Quoted Companies Alliance

6 Kinghorn Street
London EC1A 7HW

T +44 (0)20 7600 3745
F +44 (0)20 7600 8288
mail@theqca.com

www.theqca.com

Primary Markets Policy
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

cp17-04@fca.org.uk

12 May 2017

Dear Sirs,

CP17/4 Review of Effectiveness of Primary Markets: Enhancements to the Listing Regime

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

We welcome the opportunity to respond to the FCA's proposed enhancements to the Listing Regime. The Quoted Companies Alliance Legal and Primary Markets Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Responses to specific questions

Q1 Do you agree with the proposals to clarify the requirements discussed above regarding the historical financial track record and revenue earning track record requirements for premium listing eligibility?

We agree with the proposals to clarify the requirements regarding the historical financial track record and revenue earning track record requirements for premium listing eligibility. It codifies the current understanding and expectations of potential issuers and their advisers.

Q2 Do you agree with our proposals to split the current independent business requirements into three distinct areas with associated guidance?

We agree with the proposals to split the current independent business requirements into three distinct areas with associated guidance. This will ensure there is no confusion between the areas.

Q3 Do you agree with the other proposed minor clarifications to LR 6?

We agree with the proposal to delete guidance in LR 6.1.17G and LR 6.1.18G, as well as with the proposals regarding LR 6.9.1R to LR 6.9.2R and the other consequential changes.

Q4 Do you agree with replacing our existing Technical Note – Scientific research based companies (UKLA/TN/422.2) with our proposed Technical Note for SRBCs (UKLA/ TN/422.3)?

Although we agree with the proposal to replace the existing Technical Note – Scientific research based companies (UKLA/TN/422.2) with the proposed Technical Note for SRBCs (UKLA/ TN/422.3), we believe it is already clear that these companies will be assessed on a case-by-case basis. Any guidance note will only be of limited assistance.

Q5 Do you agree with our proposals to introduce a new Technical Note for mineral companies (UKLA/TN/427.1)?

We agree with the proposals to introduce a new Technical Note for mineral companies (UKLA/TN/427.1).

Q6 Do you believe a specific concession for property companies in LR 6.12 is appropriate? If so, is the proposed concession correctly calibrated and do you agree with our proposed new Technical Note – Property company concession (UKLA/TN/426.1) in Appendix 1?

We believe that the first subcategory of property companies that may benefit from a concession is reasonable, particularly for portfolio spin-outs with a third-party property valuation report. This could encourage additional listings and should not adversely affect potential investors.

We agree with the proposed new Technical Note – Property company concession (UKLA/TN/426.1).

Q7 Do you agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous?

Yes, we agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous. Please see our answer to Q9.

Q8 Do you agree that an element of judgement should be applied when deciding whether to disregard the result of the profits test where the result is 25% or more and all other class tests results are below 5%?

Yes, we agree that an element of judgement should be applied when deciding whether to disregard the result of the profits test where the result is 25% or more and all other class tests results are below 5%. The issuer and the sponsor should consider the facts of each case in question before determining whether the profits test should be automatically disregarded.

Q9 Do you agree that premium listed issuers, having obtained guidance on the class tests from a sponsor under LR 8.2.2R, should be allowed to make the proposed adjustments to the figures used to classify profits without being required to consult and agree the adjustments in advance with us?

It should generally be considered that an issuer and its sponsor will know how to make appropriate adjustments if the profits test results in an anomalous result. However, we would expect that some issuers or sponsors may, in some circumstances, want to have the comfort that the FCA has approved the adjustments. Would this be possible even without it being a strict Listing Rule requirement? We presume that the FCA will be able to look back into such adjustments made without reference to it.

Q10 Are there any other possible enhancements to the calculation of the profits test that could be made?

Material litigation costs could be added to the shortlist of genuine one-off costs presuming that it is one specific case that will not span more than one financial period.

Q11 As an alternative to our proposals, are there any alternative profit measures that should be used either in conjunction with or in place of the current profits test?

We believe that using operating profits or earnings before interest, tax, depreciation and amortisation (EBITDA) could be utilised to eliminate distorting factors such as the effect of financing decisions between debt and equity, particularly where operating assets and undertakings are being acquired or disposed of, rather than corporate vehicles.

Q12 Do you agree with our proposal to amend LR 10 Annex 1 paragraph 8R(3)(a) and (b) to set out our existing approach to adjusting the figures used to classify assets and profits for transactions that have occurred during the last financial year that are class 2 or larger?

We have no comments regarding this proposal.

Q13 Do you agree with the related changes to our Technical Note – Classification tests (UKLA/TN/302.1) which are set out in the revised note in Appendix 2 of this CP?

We have no comments regarding this Technical Note.

Q14 Do you agree that we should amend the applicable provisions in LR 5.6 to remove the rebuttable presumption of an issuer's listing being suspended upon announcement or leak of a reverse takeover (other than for shell companies)?

Yes, we agree with the amendment to the applicable provisions in LR 5.6, which removes the rebuttable presumption of an issuer's listing being suspended upon announcement or leak of a reverse takeover (other than for shell companies). This will greatly assist issuers, their advisers and shareholders by removing an element of risk and uncertainty with potential transactions.

