



**The Quoted
Companies Alliance**

Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
Tel: +44 20 7600 3745
Fax: +44 20 7600 8288

Web: www.quotedcompaniesalliance.co.uk
Email: mail@quotedcompaniesalliance.co.uk

The Committee of European Securities Regulators
11 - 13 Avenue de Friedland
75008 Paris
France

2 February 2007

Dear Sirs,

Ref: CESR/06-562 - Level 3 - CESR guidance and information on the common operation of the Market Abuse Directive

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation dedicated to promoting the cause of smaller quoted companies ("SQC"), which we define as those 2,000+ quoted companies outside the FTSE-350 (including those on AIM and PLUS) representing 85% of the UK quoted companies by number. Their market capitalisations tend to be below €500m. Appendix B to this paper gives more detail about the QCA.

Together SQCs employ over 2 million people and make a major contribution to the UK economy. They look to retail investors, more so than larger companies do, for investment and to provide liquidity in the market for their shares.

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

Below is the response of the Quoted Companies Alliance. This has been produced by our Markets & Regulations Committee. A list of Committee members is detailed at Appendix A.

QCA RESPONSE

The QCA Markets and Regulations Committee has considered the draft guidance circulated by CESR in November 2006 and would respond as follows:

General/Additional Guidance Requested

- 1 The QCA reiterates the points it made in its response to the previous CESR call for evidence in relation to the market abuse regime (which response was circulated on 31 October 2006). A copy of this response is attached for completeness at Appendix C.

In particular, the QCA reiterates the points made at paragraph 3 of that letter relating to consistency across the EU in relation to implementation of the Market Abuse Directive ("MAD") and the application and enforcement of MAD offences/requirements in different EU states. Many of the specific responses below reflect this issue of consistency.

One example of this need for consistency is taken up in the CESR draft guidance (in relation to insider lists). However the issue of consistency is broader than this, in particular in relation to the bringing of enforcement proceedings. Any given set of circumstances could give rise to market abuse proceedings in a number of different EU Member States (for example where behaviour occurs in one or more EU Member States in relation to securities or related investments which are traded on a regulated market in another EU Member State). Ideally, there should be (i) consistency between the affected Member States on whether such behaviour does or does not constitute market abuse; and (ii) clarity on which regulator in which Member State should bring proceedings and how those proceedings should be carried out (for example, what the burden of proof should be in relation to proving market abuse offences in each jurisdiction - see attached 31 October response).

- 2 In general, as mentioned in the previous response, from the point of view of smaller quoted companies, such companies would not at this stage welcome any greater degree of regulation in respect of market abuse (either on an EU or a national basis) - the rules, regulations and guidance set out in the UKLA Disclosure Rules ("DR") and the Code of Market Conduct ("CMC") in the UK are considered to be sufficient for the purposes of regulating smaller quoted companies.

Further, certain market participants in respect of securities issued by small/mid-cap companies in the UK have made it clear, through the QCA that they would also not welcome further detailed "guidance" which could provide for a "checklist" approach by regulators in any enforcement proceedings.

What is inside information?

- 1 The guidance on what is "precise" for the purposes of the definition of "inside information" is helpful as there is no direct guidance on this in either the UK CMC or DR.
- 2 The language in the MAD talks of "inside information" being information which has "not been made public". The equivalent language in the FSMA in the UK (which in part implements the MAD) instead talks of information which is "not generally available". It is not clear if there is intended to be any difference between the two concepts. Arguably, on a literal interpretation, this element of the test for commission of the offence as set out in MAD is easier to satisfy than under the UK market abuse rules which implement MAD. This could lead to conduct in the UK not being classified as unlawful market abuse whereas the same conduct could be unlawful market abuse in different EU jurisdictions (see general point above in relation to consistency between jurisdictions).

In particular, the wording in the Directive ("*made public*") suggests some positive action required on behalf of one or more parties. Although the CESR guidance which has been issued suggests that this does not require a public disclosure by the *issuer* it does suggest that some positive step is required to make the relevant information public (whereas the UK wording does not).

