

STOCK EXCHANGE AIM DISCIPLINARY NOTICE

AD 21

30 May 2019

PUBLIC CENSURE AND FINE – REAL GOOD FOOD PLC

1. London Stock Exchange plc (“**Exchange**”) announces that it has agreed settlement terms with Real Good Food plc (“**Company**”) for a public censure and fine of £450,000 for breaches of rules 10, 13, 17, 19, 21 and 31 of the AIM Rules for Companies (“**AIM Rules**”). The Exchange has agreed with the Company that the fine of £450,000 shall be discounted to £300,000 for early settlement.
2. The Exchange is publishing details of the Public Censure for the purpose of educating the market on the expected standards of conduct for AIM companies under the AIM Rules.

INTRODUCTION

3. The Company was admitted to AIM on 31 August 2005 and is a diversified food business serving a number of market sectors.
4. The relevant events which give rise to the Public Censure, which occurred during the tenure of a different board, relate to:
 - (a) The Company’s disclosure of misleading or incomplete information in its notification of 29 June 2017 in respect of its expected trading performance;
 - (b) Disclosure failures with respect to multiple related party transactions between the Company and certain members of the Company’s former board (“**Board**”);
 - (c) Director’s dealing in a close period and a delay in notification of that dealing (pursuant to the AIM Rules, May 2014); and
 - (d) Failures in the Company’s procedures and controls to comply with the AIM Rules, and in its approach to ensuring both collective and individual responsibility of its directors for its AIM Rules compliance and in its approach to providing information to, and seeking advice from, its nominated adviser.
5. The nature and circumstances of these matters involve multiple and serious breaches of the AIM Rules and a pattern of unacceptable conduct by the Board.
6. As notified on 1 August 2017 and 8 August 2017 three members of the Board, who were directors at the time of the relevant events referred to in this Public Censure, stepped down with immediate effect. This included the Executive Chairman (“**former Chairman**”) who resigned on 8 August 2017. All three directors have left the Company and other board changes have also been implemented. The Company, under the stewardship of new members of the Board (“**new Board**”), has undertaken significant remedial action including enhancing the Company’s procedures, resources and controls, adopting new corporate governance and implementing new financial processes and procedures.

BREACHES OF THE AIM RULES

THE COMPANY'S NOTIFICATION OF 29 JUNE 2017

7. On 29 June 2017, the Company notified, amongst other matters, an 'Update on Trading', in which the Company indicated its intention to announce, in July 2017, its final results for year ending 31 March 2017 and that it expected to report EBITDA to 31 March 2017¹ ("**2017 EBITDA**") of between £5.0m and £5.4m. A material part of the expected 2017 EBITDA figure in the notification was predicated on the Company having settled a number of legal claims in favour of the Company. The former Chairman knew that the claims were ongoing, but nevertheless confirmed to the nominated adviser that the largest claim had been settled.
8. Whilst other members of the Board were unaware of the confirmation provided by the former Chairman, certain of them had concerns, nevertheless, regarding the reliability of the 2017 EBITDA figure, given its reliance on the successful resolution of the legal claims. Notwithstanding this, they did not raise these concerns with the nominated adviser or check the position, prior to approving the notification.
9. The Company's notification of 29 June 2017 also stated that it had embarked on an expansion plan, which was expected to be largely completed by September 2017, and confirmed that its trading to date was consistent with meeting the Board's expectations for revenue and EBITDA for the year ending 31 March 2018 ("**2018 EBITDA**"). However, at the time of the notification, the Board was aware of funding and operational delays affecting the timely implementation of its expansion plan, which would, in turn, have an adverse material effect on the Company's 2018 budget. Despite this, the Company announced in its notification on 29 June 2017 that it expected the expansion plan to help the Company achieve its 2018 budget, without providing any qualifications or caveats in relation to the potential impact of the delays on its expected 2018 EBITDA.
10. The Company's 2018 EBITDA expectations were further diminished following the receipt, in early July 2017, of details of lower than expected trading figures for the first quarter of its 2018 financial year. This gave rise to concerns amongst certain members of the Board that trading expectations might need to be revised. Whilst the Company sought to clarify further the scale of the impact of this on trading expectations, it did not inform its nominated adviser of its concerns until 31 July 2017.
11. The Company subsequently released a 'Company Update' notification on 1 August 2017, in which it indicated that its revised expected 2017 EBITDA was approximately £2.0m, rather than the £5.0m to £5.4m previously notified, and that its anticipated 2018 EBITDA was approximately £2.3m lower than previously expected.