Suspension is generally viewed as being undesirable, particularly where a potential transaction is far from certain, particularly due to share price movements following the lifting of suspension in circumstances where a transaction has not completed.

Q15 Accordingly, do you agree that (other than for shell companies) an issuer or, where the issuer is premium listed, its sponsor should no longer be automatically required to contact us as early as possible to discuss whether a suspension is appropriate when a reverse takeover is agreed or is in contemplation, or to request a suspension where details of the reverse takeover have leaked?

Yes, we agree that (other than for shell companies) an issuer or, where the issuer is premium listed, its sponsor should no longer be automatically required to contact the FCA as early as possible to discuss whether a suspension is appropriate when a reverse takeover is agreed, or is in contemplation, or to request a suspension where details of the reverse takeover have leaked.

Q16 Do you agree with our proposal to delete the Technical Note – Reverse takeovers (UKLA/TN/306.3) and with our proposed changes to the Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2) set out in Appendix 4?

Yes, we agree with the proposal to delete the Technical Note – Reverse takeovers (UKLA/TN/306.3) and with the proposed changes to the Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2). Please see our answer to Q14.

Q17 Do you agree with our proposed criteria for the types of issuers who will continue to be covered by the rebuttable presumption of suspension and related provisions?

Yes, we agree with the proposed criteria for the types of issuers who will continue to be covered by the rebuttable presumption of suspension and related provisions. However, please see our answer to Q18.

Q18 In particular, do you agree that we should retain the rebuttable presumption of suspension for shell companies upon announcement or leak of a reverse takeover?

Whilst we agree that a "reverse takeover" for a shell company should remain subject to the rebuttable presumption of suspension, there may be circumstances in which a shell company is undertaking a corporate action which would not ordinarily be considered by investors or the shell company itself to constitute an acquisition. This could be, for example, acquiring a minority interest in an entity or entering into an option where there is not a fundamental change in operations or to the board. In these circumstances it could be appropriate not to apply the Reverse Takeover requirements of the Listing Rules at all, including the suspension provisions.

Q19 Accordingly, do you agree that shell companies should continue to be required to contact us as soon as possible (i) before announcing a reverse takeover, to discuss whether a suspension of listing is appropriate, or (ii) where details of the reverse takeover have leaked, to request a suspension?

Yes, we agree that shell companies should continue to be required to contact the FCA as soon as possible either before announcing a reverse takeover, to discuss whether a suspension of listing is appropriate, or where details of the reverse takeover have leaked, to request a suspension, given that share price fluctuations can occur.

Q20 Do you agree with our proposed amendments to the Technical Note - Special purpose acquisition companies (SPACs) (UKLA/TN/420.1)?

The Technical Note (UKLA/TN/420.2) is generally satisfactory (although please note our comments to Q18 regarding reverse takeovers).

We would recommend, given the remarks made earlier in UKLA/TN/420.2 in relation to microcap special purpose acquisition companies (SPACs) and given that most cash shells will generally be small in terms of assets and market capitalisation, that under the heading "**early engagement on reverse takeovers**", it is made clearer that suspension will be required in almost all circumstances for such entities, rather than the current text of "*we will often consider…*".

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chairman)	**Clyde & Co LLP**
Maegen Morrison (Deputy Chairman)	Hogan Lovells International LLP
David Davies	Bates Wells & Braithwaite LLP
Martin Kay	Blake Morgan
Paul Arathoon	Charles Russell Speechlys LLP
David Hicks	Charles Russell Speechlys LLP
Mark Taylor	Dorsey & Whitney
Jane Wang	Fasken Martineau LLP
Richard Pull	Hamlins LLP
Nicholas Narraway	Hewitson Moorhead
Danette Antao	Hogan Lovells International LLP
Donald Stewart	Kepstorn
Nicola Mallett	Lewis Silkin
David Wilbe	Lewis Silkin
Tara Hogg	LexisNexis
Stephen Hamilton	Mills & Reeve LLP
Nicholas McVeigh	Mishcon De Reya
Philippa Chatterton	Nabarro LLP
Jo Chattle	Norton Rose Fulbright LLP
Simon Cox	Norton Rose Fulbright LLP
Julie Keefe	Norton Rose Fulbright LLP
Ashmi Bhagani	Pillsbury Winthrop Shaw Pittman LLP
Sarah Hassan	Practical Law Company Limited
Kieran Rayani	Stifel
Catherine Moss	Winckworth Sherwood LLP

Quoted Companies Alliance Primary Markets Group

Richard Evans (Chairman)	**Strand Hanson Limited**
David Worlidge	Allenby Capital Ltd
Nick Naylor	Allenby Capital Ltd
Chris Hardie	Arden Partners Plc
David Foreman	Cantor Fitzgerald Europe
Stephen Keys	Cenkos Securities Plc
Peter Stewart	Deloitte LLP
Stuart Andrews	finnCap
Samantha Harrison	Grant Thornton UK LLP
Niall Pearson	Hybridan LLP
Richard Crawley	Liberum Capital Ltd
Tom Price	Northland Capital Partners Limited
Peter Whelan	PricewaterhouseCoopers LLP
Bidhi Bhoma	Shore Capital Group Ltd
Azhic Basirov	Smith & Williamson LLP
James Spinney	Strand Hanson Limited
Paul Shackleton	W.H. Ireland Group Plc