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6 September 2010

Dear Sirs,

Consultation on the modernisation of the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ('Transparency Directive')

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 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, especially given its focus on smaller issuers' needs.

We wholly welcome the Commission's acknowledgement of this aspect of the "Think Small First" strategy in the 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 and visibility of 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 Issuers, especially those that are small and mid-cap issuers, do not tend to look at

the requirements of the Transparency Directive in isolation, but rather as part of their corporate reporting obligations triggered by being on a public market. They tend to focus on what is required to produce the content that makes up the reports required by the Directive, e.g. the accounting standards (IFRS) used to produce the financial figures and on which the narrative in half-yearly and annual reports is based on and varying obligations for what is required in these reports as a result of national company law. As such, it is very difficult to review the Transparency Directive without undertaking a more strategic review of corporate reporting and the burden of certain requirements on smaller issuers, and we would call on the Commission to consider such a review.

The costs associated with the Transparency Directive obligations are mostly opportunity costs that arise from resourcing their obligations (e.g. management time spent on producing interim management statements and half-yearly and annual reports), rather than cash costs. Some of the more onerous requirements, such as producing interim management statements, takes time and resources (which in smaller listed companies are limited) away from the directors, who should be focused on running and growing the business.

We believe that smaller issuers should be subject to a proportionate approach, especially where there are obligations that do not provide a significant benefit when compared to the costs associated with them.

Our main proposal for establishing a proportionate approach for smaller issuers would be to exempt smaller listed companies from the obligation to produce interim management statements, as these are overly costly to produce, in terms of the time put into producing them, and do not provide a significant benefit, given that companies already have an obligation to disclose any material information to the market as triggered by either national rules or other Directives. We discuss this in more depth below under *'I. Attractiveness of regulated markets for small listed companies'*.

In addition, we would like to express our concern over the proposal to harmonise the major holdings of voting rights in the Transparency Directive. However, we would stress the need to lower the minimum threshold to three percent, if maximum harmonisation would be brought in, and that the obligation to disclose be triggered by every one percent thereafter, rather than the five percent buckets currently set out in the Directive. We discuss this more in depth below under *'III. Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive*'.

We have responded to the individual consultation questions below:

I. Attractiveness of regulated markets for small listed companies and the Transparency Directive

1. **Impact of the Transparency Directive on the attractiveness of regulated markets for small listed companies.** Do the Transparency Directive obligations for issuers (e.g. disclosure of annual and half-yearly financial reports, quarterly information etc.) impact on the decisions of small listed companies to be listed in or to exit regulated markets (e.g. do they act as an entry barrier)? Please provide evidence supporting your answers.

As mentioned above, this is difficult to quantify as issuers do no view the Transparency Directive obligations in isolation from their other reporting requirements.

2. **Costs for smaller listed companies.** Which are the most important costs for small listed companies associated to compliance with the Transparency Directive (e.g. cost of preparing the accounts, auditing costs, legal costs, cost of making public the information etc.)? Please support your answer with quantitative data.

As mentioned above, the costs associated with the Transparency Directive obligations are mostly opportunity costs that arise from resourcing their obligations (e.g. management time spent on producing interim management statements and half-yearly and annual reports), rather than cash costs. Some of the more onerous requirements, such as producing interim management statements, takes time and resources (which in smaller listed companies are very limited) away from the directors, who should be focused on running and growing the business.

3. **Potential diminution of cost for small listed companies.** What changes of the Transparency Directive will bring important reductions in costs for small listed companies? Please provide evidence in support of your answer (see also questions 7 and 8 if you are able to provide more detailed replies).

Interim Management Statements

Our main proposal for establishing a proportionate approach for smaller issuers would be to exempt smaller listed companies from the obligation to produce interim management statements, as these are overly costly to produce, in terms of the time put into producing them and the limited staff available to do the analysis required to produce the reports. The content included in the reports is not that useful or informative of the company, and companies already have an obligation to disclose any material information to the market as triggered by either national rules or other Directives. We would also agree with the statement in the Commission Staff Working Document (COM(2010)253), which accompanies this consultation, that quarterly disclosures could contribute to short-termism (p. 10) and in the case of smaller listed issuers, we want to encourage long-term investors who are engaged with the companies.

In addition, if investors/shareholders/stakeholders demand the information included in interim management statements, then companies will choose to publish them. If they do not demand or use the information (or indeed have already seen most of the information before in previous market announcements), then there is no point in obliging companies to produce it. As such, the publication of interim management statements for smaller listed companies should be voluntary rather than obligatory.

Deadline of publication of financial reports

We are not opposed to extending the deadline for the publication of financial reports, especially with regard to the proposal to extend the deadline for the publication of half-yearly reports to three months. Smaller listed companies could benefit with having a more flexible deadline, especially given the limited resources available to them when producing these reports. However, our feedback suggests that not that many companies in the UK have difficulty with the two month deadline.

4. **The lower visibility of smaller listed companies.** How does the visibility problem materialise (e.g. lower attention of analysts, lower investment levels, lower trading etc.) for (objectively) well performing small companies? Please provide evidence supporting your answer.

