QUOTED COMPANIES ALLIANCE

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Friday 18 October 2024

Dear FCA colleagues,

New Regime for Public Offer Platforms: Consultation

We welcome the opportunity to respond to your consultation on the New Regime for Public Offer Platforms.

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

At the QCA, we champion the UK's small and mid-sized quoted companies. However, we have a strong interest in a flourishing market eco-system that enables private companies to scale-up, grow and one day join the public markets. The ability for private companies to raise equity capital is an important part of this eco-system.

We believe that if the FCA implements the proposals in the form suggested in CP24/13, the number of firms willing to be public offer platform operators will be very small because of the risks involved (see below). This will mean less competition and will potentially cut-off an important source of finance for growing private companies. In our response below, we raise the following points:

1. The minimum information requirements proposed for POP operators to conduct on companies are too onerous.
2. It is unworkable to expect POP operators to assume liability for these disclosures and to make the judgements which are both expressly and implicitly required by the proposed regime.
3. This will be highly costly for the operators who will pass the cost on to companies. This will render this method of raising capital unattractive for companies and the POP operators' business model unviable.

Instead, we recommend that the FCA reconsider its proposals for the new public offer platform regime.

While we are not in favour of increasing unnecessary burdens on companies, we recommend that the liability regime and documentation requirements should remain aligned with those for a prospectus, with the Company and its directors maintaining primary responsibility and the function of the POP operator being to oversee the exercise and ensure that due process is followed.

We do not necessarily advocate a full prospectus. The regime would need to be proportionate to the size and resources of companies at the lower end. However, an approach which clearly defines the required information items and places primary liability for the content on the issuer and its directors would be more cost effective than that proposed in the consultation whilst also providing better investor protection in the interests of including retail participation.

The FCA's proposals will likely be more costly for companies than having to produce a prospectus and will significantly limit the number of POPs in operation as they struggle to meet the requirements proposed under this consultation.

In terms of the corresponding legal liability for public offer platform operators, we believe their role should be limited to checking the information that companies provide in a similar legal capacity to that of a NOMAD or sponsor. This would include determining whether a company has undertaken due diligence and has conducted an appropriate verification exercise in relation to the information required to be disclosed.

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 with our proposed approach to have an outcomes-based approach supplemented with minimum information requirements for the information gathering step of the due diligence process?

We believe that POP operators will be reluctant to operate under the proposed regime because of the onerous obligations being placed on them.

Risk and liability needs to be balanced more appropriately between companies, the public offer platform (POP) operators and investors. While the stated objective of this consultation is to create a market for offers over £5 million, these proposals in their current form risk reducing the number of firms that are willing to act as POP operators with a resulting lack of options for companies.

The fees charged by POP operators who decide to operate under the new regime will need to reflect the resource required to fulfil their duties and the significant risk profile which they will assume as having primary responsibility for the information document. Rather than fulfilling the intention of providing a cost-effective vehicle for private companies to raise capital, the reforms will therefore increase costs and in doing so are likely to render capital raises by private companies unattractive for companies.

Q2 Do you agree with the minimum information requirements we are proposing? Are there others you would like us to consider?

As stated above, we are concerned that the FCA's proposed minimum information requirements are too onerous for both companies and POP operators.

Draft COBS 23.3.1R refers to the "reasonable investor client" making an informed assessment as to whether to participate in the offer. This seems to imply a level of information similar to that included in a prospectus which in our view is not appropriate. Given the amount of information required it is likely that significant legal and financial due diligence will be required to be undertaken by the POP operator. We query how easy it will be for POP operators to provide the disclosure required by draft COBS 23.7.1R and whether they will be prepared to accept the liability attached to that summary.

We believe that the correct approach the FCA should adopt is to hold companies responsible for preparing this information, not the operators. In turn, the operators should be required to oversee due process and to check this information in a similar capacity to that of a NOMAD or sponsor who is not legally responsible for the information contained in a prospectus.

Q3 Do you agree with the standards and expectations we are proposing for POP operators to analyse the information they gather on issuers?

No – please see above. The standards and expectations being proposed for POP operators to analyse the information they gather on issuers will be considerably burdensome and costly for the operators.

Instead, a more appropriate regime would be for companies to work with their legal and other professional advisers in undertaking a verification exercise for the information they provide. In turn, the POP operator should be responsible for determining whether a reasonable verification exercise has been carried out by the company. This would include consideration as to whether the company has sought legal counsel and, where appropriate, independent expert opinions or reports in respect of the information required. This would shift the level of responsibility from being placed almost exclusively on the POP operators and redress the balance of liability between companies and operators. It is not currently market practice for nominated advisers and sponsors to do a verification exercise in relation to admission documents or prospectuses, instead that is the responsibility of the issuer working with its legal and accounting advisers, with the nominated advisers and sponsors then checking the verification exercise which has been done. We query why this should be any different for an offer on a POP.

Furthermore, the plausibility standard for non-factual information set out at draft COBS 23.4.1G is a completely new concept from a both a market and a legal point of view. It this is not a requirement for sponsors or nominated advisers and it is not clear how this will work in practice (particularly in tandem with a reasonableness standard). Consequently, even allowing for the rules and guidance set out, we believe that this new concept could cause significant uncertainty for POP operators.

