



The Quoted
Companies Alliance

QCA Legal Committee

Minutes of the meeting held on: Thursday 31 March 2011 at 8:45am

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

Present:	Tom Shaw (in the Chair)	TS
	Richard Beavan	RB
	Gary Thorpe	GT
	Philip Lamb	PL
	Martin Kay	MK
	James Archibald	JA
	Jonathan Deverill	JD
	Donald Stewart	DS
	Jeanette Gregson	JG
	Stephen Hamilton	SHa
	Kate Jalbert	KJ
	Tim Ward	TW
	Susan Hollingdale	SH
	Maegan Morrison	MM
	Chris Owen	CO
	June Paddock	JP
	Ross Bryson	RBr
In attendance:	David Hicks	DH
	Jaspal Sekhon (Minutes)	JS

ACTIONS

1. Apologies/Welcome to New Members

Apologies were received from Jai Bal and Carol Kilgore. TS welcomed new members to the committee – Maegan Morrison, Martin Kay and Stephen Hamilton.

2. Approve the minutes of the previous meeting (27 January 2011)

The minutes of the last meeting were approved.

3. Prospectus Directive Working Group

Proportionate Prospectus

TW reported that on 28 March 2011 Maria Valentza¹ had met with two AIM companies, PLUS-quoted company, a broker and had also spent time at Winterflood Securities in order to gain an insight into execution-only trading. During the day, she noted that certain regulators in Europe are not happy with the concept of proportionate disclosure for prospectuses and, therefore, she recommended that the QCA and other interested parties engage with ESMA on this issue.

¹ Head of Unit for Securities Markets, DG Internal Market and Services, European Commission

Meet with CESR/ESMA representatives in early 2011

KJ said she was waiting to hear back from CESR/ESMA with a date for a meeting.

It was agreed that the key issues for a small QCA contingent to raise with ESMA were proportionate disclosure and rights issues.

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

On 17 March 2011, HM Treasury launched a consultation on the early implementation of the amended Prospectus Directive in relation to the increased threshold for exempt offers (from E2.5m to E5m) and the increased exemption for limited investors (from 100 persons to 150 persons per member state). Committee members agreed that the QCA should submit a short, straightforward response in support of the proposals and requesting that the Treasury implements the amendments as soon as possible. JA volunteered to draft the response to the consultation.

JA

4. Consultation update

HM Treasury: A new approach to financial regulation (RD: 14 April 2011) (Responses by Markets & Regulations and Corporate Finance Advisors Committees)

The consultation document sets out the scope and powers of the new bodies charged with regulating financial services. The Government's reforms focus on three key institutional changes:

- the creation of a new Financial Policy Committee (FPC) to be established in the Bank of England, with responsibility for 'macro-prudential' regulation, or regulation of stability and resilience of the financial system as a whole;
- 'micro-prudential' (that is, firm-specific) regulation for financial institutions that manage significant risks on their balance sheets will be carried out by an operationally independent subsidiary of the Bank of England, the Prudential Regulation Authority (PRA); and
- responsibility for conduct of business regulation will be transferred to a new specialist regulator, which has had the working title 'consumer protection and markets authority'. The Government has now finalised the name of this body as the Financial Conduct Authority (FCA).

The Government has decided that the UKLA should remain part of the FCA. The main change to the listing regime will be to bring it under the general legislative framework of the FCA (rather than being solely contained in a discrete part of the statute).

MM noted that the proposals look like a significant shift in powers and, therefore, it would be worth considering whether they dilute the strengths of the LSE compared with other exchanges.

KJ said it would be useful to consider the proposals and possibly submit a response. MM and GT agreed to look into this.

MM, GT

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 and RBr agreed to help KJ with the QCA review and response to the Takeover Code consultation.

JD noted that what is left in the latest consultation/proposals is quite limited (i.e. after the very broad position that was adopted at the outset). Accordingly, there is probably not much scope to change the proposed new rules.

5. Current Issues/Communications

Implementation of the Bribery Act – seminar?

It was noted that there had been various press releases from different firms. A more thoughtful piece from the QCA could follow in two to six weeks after the initial note to members confirming when it would come into force. It was then considered what form a guide should take.

TW said that a Bribery Act guide would be one of several thousand and that it might be more helpful to focus on a guide for corporate finance advisers in the equity market, which could perhaps be run past the LSE to confirm that they are happy for it to be released.

TS confirmed that he understood that the AIM team were not producing anything and were in general very guarded about commenting as to how, say, this would impact upon appropriateness for market.

TW reported that he had written to Ken Clarke, who had declined to come to an event.

TS suggested that the guide could inform companies as to the approach that advisers would take and the market what advisers should be doing. TW noted that the Markets and Regulations Committee and the Corporate Finance Advisors Committee were very interested in contributing to such a guide.

JP raised the issue as to whether raising capital on markets is carrying on business in the UK for the purposes of the Bribery Act. SH agreeing that it was a grey area and that whilst simply having a listing may not count, carrying on road shows may do and it was noted by JP that it would be the approach of the SFO that would be key. RBr queried whether the Bribery Act would have any real impact at all, as it did not require anything which one should not be doing anyway. JP raised the various issues in respect of, for example, cultural practices and what would be a commonsense approach for corporate finance advisers – TS suggested that this might be a useful area for the guide to cover.

