



London  
Stock Exchange

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For the attention of the Nominated Advisers/ Finance  
Directors/ Company Secretaries, all AIM Companies

AIM33

## STOCK EXCHANGE AIM NOTICE

### FEEDBACK ON AIM NOTICE 30, CONFIRMATION OF AIM RULE CHANGES AND THE INTRODUCTION OF AN AIM NOTE FOR INVESTING COMPANIES

#### 1. INTRODUCTION

On 18 December 2008, the London Stock Exchange ("the Exchange") issued AIM Notice 30 which consulted on:

- **Proposed rule changes relating to investing companies and the introduction of a new AIM Note for Investing Companies**, which sought to provide more tailored rules for companies of this type on AIM; and
- **Other miscellaneous changes to the AIM Rules for Companies and Guidance Note for Mining, Oil & Gas Companies**

#### 2. IMPLEMENTATION OF NEW RULES

This Notice provides feedback on AIM Notice 30 and confirms the resulting rule changes including the introduction of the new AIM Note for Investing Companies.

The new version of the AIM Rules for Companies (the "AIM Rules"), the AIM Note for Investing Companies (the "Note") and the AIM Note for Mining, Oil & Gas are available to download, in clean and marked-up versions in the case of the AIM Rules and the Note, from: [www.londonstockexchange.com/aimnotices](http://www.londonstockexchange.com/aimnotices).

These changes have immediate effect with certain transitional provisions being set out in paragraph 5 below.

The new version of the AIM Rules also includes the changes set out in AIM Notice 31 relating to rights issue subscription periods and AIM Notice 32 relating to significant shareholder notifications.

Please also note that a minor revision has been made to the financial instrument definition introduced in AIM Notice 32. This revision has been made to clarify the Exchange's position that AIM companies not subject to the Financial Services Authorities' Disclosure and Transparency Rules should continue to make best endeavours to comply with the requirements of AIM Rule 17, including the disclosure of shareholdings resulting from a Contract for Difference or related financial instrument.

### **3. FEEDBACK ON RESPONSES RECEIVED TO AIM NOTICE 30**

The Exchange received ten responses from a variety of AIM participants and would like to thank everyone who responded. Broadly, the proposals were positively received.

No significant revisions have been made to the proposed rules since consultation. However, attached to this Notice is a detailed statement which provides the Exchange's feedback on the proposed rule changes and aspects of the Note that attracted the most comment, together with details of any changes made as a result.

### **4. GUIDANCE REGARDING APPROPRIATE STRUCTURES FOR ADMISSION TO AIM**

The Exchange would like to reiterate the guidance previously provided on what would ordinarily constitute an appropriate entity for admission to AIM. This applies most typically to investing companies but will apply to other entities wishing to admit to AIM.

As previously indicated, investing companies seeking admission should be straightforward in their structure, securities and investing policy. More complex investing entities that are designed primarily for sophisticated investors should consider admission to an alternative market, such as the Main Market or Specialist Fund Market.

In particular, the Exchange would expect an investing company to issue primarily ordinary shares or equivalent, which may include "C" shares depending on their terms. Any other securities would be expected to be a lesser part of the company's security structure, typically considered to be less than 50% of the overall share capital.

Other securities such as those that are partly paid, non-voting or redeemable on an open basis or which form part of a stapled unit are unlikely to be regarded as appropriate for admission.

The Exchange should be consulted at an early stage if there is a doubt as to whether the securities or structure being proposed for admission are likely to fit within the above criteria.

### **5. TRANSITIONAL PROVISIONS**

The revised AIM Rules, the AIM Note for Mining, Oil and Gas Companies, and the Note are implemented by this Notice with immediate effect.

There are however, certain transitional provisions that are set out below which apply, as appropriate, to existing investing companies that are currently admitted to AIM.

### **5.1 Investing Policy**

The new rules require investing companies to publish a detailed investing policy. In order to comply with this requirement, a company may need to make its investing policy more specific.

The Exchange requires that investing companies make any such changes to their investing policies as soon as practically possible, and in any event within six months of the date of this Notice. However, the Exchange will not require shareholder approval to be sought, pursuant to AIM Rule 8, for any changes to the investing policy that arise solely as a result of these rule changes, unless the revisions are considered to materially change the overall objective and risk profile of the existing strategy. The Exchange should be consulted if a nominated adviser has any concerns about the application of this provision.

The revised investing policy should be notified when it has been finalised and should be published in the company's next annual accounts, in accordance with AIM Rule 8. In addition, the revised policy should also be made available on the company's website at the same time as it is notified, pursuant to AIM Rule 26.

The investing policy definition includes a requirement for the policy to be precise and detailed and therefore the Exchange would not consider it appropriate for the policy to include a catch-all provision, which would potentially allow the company to invest in a range of assets outside of the stated policy. This should be considered when any revisions to a policy are being made as a result of these rule changes.

### **5.2 Investment Manager**

Where an AIM company does not comply with the requirements of paragraph 3.3 (independence) of the Note, this information should be notified. Where the AIM company has not previously disclosed, in its admission document or in a subsequent notification, the information required by paragraph 4.2 of the Note, this should also be notified.

Both the above notifications, if required, should be made within three months of the date of this notice.

### **5.3 Rules 12 and 14**

In order to gain the benefit of the partial carve-outs to rules 12 and 14 set out in paragraphs 5.4 and 5.5 of the Note, an investing company must have an investing policy that meets the criteria set out in the revised rules.

## **6. QUERIES ON THIS NOTICE**

Queries from AIM companies on this Notice should be addressed to their nominated adviser.

