

Minutes of the QCA Legal Expert Group

**QUOTED
COMPANIES
ALLIANCE**

Held on: Tuesday 17 July 2018

Venue: Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD

Present:

Stephen Hamilton (Co-Deputy Chair)	Mills & Reeve LLP	SH
Paul Arathoon	Charles Russell Speechlys LLP	PA
Philippa Chatterton	CMS	PC
Paul Cliff	Gateley LLP	PCI
Murdoch Currie	Bates Wells & Braithwaite LLP	MC
David Hicks	Charles Russell Speechlys LLP	DH
Martin Kay	Blake Morgan	MK
Nicola Mallett	Lewis Silkin	NM
Nicholas McVeigh	Mishcon De Reya	NMc
Daniel Okusaga	LexisNexis	DO
Jaspal Sekhon	Hill Dickinson LLP	JS
Donald Stewart	Kepstorn LLP	DS
Jane Wang	Fasken LLP	JW
Tim Ward	Quoted Companies Alliance	TW
Anthony Robinson	Quoted Companies Alliance	AR
Callum Anderson (minutes)	Quoted Companies Alliance	CA

In attendance:

Helen Boyd	Financial Conduct Authority (FCA)	HN
Michael Naughton	Financial Conduct Authority (FCA)	MN
Liga Dugdale	Practical Law Company Limited	LD
John Holme	Hogan Lovells International LLP	JH
Victoria Youngusband	Charles Russell Speechlys LLP	VY

1. WELCOME TO HELEN BOYD AND MICHAEL NAUGHTON, FINANCIAL CONDUCT AUTHORITY (FCA)

SH welcomed HB and MN to the meeting.

HB gave a brief overview of the engagement work that the FCA had conducted with stakeholders regarding implementation of the Market Abuse Regulation (MAR). She noted that the FCA felt that, overall, implementation had gone smoothly and that the market had continued to operate without interruption. She added that a significant reason for this was the fact that the changes brought in by MAR were relatively small in the UK compared to other EU Member States.

Case Study 1

HB and the Expert Group exchanged views on whether a director could exercise SAYE options, despite the fact that within the six month window that they could exercise the options, they had come to possess inside information. It was noted that the director and the legal advisers were notified a couple of months into the

window, meaning it was just too late for the director to give four months' notice of an irrevocable decision to exercise the option.

HB acknowledged the challenges of this situation, but also pointed out the difficulty in accurately determining an individual's motive when exercising an option if they hold inside information, even if there is a reasonable rationale for exercising the options. Nonetheless, HB and MN explained that they would be open to solutions within the confined constraints of MAR and invited the Expert Group to bring forward proposals that respected this principle.

Case Study 2

DS led the discussion on the issues regarding the market sounding regime and accelerated book builds. He emphasised that the new regime was also causing significant uncertainty for equity fundraising. DS compared and contrasted former with current market practices.

He emphasised that a key problem with the new regime was that small and mid-size quoted companies were uncertain as to whether their fundraising is in place and that everyone on the placing list will, in fact, confirm their participation. This was confirmed to before MAR came into force, whereby the SME had the comfort of knowing that the funding was in place when the market announcement was made.

Case studies can be found here:

http://www.theqca.com/article_assets/articledir_314/157481/MAR%20case%20studies%20170718.pdf

HB and the Expert Group briefly exchanged views on the European Commission's February 2018 consultation paper on building a proportionate regulatory environment to support SME listings, as well as the current request for feedback regarding the European Commission's legislative proposals to amend MAR and the Prospectus Regulation.

HB and MN agreed that it would be useful to have these meetings on a roughly bi-annual basis, if required.

SH thanked HB and MN for their time. HB and MN left the meeting.

2. APOLOGIES

Apologies were received from Danette Antao, Simon Cox, Sarah Hassan, Julie Keefe, Jonathan King, Mark Taylor and Gary Thorpe.

3. MINUTES OF LAST MEETING (15 May 2018)

The minutes were approved.

4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p>European Commission request for feedback: Fostering and promoting the use of SME growth markets – Level 1</p> <p>The Expert Group noted that CA had circulated draft responses to the European Commission’s request for feedback on its legislative proposals to foster and promote the use of SME growth markets.</p> <p>CA encouraged the Expert Group to send their comments in good time before the 25 July 2018 deadline.</p> <p>TW added that any comments would also contribute to EuropeanIssuers’ response.</p>	<p>CA to circulate draft response to Expert Group members.</p> <p>SH and DS to draft paragraphs on market soundings.</p> <p>ALL to comment on draft response.</p>
b)	<p>FCA’s 19th Primary Market Bulletin</p> <p>The Expert Group noted that CA had circulated draft responses to the FCA’s 19th Primary Market Bulletin which proposed changes to a Technical Note regarding periodic financial information and inside information.</p> <p>CA encouraged Expert Group members to send their comments in good time before the 23 July 2018 deadline.</p>	<p>CA to circulate draft response to Expert Group members.</p> <p>ALL to comment on draft response.</p>
c)	<p>Brexit</p> <p>This was not discussed.</p>	None.

5. COMMUNICATIONS AND FUTURE MEETINGS

	ITEM	ACTION
a)	<p>Policy Update (June 2018)</p> <p>This was tabled for information only and was not discussed.</p>	None.
b)	<p>Guest invitations to future meetings</p> <p>This was not discussed.</p>	None.

6. ANY OTHER BUSINESS

TW explained that he had received a letter from the Pre-Emption Group regarding its prospective proposals to amend its Statement of Principles, so that companies seek the approval of investors if they wish to issue shares up to 20% of share capital; such issuances are exempt from the requirement to produce a prospectus by the new Prospectus Regulation. He invited any Expert Group member interested in this issue to contact the QCA.

7. NEXT MEETING

Tuesday 11 September 2018, 9.00am – 10.30am (Venue: Clyde & Co LLP, St Botolph Building, 138 Houndsditch, London, EC3R 7AR).