



INSIDE AIM

Issue 2 - July 2010

WELCOME TO INSIDE AIM

Welcome to our second edition of Inside AIM. Following positive feedback on our inaugural issue, in this edition we have followed a similar format, with a continuing objective of dealing with key or common matters that nomads should find useful.

CORPORATE GOVERNANCE ON AIM

Lucy Leroy
Head of UK Primary Market Regulation

Or should that be: *Corporate Governance on AIM?* At times, that has been a question levelled at the market.

Until the advent of the Nominated Adviser rules, there was no specific mention of the phrase 'corporate governance' within the AIM rules, although there are long-standing AIM company rules requiring a company to have "sufficient procedures, resources and controls in place". As well as this continuing requirement, under the current Nomad Rules, a nomad should "consider, with the directors of an applicant, the adoption of appropriate corporate governance measures".

Since the last issue of Inside AIM, the Exchange has amended the AIM Rules to provide for enhanced disclosure on directors' remuneration in AIM companies' annual accounts. With the continuing difficult economic situation, there has also been an increased focus on levels of executive pay and the Financial Reporting Council has updated the UK Corporate Governance Code ("CGC"). This therefore seems a good time to set out the Exchange's position on corporate governance for AIM companies.

The Exchange believes that good corporate governance is just as relevant and important for AIM companies as it is for those on the Main Market.

CONTENTS

- Corporate Governance on AIM
- Nomad Review Programme
- Contact with the Exchange
- Investigations & Enforcement Update
- AIM Policy Update
- FAQs incl. on schemes of arrangement, cash shells, capital reorganisations, accounts, ADM, Rule 28.

Why then do the AIM Rules not require adherence to a particular set of corporate governance rules?

Given the nature and range of smaller, growing companies that predominantly make up AIM's constituent members, the Exchange has believed for some time that a blanket requirement to comply or explain against a particular code, in a 'one size fits all' style, is not appropriate; such a step may simply be seen as 'more regulation' rather than as a beneficial set of practices to improve the running of a company and the interaction between board and shareholders.

More importantly, AIM also has the benefit of the nomad system. Nomads are in an excellent position to work with their AIM company clients, both up to admission and on an ongoing basis, to consider and set out the corporate governance standards with which the company is going to comply, by reference to size, stage of development, business sector, jurisdiction etc.

So, whilst full adherence to the CGC should not necessarily be the expectation for all AIM companies, we believe it continues to serve as a standard that public companies should aspire to.

The QCA's Corporate Governance Guidelines for AIM Companies have become a widely recognised benchmark for SME corporate governance. We fully support the use of these Guidelines to achieve a level of corporate governance measures appropriate for an AIM company.

We will keep the Exchange's position on corporate governance under review. We expect to see nomads continue, and extend, their involvement in this area by demonstrating an active involvement in the setting and satisfying of the corporate governance standards that their AIM company clients will follow.

As with all things AIM, we expect this to be done in a meaningful and pragmatic way. It should not simply be a “box ticking” exercise, for example by installing audit and remuneration committees with boilerplate wording in the admission document or over-reliance on the FRP review conducted by the reporting accountants.

We look for evidence of discussion and debate at admission, and on an ongoing basis, of board composition, structure, procedures and controls, using, for example, the CGC or QCA Guidelines as a base. This should enable the Exchange to maintain a flexible approach to corporate governance while continuing to improve the quality of companies on AIM and reducing the number of disciplinary actions we have to take in circumstances where board inadequacies have led to breaches of the rules.

So, corporate governance on AIM? Yes, most definitely.

NOMAD REVIEW PROGRAMME

The most recent cycle of our nomad review programme, which started in 2007 after the introduction of the AIM Rules for Nominated Advisers (Nomad Rules), has recently been completed. That programme achieved its primary objective of assessing compliance with the Nomad Rules across the nomad community. It also enabled us to obtain a greater understanding of each nomad firm, as well as allowing us to compare practices and to develop better relationships with key executives at each firm. During the three year review period, we visited each nomad firm at least once.

