The Quoted Companies Alliance

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26 May 2005

Dear Sirs,

CESR's revised draft Technical Advice on Possible Implementing Measures of the Transparency Directive (CESR/05-267)

Please find enclosed the QCA response to the above Consultation Paper.

We welcome the opportunity to comment and this response has been formulated by our Markets & Regulations Committee.

Yours faithfully,

John Pierce
Chief Executive

Enc: QCA Response to CESR's revised draft Technical Advice on Possible Implementing Measures of the Transparency Directive (CESR/05-267)

The Quoted
Companies Alliance

26 May 2005

CESR

REVISED DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE (CESR/05-267)

Response to consultation
from the
Quoted Companies Alliance

May 2005

A company limited by
guarantee registered in
England
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CONTENTS

1. INTRODUCTION

The Quoted Companies Alliance ("QCA") represents Britain's Smaller Quoted Companies ("SQCs"). The SQC sector is defined as those companies that are listed on the London Stock Exchange and are outside the FTSE 350 Index, plus those listed on the London Stock Exchange's Alternative Investment Market and on OFEX. These companies range from a market capitalisation of €0.5 million to more than €900 million.

The QCA is a founder member of UNIQUE, the Union of Issuers Quoted in Europe, which represents over 3,500 quoted companies in six EU member states.

The authors of this response have the objective of ensuring that the voice of SQCs is heard in debates about the markets and regulations issues which may affect them.

The appendix to this paper gives more detail about the QCA.

2. THIS PAPER

CESR issued a consultative document dated 27 April 2005. This paper constitutes the reply of the QCA to that consultative document. The response has been prepared mainly by Peter Swabey on behalf of the QCA's Markets & Regulations Committee.

3. RESPONSE TO SPECIFIC QUESTIONS RAISED

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1. Do consultees agree with the above proposal? ('connections with the media' should include multiple national coverage)

No – this seems overly onerous, especially for smaller companies, and should be left to the national regulator to address in detail in line with the needs of that market.

2. What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.

None – this should be left flexible for appropriate local regulation. The only general mandate should be that the internet should be the default.

3. Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service provider) and media be based on electronic systems, such as dedicated lines?

No – this should be left flexible for local regulation.

4. Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

No, except to the extent that electronic communication (eg through the internet) should be the default.

5. ***Do consultees agree with the approach of redrafting the required field of information, as proposed above? (ISIN rather than company name).***

   Yes.

6. ***Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies register or the ISIN)? Which of these? Please provide reasons for the answer.***

   Yes, the ISIN, which is the single most widely recognized unique key for identifying issuers.

7. ***Do consultees consider that CESR should establish a method, or some sort of a code, by which there would be a single and unique number of identifying each announcement that an issuer makes, that is valid on a european basis and that could be used also for storage?***

   No.

8. ***What methods do consultees suggest CESR should establish? Please provide reasons for the answer.***

   N/A.

9. ***Do consultees agree with the above proposals? [Separation of functions where service providers provide multiple services] Please provide reasons for the answer.***

   Yes – on grounds of transparency and fair competition.

10. ***When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services. Do consultees agree with this approach? Please provide reasons for the answer.***

    Yes – otherwise anti-competitive.

11. ***When stock exchanges act as service providers, CESR considers that their admission to trading critieria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.***

    Ditto.

12. ***Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.***

    Yes – if companies cannot charge for this information under the Directive, why should an intermediary be able to do so ? Similarly, the media should be prohibited from charging companies or service providers for publishing this information unless they are doing so by way of a paid-for advertisement.

13. ***Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for the answer.***

Yes – service providers are being paid by the company. It seems unreasonable that they should be paid by the media as well.

14. ***Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.***

Yes – if the Directive / law places an obligation on companies, they will need to be able to demonstrate that they have complied.

15. ***Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answer.***

Yes. Approval probably should be mandatory to ensure appropriate standards. An Issuer will want to be able to rely on the service provider it chooses, and if these have been approved by the regulator that will provide significant comfort. However, such approval should be on the basis of compliance with local market practice.

16. ***Do you agree with this change? [market makers are only exempt if they do not exercise any voting rights]. Please give reasons for your answer.***

Yes – but we would add the qualification that the market maker should only be exempt if it is contractually prohibited from exercising voting rights or using the shares to influence management. This would include holding shares to hedge contracts for difference.

17. ***Do you agree with this change? [keeping activities separate] Please explain.***

Yes – the critical point to demonstrate is that the shares are held transparently in a separate account wherever jurisdictional custody and settlement arrangements are such that this can be done.

18. ***Do you agree with the proposed changes to this advice? Please explain.***

Yes, but in the interests of transparency, the notification should also be given to the issuer concerned. It is not always clear to the issuer whether a major shareholding should have been declared or not.

19. ***Do you agree with this change in the content of the declaration that the parent undertaking has to make ? Please explain.***

Yes. This seems reasonable and sensible.

20. ***Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of`independence?***

No – given the requirement to report interests once the exemption no longer applies.

21. ***What are your views on this new definition of indirect instruction?***

Agreed – the new wording seems reasonable and proportionate.

22. ***Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.***

This approach is reasonable in principle, but should not adversely affect the right of individual member states to set a threshold for notification that is below the 5% suggested in the directive – ie where the threshold is set at, for example, 3% as in the UK, then that figure should be applied throughout this section.

23. ***What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?***

The disclosure should be in full – ie the resulting percentage of shares held. As you point out in the consultation paper, there is an enormous difference between an interest which falls from 5.1% to 4.9% and one which falls from 5.1% to 1.5%. This is a fundamental issue of market transparency.

24. ***Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.***

It would be sensible for the form to include the ISIN for the avoidance of doubt. However, far more important is that all information be sent to the issuer.

