



Minutes of the QCA Legal Expert Group (the "Committee")

Held on: Tuesday 9 July 2019, 9.00am-10.30am

Venue: Clyde & Co LLP, St Botolph Building, 138 Houndsditch, London, EC3A 7AR

Present:

Maegen Morrison (Co-Deputy Chair)	Hogan Lovells International LLP	MM
Danette Antao	Hogan Lovells International LLP	DA
Robin Bolivar	Thomson Reuters	RB
Phillipa Chatterton	CMS	PA
Simon Cox	Norton Rose Fullbright LLP	SC
Tunji Emanuel	LexisNexis	TE
David Hicks	Charles Russell Speechlys	DH
Martin Kay	Blake Morgan LLP	MK
Nicola Mallet	Lewis Silkin	NM
Nicholas McVeigh	Mishcon De Reya	NMV
Jaspal Sekhon	Hill Dickinson LLP	JS
Donald Stewart	Kepstorm	DS
Tim Ward	Quoted Companies Alliance	TW
Anthony Robinson	Quoted Companies Alliance	AR
Jack Marshall	Quoted Companies Alliance	JM

In attendance:

John Mulcahy	FCA	JMY
Michaela Halse	FCA	MH

- 1. WELCOME TO John Mulcahy and Michaela Halse, Managers of the Listing Transactions Department at the FCA, as guest speakers in order to discuss the structure of the markets and standard listing.**

MM welcomed JMY and MH to the Legal Expert Group meeting.

Overview of the department

MH and JMY briefly summarised their roles within the Listing Transactions Department and gave an overview of the Department as the listing authority function of the FCA. The key points highlighted about the departments work included:

- Live market monitoring;
- Administration of the official list;
- Eligibility for listing and eligibility enquiries in general;
- Review of shareholder documentation; and
- Operate in debt, equity and funds.

Standard listing

Standard listing is still seen by the FCA as being a highly valuable market for the majority of companies that seek to join it. It is particularly beneficial for companies to come to market and raise cash, and is valued by both issuers and their shareholders. However, certain micro-cap companies or start-ups that are seeking standard listing are from jurisdictions that have dubious backgrounds. The Listing Transactions Department are increasingly focussing on intelligence in order to mitigate or limit the arrival of such companies.

Post-Brexit and the future of standard listing

In the post-Brexit space it is likely that the listing regimes, and, in particular, standard listing, will be reviewed, but this is contingent on the type of exit. Whilst it was acknowledged that there is a need for something for the companies that seek standard listing or are admitted on this regime, it is necessary to ensure that it is appropriate and continues to be fit for purpose. In undertaking the review, it was mentioned that it is important to be conscious of fees and how expensive it is to premium list so that it does not deter smaller companies from wanting to list.

The FCA's work on patient capital will also be re-opened, having been stopped due to Brexit and no-deal preparations. The patient capital review would look at the lower end of the market in terms of quality, rather than size. It was explained that it was wrong to devote more time and resource to certain special acquisition companies than a large-cap company.

A question was raised as to whether there are any proportionate rules for small-cap companies, similar to that developed for oil companies. It was explained that this could be looked at during the standard listing review and certain categories could be developed as a result of this.

FCA current focus

The FCA's current focus and priorities over the next few months will predominantly surround work on PD3 and the Prospectus Regulation. In particular, the focus will be on the debt side as everyone wants to get their documents approved before the 21 July deadline. As well as this, there are currently a lot of dual-track companies, some of whom are very close to IPO'ing.

SME growth markets and prospectuses

It was highlighted that SME growth markets are more streamlined than PD2. It was asked what is classified as an SME growth market and explained that it was quite a broad definition, but that it was generally considered to be AIM and the NEX Exchange, although this can change over time. The high growth market also ties in with the SME growth market, but it was stated that this was not very popular due to the fact it is not a listed market and the low-free float requirements were not seen as a good thing.

Discussion

The passport regime may collapse as a result of Brexit, but this depends on equivalence.

In terms of suspensions, the FCA has the power to suspend and will do so usually when someone is in breach of a rule.