Breaches of AIM Rule 10

12. The Company breached its AIM Rule 10 disclosure obligations, in that the Company did not take reasonable care with respect to the information in its notification of 29 June 2017. In consequence, the Company notified:
 - (a) misleading information concerning its expected 2017 EBITDA; and
 - (b) misleading and/or incomplete information regarding the progress of the Company's expansion plan and expected contribution to its 2018 budget.

¹ EBITA: Earnings Before Interest, Tax, Depreciation and Amortisation, which was a key performance measure for the Company.

TRANSACTIONS WITH DIRECTORS

13. Consultancy payments were made to the former Chairman, over and above normal remuneration, for financial years ending 31 March 2015 and 2016 inclusive. These payments involved a related party transaction which should have been disclosed, without delay, pursuant to AIM Rule 13 when the size of the transaction (in this case on an aggregated basis) exceeded the 5% threshold pursuant to the class tests in Schedule Three of the AIM Rules.

Breaches of AIM Rule 13

14. In breach of AIM Rule 13 the Company did not notify the transaction, without delay, at the point in time when a disclosure obligation arose. Further, the Company's directors who were independent of the transaction did not, in consultation with the nominated adviser, consider whether the consultancy payments were fair and reasonable insofar as the Company's shareholders were concerned.

Breaches of AIM Rules 19

15. Further, the Company breached its AIM Rule 19 obligations in that:
 - (a) During three consecutive years, consultancy fees paid to a non-executive director, and also those paid to the former Chairman, involved transactions with related parties which exceeded 0.25% pursuant to the AIM Rules class tests. In consequence, the Company was required, pursuant to AIM Rule 19, to disclose details of these consultancy fees in the Company's audited annual accounts for the periods to 31 March 2014, 2015 and 2016 respectively.
 - (b) In the financial year to 31 March 2016, the Company loaned the former Chairman £39,000, to finance a personal family transaction. Details of the loan should have been disclosed in the annual accounts for the period to 31 March 2016 because it was also a related party transaction which exceeded the 0.25% threshold pursuant to the class tests; and
 - (c) Fees of £56,000 paid in 2016, as remuneration of one non-executive director for performance of his role in financial years between 2013 and 2015, should also have been disclosed, pursuant to AIM Rule 19, in the audited annual accounts for those prior periods.
16. The disclosure failures were identified, and then addressed, in the Company's notifications of 1 August 2017 and 14 September 2017, following the conclusion of a forensic accounting enquiry commissioned by the Company's new Board.

DIRECTOR'S DEALING

17. The former Chairman dealt in the Company's securities, whilst the Company was in a close period². The Company appreciated, at or around the time of the dealing, that it was in a close period. The Company did not notify the former Chairman's dealing until after publication of its annual results for the year ending 31 March 2015 and, when the Company did notify the dealing, the notification included an incorrect transaction date.

Breaches of AIM Rules 10, 17 and 21 (May 2014³)

18. The former Chairman's dealing resulted in a breach of the Company's AIM Rule 21 obligations to ensure that its directors did not deal during a close period. The Company also breached its AIM Rule 17 obligations to notify, without delay, the former Chairman's dealing, when it had all relevant information to make that notification. The notification which was made breached AIM Rule 10, because it contained an incorrect transaction date which gave a misleading impression that the dealing did not take place during a close period.

