



**The Quoted
Companies Alliance**

Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
Tel: +44 20 7600 3745
Fax: +44 20 7600 8288

Web: www.quotedcompaniesalliance.co.uk
Email: mail@quotedcompaniesalliance.co.uk

Kate Gillies
BERR
Corporate Law and Governance
1 Victoria Street
London, SW1H 0ET
United Kingdom
kate.gillies@berr.gsi.gov.uk

29 May 2009

Dear Ms. Gillies,

Draft Statutory Instrument: The Companies (Shareholders' Rights) Regulations 2009

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation dedicated to promoting the cause of smaller quoted companies (SQC), which we define as those 2,000+ quoted companies outside the FTSE 350 (including those on AIM and PLUS) representing 85% of the UK quoted companies by number. 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 thirteen European countries.

RESPONSE

These comments follow the numbering of the questions raised in BERR's October 2008 consultation paper, Implementation of the Directive on the exercise of certain rights of shareholders in listed companies, to which the QCA responded in January 2009.

Question 1: Vote Splitting

- The proxy voting provisions have been clarified by the removal of original section 285(2). This means that, as now, a member may appoint more than one proxy to represent different shares (section 324(2)) and each proxy has one vote on a show of hands. Where a proxy is appointed by more than one member, then if all of those members vote the same way, the proxy has one vote to that effect. If some members vote for and some against, the proxy has one vote for and one against. This permits a type of vote splitting (and seems workable), but may not reflect the sense of the meeting. Presumably, the chairman will in each case have to ascertain this and proceed to a poll if the show of hands is thought to be unrepresentative.

- The legislation is still difficult to apply where an individual nominee acts in person. It only provides for one vote on a show of hands (section 284(2)). The provision that allows nominees to exercise rights in different ways (section 152) does not itself provide for that one vote to be divisible. How is the one vote split on a show of hands?
- The consultation paper commented on the difficulties encountered in applying section 152 in conjunction with other provisions regarding voting (e.g. as to whether notifications to the company are required). These difficulties do not appear to have been resolved.

Question 2: Corporate Representatives

- This is clearer. There is also additional provision dealing expressly with voting on a show of hands. This puts multiple corporate representatives in the same position as multiple proxies appointed by one member on a show of hands - each gets one vote - and appears to resolve the issue as regards vote splitting on a show of hands for corporate representatives.

Question 3: Demanding a poll by correspondence in advance

- This has not been clarified - and so it is unclear whether a poll can be demanded by correspondence in advance.

Question 4: Obligations of proxies

- This has been included in its unamended form. It would have been helpful to have further provision to confirm that the company has no responsibility to make any checks and incurs no liability in this respect.

Question 5: Electronic means accessible to all shareholders

- Our understanding is that, whilst the ability to appoint a proxy through CREST will not be sufficient to satisfy condition A, it will be met if a company's website links to a facility offered by registrars to appoint a proxy electronically, in the same way as FTSE 100 companies currently do ahead of GMs and AGMs.

Question 6: Two-thirds or special resolution

- BERR has opted for the special resolution, which is the simplest route.

Question 7: Questions at meetings

- The changes are helpful - the reference to the opinion of the chairman is removed, putting all of the exceptions on the same footing, and although a reference to 'business interests' has not been included, there is a new exception for matters, which are 'undesirable in the interests of the company'.

Question 8: Expenses of circulation

- Section 340 stays the same, so (as now) members have to pay to circulate resolutions unless they make their request before the end of the preceding financial year. We are not sure why the reference to traded companies has disappeared from section 338. Section 338 is no longer going to be amended to provide a shorter request period for traded companies, but presumably the section needs to be applied to all traded companies (not just public companies) to satisfy Article 6 of the Directive? The same point applies to sections 339 and 340. Whilst this tallies with

the approach taken in section 337 (as amended) which distinguishes between traded companies which are, and are not, public companies (new ss(3)), it is not immediately evident why this distinction has been made in the new draft.

- The provisions regarding other agenda items have been amended to provide exceptions for defamatory etc matter and to align them with the rights regarding circulation of resolutions. In the light of new section 340B, it appears that new section 340A needs an equivalent proviso to that in section 339(2) (and perhaps also the equivalent of section 339(3)). There also needs to be a cross-reference in section 360 to new section 340B.