COMMON THEMES

We thought it would be useful to share the common themes that emerged from the programme. Whilst every firm was treated individually and specific recommendations were made in each case, common themes for recommendations included:

- Record keeping – improving the records retained to demonstrate more fully how aspects of the Nomad Rules are being complied with, in particular the duties set out in Schedule 3;
- Directors due diligence – ensuring that (i) sufficient due diligence is carried out for both an admission of a new company and a take-on of an existing AIM company, which we do not consider to be materially different in terms of requirements; and (ii) tailoring due diligence more, to take

account of each individual director including their operating location, background and independent, reliable knowledge of the director;

- Directors education – reducing reliance on other advisers to educate directors about their AIM Rules responsibilities and taking a more direct, pro-active and tailored approach in educating all directors of their responsibilities (this applies not only at admission); and
- Corporate Finance Procedures Manual – including practical guidance on how each nomad firm expects its executives to comply with the Nomad Rules in key areas, such as the three areas stated above.

NEW NOMAD REVIEW PROGRAMME

In April of this year, we started a new programme of nomad reviews. The primary focus of the new programme will be a much broader risk-based review of the regulatory risks relevant to its nomad status that are facing each nomad firm. The reviews will therefore take into account a number of factors including, for example, the size and scope of the nomad firm and its client base, our day-to-day experience of dealing with the firm, its management, its risk appetite, compliance procedures and its disciplinary record. Each visit will therefore be different in terms of matters examined and method of examination. The duration of and time between visits will also be tailored according to our risk assessment.

FAQ

Q. An AIM client is seeking to cancel from AIM by scheme of arrangement. Who should I contact?

A. Nomads should contact the following departments before any announcement is made which includes a proposed cancellation date:

- Stock Situations – email the full scheme timetable;
- AIM Regulation – email the full scheme timetable clearly outlining the court, record and CREST disablement dates, any derogation requests (eg, for obtaining shareholder approval), and confirmation that the timetable has been approved by Stock Situations. AIM Regulation must confirm the cancellation date and whether any suspension is required before any announcement is made. Please note the 20 business day notification requirement in Rule 41. If a company is going to be suspended from trading ahead of cancellation, then the 20 business days notification requirement should run to the date of suspension usually.

FAQ

Q. Can a company that has become a Rule 15 investing company (e.g. a trading company that has sold all of its business/assets) avoid the 12 month deadline for being suspended by raising a minimum of £3m and therefore becoming instead an investing company that is subject to AIM Rule 8?

A. No. A Rule 15 company has 12 months (followed by a 6 month suspension period) to either implement its investing policy or carry out a reverse takeover. The Exchange considers that this is enough time to satisfy the requirements of this rule.

If a company wishes to remain a cash shell for a longer period of time after becoming a Rule 15 company, it instead must readmit to AIM as a Rule 8 investing company, following the usual admission process, including compliance with the Investing Companies Note.

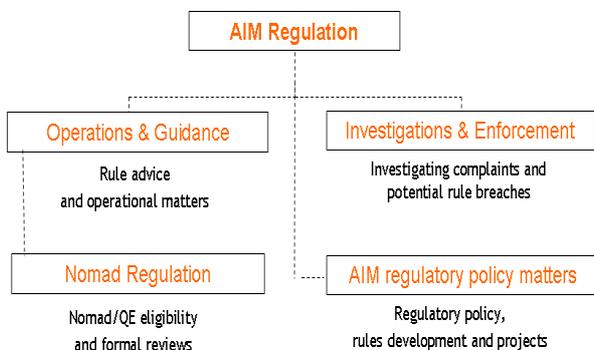
Preparing an admission document *as well as* raising a minimum of £3m from independent investors demonstrates commitment by the company to its investing policy. It also means shareholders receive full disclosure about the company's intentions and its risk factors.

Rule 15 seeks to protect the integrity of AIM by ensuring companies which are potentially no longer suitable for a public market do not remain on market over an extended period.

CONTACT WITH THE EXCHANGE

This section provides information on key Exchange departments that nomads may need to deal with regarding their AIM company clients. This follows some recent situations where not all relevant departments have been contacted.

AIM REGULATION



All day-to-day queries including in relation to real time matters and AIM Rule derogation requests are dealt with by the Operations & Guidance team. Schedule 1 documents should also be sent to this team.