² A period of time, defined in previous editions of the AIM Rules in force prior to 3 July 2016, where directors were restricted from dealing in their Company's AIM securities such as for a prescribed period before publication of financial statements or when the AIM company is in possession of unpublished price sensitive information.

³ The AIM Rule 17 and 21 requirements relating to directors' dealings at the relevant time were subsequently removed from the AIM Rules on 3 July 2016. These requirements are now contained in the Market Abuse Regulation for which the FCA is the Competent Authority.

CONDUCT RESULTING IN MULTIPLE BREACHES OF AIM RULE 31

19. The Company's conduct described above, reflected serious underlying failures during the relevant period, in the Company's compliance with its AIM Rule 31 obligations and responsibilities. This included:
- (a) **Corporate responsibility:** failing to ensure that each of its directors accepted responsibility, collectively and individually, for AIM Rules compliance, including failures to (i) adequately challenge the accuracy of the expected 2017 EBITDA figure to be included in the 29 June 2017 notification and/or (ii) undertake sufficient scrutiny or consideration of transactions with, or payments to, the former Chairman and certain non-executive directors. This was notwithstanding the AIM Rules 10, 13 and 19 disclosure implications.
 - (b) **Procedures and controls:** failing to ensure its procedures and controls were sufficient to monitor the progress of its expansion plan, and the impact of delays or other contingencies on its anticipated completion, so that timely and accurate updates could be provided on the Company's expected 2018 trading performance.
 - (c) **Liaison with the nominated adviser:** failing to provide timely or accurate information and/or seek AIM Rules advice and guidance whenever appropriate, regarding:
 - (i) The settlement status of a legal claim and/or the Board's concerns as to the reliability of the expected 2017 EBITDA figure which was being notified on 29 June 2017;
 - (ii) Developments regarding the expansion plan and resultant changes in trading expectations for the year ending 31 March 2018; and
 - (iii) Transactions with or payments to the former Chairman and certain other non-executive directors.

EXPECTED STANDARDS FOR AIM COMPANIES

20. The events outlined in this Public Censure reflect inadequate corporate governance within the Company, under the leadership of the former Chairman and its Board at the relevant time. The Company's inadequate corporate governance facilitated a culture of poor decision making, and an overly dominant former Chairman and directors who were allowed to go unchallenged. The Board failed to assert sufficient control or prevent the former Chairman and certain directors from exerting disproportionate influence. This contributed to a number of serious failures by the Company to comply with its AIM Rules obligations.
21. Robust procedures and controls, overseen by independent non-executive directors who can hold management to account, are essential to ensure corporate integrity, considered judgement and accountability. It is therefore incumbent on AIM companies to ensure that appropriate corporate governance and financial controls are properly embedded in culture and effective in practice. Failure to do so gives rise to the inherent risk of breaches of the Company's AIM Rules obligations.
22. AIM companies can expect to be held to account to ensure that directors, individually and collectively, conduct themselves so as to ensure AIM Rules compliance. Given the seriousness of the breaches, the Exchange considers that a public censure with a significant fine is the appropriate sanction. The Exchange notes the new Board's full co-operation in the investigation of these matters. But for the new Board's approach, the fine for the breaches would have been substantially higher than the fine imposed.

Any queries relating to this AIM Notice should be addressed to: aimregulation@lseg.com

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Notes:

AIM Rules for Companies

Sanctions against an AIM company

42. If the **Exchange** considers that an **AIM company** has contravened these rules, it may take one or more of the following measures in relation to such **AIM company**:

- issue a **warning notice**;
- fine it;
- censure it; or
- cancel the admission of its **AIM securities**; and
- publish the fact that it has been fined or censured and the reasons for that action.

Disciplinary process

44. The **Exchange** will take any proposed disciplinary action against an **AIM company** in accordance with the **AIM Disciplinary Procedures and Appeals Handbook**.