



**London**  
**STOCK EXCHANGE**

19 October 2007

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## **STOCK EXCHANGE AIM DISCIPLINARY NOTICE**

**AD1**

### **PUBLIC CENSURE AND FINE - NABARRO WELLS & CO LIMITED**

#### **AIM DISCIPLINARY COMMITTEE**

#### **PUBLIC CENSURE AND FINE**

**In relation to the conduct of**

**NABARRO WELLS & CO LIMITED**

**for**

**Breach of Rule 39 of the  
AIM Rules for Companies, April 2005 (the "AIM Rules")  
and**

**Breach of Part 2 of the  
Nominated Adviser Eligibility Criteria, April 2005 (the "Eligibility Criteria")**

#### **SUMMARY**

1. The London Stock Exchange plc (the "Exchange") of 10 Paternoster Square, London EC4M 7LS announces for the reasons listed below, and having agreed with Nabarro Wells & Co Limited ("NW") the facts and matters set out below, that on 18 October 2007 the AIM Disciplinary Committee ("ADC") has approved a consent order agreed between the above parties which imposes the following sanctions on NW:
  - (i) a public censure as detailed below; and
  - (ii) a fine of £250,000 inclusive of costs.

2. These sanctions were imposed in respect of breaches of AIM Rule 39 and breaches of Part 2 of the Eligibility Criteria, including that:
  - NW's systems and controls did not satisfy the Eligibility Criteria;
  - NW failed to act with due skill and care;
  - NW failed to undertake the necessary level of due diligence to assess the appropriateness of certain companies for admission to AIM; and
  - NW failed to make due and careful enquiry into whether certain AIM companies' admission documents complied with the AIM Rules;
3. The information in paragraph 2 above is derived from and should be read in conjunction with the section entitled 'Particulars of Breaches' below.
4. All references to the AIM Rules and the Eligibility Criteria in this censure are to those in effect at April 2005.

### **THE ROLE OF A NOMINATED ADVISER**

5. AIM's regulatory structure is designed to facilitate the admission of small and growing companies, balancing the need to protect investors with a desire to control the costs associated with being admitted to a public market.
6. The Exchange delegates certain important regulatory responsibilities to nominated advisers ("nomads"), such as that of assessing the appropriateness of companies for AIM. Accordingly, the role that the nomad fulfils is different from that of other professional advisors acting for an AIM company.
7. Nomads fulfil a vital role in maintaining the quality of companies admitted to AIM and providing advice and guidance to AIM companies about their responsibilities under the AIM Rules. The Exchange therefore requires approved nomads to act with due skill and care at all times.

### **RELEVANT REGULATORY PROVISIONS**

8. Under AIM Rules 43 and 44, if the Exchange considers that a nomad has breached its responsibilities under the AIM Rules, it can refer the matter to the ADC.
9. Under the AIM Disciplinary Procedures and Appeals Handbook, if the ADC finds, on the balance of probabilities, that the nomad has breached the AIM Rules or that the integrity and reputation of AIM has been or may be impaired as a result of its conduct or judgement it may impose one or more of the following sanctions:
  - a fine;
  - a censure;
  - remove the nomad from the register; and/or
  - publish the action it has taken and the reasons for such action.
10. Under AIM Rule 39, a nomad must confirm to the Exchange, inter alia, the following information in relation to any company producing an AIM admission document:
  - that in its opinion, it is satisfied that the applicant company and the securities are appropriate to be admitted to AIM; and
  - that to the best of its knowledge and belief, having made due and careful enquiry, all relevant requirements of the AIM Rules have been complied with.

11. Under AIM Rule 39, a nomad must act with due skill and care at all times.
12. Under AIM Rule 39, a nomad must abide by the Eligibility Criteria at all times. Under the Eligibility Criteria, a nomad must:
  - ensure that it maintains procedures which are sufficient for it to discharge its ongoing obligations under the Eligibility Criteria, which includes an obligation to abide by its responsibilities under the AIM Rules;
  - retain sufficient records to maintain an audit trail of the advice which it has given to the AIM companies for which it acts as nomad; and
  - ensure that it has sufficient corporate finance staff to discharge its obligations as a nomad.

## **BACKGROUND**

13. NW has been approved by the Exchange to act as a nomad on AIM since 1995.
14. As a result of the Exchange becoming aware of a number of incidents which caused it to question whether NW, as an approved nomad, was properly discharging its obligations to the Exchange in accordance with the AIM Rules and the Eligibility Criteria, the Exchange completed a formal review of NW during 2006 under Part Three of the Eligibility Criteria (the "Formal Review").
15. For the purposes of the Formal Review the Exchange selected, for detailed examination, seven AIM companies for which NW acted as nomad (the "Companies"). The Exchange makes no finding in relation to the conduct of the Companies, and to avoid the inference of any liability or blame on the part of the client companies the Exchange does not identify the Companies in this censure.
16. The Exchange's Formal Review included an examination of all NW's records in respect of the Companies, recorded interviews with relevant NW executives as well as scrutiny of other relevant public documents relating to the Companies, such as admission documents and regulatory announcements. The Exchange acknowledges NW's open and co-operative approach during the Formal Review.
17. As a result of the Formal Review, the Exchange referred to the ADC material breaches by NW of the AIM Rules (in respect of five of the Companies) and a procedural breach by NW of the Eligibility Criteria (in respect of a further Company).
18. The Exchange emphasises that this action relates solely to the conduct of NW. This censure does not contain, and should not be taken to imply, any other findings in relation to any other party.
19. The Exchange notes that NW has undergone significant changes in personnel and also a significant increase in staff numbers since the events in question arose. The Exchange also notes NW's representations that, since the start of the Exchange's review, it has reassessed its operations and that this has led to significant changes and strengthening of its operating and regulatory procedures.