A pertinent example may be that which is given in paragraph 1.2.14 of the UK CMC. In that example, a person ("Y") sees first hand the factory premises of X plc (a company with shares admitted to trading on the UK Official List) burning down. Immediately after seeing this, Y orders his broker by phone to sell his holding in X plc. The FSA's view is that this conduct would not be market abuse in the UK, on the basis that the information which Y has in relation to X plc, albeit precise and undoubtedly price sensitive, is at that point "generally available". In this exact same factual circumstance, would the same information be deemed to have been "made public" and therefore fall outside of the definition of "inside information" under MAD?

If in the same example, the X plc shares were actually listed or traded on another regulated market elsewhere in the EU, or indeed if the factory was in another EU jurisdiction and the behaviour (ie the order for trading) took place outside of the UK

and in that other EU jurisdiction, would the market abuse analysis be different in the different relevant jurisdictions?

Also, in relation to whether information is “not yet made public” or “not generally available”, the UK CMC states that it does not matter for the purposes of UK market abuse regulation if information is only “generally available” in another Member State and not in the UK. Even in such circumstances, the use of that information in the UK in relation to UK listed/traded securities would not constitute market abuse in the UK. CESR guidance on this point from an EU perspective would be helpful from the point of view of consistency across the EU in relation to key concepts.

Similarly, the UK CMC (para 1.2.13) states that, even if the observation/analysis of certain information is only achievable by a person of “above average financial resources, expertise or competence” that information is still “generally available” for the purposes of defining “inside information”. Therefore, any trading on the basis of such information would not constitute market abuse. Again, does CESR take the same view in relation to EU wide market abuse regulation?

Significant price effect

- 1 Inside information must be “likely to have” a significant price effect. The guidance on this issue is helpful but it is still not entirely clear what is meant by whether something is “likely”. Does it mean that information must be “more likely than not” to have a significant price effect?
- 2 In the UK the FSA has taken a view in its market abuse guidance that the “reasonable investor” is interested in maximising his economic self-interest and is (therefore) not interested in other investment factors (such as the impact of a particular issuer’s business on the environment). Does CESR take the same view on an EU wide basis?
- 3 The list of examples of possible inside information set out in the draft guidance are helpful. The QCA has no comment on the list.

Delay of disclosure of price sensitive information

- 1 CESR has provided some helpful guidance on what is a “legitimate interest” to protect by delaying disclosure of information. However, it would be helpful to have some guidance on the other conditions for this exemption to the duty to disclose. In particular it would be helpful to have some guidance on:
 - what constitutes “not misleading the public” (or what factors can provide evidence that the public has not been or would not be misled);
 - what is meant by “being able to ensure confidentiality”.

It is fairly clear in relation to the latter point under the UK Disclosure Rules that there must be an obligation of confidentiality. Is it CESR’s view that there needs to be an express duty of confidentiality set out in a confidentiality agreement before information can be selectively disclosed (but withheld from the market generally to protect the legitimate interest)? To what extent can issuers rely on implied duties of confidentiality at law (eg from employees/officers) and/or duties imposed by regulatory bodies (eg regulated financial advisers, sponsors, brokers etc)? Would it be sufficient for issuers to selectively disclose (for example, to major shareholders who do not as a matter of law owe an implied duty of confidentiality and who have not entered into an express confidentiality agreement) relying simply on the limited number of disclosees and also the fact that those disclosees would themselves be in breach of market abuse regulations if they were to disclose further that information to third parties or act upon it?

Client pending orders and when they constitute "inside information"

In respect of guidance on when pending client orders will constitute inside information, paragraph 3.13 (a) of the CESR guidance raises specific issues for UK smaller quoted companies and those broking or dealing in their shares. The "Normal Market Size" for orders in those smaller companies (e.g. those traded on AIM) may be quite low, yet often the buy/sell orders in respect of such companies will fall outside of that Normal Market Size. Where such significant trades take some time to fulfil, is it CESR's view that the broker's role will involve making potential purchasers (e.g. of a large "sell order") insiders, preventing them dealing in the issuer's shares? Market participants consider that this is not normal market practice, and any such notion would impact more onerously on the liquidity of small quoted companies than on larger quoted companies. Further guidance on what is the "average size" of orders for the purpose of the application of paragraph 3.13(a) would be helpful.

Insider lists

The QCA does not have any comments on the draft guidance relating to insider lists.

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 'JPierce', with a horizontal line drawn underneath it.