Q4 Do you agree with the proposed distinction between factual and non-factual information, and the implications this has in the relevant assessment standard?

No. This is not a distinction that is made on other markets.

Q5 Do you agree with our proposed approach to the creditworthiness assessment we expect POP operators to carry out on issuers?

We disagree with both the FCA's approach to requiring a creditworthiness assessment for equity raises on POPs, and the expectation that POP operators should be responsible for undertaking creditworthiness assessment on companies that use their platform.

Again, the FCA's proposed approach to creditworthiness is not one that is seen in other equity markets and it goes beyond the requirement to produce a working capital statement. Moreover, it will be difficult for POPs to make an assessment given the general profile of companies that will be raising capital on POPs. Many of these companies are likely to be either start-ups raising early stage finance or companies who require finance to continue in business. These companies are unlikely to pass any objective "creditworthiness test" and rather than exclude them from the market we would suggest that the risks of investment are clearly spelled out in the document (in the body and as clear risk warnings on its cover). This approach is also consistent with the reforms to the admission regime for the main market where appropriate disclosure replaces a number of former eligibility requirements

Generally, creditworthiness is something that is relevant when debt securities are issued because of the requirement to pay interest on the debt being issued. We see no justification for making this a requirement for POPs when there is not a corresponding requirement for equity raising on the public markets.

As we have argued in our comments to previous questions, it should be the companies and their directors required to undertake due care and consideration of the information required, with POPs required to determine whether due process has been followed. With regard to requiring POP operators to undertake creditworthiness assessment on companies, we believe that this will be a significant challenge for the platforms.

For example, Paragraph 4.26 of this consultation considers an assessment of an issuer's ability to make payments when due. This assessment of solvency is one that POP operators are unlikely to be prepared to make. It would require a detailed analysis of cash-flows and a high level of cooperation from the issuer. The requirement that POP operators consider market risks in making the assessment is problematic and goes beyond what should be expected of the platforms.

Ultimately, requiring this level of due diligence for POP operators will result in higher costs as they will need to adapt their business models to employ accountants to undertake this work. In turn, these costs will be passed on to the companies who use the platforms, increasing the cost of raising equity on platforms whose primary attraction is meant to be the ability to raise cost-effective capital for smaller private companies.

Q6 Do you agree with our proposed approach to how we expect POP operators to communicate the result of their due diligence with investors?

Please see our response to Q5.

Q7 Do you agree with the additional information we are requiring POPs to present investors with, including our proposed confirmation statement?

As stated throughout our consultation response, we believe that liability for producing information for investors should remain with companies. POPs are an important feature of the UK's capital raising infrastructure for companies, and while in principle we support the FCA's efforts towards increasing retail investor participation in capital raises, we do not believe that these proposals are the appropriate mechanism for doing so.

It is the QCA's view that the appropriate way to involve retail investors is through a document and liability regime which is consistent with that for a prospectus but with appropriate alleviations to ensure that the requirements are workable and proportionate for private issuers. An offering which complies with these requirements should sit outside the existing financial promotions regime in the same was as an offering by way of a prospectus does.

We believe that, whilst on the face of it our suggested approach might appear more costly for companies, the current proposals will result in POP operators incurring higher costs in order to collect the necessary information for investors. The changes being proposed as part of CP24/12 to simplify the prospectus document mean that the starting point for the "POP prospectus" is already a more favourable document than that which has historically been required.

We would mention that not all QCA members were in agreement on the offering size threshold which should apply for the new regime, but the general consensus was on the existing €8 million threshold.

Q8 Do you agree with our proposal to require specific contractual terms between POP operators and issuers to ensure any relevant, material change to information while an offer is open is communicated to the POP operator?

Yes – we agree with this proposal.

Q9 Do you agree with our proposals to grant withdrawal rights should a material change in information be disclosed prior to an offer closing, and that POP operators should make investors aware of any significant change in information regarding the securities they agreed to purchase?

Yes – we agree with this proposal.

Q10 Do you agree with our current proposal that POP operators will have no ongoing disclosure obligations relating to an offering once it has closed? If you do not agree with it, which of the options

described above would you favour and why. Please provide views or estimates with regards to costs and benefits to POP operators and investors.

Yes – we agree with the FCA's proposal in this this area.

Q11 Do you agree with the policies and procedures we are proposing for POP operators? Are there any other requirements in this area you consider relevant, including any other contractual terms you would favour us prescribing in our rules?

In principle, we agree with the policies and proposals that the FCA is proposing for POP operators, with the proviso that the proposed POP regime requires reconsideration.

Q12 Do you agree that our proposal on liability strikes the appropriate balance between investor protection and market development objectives? If not, please explain why and what you would change.

No – we do not agree as per our comments in response to Q1 and Q2.

Q13 Besides what you may have mentioned when answering the previous questions, do you identify any additional aspect we should consider in the context of the new regulated activity?

We have no comments.

Q14 Do you agree with our proposed approach to voluntary offers where they may be made by a firm also operating as a POP?

