



The Quoted  
Companies Alliance

**QCA Legal Committee**

Minutes of the meeting held on: Thursday 29 March 2012 at 8:45am

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

<b>Present:</b>	Gary Thorpe (in the Chair)	GT
	Kate Jalbert	KJ
	Jacques Sultan	JS
	Tim Ward	TW
	Tim Stead	TS
	Kirsten Anderson	KA
	June Paddock	JP
	Phillip Lamb	PL
	Martin Kay	MK
	Stephen Hamilton	SH
	Chris Owen	CO
	Madeleine Cordes	MC
	Carol Kilgore	CK
<b>In attendance:</b>	Steven Berry (Minutes)	SB
	David Hicks	DH
	Paul Arathoon	PA

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**ACTIONS**

**1. Apologies**

Apologies were received from Jai Bal, Anthony Turner, Richard Beavan, Susan Hollingdale, Christian Lewis, Leon Miller, Maegen Morrison, Donald Stewart, Jaspal Sekhon, Tom Shaw and Simon Cox.

**2. Approval of the minutes of the previous meeting (1 March 2012)**

The minutes of the last meeting were approved.

**3. Current consultations and Issues**

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

*Transactions*

The QCA response includes feedback from a number of committees and is being overseen by KJ and the legal committee. MK explained that the paper proposes a number of fine tuning tweaks that will relax the rules slightly, including the abolition of Class 3 transactions, as it was thought that the regime already serves its purpose without the need for further regulation under Class 3. It seems that the FSA is seeking to align the rules with current market practice by introducing compulsory supplementary circulars in the event of changes and by forcing the adjournment of shareholder meetings in the absence of such circulars. MK expects our response to affirm the changes proposed by the FSA.

**MK, KJ**

### *Reverse takeovers*

JP explained that the paper also proposes a number of fine tuning tweaks to the rules on reverse takeovers. The FSA's aim appears to be to codify existing guidance, which JP considers to be unobjectionable. The main changes proposed are:

- the narrowing of the reverse takeover exception to apply to only companies acquiring targets in their own listing category (i.e. it will no longer apply to a premium - standard reverse takeover), which means that standard listed companies now fall within the reverse takeover regime;
- the codification of the existing practice of contacting the FSA once a takeover is agreed or details leaked to discuss whether there should be a suspension;
- the removal of the exemption for small reverse takeovers (which JP noted is not used in practice anyway); and
- amending the Listing Rules to require premium companies to appoint a sponsor to discuss a suspension with the FSA before announcing a reverse takeover that is agreed on or in contemplation (JP queried what 'in contemplation' means).

JP explained that the FSA is concerned that standard listed shell companies are being used to evade the reverse takeover rules.

JP reported that the FSA proposes a new definition of a 'fundamental change' for the purposes of reverse takeovers, guided by three indicators relating the effect the change will have on the nature of the business, the impact on the industry sector and the impact on end users and suppliers. GT explained that advisors are likely to wish to contact the FSA anyway to check whether a change is fundamental.

PA said the new rules are seeking to discourage standard listings. JP said that nowadays standard listing it is mostly used by offshore companies seeking to avoid the pre-emption rules and DH noted that it was popular amongst cash shells seeking to avoid the transaction rules.

**JP**

### *Externally managed companies*

TS discussed the new rules on companies managed by special purpose acquisition companies (**SPACS**). SPACS are overseas companies that acquire UK listed cash shell companies on an IPO and then advise and manage the UK company. The UK companies tend to have boards of non-executive directors. The FSA is concerned that the boards of the UK companies are not in control and that the rules on shareholder control over executives are thereby avoided. The new rules will:

- make the executives of the SPACS responsible for the prospectuses of the UK companies;
- make the overseas management/advisory company an FDMR for the purposes of the disclosure and transparency rules; and
- preclude such companies from being premium listed.

It was agreed that the new rules are sensible. However, DH noted that structures such as this are often put into place for tax reasons and that companies are careful to ensure that all management decisions are taken offshore, which conflicts with the FSA's new approach.

