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The Quoted Companies Alliance

European Commission
Internal Market and Services Directorate-General
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markt-consultations@ec.europea.eu

28 July 2010

Dear Sirs,

Public Consultation on a Revision to the Market Abuse Directive (MAD)

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.

Our ID number for the European Commission's register of interest representatives is 45766611524-47.

The QCA Markets & Regulations and Legal Committees has 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, as it provides an important opportunity to reduce the burden of the Directive on companies and also ensures that an appropriate market abuse framework is in place.

As our organisation represents small and mid-cap quoted companies, we are particularly interested in this consultation given the suggestion to introduce an adapted regime for SMEs. We particularly welcome the last paragraph of Part 1 of the Introductory Comments contained in the Consultation Document. These comments are, in our view, very much in line with the views presented in Fabrice Demarigny's report, 'An EU-Listing Small Business Act' (March 2010).

We wholly welcome the Commission's acknowledgement of this aspect of the "Think Small First" strategy in the Market Abuse Directive review and in the recently published Transparency Directive review. We also believe that, in order to maximise the ability of

SMEs to access market driven cross-border networks of listing venues and to increase the liquidity pool for SMEs, the Commission should not stop short of taking a complete and holistic review of the burdens on small and mid-cap quoted companies. It should examine overall what is appropriate and beneficial in terms of a regulatory approach for primary markets, rather than examining measures in a piecemeal approach in order simply to echo the current structure of the Financial Services Action Plan Directives.

In principle, we support the extension of the Market Abuse Directive to MTFs which function as growth markets. We believe that, to be of long term benefit to investors and companies, equity markets must maintain, and must be seen to maintain, their integrity. **However, we concur with the Commission that there is a need for simplification of the Directive together with an adapted regime for SMEs. This must be considered and completed before any extension occurs.**

Currently, in the UK, most of the market abuse provisions of the Directive have been voluntarily extended so that they already apply to companies quoted on AIM and PLUS ('prescribed markets' or exchange regulated markets), without some of the more burdensome aspects of the Directive, e.g. the obligation to produce and maintain insider lists.

We would argue that, before extending the Market Abuse Directive to MTFs, there are simplifications which can be made to the Directive for all issuers, including those smaller issuers on regulated markets and MTFs. These include raising the notification limit of manager's transactions and abolishing insider lists, which are burdensome and time-consuming and do not provide a significant benefit to the market. We believe that simplifying the Directive in these two areas would reduce the regulatory burden on all issuers and, in particular, smaller listed and quoted issuers, and should be explored prior to the extension of the Directive and the consideration of an adapted regime for SMEs.

We also believe that the Directive should not be extended to MTFs without recognising that all MTFs are not the same. We see a significant distinction between an MTF which serves as a growth market and has a primary market function, such as AIM and PLUS Markets in the UK, along with some 14 other such markets across Europe[1], and an MTF that serves only a secondary market function. We would like to highlight to the Commission the need to formally recognise this distinction amongst MTFs and have suggested this to CESR in its recent consultation on MiFID.

MTFs with a primary market function operating as growth markets serve to provide small, growing companies with organised opportunities to access equity finance, which are often unavailable to such companies from any other source for a variety of economic and cultural reasons. It is vital that steps are taken across the EU without delay to improve access to equity finance for SMEs to create jobs and economic growth in Europe. While such SMEs can, together, create significant economic dynamism, such companies do not individually pose any systemic threat to the overall economic well being of the EU or of individual member states.

[1] These markets include: Alternext (Amsterdam, Brussels, Paris and Lisbon), Marché Libre in France, the Alternative Investment Market (AIM) and PLUS-quoted market in the United Kingdom, Marché Libre in Brussels, Entry Standard in Germany, Nasdaq OMX First North in the Baltic and Nordic areas, the Athex Alternative Market in Greece, the Irish Enterprise Exchange (IEX) in Ireland, AIM Italia in Italy, New Connect in Poland, and Mercado Alternativo Bursátil (MAB) in Spain.

Accordingly we believe that provisions in the Directive that create significant expense or management burdens[2] for smaller quoted companies/SMEs, e.g. producing and maintaining insider lists, which do not add significantly to the maintenance of market integrity, should not be applied to companies on MTFs with a primary market function. There should be a clear distinction between that required for regulated markets and growth market MTFs, in order for growth market MTFs to maintain the appropriate flexibility and level of regulation.

An over-riding principle for the extension of the Market Abuse Directive to MTFs is that there should be no changes to this Directive which could result in a company being required to comply with more regulatory requirements than are applicable to the primary market that it has chosen to join. This principle will primarily apply in two events: (1) where shares in the company are traded on a MTF other than that on which the issuer is admitted to trading[3], and (2) where derivatives are created and traded based on securities issued by a company.