Yes – we agree with the FCA's proposed approach in this area.

Q15 Do you favour the issuance of guidance for firms facilitating sub-£5m public offers to have regard to the rules we are proposing? If so, should that guidance be directed only to POPs or also other types of firms (e.g., investment-based crowdfunding and corporate finance firms)?

Consistent with our approach to the proposal in general, – we do not favour the issuance of guidance for firms facilitating sub-£5million public offers to have regard to the rules the FCA is proposing. The existing financial promotions regime should continue to govern those offers and they should be clearly demarcated as falling outside of this regulatory regime.

Q16 Do you agree with our approach that we would expect firms to have to comply with relevant wider provisions?

Our responses to Q16 – Q19 are informed by the quoted companies we support and the eco system for raising capital and joining the public markets. As stated previously, we want growing companies to have a viable market to raise funding on and we are concerned that these proposals will not achieve this.

Q17 Do you agree with our proposals on applying existing systems and controls rules as applicable to firms' regulatory status as a MiFID or non-MiFID firm?

Please refer to our response to Q16.

Q18 Do you agree with our proposal to broadly apply the same remuneration incentive rules for both MiFID and non-MiFID firms operating a POP?

Please refer to our response to Q16.

Q19 Do you agree with our proposed approach to align capital requirements between POP operators that are MiFID and non-MiFID firms?

Please refer to our response to Q16.

Q20 Do you agree with our proposal to apply existing financial promotion rules to firms operating a POP, as relevant to the type of security being offered?

It is our view that if these rules function as set out in the consultation proposals, financial promotion rules should not be required. Offers of private securities are rare and they will become rarer still under the current proposals. The proposed requirements for POP operators are so onerous that it is difficult to see why additional financial promotion requirements are needed.

Q21 Do you agree with how we are considering the applicability of the Consumer Duty in the context of the new regime for POPs?

It is our view that there is a potential conflict of interest for POP operators as they would be required to treat investors as clients when in practice, they are customers. Under the proposed regime, POP operators will assume liability and will be required to act in the best interest of retail investors. According to the rules stipulated under the Consumer Duty, the Duty would in most cases require that investments of the kind offered on POPs could only be recommended to a retail investor provided there was ongoing disclosure, or a prospectus-type document provided (please see our response to Q7).

Q22 Do you agree with our proposal that firms operating a POP should be subject to our rules in CASS, as applicable, if they hold client money or assets?

We have no comments.

Q23 Are there any amendments you think we should make to CASS in relation to the introduction of the new regulated activity?

We have no comments.

Q24 Do you think that issuers and investors that use POPs should be able to refer complaints about POPs to the Financial Ombudsman Service?

Yes – given that crowdfunding platforms are within this regime, we believe that POP operators should also be covered by it.

Q25 Do you agree with our proposed approach to provide FSCS coverage to investors when the actions (or omissions) of POP operators result in a harm to investors?

No – we do not agree with the FCA's proposed approach in this area as the FCA is characterising the role of a POP platform as that of an investment manager. However, POP operators do not function as investment managers: they do not advise investors on the platform as clients nor manage their assets so it is not clear why they should be held accountable for any losses incurred as a result of an investment.

Q26 Do you agree with our proposed approach to reports we are requiring on POP operators?

No - we do not agree with the FCA's proposed approach in this area.

Q27 Do you agree that we should extend our complaints reporting rules to this new regulated activity?

Yes – we agree with the FCA's proposed approach in this area.

Q28 Do you agree with our proposal for adopting a narrow concept of client for the purposes of our specific rules for operators of POPs (ie, new COBS 23)?

We do not agree with the FCA's proposals in this area. In principle, the QCA is in favour of retail involvement in the capital raising process for companies and believe that they should be treated as clients. Nevertheless, under these proposals the client/customer relationship is blurred and generates a conflict of interest for POP operators: they are responsible for facilitating the selling of securities on behalf of companies on the platform, but are also required to protect investors and ensure that the investment they are acquiring is appropriate.

Q29 Do you agree with our proposed approach to POP operators making offers of securities relative to overseas issuers?

Yes – we agree with the FCA's proposed approach in this area.

Q30 Do you agree with our proposed approach to not create further specific rules for advertisements under our specific provisions for POP operators?

We have no comments.

Q31 Do you have any comments on our cost benefit analysis?

We have no comments.

Appendix A

The Quoted Companies Alliance *Primary Markets and Legal Expert Working Group*

Mark Taylor (Chair)	**Dorsey & Whitney (Europe) LLP**
Paul Airley	Fladgate LLP
Caroline Chambers	Simmons & Simmons LLP
Paul Cliff	Gateley
Gabrielle Cordeiro	First Sentinel Corporate Finance
Jonathan Deverill	DAC Beachcroft LLP
Stephen Hamilton	Mills & Reeve LLP
Samantha Harrison	Grant Thornton UK LLP
David Hicks	Simmons & Simmons LLP
Martin Kay	Blake Morgan
Catherine Moss	Shakespeare Martineau LLP
Jaspal Sekhon	Hill Dickinson LLP
Donald Stewart	Kepstorn Solicitors
Nick Williams	DMH Stallard LLP