Other Comments

- It would be helpful to have confirmation (at least in guidance) that directors may (as commonly provided in articles of association) continue to require sight of the authority (e.g. power of attorney) pursuant to which a proxy is appointed without contravening new section 327(A1)(b) (i.e. that a member is not required to provide the company with anything relating to the appointment of a proxy other than reasonable evidence of the identity of the member and the proxy and the member's instructions (if any) as to how the proxy is to vote).
- Is new section 340A(2) required? There does not appear to be a reference in that section to a period as described in section 360.
- The text and numbering on the contents page needs to be aligned with the revised regulations.
- The following appear to be typos: new section 307(A2) - traded not trading; new section 307A(4) - cross-references (3)(a) and (5)(e) should be (3) and (4)?; First line of Regulation 18 - amend descriptions of section 340A and 340B

If you wish to discuss these issues with us, we will be pleased to attend a meeting.

Yours sincerely,

A handwritten signature in black ink that reads "John Pierce". The signature is written in a cursive style and is underlined with a single horizontal line.

John Pierce
Chief Executive

THE QUOTED COMPANIES ALLIANCE LEGAL COMMITTEE

Nicholas Narraway (Chairman)	Fasken Martineau LLP
Chris Barrett	Bird & Bird
Richard Beavan*/Martin Finnegan	Nabarro LLP
Matt Bonass	Denton Wilde Sapte
Jennifer Carter-Shaw	Curtis, Mallet-Prevost, Colt & Mosle LLP
Andrew Chadwick	Bircham Dyson Bell LLP
Jonathan Deverill	Stikeman Elliott
Jeanette Gregson/Rebecca Ferguson	Davenport Lyons
Philip Lamb	Lewis Silkin LLP
Tessa Laws	Rosenblatt
Kevin McCarthy/Ross Bryson	Mishcon de Reya
Chris Owen	Manches LLP
June Paddock	Fasken Martineau LLP
Tom Shaw	Speechly Bircham LLP
Donald Stewart	Faegre & Benson LLP
Gary Thorpe/Lorraine Morris*	Clyde & Co
Adam Walker	Farrer & Co
John Pierce	The Quoted Companies Alliance
Kate Jalbert	The Quoted Companies Alliance

*Main Authors

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of SQCs, their advisers and investors. It was founded in 1992 and originally known as CISCO.

The QCA has nearly 400 members. 75% of these are smaller companies quoted on the stock market, or companies with aspirations to join. 25% are drawn from the full range of professional advisory firms whose business is either wholly or significantly derived from servicing smaller companies.

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
- introduction of, or changes to, legislation affecting SQCs
- corporate governance
- share schemes for employees
- trading, settlement and custody of shares
- structure and regulation of stock markets for SQCs; Financial Services Authority (FSA) consultation
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from the Accounting Standards Board
- company law reform

The QCA is a founder member of **EuropeanIssuers**, which represents over 9,000 quoted companies in twelve EU member states.

QCA's AIMS

As the only organisation dedicated solely to the particular interests of the SQC sector, the QCA has three primary goals:

Identification

To create a distinct identity for the SQC sector, and demonstrate its value to the stock markets and the UK economy.

Representation

To pro-actively pursue and represent the interests and requirements of the SQC sector to enable it to increase its contribution and ensure that its specific needs are addressed.

Affiliation

To build a strong and vocal collective body of support from within the SQC sector, among corporate directors and securities industry leaders.

DEFINITION

The Quoted Companies Alliance definition of Smaller Quoted Companies (SQC) is:

- all fully listed companies – excluding the top 350 ie with market cap of £340m+
- plus companies quoted on AIM
- plus companies quoted on PLUS

The QCA also represents companies planning to float.

SQCs contribute to the economy:

- there are approximately 2,000 SQCs
- they represent around 85% of the total of quoted companies by number
- they employ 2 million people
- this figure represents around 10% of total private sector employment
- every 5% growth in the SQC sector could reduce UK unemployment by a further 100,000
- They generate:
 - corporation tax paid of £2.0 billion pa
 - income tax paid of £5.0 billion pa
 - social security paid of £2.0 billion pa

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

For more information contact:

John Pierce
The Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
020 7600 3745
www.quotedcompaniesalliance.co.uk