



**The Quoted
Companies Alliance**

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Committee of European Securities Regulators
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16 December 2009

Dear Sirs,

CESR Consultation Paper - Understanding the definition of advice under MiFID (Ref: CESR/09-665)

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation working for small and mid-cap quoted companies. 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 fourteen European countries.

The QCA Markets & Regulations Committee has examined your proposals and advised on this response. A list of Committee members is at Appendix A.

RESPONSE

Being a representative body of small and mid-cap issuers and their advisors, our particular interest relating to advice under MiFID is that of corporate finance advice. For this reason, we have constrained our comments to Section VIII of the consultation paper.

We would like to clarify and confirm the scope of advice under MiFID in the context of corporate finance advice. A number of firms, who advise or provide services to issuers hold details of investors to whom they communicate information on corporate events, in particular on new issues. The advisory/service firms receive remuneration from the issuers, not from the investors who they treat as “corporate finance contacts” and not as clients. Under Article 2(1)(j) we understand that, because it is not “specifically remunerated”, such a service would be exempted by MiFID. If our understanding is wrong, then we would like to revert and comment further.

You posed two questions:

Q.7. What information would be helpful to assist in determining whether or not what firms provide constitutes investment advice or corporate finance advice?

Q.8. Are there specific examples of situations you would like considered, where it is difficult to determine the nature of the advice?

In the diagram on page 5 of the consultation paper, there are five key tests for investment advice, all of which have to be met for the advice to be considered investment advice under MiFID.

Corporate finance advice is concerned with corporate stock events, including new issues/flotations, rights issues, take-overs, reconstructions, share splits and consolidations. An important characteristic of such stock events is that, until such time as a specific decision is made to go ahead with the stock event, a financial instrument may not or does not definitely exist. In our view, therefore, Test 2 of the 5 tests (i.e. is the recommendation in relation to one or more transactions in financial instruments?) is not met if the decision to go ahead has not been made and the instrument has not been created. We consider that the distinction between corporate finance advice and investment advice in the first instance can be established by determining whether the advice relates to a financial instrument which exists. This test is clear in the situation of new issues until such point as the (new) instrument becomes tradable.

We would argue that it also applies to rights issues, take-overs, reconstructions and other stock events where, although an underlying equity exists, the nature of the equity is changing and a new instrument, albeit in some cases temporary, may be created. At the juncture that the instrument is able to be traded and investors become involved, we would accept that advice to investors, whether they are members of the family firm or external persons, could fall within the scope of investment advice. If the instrument's characteristics (e.g. the offer price) are still undecided, then we cannot see that there is a basis of assessing whether advice is suitable.

In our opinion, if firms have to take a view on a case-by-case basis, this is likely to cause uncertainty. Until such time as a definite decision is made to go ahead with the stock event and investors are asked to commit, there is no risk and therefore no need for investor protection.

In summary, corporate finance advice and investment advice are qualitatively different. Corporate finance relates to advice to the corporate on its own financial structure and should not be covered by regulations concerning investment advice which relate to what the corporate or individual does with its own resources

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, appearing to read 'TWL', written in a cursive style.

Tim Ward
Chief Executive

THE QUOTED COMPANIES ALLIANCE MARKETS & REGULATIONS COMMITTEE

Stuart Andrews (Chairman)	Evolution Securities LTD
Peter Allen	DWF LLP
Umerah Akram	London Stock Exchange plc
Andrew Collins	Speechly Bircham LLP
Jonathan Eardley*	Share Resources
Richard Everett	Lawrence Graham LLP
Richard Evans	Consultant
Martin Finnegan	Nabarro LLP
Alexandra Hockenhull	Hockenhull Investor Relations
Farook Khan	Pinsent Masons LLP
Linda Main	KPMG LLP
Richard Metcalfe	Mazars LLP
Craig Nimmo	Brewin Dolphin Securities
Simon Rafferty	Winterflood Securities
Chris Searle	BDO Stoy Hayward LLP
Peter Swabey	Equiniti
Theresa Wallis	LiDCO Group plc
Tim Ward	The Quoted Companies Alliance
Kate Jalbert	The Quoted Companies Alliance

*Main Author

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

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
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies; Financial Services Authority (FSA) consultations
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The QCA is a founder member of European**Issuers**, which represents quoted companies in fourteen European countries.

QCA's Aims and Objectives

The QCA works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

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

For more information contact:

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