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Dear FCA colleagues,

FCA Engagement Paper 2 - Further issuances of equity on regulated markets

We welcome the opportunity to respond to the FCA's Engagement Paper on further issuances of equity on regulated markets.

The Quoted Companies Alliance *Legal Expert Group* and *Primary Markets Expert Group* have examined the proposals and advised on this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

We warmly welcome the starting assumption set out in paragraph 4 of this Engagement Paper, namely that the FCA should not require a prospectus for further issuances of shares unless there is a clear argument that it is necessary to do so for investor protection. Moreover, we would urge the FCA to be ambitious in its endeavours to reduce the incidences where a prospectus will be required under the new regime.

With this in mind, we strongly support the proposal to increase the prospectus trigger threshold for equity increases from 20 per cent. to 75 per cent. Below that threshold we believe that the publication and circulation to shareholders of an announcement which operates as a cleansing notice and either has appended to it the terms and conditions of the offer (in the manner typically used for accelerated book-build placings) or which incorporates a link to the terms and conditions, application form and instructions for acceptance, should be sufficient in most cases.

For the further issuance of shares above the 75 per cent. threshold, we believe the FCA should adopt a flexible approach by allowing companies to use either a simplified prospectus or a full prospectus.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

James Ashton.

James Ashton
Chief Executive

Q1 Do you agree that we should be more ambitious in seeking to reduce requirements for a prospectus for further issuances than for issuances at initial public offering? Please give your reasons.

Yes – as indicated in our covering letter we agree that the FCA should be more ambitious in seeking to reduce requirements for a prospectus for further issuances of shares.

The requirement to produce a prospectus is a significant impediment for further issuances and has operated to the severe detriment of retail investors. For a number of years, small to mid-sized quoted companies (and many larger companies) have defaulted to institutional placings for their equity fundraisings in order to avoid the significant time and cost typically associated with the preparation, vetting, approval and issue of a prospectus.

Q2 Do you agree with our analysis of where there may be potential frictions for issuers which may prevent them from raising capital efficiently? Please give your reasons.

Yes – we are in agreement with the FCA's analysis of where there may be potential frictions for issuers which may prevent them from raising capital effectively. In the UK, the prospectus brand has long been associated with cost, delay and disproportionate allocation of management time. The vetting process itself encourages a "stop/start" process and it is questionable whether its utility in ensuring consistency and eliminating errors is sufficient to justify the time and expense that it adds to the process.

Q3 Do you agree that we should set a percentage threshold for a requirement to publish a prospectus? If so, where would you set this threshold? Please give your reasons.

The current 20 per cent. threshold can be a significant barrier for equity fundraises by growth companies given the time and cost associated with publishing a prospectus. Therefore we strongly support the recommendation of the UK Secondary Capital Raising Review (SCRR) that the current 20 per cent. trigger point for increases in share capital should be increased to 75 per cent.

By way of explanation, we believe that the additional disclosure requirements linked to the size of the issue are difficult to justify unless the investment proposition offered by the issuer is itself changing in consequence of the issue. In this regard, the existing disclosure requirements for substantial transactions and reverse takeovers remain fit for purpose and largely render any requirement for a prospectus redundant.

Furthermore, while we are cognisant that there are circumstances in which companies issue shares in more complex scenarios (such as in connection with an acquisition / disposal), we believe this should be dealt with via the Listing Rules around disclosure requirements (as covered by the Primary Markets Effectiveness Review) rather than conflating this with prospectus requirements. Practice around the continuous disclosure requirements (as there are under MAR) have been effective for AIM companies in ensuring investors have sufficient information.

Q4 Do you consider that we should allow issuers to only publish a simplified prospectus above this level or continue to allow them to publish a full prospectus if they choose to do so?

We believe that the FCA should allow companies the flexibility to produce either a simplified prospectus or a full prospectus should they wish to do so. It is probable that market practice will dictate that most

companies do not produce a full prospectus. However, if an issuer has the time and resource to do so and believes that a full prospectus will assist its fundraising endeavours then it should be able to take this route.

Q5 Would you set a requirement for an offer type document below this threshold? If so, please describe what type of document you would require. Please give your reasons.