TS said that he doubts that the new rules will be extended to apply to AIM shells. AIM provides an unregulated environment for firms to migrate to if they wish to avoid the increasing regulation of standard listed companies. It was considered that the FSA is trying to make companies choose between premium listing and a listing on AIM by regulating standard listed companies more heavily. TS pointed out that hundreds of listed companies have left the UK and that pattern will continue if the standard list continues to be eroded. It was also thought that there should be a clear regulatory differentiation between standard and premium listing. JP noted that recent changes to the prospectus rules of a Frankfurt exchange have caused many companies formerly listed there to migrate to alternative German exchanges.

- **QCA Guidance Note – Disclosure and Transparency Rules**

KJ queried whether the QCA Guidance Note regarding Disclosure and Transparency rules needed to be updated. PL said that he is happy to update the guidance document on the disclosure rules to reflect any technical changes.

PL

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

KJ said that she would follow up to discuss the consultation and in particular cross border de-mergers and capital maintenance issues. It was queried whether the consultation relates generally to corporate law or specifically to small quoted companies and whether the consultation raises matters of company or corporate law.

KJ

- **Joint Committee – Draft Financial Services Bill Report**

Maegen Morrison had been reading through the report and was to report back to the committee. However she was not in attendance.

MM

- **Draft Report on Market Abuse and MiFID**

KJ said she will look at the draft report on market abuse and on MIFID and provide a summary of the main issues. Notable changes include a new requirement for all quoted companies including AIM listed companies to maintain an insider list. KJ suggested it may be worth contacting MEPs and the Rapporteur. Although there is no return date, the legislative process is already underway. CO expressed concern at the time and cost implications of maintaining insider lists. GT noted that insider lists will be expected to include support staff such as secretaries.

KJ

#### **4. Communications**

##### **Guest invites**

GT said that he would like to invite someone from the Takeover Panel to attend a QCA meeting. TW said that he would like to invite someone from the Treasury to give input on the European angle of some legislative changes and KJ reported that it would be great to see someone from the Growth Fund in April.

KJ/Chris Stapeley

##### **QCA/BDO Small and Mid-Cap Sentiment Index**

It was considered that most advisers are pessimistic about the economy, whilst companies are generally more optimistic (although such optimism may be in relation to the likelihood of survival rather than growth). TW said that a recent survey found that 2/3 of advisers remain pessimistic and he wondered whether such pessimism and a lack of confidence in the City is obstructing growth because people are talking themselves out of business.

It was reported that there were 150 company and 80 advisory responders to the last sentiment index survey. Everyone is urged to forward the next sentiment index survey to clients and others in their network.

All

## Remuneration Committee Guide for Smaller Quoted Companies

A copy of the Guide has been sent to the main contact at each firm. Everyone is encouraged to recommend it to their clients. There will be an event to launch the survey.

KJ acknowledged that other existing guidance may also need to be updated to reflect legislative changes. She will contact the committee to advise as to who can input on updating the guidance.

TW reported that a master class on corporate governance is under development that is open to advisers and is pencilled in for October.

All

### 5. Review of actions from the last meeting (to the extent not already covered)

It was agreed that everything had been picked up from the previous meeting on 1 March 2012.

### 6. Any other business

JP asked if anyone had experience of bond issues by small quoted companies. It was noted that such issues are difficult at the moment as the necessary infrastructure is not in place. Although it may not be possible to give small companies a credit rating, agencies could provide diagnostics on the state of such companies that could help them to issue bonds. KJ said that consideration is being given to developing a private placement market and that AFME is looking at developing an aggregator for small company bonds. An aggregator model is currently being tested in France and that Bond M in Stuttgart could be an interesting model as it reserves 50% to retail investors and 50% to institutional investors.

### Information for noting

- Next meeting
  - 08:45 on Thursday 26 April (Venue: Speechly Bircham)

### 7. Actions

Action	Person	Timing
Preparing response to proposed amendments to transaction rules within the FSA Listing Rules Consultation	MK, KJ	26 April 2012
Preparing response to proposed amendments to reverse takeover rules within the FSA Listing Rules Consultation	JP	26 April 2012
Preparing response to proposed amendments to the rules on externally managed companies within the FSA Listing Rules Consultation	TS	26 April 2012
Follow up on consultation re consultation of the future of European company law	KJ/DS	14 May 2012
Reporting to the committee on the draft financial services bill report	MM	
Update the QCA Guidance note for Disclosure and Transparency Rules	PL	
Agree guest invites	KJ/Chris Stapeley	