



**The Quoted
Companies Alliance**

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Financial Regulation Strategy
HM Treasury
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15 April 2011

Dear Sirs,

HM Treasury: A new approach to financial regulation: building a stronger system

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation working for small and mid-cap quoted companies. Their individual market capitalisations tend to be below £500m.

The QCA is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The QCA Legal, Markets & Regulations and Corporate Finance Advisors Committees have examined your proposals and advised on this response. A list of committee members is at Appendix A.

RESPONSE

We welcome the opportunity to respond to this consultation. We would like to respond to the HM Treasury's Consultation document 'A new approach to financial regulation: building a stronger system' (the "Consultation") insofar as it relates to small and mid-cap quoted companies and affects the corporate finance and broking houses advising these companies. Our response is limited to the proposed "minor technical improvements" to Part VI of the Financial and Services and Markets Act 2000 ("FSMA") listed at paragraph 4.112 of the Consultation.

EXTENSION OF S.166

We are concerned with one particular aspect of the Consultation, that Part VI be amended to allow "the UKLA to require a listed issuer to have a skilled person prepare a report on a matter in respect of which the UKLA could require information to be supplied".

It is important to distinguish clearly the dual roles of what is currently the Financial Services Authority ("**FSA**") and will be the Financial Conduct Authority ("**FCA**"). The role of the FSA as regulator for authorised institutions under the FSMA ("**Regulated Issuers**") is fundamentally different from the FSA's role as the UK Listing Authority with regard to listed issuers admitted to regulated markets ("**Non-regulated Issuers**"). The power to appoint a skilled person is consistent with the former role, but not the latter. The extension of the section 166 power is a major change which should be fully analysed and justified. Companies should not fall into a regulated sector by default, risking the competitiveness of the UK as a listing venue.

The 'Analysis of costs and benefits' included in Chapter 5 of the Consultation does not deal with the impact of any changes on Non-regulated Issuers but we believe that they could be significant.

We set out below our detailed concerns

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1. The FSA has powers to appoint skilled persons under both sections 166 and 168 of the FSMA. The function of the two sections can be described as follows:
 - (a) Section 166 provides a power for the FSA to require an authorised person, or person connected to an authorised person, to provide the FSA with a report on certain matters relevant to the exercise of the FSA's functions. The person appointed to make the report must be nominated or approved by the FSA, and have the necessary expertise.
 - (b) Section 168 provides a power to appoint competent persons to carry out an investigation and make a report in cases in which the FSA suspects that there has been a particular instance of misconduct or wrongdoing.

The FSA already has a power to appoint a person to carry out an investigation equivalent to section 168 (section 97 of the FSMA). If a skilled person is appointed other than where there is particular wrongdoing, it is unclear what the outcome would be outside of the regulated arena. Generally we would expect some kind of remedial plan but that is not appropriate for a Non-regulated Issuer.

2. In CP91 (May 2001), the FSA stated that "Under our new approach to regulation, the use of skilled persons is a regulatory tool for diagnostic, monitoring, preventative and remedial purposes. It can be used in risk assessment, risk mitigation programmes and when responding to risk escalation or crystallisation." Thus the use of the skilled person is linked to the role of the FSA relating to risk arising from individual businesses in the regulated sector. It is not the role of the FSA or FCA to scrutinise the underlying business of a listed company and therefore the power to appoint a skilled person is inappropriate.
3. The power to appoint a skilled person relates to the statutory objects of the FSA and therefore is extremely broad. It is a seriously intrusive and costly procedure for the target of the expert and there is no simple and quick way to challenge the use of the power. Whilst Chapter 5 of the Supervision part of the FSA Handbook ("**SUP 5**") sets out the FSA's policy on the use of skilled persons, including at SUP 5.3.3 the likely factors to which the FSA will have regard when making the decision to require a report by a skilled person, a Non-regulated Issuer who disagrees with the FCA's decision to appoint an expert would only be able to apply for judicial review of the decision which is unlikely to be practicable in terms of time or cost.
4. The FSA set out in SUP 5 Annex 1 examples of when the FSA may use the skilled person tool. In general these would not be applicable to a Non-regulated Issuer. Given that the FCA has no role in regulating the underlying business of a Non-regulated Issuer and the existence of section 97 of the FSMA, there would appear to be only one area of possible application: where the FCA believes that a Non-regulated Issuer does not maintain the systems and controls required under the Listing Rules or Disclosure and Transparency Rules but where there is no evidence of contravention of the Listing Rules or Disclosure and Transparency Rules. Therefore, it is unclear why and in what circumstances the FSA would require such an additional power.