We believe that an announcement with offer terms and conditions appended and a link to the application process should be sufficient for public offers by companies whose shares are already traded and who have therefore been compliant with their market disclosure requirements. We envisage that such an announcement would include a current trading update, working capital statement (which may be qualified where appropriate) and a statement regarding the use of funds.

The announcement would also operate in the same way as a "cleansing announcement" which is a feature of retail offers in Australia. These cleansing announcements could be adapted to the UK market as suggested by the SCRR. In particular, consideration would need to be given to whether any changes to the existing liability regime would be needed for these cleansing announcements. The terms and conditions appended to the announcement would include details of the pre-emptive offering policy for shareholders on the applicable record date as well as any preferential allocation to institutional investors (whether or not subject to "claw-back").

This approach has the advantage of simplicity and speed of access to market and it offers considerable savings in costs of execution.

Regarding pre-emption and how this interacts with prospectus requirements as outlined in SCRR, we do not believe that whether an offer is on a pre-emptive basis or not is significant, bearing in mind that shareholders will have agreed to a pre-emption disapplication resolution in accordance with investor guidance.

Q6 Do you agree that we should set requirements for a prospectus for further issuances of funds? If so, where would you set these requirements? Please give your reasons.

We have no comments.

Q7 Is there any further data which we should take into in our analysis? If so, please provide us with details of this data.

We have no comments.

Appendix A

The Quoted Companies Alliance *Legal Expert Group*

Mark Taylor (Chair)	Dorsey & Whitney (Europe) LLP
Stephen Hamilton (Deputy Chair)	Mills & Reeve LLP
Paul Airley	Fladgate LLP
Danette Antao	Hogan Lovells International LLP
Paul Arathoon	Charles Russell Speechlys LLP
Kate Badr	CMS
Naomi Bellingham	Practical Law Company Limited
Ross Bryson	Mishcon De Reya
Caroline Chambers	Simmons & Simmons LLP
Philippa Chatterton	CMS
Paul Cliff	Gateley
Matt Cohen	Stifel
Jonathan Deverill	DAC Beachcroft LLP
Sarah Dick	Stifel
Tunji Emanuel	LexisNexis
Kate Francis	Dorsey & Whitney (Europe) LLP
Claudia Gizejewski	LexisNexis
Sarah Hassan	Practical Law Company Limited
David Hicks	Simmons & Simmons LLP
Kate Higgins	Mishcon De Reya
Nichols Jennings	Locke Lord LLP
Martin Kay	Blake Morgan
Jonathan King	Osborne Clarke
Jennifer Lovesy	KPMG
Nicholas McVeigh	Mishcon De Reya
Catherine Moss	Shakespeare Martineau LLP
Hilary Owens Gray	Practical Law Company Limited
Kieran Rayani	Stifel
Jaspal Sekhon	Hill Dickinson LLP
Patrick Sarch	Hogan Lovells LLP
Gary Thorpe	QCA Director
Robert Wieder	Faegre Drinker LLP
Sarah Wild	Practical Law Company Limited
John Young	Kingsley Napley LLP

The Quoted Companies Alliance *Primary Market Expert Group*

Samantha Harrison (Chair)	Grant Thornton UK LLP
Azhic Basirov (Deputy Chair)	Global Alliance Partners Financial Limited
Colin Aaronson	Grant Thornton UK LLP
Stuart Andrews	Zeus Capital
Mark Brady	Spark Advisory Partners Limited
Andrew Buchanan	Peel Hunt LLP
David Coffman	Novum Securities Limited
Richard Crawley	Liberum Capital Ltd
Dru Danford	Liberum Capital Ltd
David Foreman	Zeus Capital
Chris Hardie	W.H. Ireland Group PLC
Stephen Keys	Cenkos Securities PLC
Nick McCarthy	Shoosmiths LLP
Katy Mitchell	W.H. Ireland PLC
Hayley Mullens	Radnor Capital Partners Limited
Nick Naylor	Allenby Capital
Jeremy Osler	Cenkos Securities PLC
Niall Pearson	Hybridan LLP
Mark Percy	Shore Capital Group Ltd
Oliver Pilkington	Shoosmiths LLP
George Sellar	Peel Hunt LLP
James Spinney	Strand Hanson
Stewart Wallace	Stifel