Bryson, Stephen Hamilton, Carol Kilgore, June Paddock, Gary Thorpe and Kate Jalbert (**KJ**). Chris Stapeley attended in place of Kate Jalbert.

### **2. Approve the minutes of the previous meeting (5 May 2011)**

The minutes of the last meeting were approved.

### **3. Prospectus Directive Working Group**

#### ***Report of meeting with ESMA representatives – 19 May 2011***

TS reported on the meeting. Overall it was felt that it was a good first meeting.

In attendance for ESMA were Lee Piller (Director for Financial Information) and Toby Wallis from the FSA, as well as others from various European regulators.

On the proportionate disclosure regime for rights issues, it seems to be going in the right direction and the regime may end up not too far from the regime that existed before the Prospectus Directive took effect. However, the concern about statutory pre-emption rights under article 7.2(g) of the directive remains an issue. ESMA said that they proposed to address the issue by letting proportionate disclosure apply to issuers that have disapplied statutory pre-emption rights provided that they offer a compensatory alternative to existing shareholders. ESMA seemed to be concerned when the QCA members explained

to them that this would in fact have a number of consequences which would cut across the aims of the directive. ESMA asked the QCA to suggest alternative solutions to address the issue.

On the proportionate disclosure regime for SMEs and issuers with reduced market capitalisation, and as indicated by Toby Wallis at the last QCA meeting, it was clear that ESMA is not keen on a reduced regime for smaller companies listed on a regulated market. The QCA members made lengthy submissions to ESMA about the length of documents and the associated costs under the current regime, however, ESMA said that when one looks at the contents requirements it is difficult to work out which requirements can be left out. TS noted that it would be helpful if there was something in the rules to say that the information disclosed should be concise and written in plain English. TW suggested to ESMA that prospectuses for smaller companies need not be vetted by regulators before publication but this was not well received.

Following the meeting, the QCA delegation met with Fabrice Demarigny who wrote a report in 2010 on establishing a proportionate regulatory environment for SMILEs (Small and Medium-sized Issuers Listed in Europe)<sup>1</sup>. The French in particular are very supportive of a reduced disclosure regime. Fabrice was not surprised by ESMA's lack of support for a reduced disclosure regime. He thought that the only way to deal with this is to lobby the Commission instead. He also thought that, in the wider political context, the QCA should be seen to be supporting the Commission and the EU Parliament. TW said that we should consider a public forum of some sort and Fabrice has indicated that he would be willing to participate.

Following the meeting with ESMA the following actions were agreed:

- Consider suggestions for dealing with the article 7.2(g) issue about disapplying statutory pre-emption rights. All
- TW to follow up with the French regulator TW
- TW/KJ to circulate KJ's notes of the meeting with ESMA. TW/KJ

After discussion, Committee members agreed that we should wait until ESMA has published its proposals in relation to reduced disclosure for SMEs and companies with a reduced market capitalisation before taking any further action.

DS asked if anyone had been speaking to the Polish regulators, given that Warsaw is one of the leading markets for small companies. MM said a number of her firm's clients have looked at listing in Warsaw but due to concerns about the slow speed and inconsistency of the Polish regulator they prefer to publish a prospectus in Ireland and Luxembourg and then passport the prospectus to Warsaw. TW said he had heard that the Polish regulator has got a lot quicker than in has been in the past. DS said it would be useful to see the statistics for the nationality/domicile of issuers in Warsaw. MM will ask her firm's Warsaw office to compile some statistics.

MM

***HM Treasury: Consultation on early implementation of amendments to the Prospectus Directive (RD: 9 June 2011) (+ Markets & Regulations Committee)***

James Archibald is moving jobs and is unable to draft the QCA's response to the consultation. MM volunteered to draft the response instead.

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<sup>1</sup> "AN EU-LISTING SMALL BUSINESS ACT - Establishing a proportionate regulatory and financial environment for Small and Medium-sized Issuers Listed in Europe (SMILEs)" – March 2010. (See <http://www.eurocapitalmarkets.org/system/files/EU%20Listing%20SBA%20EN%20Final.pdf>)

MM

#### 4. Consultation update

##### ***Takeover Panel: Review of Certain Aspects of the Regulation of Takeover Bids – Proposed Amendments to the Takeover Code (RD: 27 May 2011) (+ Markets & Regulations and Corporate Finance Advisors Committee)***

JD attended a meeting of chartered accountants on 20 May 2011 during which the Takeover Panel review was discussed. The general feeling was that the proposed changes were, on the whole, acceptable. The specific issues raised were about the lack of private equity bids and the fall out from the Cadbury's takeover, in particular time limits for which statements about future intentions should be binding. The likely consequence is that significant extra work will be required (e.g. due diligence) before bidders make any statements. Robert Gillespie, Director General of the Takeover Panel, also attended the meeting. He said that the Panel had not thought about increased due diligence before making statements but he made it clear that the Panel do not want any more Kraft-type statements being made. Robert was also asked if there will be another review and he replied that the Panel are always looking for further improvements.

Following the meeting above, JD amended the QCA submission to make it clear that the quality of information in statements about future intentions should be improved (i.e. by providing greater explanation).

#### 5. Current Issues/Communications

##### ***Bribery Act***

*Event for QCA Corporate Members (21 June 2011)*

MC volunteered to participate in the seminar on 21 June 2011. CS will send the relevant information to MC.

CS

*Bribery Act Draft Survey*

SH agreed to provide some suggestions for the draft survey.

SH

##### ***Guest invitations***

DS suggested that it would be good to have someone from the Treasury to attend another meeting<sup>2</sup>.

From the AIM Team, it was suggested that Stephen Travers, a lawyer in the regulatory team, and Marcus Stuttard would be good choices<sup>3</sup>.

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<sup>2</sup> Following the meeting, the QCA were looking to invite the Treasury to the meeting of the Markets & Regulations Committee on 13 July 2011 but also to include the Legal Committee at the same meeting.

<sup>3</sup> Following the meeting, Marcus had been pencilled in to attend the meeting on 28 July 2011 and give a general update to the Legal Committee.

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

None

**7. Any other business**

None

**8. Date of Next Meeting**

Thursday 7 July 2011 at 09:00 (venue: Speechly Bircham LLP)

**9. Actions**

<b>Action</b>	<b>Person</b>	<b>Timing</b>
Consider suggestions for dealing with the article 7.2(g) issue about disapplying statutory pre-emption rights	All	
Follow up with the French regulator	TW	
Circulate KJ's notes of the meeting with ESMA	TW/KJ	
Compile statistics on the nationality/domicile of issuers on the Warsaw Stock Exchange	MM	
Submit response to Treasury consultation on early implementation of the amendments to the Prospectus Directive	MM	09/06/2011
Provide details of the Bribery Act seminar to MC	MC	ASAP
Provide some suggestions for the Bribery Act survey	SH	