John Pierce
Chief Executive

THE QUOTED COMPANIES ALLIANCE MARKETS & REGULATIONS COMMITTEE

Theresa Wallis (Chairman)	LIDCO
Peter Allen*	Barlow, Lyde & Gilbert
Stuart Andrews	Evolution Securities
Andrew Collins	Speechly Bircham
Jonathan Eardley	Share Resources
Alexandra Hockenhull	Hockenhull Investor Relations
Raquel Hughes	London Stock Exchange
Farook Khan	Pinsent Masons
Linda Main	KPMG LLP
Craig Nimmo*	Brewin Dolphin Securities
Julian Palfreyman	Winterflood Securities
Chris Searle	BDO Stoy Hayward LLP
Peter Swabey	Lloyds TSB Registrars
John Pierce	Quoted Companies Alliance
Laurence Davis	Quoted Companies Alliance

*Main Authors

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation 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 nearly 400 members. 75% of these are smaller companies quoted on a stock market, or companies with aspirations to join. 25% 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 various Accounting Standards Boards
- 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 seven European countries.

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 identity 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.

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 £340m+
- plus companies quoted on AIM
- plus companies quoted on PLUS

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:

John Pierce
Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
020 7600 3745
www.quotedcompaniesalliance.co.uk



**The Quoted
Companies Alliance**

Fabrice Demarigny
Secretary General
CESR (The Committee of European Securities Regulators)
11-13 avenue de Friedland
75008 Paris
France

31 October 2006

Dear Mr Demarigny,

Ref: CESR/06-078 - Evaluation of the supervisory functioning of the EU Market Abuse Regime

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation dedicated to promoting the cause of smaller quoted companies ("SQC"), which we define as those 2,000+ quoted companies outside the FTSE-350 (including those on AIM and PLUS) representing 85% of the UK quoted companies by number. Their market capitalisations tend to be below €500m.

Together SQCs employ over 2 million people and make a major contribution to the UK economy. They look to retail investors, more so than larger companies do, for investment and to provide liquidity in the market for their shares.

CALL FOR EVIDENCE - QCA RESPONSE

The QCA Markets and Regulations Committee has considered the call for evidence set out in the letter dated 19 June 2006 and would respond as follows:

1. In the view of the QCA, there is no requirement at this stage in the UK for further guidance and/or rules in respect of interpretation of market abuse concepts (including the concept of "inside information").
2. From the point of view of smaller quoted companies, such companies would not at this stage welcome any greater degree of regulation in respect of market abuse - it is considered that the rules and regulations guidance set out in the UKLA disclosure rules are deemed to be sufficient for the purposes of smaller quoted companies.
3. Although not of direct concern to smaller quoted companies, there may be concerns within the UK as to the consistency across the EU of (i) implementation of the Market Abuse Directive and (ii) the application and enforcement of market abuse laws and regulations in different EU states. In particular:

APPENDIX C

Quoted Companies Alliance
6 Kinghorn Street
London EC1A 7HW
Tel: +44 20 7600 3745
Fax: +44 20 7600 8288

Web: www.qcanet.co.uk
Email: mail@qcanet.co.uk

- i) CESR might consider issuing guidance on the requisite burden of proof to enforce market abuse offences - this has been the subject of debate at the Financial Services & Markets Tribunal where it was held that market abuse was a “criminal offence” for the purposes of Article 6 of the European Convention on Human Rights. The Tribunal concluded that, although the standard of proof was a civil standard (balance of probabilities) rather than a criminal standard (beyond all reasonable doubt), it was decided that such civil standard of proof was flexible depending on the seriousness of the alleged offence. As market abuse is a very serious offence, this should require a higher standard of proof. The burden of proof issue is therefore not clear in the UK. There is an argument that burden of proof ought to be clear and consistent across all EU jurisdictions.
- ii) There ought to be a system for consistent enforcement in respect of circumstances giving rise to commission of an offence in more than one EU jurisdiction (there could for example be a system by which one EU state regulator can effectively “take the lead” in bringing enforcement proceedings). Otherwise, market participants may find themselves being the subject of differing proceedings in different jurisdictions and having to fight cases on a number of fronts in respect of the same circumstances. Guidance or some form of formal co-operation between different EU regulators would therefore be welcome on this issue.

We welcome the opportunity to comment and if you require any further information, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JPierce', with a horizontal line drawn underneath it.

John Pierce
Chief Executive