A question was asked as to the extent to which the FCA engages with corporate governance issues. It was explained that the FCA does not typically get involved with this and especially not within the Listing Transactions department as the listing rules do not cover this. The FCA do, however, engage regularly with the FRC, but it is not likely that public statements would be made about this. It is important that the FCA is aware of its remit in relation to other regulators.

In regards to eligibility letters, the group asked whether there were any examples of these that had gone wrong. In response, it was explained that, when conducting the eligibility review, issues with the company would often become evident. These issues often include the likes of unknown directors as well as fines the company is due to pay. These problems predominantly occur within the standard listing regime.

It was mentioned that it is often the case that there are more fundamental issues with the company than just issues with their eligibility letters. The more fundamental issues are usually unearthed during the background checks to the company. The background checks do not solely rely on the information provided to the FCA by the company and its advisors, but also on the FCA's database. The FCA will conduct comprehensive and rigorous checks on the company and its individuals, as well as carefully considering overarching power relations and investor detriment.

MM thanked JMY and MH for their time. JMY and MH left the meeting.

2. APOLOGIES

Apologies for absence were received from Paul Aarthon, Daniel Bellau, Ashmi Bhagani, Paul Cliff, Kate Francis, Claudia Gizejewski, Francine Godrich, Stephen Hamilton, Sarah Hassan, Alex Iapichino, Nicholas Jennings, Julie Keefe, Jonathan King, Catherine Moss, Nicholas Narraway, Richard Phillips, Kieran Stone, Mark Taylor Gary Thorpe, Jane Wang, Robert Wieder and David Willbe.

3. MINUTES OF LAST MEETING

The minutes of the meeting of the Committee held on 21 May 2019 were tabled and approved without amendment.

4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p>General market review. Invitation for expert group members to share views and experiences of the market.</p> <p>The group discussed their experiences and opinions of the market over recent months.</p> <p>The following views were raised by the group:</p> <ul style="list-style-type: none"> It was mentioned that secondary issues were still arising due to re-structuring. 	None.

	<ul style="list-style-type: none"> • Short-selling regulations and CSDR have become increasingly important and there is a need to re-calibrate policy around these. • EIS and state aid rules are in question. 	
d)	Future meetings and speaker priorities for 2019. This was not discussed.	JM to contact potential guest speakers.

5. COMMUNICATIONS AND PUBLICATIONS

	ITEM	ACTION
a)	<p>The results of the biannual <i>QCA/YouGov Small & Mid-Cap Sentiment Index</i> has been published. The latest edition reveals that small and mid-cap companies remain positive about their own prospects, despite this optimism being at its lowest point since 2012. Many companies cite Brexit and political uncertainty as continuing to contribute to the neutral outlook on the economy. The key findings are as follows:</p> <ol style="list-style-type: none"> 76% of small & mid-caps are expecting to increase jobs, but 19% anticipate decreasing employment – up from 10% six months earlier. 37% of surveyed companies are planning to raise capital - down from 47% when asked six months earlier. Companies predict average sales growth of 17%, down from 19.2% a year earlier. <p>This was tabled for information only and not discussed.</p>	None.
b)	<p>The project for updating the QCA Audit Committee Audit Guide is progressing and is on course for release over the summer.</p> <p>This was tabled for information only and not discussed.</p>	None.
c)	<p>YouGov are surveying companies that adopted the QCA Corporate Governance Code to identify any ways in which we might be able to improve the Code and see if we can find evidence that following the QCA Code has helped companies. This will be published over the summer.</p> <p>This was tabled for information only and not discussed.</p>	None.
d)	<p>Henley Business School have been commissioned by the QCA and Downing LLP to undertake a research project to understand the role that NEDs play in smaller growth companies. The results are planned to be released in September.</p> <p>This was tabled for information only and not discussed.</p>	None.

6. ANY OTHER BUSINESS

None.

7. NEXT MEETING

Tuesday 17 September 2019, 9.00am – 10.30am (Venue: Stifel, 150 Cheapside, London, EC2V 6ET)