The Operations & Guidance team can be contacted on +44 (0)20 7797 4154 or at:

aimregulation@londonstockexchange.com

The Investigations & Enforcement team investigate and (where appropriate) take disciplinary action for breaches of the AIM Rules. This team can be contacted on +44 (0)20 7797 4154 or

aiminvestigations@londonstockexchange.com

MARKET OPERATIONS

The Market Operations team (previously known as Issuer Implementation) can be contacted at admissions@londonstockexchange.com or on +44 (0)20 7797 4310. This team should be contacted for matters such as AIM application forms for new admissions and further issues ('3 day documents'), company application fees and company name changes. **Note: Schedule 1s should be sent to AIM Regulation not Market Operations.**

STOCK SITUATIONS

Stock Situations can be contacted at ssn@londonstockexchange.com or on +44 (0)20 7797 1579/1920. This team should be contacted in advance of any corporate actions which affect the rights of a company's shareholders eg, events which require an Ex action to be made, schemes of arrangement and disablement of electronic settlement (CREST). **Please ensure you regularly refer to Rules 24 and 25 of the AIM Rules (and their related guidance) for details of relevant corporate actions. Increasingly, Stock Situations are encountering issues where these rules have not been properly considered.**

SEDOL MASTERFILE

SEDOL Masterfile can be contacted at smfnewissues@londonstockexchange.com or on +44 (0)9065 543210. This team should be contacted to obtain UK ISINs and SEDOL codes for new companies admitting to AIM or AIM companies carrying out a capital reorganisation.

EQUITY PRIMARY MARKETS

Equity Primary Markets can be contacted on equityprimarymarkets@londonstockexchange.com or on +44 (0)20 7797 3429. This team should be contacted for matters such as if an AIM company wishes to change trading platform (from SEAQ to SETS, for example) or you wish to discuss a potential opening ceremony.

FAQ

Q. An AIM client is currently suspended (e.g. due to a CVA) and will be undergoing a capital reorganisation. Who should I contact?

A. You should contact:

- AIM Regulation – regarding any concerns to do with ongoing appropriateness of the company following the reorganisation and in relation to the proposed restoration to trading;
- Stock Situations – to have the corporate action timetable approved and a stock situations notice released;
- Market Operations – to ensure the stock description is amended on the trading system, and an AIM application form is lodged if appropriate; and
- SEDOL Masterfile – if a new ISIN or SEDOL code is required.

Following some recent difficulties regarding the pricing of AIM securities after complex reorganisations, we remind nomads of the need to ensure all relevant departments are contacted and the market announcements are sufficiently clear.

FAQ

Q Can we send our monthly accounts confirmation spreadsheet in after the deadline?

A. No. We ask all nomads to be mindful of the deadlines we set for submission of the accounts confirmations to AIM Regulation.

The confirmation spreadsheets must be submitted to aimregulation@londonstockexchange.com by **9am at the latest** on the due date.

Recently nomads have been submitting these confirmations throughout the day, which does not allow us time to deal with them, activating or avoiding suspension as appropriate.

If it is not possible to provide all the confirmations in time (for example, as a company is having difficulties meeting the deadline) nomads must still submit the confirmation by the due date and time. Simply indicate in the covering email which company has not yet released its accounts and whether any suspension may be required.

As a guide and so nomads can plan their resource accordingly, a confirmation spreadsheet will usually be sent to nomads c.2 weeks before the month end and is due to be returned at the latest by the last business day before month end.

In June and December, an interim confirmation will be sent at the start of the month and is due to be returned towards the middle of the month (a specific date will be advised in the email from AIM Regulation).

Nomads should not rely on the confirmations spreadsheets to be an exhaustive list of their clients that have not yet released their accounts. Nomads should be checking the completeness of the list themselves against their own client records.

INVESTIGATIONS & ENFORCEMENT UPDATE

Since Issue 1 of Inside AIM (December 2009), two AIM companies and two nomads have been privately censured and fined a total of £275,000 by the AIM Executive Panel.

ACTIONS RELATING TO AIM COMPANIES

The disciplinary action against one of the AIM companies involved breaches of AIM Rules 10 and 31. This included a significant failure to implement adequate formal procedures and controls to ensure appropriate accountability and oversight of a key individual responsible for managing the company's business. The company was privately censured and fined £75,000.

