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Ms Marta Alonso
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Financial Conduct Authority
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19 February 2016

Dear Ms Alonso,

Provisions to delay disclosure of inside information within the FCA's Disclosure and Transparency Rules

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation paper published by the FCA relating to the provisions to delay disclosure of inside information and its proposed amendment to the guidance currently contained in the FCA's Disclosure and Transparency Rules (DTR 2.5.5G).

We support amendments that assist in achieving flexibility for small and mid-size quoted companies without compromising the integrity of the market. This is an issue of particular importance to us given that, when the Market Abuse Regulation (MAR) comes into force in July 2016, the full weight of the regulation will fall upon companies whose shares are traded on growth markets such as AIM and it is these companies which form a large proportion of our membership. Small and mid-size quoted companies will be looking to the guidance provided in what will become the Disclosure Guidance and Transparency Rules (DGTRs) and, once it is issued (in Q3 2016), the ESMA Guidance required to be published under Article 17(11) of MAR (Article 17(11) Guidance). Pending the issue of the Article 17(11) Guidance, issuers will continue to look at the historic guidance issued by CESR in 2006 (CESR/06-562b) (CESR Guidance).

In addition, in the case of AIM companies, AIM Regulation wishes to retain the existing provisions of the AIM Rules for Companies which deal with the disclosure of inside information and to maintain its ability to require the making and/or correction of announcements where it considers that those Rules are not being complied with. Whilst it remains to be seen how this will operate in practice following the implementation of MAR, it would appear to provide a further level of scrutiny of conduct of AIM companies (and will enable the imposing of additional sanctions on those companies). In particular (as is currently the case), AIM companies will continue be expected to consult with AIM in the case of any questions regarding the requirement for and the timing of announcements. We note that consultation with the FCA is also mandated by MAR in these circumstances, and we expect that a protocol will emerge or be imposed once the new regime is in force. We do not comment further on this aspect in this response.

Given the greater restrictions on manoeuvre which will apply to the FCA following MAR, a number of the points we make below will also form part of our submission to ESMA in response to its Consultation Paper ESMA/2016/162 issued on 28 January 2016 ("ESMA Consultation Paper") and which contains the draft Article 17(11) Guidance. We have commented in more detail to the question asked by the FCA in this consultation paper below.

We would highlight that, as a general comment, we have a few overarching concerns on the implementation of MAR, as we have pointed out to the FCA in our response to CP15/35[1]. Our members have raised concerns regarding:

- **The provisions relating to dealings by persons discharging managerial responsibilities** – These rules could negatively affect all quoted companies significantly. We urge the FCA to ensure that MAR rules will allow for preliminary announcements to trigger the end of the closed period;

- **The interaction between the application of MAR rules for SME Growth Markets and the entry into force of MiFID II** – Issuers on growth markets should be able to take advantage of MAR's more proportionate rules regarding insider lists from the date MAR enters into force; and

- **The implementation of other periphery Model Code issues** – It is important to understand how other issues will be addressed, such as the definition of dealing, clearance or the non-exhaustive list of the delay of disclosure of inside information.

Responses to specific questions

Q1 Do you agree that making the proposed change to DTR2.5.5G, without issuing further guidance relating to 'legitimate interest', supports a properly functioning disclosure regime?

Our response to the question raised in the FCA Consultation Paper is as follows:

We welcome the proposed change to DTR2.5.5G, without the issue of further guidance relating to "legitimate interest". We believe that this is a helpful amendment, particularly given the evolution of the concept of "inside information" to the point where the threshold tests for publication are considerably

[1] See http://www.theqca.com/about-us/responses/112116/qca-response-to-the-fca-consultation-paper-cp1535-policy-proposals-and-handbook-changes-related-to-the-implementation-of-the-market-abuse-regulation-2014596eu.thtml.

lower than that has been considered to be acceptable market practice over many years and the information and circumstances likely to be considered in the context of delayed disclosure is therefore correspondingly greater.

We believe that the proposed amendment supports a properly functioning disclosure regime for the following reasons:

- The existing CESR Guidance (which will continue to be a point of reference outside the DTRs pending the adoption of the Article 17(11) Guidance) is itself restrictive. Indeed, whilst consistently emphasising that the two circumstances of "legitimate interests" given in Article 3(1) of MAD (and preserved in Recital 50 of MAR) are non-exhaustive, that guidance is expressed as illustrating rather than extending those circumstances.

- The draft Article 17(11) Guidance is, if anything, more restrictive than the existing CESR Guidance. It helpfully splits out the two elements of the first circumstance set out in Recital 50 of MAD but, as currently drafted, dispenses with the general circumstance of "impending developments that could be jeopardised by premature disclosure", which is a feature of the existing CESR Guidance (effectively, "impending developments is relegated to the development of products or inventions and plans to purchase or dispose of major shareholdings).

- We note that the amendments to what will become the DGTRs contemplate the retention of the wording of DTR2.5.5G which specifically addresses "impending developments" as a general circumstance and we welcome this (with the deletion of the final sentence). We do not believe that this is inconsistent with MAR and we propose to make this point in our response to the ESMA Consultation Paper.

- The proposed inclusion in the Article 17(11) Guidance of guidance relating to situations in which the delay of inside information is likely to mislead the public, will further promote a properly functioning disclosure regime and (taken with the other points made in this response) serve to counter any risk of the deletion of the last sentence of DTR5.2.2G being viewed as a relaxation of the existing regime (note that we do not view it as being a relaxation of the existing regime in any event).

- In the case of AIM companies, the ongoing oversight of AIM Regulation will add a further level of control (and a further avenue for seeking guidance) over the publication of inside information, including the timing and content of announcements.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chairman)	**Clyde & Co LLP**
Maegen Morrison (Deputy Chairman)	Hogan Lovells International LLP
David Davies	Bates Wells & Braithwaite LLP
Martin Kay	Blake Morgan
Paul Arathoon Andrew Collins David Hicks Tom Shaw	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Mark Taylor	Dorsey & Whitney
June Paddock	Fasken Martineau LLP
Ian Binnie	Hamlins LLP
Donald Stewart	Kepstorn
Karish Andrews	Lewis Silkin
Tara Hogg Jane Mayfield	LexisNexis
Stephen Hamilton	Mills & Reeve LLP
Ross Bryson Nicholas McVeigh	Mishcon De Reya
Philippa Chatterton	Nabarro LLP
Jo Chattle Simon Cox Julie Keefe	Norton Rose Fulbright LLP
Naomi Bellingham Sarah Hassan Hilary Owens Gray	Practical Law Company Limited
Ben Warth	PricewaterhouseCoopers LLP