In addition to section 97 of the FSMA, premium listed companies are required to appoint a sponsor when required to do so by the FSA because "it appears to the FSA that there is, or there may be, a breach of the Listing Rules or the Disclosure Rules and Transparency Rules by the listed company." (LR 8.2.1(5)). We are not aware of, and the FSA has not clearly indicated, any evidence of failure of the sponsor regime in these circumstances. The sponsor regime allows Non-regulated Issuers access to knowledge and expertise to guide them in understanding and meeting their responsibilities under the Listing Rules and Disclosure and Transparency Rules. Given the existence of the sponsor regime it is not clear that the circumstances of a Non-regulated Issuer would ever meet the criteria referred to in SUP 5.3.4 (and in particular 5.3.4 (6)) which specify the circumstances in which a skilled person would be appointed.

5. Issuers with a standard listing are not subject to the sponsor regime, but have obtained such a listing on the understanding that, in general, it imposes directive minimum standards. We are concerned that the imposition of a section 166 power will appear to be an imposition of a sponsor regime "by the back door" which will make the UK markets unattractive to such issuers, particularly given that the FSA already has the power given to it by section 97 of the FSMA in circumstances of possible contravention by the Non-regulated Issuer.

6. There does not appear to be evidence of the failure of the current enforcement regime. The FSA has not indicated a lack of co-operation from Non-regulated Issuers. In the FSA business Plan for 2011/2012 it is stated that "In the area of enforcement, meanwhile, the last three to four years have seen a revolution in FSA effectiveness, as we have built a credible deterrence approach based on a far more robust use of our civil enforcement and criminal prosecution powers." There is no discussion in the report of issues relating to Non-regulated Issuers as a particular risk nor that there might be any shortfall in the FSA's powers insofar as they might need to deal with that risk.
7. In contrast, the number of skilled persons being appointed appears to be rising significantly year on year (88 in 2009/2010, 56 in 2008/2009, 30 in 2007/2008 and 18 in 2006/2007) (Freedom of information request available at: http://www.fsa.gov.uk/pubs/foi/foi_1794.pdf). This is concerning in the context of the difficulties noted in DP 10/3 in relation to the appointment of skilled persons and the lack of evidence that such a power is required in relation to the non-regulated sector.
8. In cases where the FCA is concerned that there is wrongdoing, we believe that adequate remedial powers exist at present. These include: the power to suspend or discontinue listing (section 78 and 89L of the FSMA), power to issue a public censure (section 87M and 89K of the FSMA), power to call for information (section 89H of the FSMA), power to impose financial penalties (section 91 of the FSMA), appointment of investigator (section 97 of the FSMA), power to impose penalties for market abuse (section 123 of the FSMA) and restitution orders in cases of market abuse (section 383 of the FSMA).
9. We do not believe that it is the role of the FSA or FCA to regulate Non-regulated Issuers. The extension of the 166 power to Non-regulated Issuers risks giving investors a misleading impression that the FCA is underwriting the business and systems and controls of the company in which they are investing.

OTHER PROPOSALS

10. We agree with the proposal to simplify the procedure for delisting at the request of the issuer.
11. We are unable to give in depth comments at this time on the extension of powers to penalise sponsors as there is not adequate detail given around these proposals.

However, we are concerned that such a change should be fully justified as we are not aware of any significant weaknesses or behaviours by sponsors, which would require enforcement powers to be reinforced. Our members believe that the FSA's Sponsor Supervision unit maintains a good level of contact with sponsors and supervises effectively, that the listing regime and UKLA processes are robust (involving significant UKLA input and participation where required) and market knowledge and practices are well informed by regular issues of LIST!.

