



The Quoted
Companies Alliance

QCA Legal Committee

Minutes of the meeting held on: Thursday 31 May 2012 at 8:45am

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

Present:	Tom Shaw (in the Chair)	TS
	Tim Ward	TW
	Donald Stewart	DS
	Maegan Morrison	MM
	Anthony Turner	AT
	Susan Hollingdale	SH
	Stephen Hamilton	StH
	June Paddock	JP
	Martin Kay	MK
	Christopher Owen	CO
	Kirsten Anderson	KA
	Hilary Owens	HO
	Jacques Sultan	JS
	Christian Lewis	CL
In attendance:	Jaspal Sekhon (Minutes)	JSS
	David Hicks	DH
	Paul Arathoon	PA

ACTIONS

1. Apologies

Apologies were received from, Kate Jalbert, Ross Bryson, Simon Cox, Richard Beavan, Jai Bal, Chris Barrett, Madeleine Cordes, Mehboob Dossa, Carol Kilgore, Philip Lamb, Leon Miller, Mark Taylor and Gary Thorpe.

2. Approve the minutes of the previous meeting (26 April 2012)

The minutes of the last meeting were approved.

3. Current consultations

a) Discussion on the delegated acts on the Prospectus Directive

TS handed out a copy of the QCA’s proposal for a proportionate disclosure regime for SMEs and small caps which comprised part of the QCA’s submission to the relevant authorities when the Prospectus Directive was going through the legislative process. The proposal set out in table form which items from Annexes I to III of the PD regulation should be included in a prospectus for IPOs and secondary fundraisings by SMEs. TS had marked up the table to show how the final delegated acts on the Prospectus Directive compared with our “shopping list” from the previous regime. TS noted that the new regime is not that reduced compared with the original Prospectus Directive.

The parts of Annex I that are now excluded for rights issues are:

- 8. Property, plant, equipment
- 9. Operating and financial review
- 10. Capital resources
- 11. Research and development etc.

On the face of it, the issue about disapplication of pre-emption rights for a rights issue seems to have been dealt with. However, DH noted that there is a potential issue with Article 1(2)(c) which appears to limit the provision to a compensatory offer. MM also felt that the wording in the article did not cover normal open offers. CO suggested that it would be worth getting the views from the broking community as to whether this will be an issue and committee members agreed.

TW noted that the Treasury share our dismay with the new regime and there is clearly a disconnect between them and the FSA.

TW observed that there does seem to be a change in mindset in the European Commission that proportionate disclosure is a desirable policy objective. For example, someone from the Commission attending a meeting of the QCA's financial reporting committee and understood that small companies are different from larger ones but the difficulty is determining where the cut off point should be.

TS summarised the new regime – which comes into force on 1 July 2012 – as being not that much reduced for SMEs which is disappointing after all the work that people put into the proposals. There is a reduced regime for rights issues, however, it does not appear to cover open offers. TS asked all committee members to look at the open offer point for discussion at the next meeting.

All

DS asked for committee members' thoughts about the impact of the proposed US JOBS Act on prospectuses and marketing securities in the US. The Jumpstart Our Business Startups Act or JOBS Act, is a law intended to encourage funding of US small businesses by easing various securities regulations. It was signed into law on 5 April 2012¹ although the SEC is looking at the detail and will formulate the regulatory framework. MM summarised some of the key provisions in the JOBS Act which include the following:

- Companies that have never had their shares registered in the USA and have less than \$1bn in revenue will be subject to reduced requirements when seeking to be admitted onto US stock markets.
- Certain companies will be subject to reduced requirements for the first 5 years after listing.
- The JOBS Act has much broader application than just SMEs. A lot of companies that have listed in the US in the past few years would have fallen within the JOBS Act.

MM also noted that, depending on the SEC's eventual proposals, the rules about solicitation and marketing securities in the USA may be relaxed which would allow for limited marketing of securities. MM observed that the JOBS Act emerged at the same time as ESMA's proposals for a reduced disclosure and there is quite a notable difference between the two approaches.

b) Discussion on MiFID II and Market Abuse Directive/Regulation

DS summarised the latest developments with MiFID and MiFIR. DS noted that a key issue under MiFID is the definition of "SME" and DS hopes that we can have another bite at the cherry as regards a reduced disclosure regime. The draft directive went before the European Parliament late last year.

¹ For further information, see http://en.wikipedia.org/wiki/Jumpstart_Our_Business_Startups_Act

Markus Ferber, the rapporteur for MiFID, sent out a questionnaire to interested parties to which the QCA responded. 2,300 proposed amendments were submitted to the rapporteur.

The part relating to SME Markets is a key area of focus in the present negotiations. Kay Swinburne MEP has tabled an amendment to Recital 89 promoting further relaxations and promoting the creation of a new SME MTF. This could be a very useful amendment if it is accepted which could lead to another assessment of the entire regulatory regime for SME MTFs.

DS thinks that Markus Ferber is aiming to put MiFID before a European Parliamentary vote by July this year.

DS highlighted some of the proposals that have been put forward for the definition of "SME". For example, Arlene McCarthy MEP had proposed a definition that refers to "existing national concepts of a SME". Another proposed definition of having a market cap of less than EUR200m came from Markus Ferber which could be a good indication of where it may end up.

TW noted that this issue will also come up in the Corporate Governance Directive which is proposing to have the same corporate governance standards for large listed companies as well as large private companies. The definition of "large private company" will be interesting.

TW wanted to see a consistent definition of "SME" based on the company itself as opposed to the market that its shares are traded on. It might be an idea for certain countries, for example, the UK, France and Germany to agree a definition of SME and then lobby on that basis.

SH volunteered to look into the various definitions currently being proposed across the various pieces of legislation.

SH

DS also noted that there have been a number of proposed amendments which seek to restrict shares in a listed company being traded on another stock market. For example, the Berlin Stock Market trades in the shares of AIM companies.

c) Joint Committee – Draft Financial Services Bill Report

This was held over to the next meeting.

4. Communications

a) QCA Guidance Note – Disclosure and Transparency Rules

Philip Lamb (PL) had volunteered at a previous 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

Catherine Clarke and Laura Jordan from the Business Growth Fund will attend the next meeting.

Committee members suggested having someone from the Treasury and the FSA attend a meeting.

c) QCA/BDO Small and Mid-Cap Sentiment Index²

² <https://start.yougov.com/refer/vLMD8HX8GZtzZR>

The latest index has been published which presents a relatively optimistic view from companies and nomads. TS asked TW to send him a copy.

TW

d) QCA Conference – Engineering Growth for Small and Mid-cap companies – 27 June 2012³

TW reminded committee members about 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). Kay Swinburne MEP will also be attending.

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

N/A

6. Any other business

None

Information for noting

- Consultation Update – Responses submitted:
 - FSA – CP12/2: Amendments to Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules (RD: 30 April 2012)
 - European Commission: Consultation on the future of European Company Law (RD: 14 May 2012)
- Next meeting(s)
 - 8.45am Thursday 28 June 2012 (Venue: Speechly Bircham LLP)
 - 8.45am Thursday 28 July 2012 (Venue: Speechly Bircham LLP)

7. Actions

Action	Person	Timing
Consider the Article 1(2)(c) of the delegated act under the PD which does not appear to extend to open offers	All	Next meeting
Review and reconcile the various definitions of “SME” being proposed in MifID/MiFIR and draft EU legislation	SH	Next meeting
TW to send the latest QCA/BDO Small and Mid-Cap Sentiment Index to TS	TW	Asap

³ <http://www.theqca.com/events/annual-events/conference-2012/>