25. ***Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.***

Yes – ISIN is the most widely accepted form.

26. ***Do you agree with these principles? (Equivalence)***

They seem reasonable and proportionate. Where an individual member state opts for super-equivalent rules, these should, of course, take precedence.

27. ***Are you satisfied with the draft technical advice considering both the need for flexibility and the requirements of the text of the Directive?***

In general, yes. However, as mentioned above, where an individual member state opts for super-equivalent rules, these should, of course, take precedence.

28. Do you agree with the proposal that an issuer should make a notification when it chooses its competent authority

Yes.

4. Additional Comments

We have identified one further issue where the wording of the Directive and of the CESR technical advice would have onerous and, we assume, unintended consequences.

Paragraph 224 et seq relate to Article 10(h) of the Directive, which states that :

> *"The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:*
> *(h) voting rights which that person or entity may exercise as a proxy where it can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders."*

Many shareholders appoint as their proxy the Chairman of the company, or an independent person, with discretion to vote as they think fit. The requirement for the Chairman or independent nominee to make notification under these circumstances is surely not what was intended by the Directive, not least because the appointment of a nonsense, proxy only becomes effective at the point when the proxy casts the vote – up until that time the shareholder can revoke the appointment and should be specifically excluded. vote themselves. In our view it is therefore only practical to comply with this reporting requirement once the meeting is over, and hence that would be the point at which the reporting period commences.

We have also identified three areas where the wording of the Directive and of the CESR technical advice does not, in our view, tend towards the best possible practice in market transparency.

Paragraph 154 refers to the provision in Article 12 that:

> *"Persons in charge of making the notification to issuers, acting on behalf of shareholders or persons referred to in Article 10 have to comply with time requirements defined in the Directive. Time requirements are D + 4 (four) trading days concerning the notification and D + 4) + 3 (three) trading days concerning the publication. "D" is the date on which the shareholder, or natural person or legal entity, learns of or should have learned of the execution of the transaction (see Section 5 in this chapter of this Consultation Paper)."*

We believe that D+4 is far too late in the process to deliver any real sense of market transparency. Paragraph 269 states that :

> *"Taking into account the very high duty of care that a natural person or legal entity that acquires and disposes of major holdings should exercise, CESR considers that a natural person or legal entity is deemed to have knowledge of the acquisition or disposal or the possibility to exercise voting rights on the day after the transaction was actually executed."*

We believe that this is reasonable, but that notification should take place before start of business on the next day after the natural person or legal entity is deemed to know of the transaction. Individual member states should be encouraged to set this shorter timescale in local legislation.

Paragraph 482 states that :

> *"The holder of financial instruments is required, under Article 13, to aggregate and notify all instruments held that qualify under Article 13 relating to the same underlying issuer."*

We believe that in order for this notification to be meaningful, and in the interests of market transparency, the requirement should include the aggregation of the qualifying financial instruments with any ordinary shares held.

Where a person holds both ordinary shares and financial instruments in such quantities that both individually fall below the threshold for notification but, when aggregated, exceed that threshold, this fact should also be notifiable.

Paragraph 485 states that :

> *"The deadlines for notification under Article 13 should be the same as those established for the notifications under Articles 9 and 10."*

As mentioned above, we believe that these timescales are far too long to meet the requirements of proper market transparency. Individual member states should be encouraged to reduce these timescales as far as practically possible.

APPENDIX I

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit membership association funded by its membership, the QCA represents the interests of SQCs, their advisers and investors. It was founded in 1992 and originally known as CISCO.

The QCA has over 200 members. 60% of these are smaller companies quoted on the stock market, or companies with aspirations to join. 40% are drawn from the full range of professional advisory firms whose business is either wholly or significantly derived from servicing smaller companies.

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
- introduction of, or changes to, legislation affecting SQCs
- corporate governance
- share schemes for employees
- trading, settlement and custody of shares
- structure and regulation of stock markets for SQCs; Financial Services Authority (FSA) consultation
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from the Accounting Standards Board
- company law reform

The QCA is a founder member of UNIQUE, the Union of Issuers Quoted in Europe, which represents over 3,500 quoted companies in six EU member states.

QCA's Aims

As the only organisation dedicated solely to the particular interests of the SQC sector, the QCA has three primary goals:

Identification

To create a distinct identify for the SQC sector, and demonstrate its value to the stock markets and the UK economy.

Representation

To pro-actively pursue and represent the interests and requirements of the SQC sector to enable it to increase its contribution and ensure that its specific needs are addressed.

Affiliation

To build a strong and vocal collective body of support from within the SQC sector, among corporate directors and securities industry leaders. Through a coalition with quoted company representative groups in the EU, the QCA participates in the formulation of changes at a European level.

DEFINITION

The Quoted Companies Alliance definition of Smaller Quoted Companies (SQCs) is:

- all fully listed companies – excluding the top 350 ie with market cap of €500m
- plus companies quoted on AIM
- plus companies quoted on OFEX

The QCA also represents companies planning to float.

SQCs contribute to the economy:

- there are approximately 2,000 SQCs
- they represent around 85% of the total of quoted companies by number
- they employ 2 million people
- this figure represents around 10% of total private sector employment
- every 5% growth in the SQC sector could reduce UK unemployment by a further 100,000
- they generate:
    - corporation tax paid of £2.0 billion pa
    - income tax paid of £5.0 billion pa
    - social security paid of £2.0 billion pa

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

For more information contact:

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APPENDIX II

QCA Markets & Regulations Committee Members

Jonathan Eardley (Chairman)	Share Resources
Andrew Collins	Speechly Bircham LLP
Martin Eales	Collins Stewart Ltd
Alexandra Hockenhull	Corporate Communications, Integrated Investor Relations
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