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| Present: | Gary Thorpe (in the Chair) | GT |
| | June Paddock | JP |
| | Julie Keefe | JK |
| | Paul Arathoon | PA |
| | Martin Kay | MK |
| | Ian Binnie | IB |
| | Danette Antao | DA |
| | Susan Hollingdale | SH |
| | Hilary Owens | HO |
| | Donald Stewart | DS |
| | Stephen Hamilton | SHa |
| | Kate Jalbert | KJ |
| In attendance: | Jaspal Sekhon (Minutes) | JS |
| | David Hicks | DH |
| | Chris Manning | CM |
| | Richard Evans (Strand Hanson) | RE |

ACTIONS

1. Welcome to Richard Evans, Strand Hanson, to discuss Relationship Agreements

GT thanked RE for attending the meeting.

Key points from RE's discussion:

- Relationship agreements are a hot topic at the moment particularly because of the proposed changes to the Listing Rules.
- RE had spent part of his career during the 1990's at the LSE in the listing department and he had looked at substantial shareholder relationship agreements closely. However, the FSA moved away from those agreements in the early 2000's because they were of the view that they were not worth the paper they were written on and it was better dealt with by an issuer making disclosures to investors.
- Following a number of scandals (mostly involving natural resources companies, especially those in CIS countries) the issue of relationship agreements has gained greater prominence. In addition, the AIM Regulation Team are looking into this area closely.
- RE has had recent experience of the AIM Regulation Team saying in a few instances that issuers should have a relationship agreement in place. However, because there is nothing prescribed in the AIM Rules about when a relationship agreement is necessary or what it should contain, it is very difficult for Nomads to know how to advise issuers in this area.
- Strand Hanson acts for a large number of natural resources companies with an overseas presence. They have used relationship agreements in a number of cases but this tends to be for when there are one or two significant shareholders. RE thinks relationship agreements can be a useful tool for foreign companies (particularly those not subject to the Takeover Code) to have a set of basic ground rules to follow.

- A Nomad would not normally be party to a relationship agreement.
- Relationship agreements would typically cover board positions, voting, standstills and matters reserved for the independent directors.
- GT asked RE if he had any experience of relationship agreements being enforced not necessarily through the Courts but otherwise being used as a lever. RE had a recent case which involved a substantial shareholder (who was also the Chairman of the company) who wanted to complete a share issue which would have changed the voting power in the company dramatically. A number of other shareholders and directors had agreed to abstain from the vote but Strand Hanson reminded them of their obligations in the relationship agreement and they withdrew their effective support for the issue. RE noted that this involved a number of American individuals who perhaps attached more weight to the threat of litigation than others may have done.
- HO asked what percentage of shareholding do the AIM Team say is sufficient to justify having a relationship agreement. RE said in his experience it is a majority position, i.e. over 50%. Market practice is for relationship agreements to be put in place at lower thresholds 10-20% not being uncommon.
- RE is overall quite sceptical of the use of relationship agreements, in particular because they are extremely difficult to enforce. They do, however, have a cosmetic value.
- That said, RE thinks that in situations where it is not clear who has control in a particular company, it can be useful to have a relationship agreement which is disclosable so that investors can make an informed decision about where the control lies.
- MK observed there is a distinction between having a relationship agreement on an IPO and post-IPO where an investor can buy shares in the market and the Company has a much weaker hand when it comes to implementing a relationship agreement. RE thought the Takeover Code gave sufficient protection to minority shareholders.
- RE thinks that rather than having a relationship agreement, it would be much more useful for non-Code companies to mirror the Takeover Code minority protection provisions in their constitution. JK noted that many companies already do this.
- GT asked RE if he had any experience of Nomads putting pressure on a shareholder who gains a majority position through buying shares in the market. RE said Strand Hanson had a client which was completing a shareholder re-financing involving two significant shareholders. As it was a non-Code company, Strand Hanson had recommended implementing a relationship agreement which would act as a statement of intent as to the obligations and responsibilities of the respective shareholders. However, RE was careful to note that that was quite a unique situation.
- RE thought that relationship agreements can be useful on a case by case basis but he was critical of them being used on a blanket basis as it would simply become a compliance issue and cease to have any value.
- GT asked whether relationship agreements would be good for strengthening the hand of non-executive directors. RE said it could make things easier but it would still take a strong non-executive director to enforce a relationship agreement against a recalcitrant director-shareholder.

- IB thought if a relationship agreement was a requirement of the AIM Rules and it was breached the ultimate sanction would be that the Nomad would have to resign. GT suggested that compliance with a relationship agreement could be made a term of the Nomad agreements so that if agreement was breached the Nomad could terminate the engagement.
- SHa thought that if it was simply a question of setting out minimum standards for relationship agreements, those requirements could just be set out in the AIM Rules.
- RE did not think that institutional shareholders attach much importance to relationship agreements, particularly for small-cap companies. Institutional shareholders are much more focused on backing a management team they believe in.
- MK noted that most people regard relationship agreements as essentially window dressing at an IPO. However, he thinks they could be much more useful post-IPO.
- HO asked RE if he had experience of provisions setting out rights of first refusal. RE noted that where there is a genuine need for a relationship agreement they will often contain provisions which are quite similar to shareholder agreements. That is why RE does not think one can be too prescriptive about what relationship agreements should contain. There is some merit in setting out certain minimum standards but one should not be too prescriptive.