As noted in our general comments above, we believe that the Commission should undertake a more holistic review of the Commission should not stop short of taking a complete and holistic review of the burdens on small and mid-cap quoted companies, which addresses the visibility question. We believe that the visibility of SMEs is a separate issue from the Transparency Directive and as such, should be reviewed separately.

5. **Other cases reflecting low benefits.** Are there, in your view, other cases reflecting low benefits for small listed companies resulting from disclosure obligations compared to larger listed companies?

Please see our general comments above and our response to Question 2.

Possible options to address in the Transparency Directive the problems related to small listed companies

6. **Definition of a small listed company.** What would be the optimal definition of a "small listed company" in the context of regular (i.e. after the admission to trading of the securities) transparency requirements? Please justify your replies.

We see issues with a number of the definitions proposed in the consultation document. It is difficult to use a relative definition, such as market capitalisation, as these fluctuate and do not necessarily provide an accurate measure of size. An annual assessment of market capitalisation as a definition may provide clarity. We also see merit in using a two out of three test, based on number of employees, net assets and/or turnover, as a determinant of the size of a company, or alternatively the creation of a small listed company index.

However, we believe that there is a need to debate this issue publicly at the EU level. There is a danger that there could end up multiple definitions of a 'SME' or 'smaller listed company' throughout many different Directives (e.g. the definition of a 'company with reduced market capitalisation' and 'SME' as defined in the amending Directive for the Prospectus Directive), which could result in even more confusion for market participants.

7. **Potential diminution of cost for small listed companies if changes to the Transparency Directive were to be adopted**

7.1 If a differentiated regime for small listed companies is added to the Transparency Directive with a view to reduce the compliance costs of those companies, would it be desirable to prevent Member States/regulated markets from imposing in national law/listing rules more stringent or additional obligations on small listed companies?

No. We would argue that a minimum harmonisation approach would be preferable.

7.2. Do you think that an extension of the deadline for the publication of financial reports would imply a reduction in legal, auditing or other type of costs? Please provide evidence supporting your answers (e.g. how much the cost would be reduced depending on the extension of the deadline)?

Please see our response to Question 3.

7.3. Do the various rules requiring the disclosure by listed companies of reports of narrative nature bring significant costs/operation complexity for small listed companies

(e.g. legal, account preparation, auditing, other type of costs)? Please provide evidence in support of your answer.

Please see our response to Question 2.

7.4. Would you see benefits from integrating in the Transparency Directive the disclosure obligations mentioned in question (8.3) which are currently in different directives? Please explain your reply (e.g. rules would be more clear, the Home Member States rules would clearly apply, etc).

We do not see a need to integrate the disclosure obligations which are currently in other directives. In general, this could present issues given that company law and the legal environments across the EU differ.

7.5. If the Transparency Directive provided for maximum harmonisation (no national add-ons) of the content of narrative reports referred to in question (7.3) for small listed companies, would this imply a reduction in legal, auditing or other type of costs? Please provide evidence supporting your answers.

We do not believe that maximum harmonisation of the content of narrative reports will significantly reduce costs for smaller listed companies and we would argue that this should not occur.

7.6. In case you think maximum harmonisation regarding the content of narrative reports referred to in question (7.5) is desirable, what do you think would be the best way? Please provide reasons on your reply.

As mentioned above, we do not believe maximum harmonisation of the content of narrative reports will reduce costs for smaller listed companies and are concerned that it could lead to more boilerplate reporting. Maximum harmonisation in this area will decrease flexibility for companies to adapt their communications to their sector, business model, shareholders' needs, etc. We also believe that it could lead to companies adopting a tick-box approach to these reports (especially if ready-to-use templates were created), which would result in boilerplate disclosure that is regarded as less informative and helpful for investors. We would argue that this would not result in more transparency or encourage better reporting and communication between companies and investors.

7.7. Concerning question (7.6), could you provide a specific reply regarding the disclosure of environmental and social data requested in Article 46(1)(b) of the Fourth Company Law?

We do not believe that the disclosure of environmental and social data should be included within the Transparency Directive. We do not believe that it is beneficial to integrate these disclosures into financial reports of companies as suggested in the Commission Staff Working Document (p. 106). Financial reports are already too lengthy and cluttered. Adding more information/disclosure to financial statements can actually make it more difficult for investors or other stakeholders interested in it to find and digest it.

8. Diminution of cost for small listed companies vs. diminution of transparency to the market

8.1. Is it possible to apply lighter transparency obligations for small listed companies without a corresponding significant diminution of transparency provided to the market? Please provide evidence supporting your answer.

We do not believe that applying lighter transparency obligations for smaller listed companies will significantly decrease transparency provided to the market. Companies already have an obligation to disclose any material or price sensitive information, triggered through other requirements of being on a regulated market, and if their investors/stakeholders demand more transparency, then companies can choose to provide it on a voluntary basis.

8.2. If the obligation to disclose quarterly financial information was waived for small listed companies, would this result in an unreasonable diminution of transparency? Please provide evidence supporting your answer.