In the other disciplinary action, an AIM company was privately censured and fined £30,000 for breaches of AIM Rules 11 and 31. This included a delay in notifying price sensitive information and failure to liaise appropriately with its nomad.

Points of interest in these cases are:

- One of the disciplinary actions was completed after the company cancelled from AIM. An AIM company's cancellation does not prevent the Exchange taking action for breaches of the AIM Rules when it was on market, where appropriate;
- One of the companies maintained that its practices were industry standard. An applicant should have regard to the fact that the procedures, systems and controls which might otherwise be regarded as industry standard for comparable non-quoted entities may not be sufficient for a company on a public market;
- When assessing the appropriateness of an applicant for AIM, a nomad should consider whether industry practice is at odds with an applicant's overriding public market obligations, potentially rendering it inappropriate for AIM; and
- In one case, a number of matters potentially affecting the company's ability to trade were known to the company but not shared with the nomad. The board also failed to recognise that the combined effect of the various matters led to a divergence between the position as previously announced to the market and the true position. This shows the importance of keeping the nomad fully updated.

ACTIONS RELATING TO NOMADS

AIM Regulation's disciplinary action against one of the nomads included failure to properly assess a company's appropriateness for AIM, for which a private censure and £90,000 fine was imposed.

In the other nomad disciplinary action, a nomad was privately censured and fined £80,000 for a number of breaches including inadequate written procedures and record keeping and failure to keep itself updated with the company's financial performance.

Actions against nomads have highlighted that a nomad should take reasonable care to ensure that:

- While it is important that individual issues arising from due diligence are dealt with, the nomad should not lose sight of the overall objective of the due diligence process when assessing an applicant's appropriateness for AIM. In one case, a significant amount of work was undertaken by the nomad and reporting accountant prior to admission to resolve numerous issues around working capital adequacy and financial reporting procedures. However, the nomad should have stepped back and considered whether the existence of so many issues and the steps required to address them in itself cast doubts on the company's appropriateness for AIM, notwithstanding any actions taken in relation to individual issues;
- In the event that information comes to light either suggesting that a company may need to make a regulatory announcement or contradicting representations that have been made to a nomad by a company, the nomad should take urgent and additional steps to follow up on that information, to ensure that, where appropriate (i) an announcement is made and/or (ii) to verify/disprove the company's representations. Such steps may include requesting sight of management accounts or other relevant documents; and
- In circumstances where there is a conflict between the nomad's views and those of other advisers (such as lawyers or PR firms) concerning the interpretation of AIM Rules, the nomad should approach AIM Regulation directly for its view.

FAQ

Q. Can a prospective AIM company client admit to AIM via the AIM Designated Markets ("ADM") if there have been changes to its business in the past few years?

A. This depends on the extent of changes to the business during that time. We expect a company to have substantially traded in the same form for 18 months prior to seeking admission via ADM. This is so that there has been a sufficient period of disclosures to the home market about the company in the form in which it is seeking to admit to AIM, which is the principle behind the requirement to be listed on one of the AIM designated markets for 18 months.

Where a business has changed substantially, for example carried out the equivalent of a Rule 14 reverse takeover, it is possible that the entity will not be able to take advantage of the ADM admission route.

If the company has performed smaller transactions or taken other actions to substantially change its business e.g. ceasing a major business unit, we would need to discuss with the nomad whether the ADM route is available.

FAQ

Q. If an AIM client is undertaking a reverse takeover and the target is an AIM or Main Market company, can historical financial information be omitted from the admission document for both companies?

A. No. AIM Rule 28 permits historical financial information to be omitted only for the offeror. Historical financial information needs to be included for the target in line with Schedule 2.

We consider it is important to provide this information in the admission document sent to the shareholders so they can use it when voting on the transaction.

In addition, the historical financial information about the target will then be available as future reference for shareholders.

This is important as there is no other specific requirement under the AIM Rules for the target's historical accounts to be made available once the enlarged company readmits to AIM.

If an AIM company wants to make use of Rule 28, the nomad must confirm to the Exchange in writing that the offeror's financial accounts are otherwise available to the market due to the company's previous compliance with the AIM Rules (i.e. through company announcements, website disclosures and shareholder mailings).