We have answered the specific questions below:

QUESTIONS

1 - Should the definition of inside information for commodity derivatives be expanded in order to be aligned with the general definition of inside information and thus better protect investors?

We do not have a view on this issue.

2 - Should MAD be extended to cover attempts to manipulate the market? If so why? Is the definition proposed in this consultation document based on efficient criteria to cover all cases of possible abuses that today are not covered by MAD?

We do not have a view on this issue, other than that we would resist any extension which would cause significant new expense or management burdens for smaller quoted companies.

3 - Should the prohibition of market manipulation be expanded to cover manipulative actions committed through derivatives?

We do not have a view on this issue, save for our over-riding principle set out above that we would resist any such expansions which could result in a smaller quoted companies being required to comply with more regulatory requirements than are applicable to the primary market that it has chosen to join. It is one thing to regulate the issuer of a security – it something completely different to impose further regulation on an issuer due the creation of a derivative by a third party.

4 - To what extent should MAD apply to financial instruments admitted to trading on MTFs?

[2] It is important to note that matters that cause significant expense or management burdens to smaller quoted companies/SMEs will be of a different order of magnitude to matters which could be said to cause significant expense or management burdens in larger companies.

[3] A number of issuers on AIM have found their shares traded on the Berlin Stock Exchange. There seems to be little the issuers can do to put a stop to this practice.

As set out above, in principle we support the extension of the Market Abuse Directive to those MTFs, subject to the simplification of certain areas of the Directive and the establishment of a suitable regime for companies on these markets.

5 - In particular should the obligation to disclose inside information not apply to issuers who only have instruments admitted to trading on an MTF? If so why?

We believe the obligation to disclose unpublished price sensitive information, subject to appropriate exceptions for bona fide commercial purposes (e.g. the timing of the disclosure rather than the disclosure itself), is fundamental to the proper functioning of equity markets, whether they are regulated markets or growth market MTFs. However, in order for such a regime to function effectively, clarity is needed on the circumstances when disclosure need not be made or may be delayed.

6 - Is there a need for an adapted regime for SMEs admitted to trading on regulated markets and/or MTFs? To what extent should the adapted regime apply to SMEs or to "companies with reduced market capitalisation" as defined in Prospectus Directive? To what extent can the criteria to be fulfilled by SMEs as proposed for such an adapted regime be further specified through delegated acts?

As noted above, we believe that there is a need for an adapted regime for SMEs, as suggested in the Demarigny report, especially with regard to increasing the notification threshold on manager transactions and abolishing (or at least simplifying) the insider list regime. However, we would argue that the simplifications of increasing the notification threshold for manager transactions and abolishing insider lists would be of benefit to all issuers, as they are burdensome and time consuming, and that this option should be considered prior to extension of the Directive.

We would propose that the notification limit for manager transactions increase from €5,000 to €20,000, as this threshold has remained unchanged since the Directive came into force and can cause the markets to be overwhelmed with information on transactions, which does not increase transparency or assist in detecting market abuse.

We would propose abolishing insider lists, as they remain a time-consuming and irritating activity for issuers, which do not provide a significant benefit to the market, especially given that experience has shown that they are very rarely used by regulators in their investigations. We believe it is more important that persons likely to have access to insider information are duly informed of their legal and regulatory duties and aware of the sanction attached to the misuse or abuse of such information.

At the very least, these measures should form some part of an adapted Market Abuse regime for SMEs, but again they would be of benefit to all issuers.

We also believe that in this area a principles-based regime is likely to be more effective to protect investors and easier and less costly for issuers to understand and comply with. It is not necessarily the case that further detailed specification will help SMEs to comply.

We do believe that, in an adapted regime for SMEs, in circumstances when an issuer has delayed the public disclosure of information, provided the issuer has been able to ensure the confidentiality of the information, there should be no requirement to inform the regulator.

7 - How can the powers of competent authorities to investigate market abuse be enhanced? Do you consider that the scope of suspicious transactions reports should be extended to suspicious orders and suspicious OTC transactions? Why?

We do not have a view on this issue.

8 - How can sanctions be made more deterrent? To what extent need the sanction regimes be harmonised at the EU level in order to prevent market abuse? Do you agree with the suggestions made on the scope of appropriate administrative measures and sanctions, on the amounts of fines and on the disclosure of measures and sanctions? Why?

We do not have a view on this issue.