GT thanked RE again for attending and RE left the meeting.

2. Apologies

Apologies were received from Simon Cox, Ross Bryson, Maegan Morrison, David Davies, Chris Barrett, Mebs Dossa, Philip Lamb, Richard Beavan, Anthony Turner and Tim Ward.

3. Approve the minutes of the previous meeting (26 September 2013)

The minutes of the last meeting were approved.

4. Review of actions from the last meeting

Please refer to the list of actions at the end of this document.

5. Current consultations and issues

a) Proposal for a regulation on a new Key Information Document for investment products (PRIPS)

KJ noted that the Expert Group had been alerted to a potential issue concerning Packaged Retail Investment Products (PRIPS), specifically a proposed regulation on key information documents for investment products. Recently a French MEP had tabled an amendment which would extend the regulation to offers of shares and bonds which would potentially cut across the Prospectus Directive.¹

KJ noted that the vote had taken place on Monday and thankfully the proposal did not go through. However, it does not mean that the measure will not come back for consideration at a future date. The regulation will now go back to the European Parliament for scrutiny before going back to the trilogue phase.

It was agreed that the Expert Group should keep a watching brief on this topic.

¹ Please refer to the Minutes dated 25 April 2013 for further information.

b) Government's Balance of Competencies Review:

- Call for Evidence: Single Market: Free Movement of Services Review (Company Law, pp.13 and 14) (RD: 13 January 2014)
- Call for Evidence: Single Market: Financial Services and the Free Movement of Capital (RD: 17 January 2014)

GT questioned whether we want to respond to these two consultations.

All members were asked to think about good and bad points about EU measures for example, MIFID and the Prospectus Directive.

All

c) Consultation Paper: ESMA Guidelines on Enforcement of Financial Information (RD: 31 October 2013)

KJ noted that the deadline for the response had been extended to 31 October 2013. Maegen Morrison is working on this response. Thanks were given to her for taking up this task.

d) Cut EU red tape - Report from the Business Task Force

KJ highlighted this for information only. The only point of relevance for this group is the proposal to increase the prospectus directive thresholds.

e) Guidance on Relationship Agreements

- FCA Feedback Statement on Relationship Agreements

The FCA Feedback Statement has not been published yet and is expected to be published in November.

GT noted that IB, KJ and himself had met with Edward Craft to discuss the form that the QCA guidance could take. KJ had also spoken to Tim Ward and he thinks it would be useful to produce an addendum to the Corporate Governance Code.

GT asked members for their views on producing guidance. JP noted that the earlier discussion with RE highlighted that Nomads take quite different views of what a relationship agreement should contain. This highlights the difficulty in producing useful guidance.

IB thought it was premature to be producing guidance given that there is a quite a lot happening in this area, for example, the FCA Statement which has still not been published. Accordingly, it would be preferable to wait until there is greater clarity on the direction of the regulations before producing any guidance.

GT thought it would be useful to include a question in the next QCA questionnaire asking the membership of their experiences of relationship agreements and KJ was asked to action this.

KJ

6. Communications

a) Guest invitations

No members had any other suggestions for guests other than those that were mentioned in the previous meeting. However, it was thought that a guest from the Takeover Panel should be invited first.

KJ will try to get somebody from the Takeover Panel to attend the next meeting.

KJ

b) Policy Briefing Update - 16 August 2013 (for information only)

Noted for information.

7. Any other business

N/A

Information for noting

- Consultation update - responses submitted:

FCA: Consequential Changes to the Listing Rules resulting from the BIS Directors' Remuneration Reporting Regulations and Narrative Reporting Regulations. Thanks to Ross Bryson for his assistance on this.

- Next meeting

8.45am Thursday 28 November 2013 (Venue: Speechly Bircham)

8. Actions

| Action | Person | Timing |
|--|--------|-----------------------------------|
| All members were asked to think about good and bad points about EU measures for example, MIFID and the Prospectus Directive in response to the Government's Balance of Competencies Review | All | Next meeting |
| Include a question in the next QCA questionnaire asking the membership of their experiences of relationship agreements | KJ | Before the next QCA questionnaire |
| Try to get someone from the Takeover Panel to attend the next meeting | KJ | Next meeting |
| Review ESMA consultation paper on ESMA Guidelines on enforcement of financial information (only to consider what impact, if any, there will be for UK issuers) | MM | 31 October 2013 |
| Circulate PLC notes on UK/US issues | SH | Next meeting |
| Consider questions / topics which could be asked in the next QCA members' feedback questionnaire | All | Week commencing 28 October 2013 |