The potential approach and views of various interested parties were considered and TW noted that the AIM team would not take a stance, but that it might be worthwhile talking to fund managers, especially on the ethical and corporate governance side, whose views would be important. DS noted that it has been alleged that investors were furious because the proposals had been watered down, but it may be helpful to talk to investors as to what would be a commonsense approach. The practicalities were discussed, as to how the Bribery Act would be reflected in standard documentation, such as in relation to warranties and directors' memoranda and the impact for potential new applicants was considered. It was noted by JD that the issues would vary across different companies and TS further noted that it is worth keeping in mind that around a third of AIM companies were in the natural resources sector and so would potentially be seriously affected. JA and MK queried whether it would be a question of producing a policy on anti-bribery, but more importantly how one demonstrates adherence to that policy.

TS suggested that the committee should run with the idea of a guide but on the basis that it would be decided if the product was helpful after something had been produced. This might focus on the process that people taking a company to market are likely to go through. Timing was discussed and the QCA's duty to its corporate members and the fact that there are already a number of notes in circulation was balanced against the advantages of waiting until the dust has settled, and perhaps looking at the views of the GC100.

TW suggested a survey of small cap fund managers asking them what the Bribery Act means for them.

RBr noted the importance of clarity on the coverage and raised the issue as to whether a UK topco would be feasible if management were not able to confirm that bribery was not an issue and queried whether fund raising would simply be undertaken in a different jurisdiction due to the lack of clarity. It was queried whether oil and mining companies should be approached as to how they were intending to deal with the issue and JP noted that advice was a bit late in the day when one has got to looking at warranties and memoranda and there was a need to put in place procedures in advance. TS noted that there may be an opportunity to backfill what is deemed to be a commonsense approach and reach a market consensus, which could be used as a defence if there is a prosecution.

TW suggested, and the committee agreed, that the QCA should start to construct a survey amongst the membership to take their views and then discuss the issue again when the committee reconvenes in May. It was agreed that the members would come up with questions today and tomorrow and feed these into KJ. **All**

SME Briefing – 28 March 2011

TW referred back to his previous comments and that he had met with Hannah Gurgah from the Treasury on a different occasion as to how small caps stocks are traded generally.

Guest invitations

It was noted that Toby Wallis from the FSA would be at the next meeting to look at the QCA's paper on proportionate disclosure as sent to ESMA and TS noted that everyone would need to have read the QCA paper by then. **All**

Deputy Chairman

It was confirmed that GT would act as Deputy to TS.

6. Any other business

Alexander Justham and Mark Teesdale of the FSA will be attending the June QCA board meeting.

DS noted that Nadia Calvino, Deputy Director General of DG Internal Market, and the European Commission in general were very interested in SME financing, which could therefore be discussed on a trip to Brussels or Paris. DS further noted that Pauline Dejmek, a member of Commissioner Barnier's cabinet, was also very interested and it was important to consider how MiFID fits in. There had been a City of London international regulatory strategy research paper and on 7 April the Hungarian Presidency of the EC were holding a forum for SME Finance. In general, DS noted that HM Treasury were backing us in support of SMEs.

TW noted that the QCA is a member of the EC SME finance forum and also that HM Treasury are looking at the definition of business angels and the issue of their classification as retail investors and related paperwork. TW noted that there was a submission to change the categorisation under the MiFID. TW asked the committee members to supply any case studies where finance had not been provided due to this issue as examples for the submission and if they wished to highlight any other obstacles to financing. **All**

TW also noted that he was on the BBA Taskforce and that the Growth Fund should be launched this month, but there are regulatory issues with the FSA. It would be up to an initial £1.5 billion with another £1 billion from Merlin. TW noted there have been governance concerns raised and queries as to whether the effect would be to convert dead loans into equity within the fund. TS noted that it was of great relevance to the QCA membership and that the committee should keep a close eye on it and TW agreed to keep the committee up to date. **TW**

7. Date of Next Meeting

Thursday 5 May 2011 at 8:45am (Venue: Speechly Bircham LLP)

8. Actions

Action	Person	Timing
Draft QCA response to HM Treasury consultation on early implementation of the amendments to the Prospectus Directive	JA	9 June 2011
Review the proposals and consider submitting a response on the HM Treasury Financial Regulation consultation. MM and GT agreed to look into this.	MM, GT	14 April 2011
Assist KJ with the QCA review and response to the Takeover Code consultation.	JD and RBr	27 May 2011
Send to KJ suggested questions for a survey to be conducted amongst the QCA membership about the Bribery Act 2010	All	1 April 2011
Read the QCA paper on proportionate disclosure as sent to ESMA.	All	5 May 2011
Supply any case studies where finance had not been provided to businesses on the basis of their categorisation under MiFID and highlight any other obstacles to financing.	All	ASAP
TW to update the Committee on any further developments with the Growth Fund.	TW	Ongoing