9 - Do you agree with the narrowing of the reasons why a competent authority may refuse to cooperate with another one as described above? Why? What coordination role should ESMA play in the relations among EU competent authorities for enforcement purposes? Should ESMA be informed of every case of cooperation between competent authorities? Should ESMA act as a binding mediator when competent authorities disagree on the scope of information that the requested authority must communicate to the requesting authority?

We do not have a view on this issue.

10 - How can the system of cooperation among national and third country competent authorities be enhanced? What should the role of ESMA be?

We do not have a view on this issue.

11 - Do you consider that a competent authority should be granted the power to decide the delay of disclosure of inside information in the case where an issuer needs an emergency lending assistance under the conditions described above? Why?

We do not have a view on this issue.

12 - Should there be greater coordination between regulators on accepted market practices?

The concept of "accepted market practice" is by definition a reference to local market behaviour. We would be very concerned should an attempt to create greater coordination on the concept lead to an increased regulatory burden on SMEs, particularly if it were to apply practices to local growth market MTFs from non-local markets. Our experience is that investors in growth market MTFs are predominantly local to the relevant market. We believe that there is no significant pan European investment in companies quoted on growth market MTFs. Investors on those markets will legitimately expect local market practices to apply.

We could see this area as being one suitable for a division in regulation between regulated markets and growth markets MTFs.

13 - Do you consider that it is necessary to modify the threshold for the notification to regulators of transactions by managers of issuers? Do you consider that the threshold of Euro 20,000 is appropriate? If so why?

Yes. As noted above, we would propose that the notification limit for manager transactions increase from €5,000 to €20,000, as this threshold has remained unchanged since the Directive came into force and can cause the markets to be overwhelmed with information on transactions, which does not increase transparency or assist in detecting market abuse.

14 - Do you consider that there are other areas where it is necessary to progress towards a single rulebook? Which ones?

We do not have a view on this issue.

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15 - Do you consider that it is necessary to clarify the obligations of market operators to better prevent and detect market abuse? Why? Is the suggested approach sufficient?

We do not have a view on this issue.

Finally, we would like to express our concern with the short comment deadline for this paper, which makes it very difficult for membership organisations, like ours, to collate views and respond in adequate time. While we understand that there are some instances that require a shortened consultation period, we do not see the need for the increased urgency on market abuse and would appreciate specific explanation within the consultation document as to why there is a shortened response period.

We would be pleased to attend a meeting to further discuss our view.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

QCA MARKETS AND REGULATIONS COMMITTEE

Stuart Andrews	-	Evolution Securities
Umerah Akram	-	London Stock Exchange plc
Peter Allen	-	DWF LLP
Andrew Collins	-	Speechly Bircham LLP
Jonathan Eardley	-	Share Resources plc
Richard Evans	-	SQC Consultant
Richard Everett*	-	Lawrence Graham LLP
Martin Finnegan	-	Nabarro LLP
Alexandra Hockenhull	-	Hockenhull Investor Relations
Farook Khan	-	Pinsent Masons LLP
Linda Main	-	KPMG LLP
Richard Metcalfe	-	Mazars LLP
Katie Morris	-	Brewin Dolphin Ltd
Simon Rafferty	-	Winterflood Securities
Chris Searle	-	BDO LLP
Peter Swabey	-	Equiniti LLP
Theresa Wallis	-	LiDCO Group
Tim Ward	-	The Quoted Companies Alliance
Kate Jalbert	-	The Quoted Companies Alliance

QCA LEGAL COMMITTEE

Nicholas Narraway	-	Moorhead James
Jai Bal	-	Farrer & Co
Chris Barrett	-	Bird & Bird

Richard Beavan	-	Nabarro LLP
Matt Bonass	-	Denton Wilde Sapte
Ross Bryson	-	Mishcon de Reya
Andrew Chadwick	-	Rooks Rider Solicitors
Jonathan Deverill	-	Stikeman Elliott
Jeanette Gregson	-	Davenport Lyons
Carol Kilgore	-	Curtis, Mallet-Prevost, Colt & Mosle LLP
Philip Lamb	-	Lewis Silkin LLP
Alex Melrose	-	Rosenblatt Solicitors
Laura Nuttall	-	McGrigors LLP
Chris Owen	-	Manches LLP
June Paddock	-	Fasken Martineau LLP
Tom Shaw	-	Speechly Bircham LLP
Donald Stewart*	-	Faegre & Benson LLP
Gary Thorpe	-	Clyde & Co
Tim Ward	-	The Quoted Companies Alliance
Kate Jalbert	-	The Quoted Companies Alliance

*Main Authors/Reviewers

APPENDIX B

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; Financial Services Authority (FSA) consultations
- 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 European**Issuers**, 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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