Please see our response to Question 8.1. In addition, in the UK, companies quoted on AIM (an exchange regulated market) are not required to produce interim management managements, but many decide to do so.

9. Addressing the lower visibility of smaller listed companies

9.1. Do you think that measures at EU level (including possible changes to the Transparency Directive) can help solving the lower visibility of smaller listed companies?

Yes, we do believe that measures at the EU level could help increase the visibility of smaller listed companies. However, as noted in our general comments above and our response to Question 4, we believe that the Commission should not stop short of taking a complete and holistic review of the burdens on small and mid-cap quoted companies, which addresses the visibility question. We believe that the visibility of SMEs is a separate issue from the Transparency Directive and as such, should be reviewed separately.

9.2. What type of measures at EU level could help solving the visibility problem of small listed companies?

Please see our response to Question 9.1

9.3. Do you think that the development of an EU database storing regulated information on all issuers of securities in the EU will facilitate research and create interest/result in greater attention in small listed companies by financial analysts, financial intermediaries and investors? Please explain.

We do not see a great deal of benefit in creating an EU database. We are not necessarily opposed to an EU database storing regulated information about issuers, but are concerned that it could become overly bureaucratic and costly for issuers and that the benefit (e.g. presumably easy access to information and increased visibility of companies to cross-border investors) would not be realised. Investors in smaller quoted companies tend to be domestic and as such a central database may not help to increase investment into this sector of listed companies. Given that companies are required to put regulated information on their websites or to make it available electronically and that the internet has facilitated more access to information, we do not see the need for such a database.

Also, we agree with the Transparency Directive Assessment Report, produced by Mazars LLP, on the use of XBRL. We are concerned about the cost vs. benefit of requiring companies to produce reports in XBRL and agree that more experience and evidence from countries where XBRL is used on the benefits are needed before the EU can make a decision on this matter.

Other views regarding small listed companies

10. Do you have any other views on regular transparency requirements which could make regulated markets more attractive to small listed companies?

No.

II. Information about holdings of voting rights

We do not have any specific comments on the questions in this section.

III. Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive

Uniform EU Regime or maximum harmonisation: major holdings of voting rights

19. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) for the notification of major holdings of voting rights? Please justify your reply by describing any legal obstacles (e.g. related to civil or company law) to such uniform EU regime.

We appreciate the intention of maximum harmonisation of major holdings of voting rights. However, we would stress the need to lower the minimum threshold to 3%, if maximum harmonisation would be brought in, as is currently practiced in the UK and a number of other European countries. This has also been suggested by the European Parliament and market experts as outlined in the Commission Staff Working Document (p. 14).

We also believe that the obligation to disclose should be triggered by every 1 percent thereafter, rather than the 5% buckets that are currently set out in the Transparency Directive.

We are concerned that maximum harmonisation, if it were carried out based on the Directive's current levels, would result in an overall decrease in transparency for the UK market, which has one of the largest markets in Europe. It would also prove problematic and be in conflict with UK law regarding takeovers ('The Takeover Code'), as to when directors must notify major shareholdings in a takeover situation.

20. If a fully uniform EU regime is not possible because of insurmountable legal barriers, should Member States be prevented from adopting more stringent requirements than those of the Transparency Directive regarding the notification of major holdings of voting rights?

No. Please see our response to Question 19.

Uniform EU Regime or maximum harmonisation: disclosure by issuers

21. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures? Please justify your reply by describing legal/other obstacles to such uniform EU regime.

We have no specific comments on this question.

Divergent rules: calculation of holdings

22. Could you please explain in what way national rules implementing the Directive result in different methods for aggregating holdings of voting rights (and where applicable financial instruments) for the purposes of calculating whether the relevant thresholds triggering the notification obligation are reached or crossed by investors? Please justify your reply.

We have no specific comments on this question.

Unclear rules

23. Could you provide evidence of cases where unclear rules in the Directive ought to be clarified? Please explain.

We have no specific comments on this question.

IV. Any other comments

24. Do you have any other comments regarding the Transparency Directive?

No.

If you would like to further discuss any of the issues above, we would be pleased to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

QCA MARKETS AND REGULATIONS COMMITTEE

Stuart Andrews (Chair)	-	Evolution Securities
Umerah Akram	-	London Stock Exchange plc
Peter Allen	-	DWF LLP
Andrew Collins	-	Speechly Bircham LLP
Jonathan Eardley	-	Share Resources plc
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 (Chair)	-	Moorhead James LLP
Jai Bal	-	Farrer & Co LLP
Chris Barrett	-	Bird & Bird LLP
Richard Beavan	-	Nabarro LLP
Matt Bonass	-	Denton Wilde Sapte LLP

Ross Bryson	-	Mishcon de Reya
Andrew Chadwick	-	Rooks Rider Solicitors
Jonathan Deverill	-	Stikeman Elliott LLP
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 LLP
Tim Ward	-	The Quoted Companies Alliance
Kate Jalbert	-	The Quoted Companies Alliance

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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