## **PARTICULARS OF BREACHES**

20. As a result of its Formal Review the Exchange identified breaches by NW of the AIM Rules and the Eligibility Criteria as set out below.

APPROPRIATENESS OF COMPANY TO BE ADMITTED TO AIM (RULE 39, SCHEDULE 6 PARAGRAPH (C))

21. The Exchange identified breaches of the above rule, in that NW failed in some instances to undertake the necessary level of due diligence to assess the appropriateness of one or more of the Companies for admission to AIM. These included:
- (i) Inadequate due diligence into a Company and its directors, in the form of insufficient enquiries into omissions in the directors' questionnaires and the identity of the controlling shareholder of a Company, despite the fact that NW had no previous experience of or contact with the Company or any of its directors and all of its directors were based outside the UK and conducted their business outside of the UK.
  - (ii) Not being appropriately involved in and adequately supervising the due diligence and verification processes in relation to the admission of a Company, for instance NW only received the first three drafts of the verification notes, despite three further proofs of the admission document being circulated.
  - (iii) Inadequate consideration of the appropriateness of a Company for a public market in light of the weighted voting rights which attached to certain shares of the Company, notwithstanding the fact that the rights attaching to the shares were disclosed in the admission document of the Company.
  - (iv) Inadequate consideration of the appropriateness of a company for AIM, in light of the Company's inability to raise the required funds on admission which was necessary to achieve the assumed growth projections included in its working capital report. This contributed to a working capital warning being notified by the Company shortly after admission.
  - (v) Inadequate consideration of the experience of the board of a Company before its admission to AIM.
  - (vi) Inadequate enquiry into the reasons for a failed placing by a Company's broker at admission, and its potential consequences on the Company's appropriateness for AIM, notwithstanding the Company's promoter agreeing to underwrite the placing shortly before its admission to AIM.

ENSURING COMPLIANCE WITH AIM RULES (RULE 39 – SCHEDULE 6 PARAGRAPH (B))

22. The Exchange identified breaches in relation to the above rule, in that NW failed to make due and careful enquiry into whether the admission documents of one or more of the Companies complied with the AIM Rules. These included:
- (i) Not being sufficiently involved in the preparation of the admission document of a Company.
  - (ii) Not identifying the lack of appropriate settlement arrangements, at the time of admission of a Company to AIM, in contravention of AIM Rule 36.
  - (iii) Not identifying that a controlling shareholder should have been locked-in, under AIM Rule 7, at the time of a Company's admission to AIM.

- (iv) Not identifying that a Company was in breach of AIM Rule 8, at the time of its admission, in that it was an investing company which had failed to raise £3m.

#### OBLIGATION TO ACT WITH DUE SKILL AND CARE AT ALL TIMES (RULE 39)

- 23. The Exchange identified breaches (in addition to those outlined at paragraphs 21 and 22 above) of the requirement for NW to act with due skill and care. These included:
  - (i) Not advising a Company of its obligations to update the market under AIM Rule 11, when NW discovered that it had failed to receive the subscription monies from a controlling shareholder and that the Company had only received a small proportion of the funds that the working capital report had assumed it would receive.
  - (ii) Insufficient evidence that NW had adequately assessed whether a related party transaction undertaken by a Company was fair and reasonable pursuant to AIM Rule 13.
  - (iii) Approving an announcement of a transaction by a Company, which would have constituted a reverse takeover, whilst the transaction was still in the course of negotiation contrary to the guidance to AIM Rule 14. Upon the transaction in question aborting, NW advised the company that this information need not be announced immediately but rather could be included in a future announcement.
  - (iv) Approving the release of interim results by a Company, despite the fact that questions posed in writing by the auditor had not been satisfactorily answered.
  - (v) Not ensuring that a Company made an application to the Exchange for admission of its securities on a number of occasions, despite announcements being made by the Company detailing the issue of the new securities.
  - (vi) Inadequate consideration of the requirement to notify the market of a change in a Company's financial condition, under AIM Rule 11, when approving a notification of the cancellation of a significant proportion of the Company's issued share capital due to non-receipt of the subscription monies.

#### NOMINATED ADVISER ELIGIBILITY CRITERIA

In addition, in relation to the requirements upon NW under the Eligibility Criteria, the Exchange identified that:

- 24. NW's systems and controls fell below the required standard for a nomad. For instance, the general compliance manual and AIM procedure documents were found to be out of date and, in relation to references to AIM, inadequate in both scope and detail.
- 25. There was, on occasion, a failure to comply with internal procedures, and in the case of three of the Companies concerned, a failure to complete any transaction approval procedures prior to taking on the client.
- 26. NW's record keeping was inadequate to evidence compliance with the AIM Rules and the Eligibility Criteria. In particular, in the case of two of the Companies, there were significant gaps in records pertaining to its activities as nomad.

27. NW delegated its nomad responsibilities, in respect of a Company, to another entity that was not approved by the Exchange to act as a nomad, and there was insufficient evidence that NW's supervision of this entity was adequate.

**BOB BEAUCHAMP**  
**Manager, AIM Investigations & Enforcement**  
**AIM Regulation**