AIM POLICY UPDATE

AIM & FISCAL INCENTIVES

Since the last issue, we remain engaged in discussions around the importance of improving SME access to finance and continue to lobby for improvements in the VCT scheme and inclusion of AIM securities in ISAs. The March Budget included statements on the intention to consult on both these issues. This was a very positive outcome and a result of our lobbying to date and work with key stakeholders, including AIM VCT managers and the QCA.

We are also delighted with the announcement of a Green Paper on Business Finance in the Emergency Budget. This demonstrates the new Government's intention to engage and legislate in this area and will take forward our previous engagement on increasing access to equity finance (as well as fixed income finance).

We are contributing to the Green Paper and are continuing our discussions on facilitating SME access to finance.

PROSPECTUS DIRECTIVE REVIEW UPDATE

Throughout the PD Review process we actively pursued and provided evidence to support specific proposed amendments that, if implemented, would help companies attract a wider set of investors and boost liquidity over the longer term.

The PD Review has now concluded in European Parliament, with the following positive amendments for smaller companies including those on AIM:

- the consideration limit of offers to which the Directive does not apply has increased from EUR 2.5 million to EUR 5 million;
- increase in the limit of natural / legal persons to which an offer can be made without the requirement to publish a prospectus has increased from 100 to 150; and
- introduction of a proportionate disclosure regime for offers by companies already admitted to regulated markets and appropriate multi-lateral trading facilities.

EUROPEAN POLICY

We continue to emphasise to the European Commission and key MEPs on the need for increased flexibility in European legislation for smaller companies, particularly those on growth markets such as AIM and AIM Italia, to help lower their cost of capital. Our efforts include contributing to discussions on the ongoing European directive reviews and participating in the EVCA working group of European exchanges and venture capitalists set up to seek ways to improve the IPO exit environment for VCs.

FAQ

Q. What are the current AIM Designated Markets?

A. The ADM markets have not changed in recent years. As a reminder the relevant exchanges are as follows (using their latest names):

- Australian Securities Exchange
- NYSE Euronext
- Deutsche Börse
- Johannesburg Stock Exchange
- NASDAQ
- NYSE
- NASDAQ OMX Stockholm
- Swiss Exchange
- Toronto Stock Exchange
- UKLA Official List

A company seeking admission via the ADM route must have been listed on the top tier/main board of the exchanges above eg, NASDAQ Global and NASDAQ Global Select, TSX main board (not Venture).

The Exchange will not currently accept admission to AIM via ADM for any market not listed above. It is always advisable to contact AIM Regulation in respect of any potential ADM admission before significant work is undertaken to ensure that route is available.

A publication about the ADM route can be found at: <http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/aim-designated-markets.pdf>

CONTACTS

AIM Regulation

T +44 (0)20 7797 4154
F +44 (0)20 7920 4787
E aimregulation@londonstockexchange.com

Emails for our Investigations & Enforcement team should be sent to:
aiminvestigations@londonstockexchange.com.

Please note requests for derogations from the AIM Rules should be submitted in writing (including email) from the company's nomad.

AIM Product and Policy

Umerah Akram
T +44 (0)20 7797 4707
E uakram@londonstockexchange.com

Claire Dorrian
T +44 (0)20 7797 2074
E cdorrian@londonstockexchange.com

Market Operations

T +44 (0)20 7797 4310
E admissions@londonstockexchange.com

Stock Situations

T +44 (0)20 7797 1597
E ssn@londonstockexchange.com

SEDOL Masterfile

T +44 (0)9065 543210
E smfnewissues@londonstockexchange.com

Equity Primary Markets

T +44 (0) 20 7797 3429
E equityprimarymarkets@londonstockexchange.com

Switchboard

T +44 (0)20 7797 1000

REGULATORY STATUS OF INSIDE AIM

The guidance provided in this newsletter should be regarded as illustrative only. It is intended to give an indication of how AIM Regulation would usually expect certain aspects of the AIM Rules to be interpreted and this guidance is not definitive or binding. AIM Regulation should be contacted by a company's nomad if clarification or derogation from the rules is required in a specific situation.

Furthermore, AIM companies should continue to seek the guidance of their nomad when considering the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.

FEEDBACK

We would welcome any feedback on this edition of Inside AIM and any suggestions for issues that you would like us to address in future editions.

Please email any comments to:
aimregulation@londonstockexchange.com