In addition, we would comment that the FSA can currently cancel its approval of sponsors and censure publicly, both of which are strong sanctions, given that the ability to act as sponsor and sponsor reputation are both critical to the business of any firm providing corporate finance services. In summary, we do not understand the need to add and introduce the ability to suspend or restrict sponsor activities, or how this would operate practically. If a sponsor does not fulfil the Listing Rules' requirements, they should not continue to be approved as sponsor by the FSA.

We also note that sponsor responsibilities do not technically extend to investor protection (LR 8.3.1), so we are also concerned by the apparent and implicit link in the paper between this and the ability to impose financial penalties.

12. We agree that the limitation period for breaches of the listing rules should be three years.
13. We are not aware of any issues relating to PIPs which suggest that a regulatory regime is required.

14. We cannot comment on the other provisions which are to be amended to facilitate integration as they are not specified.

If you would like to discuss any of these issues further, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'TW', is positioned above the typed name.

Tim Ward
Chief Executive

Quoted Companies Alliance Legal Committee

Tom Shaw (Chair)	Speechly Bircham LLP
James Archibald	Nabarro LLP
Jai Bal	Farrer & Co LLP
Chris Barrett	Bird & Bird LLP
Richard Beavan	Boodle Hatfield
Matt Bonass	SNR Denton LLP
Ross Bryson	Mishcon de Reya
Madeleine Cordes	Capita Registrars
Jonathan Deverill	DMH Stallard
Jeanette Gregson	Davenport Lyons
Stephen Hamilton	Mills & Reeve LLP
Susan Hollingdale	Practical Law Company Ltd
Martin Kay	Blake Laphorn
Carol Kilgore	Curtis, Mallet-Prevost, Colt & Mosle LLP
Philip Lamb	Lewis Silkin LLP
Maegan Morrison	Hogan Lovells LLP
Chris Owen	Manches LLP
June Paddock	Fasken Martineau LLP
Donald Stewart	Faegre & Benson LLP
Gary Thorpe	Clyde & Co LLP
Tim Ward	Quoted Companies Alliance
Kate Jalbert	Quoted Companies Alliance

Quoted Companies Alliance Markets & Regulations Committee

Stuart Andrews (Chair)	Evolution Securities Ltd
Umerah Akram	London Stock Exchange plc
Peter Allen	DWF LLP
Mark Cleland	Capita Registrars Ltd
Andrew Collins	Speechly Bircham LLP
Richard Everett	Lawrence Graham LLP
Martin Finnegan	Nabarro LLP
Alexandra Hockenhull	Hockenhull Investor Relations
Farook Khan	Pinsent Masons LLP
Linda Main	KPMG LLP
Brian McDonnell	Olswang
Richard Metcalfe	Mazars LLP
Katie Morris	Brewin Dolphin Ltd
Philip Quigley	Smith & Williamson Limited
Simon Rafferty	Winterflood Securities Ltd
Laurence Sacker	UHY Hacker Young
Chris Searle	BDO LLP
Peter Swabey	Equiniti
Tim Ward	Quoted Companies Alliance
Kate Jalbert	Quoted Companies Alliance

Quoted Companies Alliance Corporate Finance Advisors Committee

Tom Price (Chair)	Westhouse Securities
Azhic Basirov	Smith & Williamson Limited
Simon Clements	Merchant Securities Limited
Daniel Conti	RBC Capital Markets
John Cowie	Seymour Pierce Limited
Richard Crowley	Espirito Santo Investment Bank incorporating Execution Noble
Lesley Gregory	Memery Crystal LLP
Tom Griffiths	Arbuthnot Securities Ltd
Samantha Harrison	Ambrian Partners Limited

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Ray Zimmerman
Kate Jalbert
Tim Ward

Oriel Securities Limited
CMS Cameron McKenna LLP
Moorhead James
Allenby Capital Ltd
PricewaterhouseCoopers LLP
Seymour Pierce Limited
KPMG LLP
Merchant Securities Limited
ZAI Corporate Finance Ltd
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THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The QCA is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The QCA is a founder member of **EuropeanIssuers**, which represents quoted companies in fourteen European countries.

QCA's Aims and Objectives

The QCA works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

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