Queries from nominated advisers (and other advisers) should be sent to Darren Vickers at: [aimregulation@londonstockexchange.com](mailto:aimregulation@londonstockexchange.com).

**Bob Beauchamp**  
**Acting Head of AIM Regulation**

## **AIM NOTICE 33: FEEDBACK STATEMENT IN RELATION TO AIM NOTICE 30**

### **AIM RULES FOR COMPANIES**

#### **RULE 8 & 11 IMPLEMENTATION OF STRATEGY**

Respondents commented on an apparent inconsistency between the timetables relating to Rule 8 and Rule 15 by which an investing company must have substantially implemented its investing policy or completed a reverse takeover after a fundamental disposal. The timetables are eighteen and twelve months respectively. Furthermore, some respondents noted a difference in the consequences of failing to complete the required actions, namely that annual approval of the company's policy would be required for Rule 8 and that suspension and cancellation could be a consequence of Rule 15.

The Exchange has reviewed whether to align the timetables but has decided that the extended timetable for companies who come to AIM as an investing company under Rule 8 is justified, on the basis that they have to satisfy a £3m equity fundraising requirement on admission; an additional safeguard to ensure the company has an appropriate investing policy to implement.

#### **RULE 8 SUBSTANTIAL IMPLEMENTATION OF THE INVESTING POLICY**

The proposed rule changes included in the guidance note to Rule 8 included a statement that the Exchange would consider an investing company to have substantially implemented its investing policy if it has invested 75% of all funds available to it. A number of respondents felt that the 75% threshold was too high.

The Exchange has noted these concerns and has amended the rule so that substantial implementation of policy will usually mean that at least 50% of the AIM company's available funds have been invested. However, the Exchange will consider situations on a case by case basis.

#### **RULE 8 – PUBLICATION OF INVESTING POLICY IN HALF YEARLY REPORT**

On the basis that an investing company will be required to include its investing policy on its website, the Exchange has removed the requirement under the guidance to Rule 8 that a company must publish its investing policy in its half yearly report. A requirement that respondents felt was too onerous.

#### **RULE 15 – IMPLEMENTATION OF THE INVESTING POLICY**

The Exchange received a few responses which commented that the consequences of an investing company not completing a reverse takeover or otherwise implementing its investing policy within twelve months should be clarified to confirm the practice that has been in place since the rules were implemented.

In response to this, the Exchange has amended the guidance note to the rule so that the consequences of not implementing the policy, namely suspension of trading after twelve months and cancellation

after a further six months if the policy is still not implemented, are explicitly stated.

**INVESTING  
POLICY  
DEFINITION**

A number of respondents felt the requirement of the investing policy definition to publish details on “the type of returns it will make to shareholders” could place an inappropriate obligation on the company to deliver such a return. The Exchange has therefore reworded this aspect to clarify that it is the nature of the expected returns the company will seek to deliver that should be disclosed.

**RULE 7 – LOCK-  
INS FOR NEW  
BUSINESS**

Some respondents raised comments on the application of Rule 7 to investing companies. Specifically, respondents queried whether the carve-out to Rule 7 for substantial shareholders that are authorised persons should be extended to include investment funds that are managed by an appropriately authorised investment manager.

The Exchange has decided that extension of this existing carve-out would be appropriate in these circumstances. However, the carve-out has only been extended to funds whose investments are managed by an appropriately authorised investment manager acting on a fully discretionary basis.

**RULE 21 –  
RESTRICTIONS  
ON DEALINGS**

In relation to certain rules, in particular the application of Rule 21 and the restriction on dealings by the investment manager in a close period (AIM Note Rule 5.1), a number of respondents questioned whether it would be possible to include a limited number of exemptions from this rule, so that dealing by an investment manager could occur in certain situations, without prior consent from the Exchange.

The Exchange has considered this point but no amendments to the AIM Rules or the Note have been made.

The key reason for this is that the Exchange can be consulted where a nominated adviser has concerns about the interpretation of the rules and has the ability to provide a limited amount of flexibility where the situation is appropriate and where the protection of shareholders is not compromised.

Therefore, whilst no specific exemptions are included in the rules, the Exchange will continue to consider written submissions from nomads concerning the application of this rule.

**RULE 26 –  
HOSTING OF A  
WEBSITE**

A limited number of respondents raised comments in relation to Rule 26. Whilst these respondents considered the proposed amendments to the rule appropriate they were concerned that the current application of the rule would not allow an investing company’s investment manager to maintain their website on their behalf.

The existing guidance to rule 26 does include a comment that a website may be hosted by a third party provider. For the purposes of an investing company this rule would be considered to extend to an investment manager maintaining the website on their behalf.

However, the company must continue to have a separately identifiable

web address that has been notified to the market, which shareholders and investors could use to readily access the information required by Rule 26. This website should not require a user to enter search criteria, and there should be no scope for confusion between two companies if an investment manager maintains the website of more than one company.

The Exchange should be consulted if there is any concern regarding the application of this rule.

## AIM NOTE FOR INVESTING COMPANIES

### **RULE 3.3 - INDEPENDENCE**

The Exchange has amended the wording to clarify the requirements of the rule to remove any ambiguity. The intention of the rule is that independence between the investment manager and the board of directors of the company should be maintained. However, this is not an absolute requirement and where there are issues relating to independence, these can be dealt with through adequate disclosure so that investors are aware of the situation.

A similar amendment has been made to the paragraph of the rule dealing with independence between the board, nominated adviser and any substantial shareholders.

### **RULE 5.4 & 5.5 - SUBSTANTIAL TRANSACTION & REVERSE TAKE- OVERS**

A proportion of the respondents felt that the application of Rules 12 and 14 (as required by Rules 5.4 and 5.5 of the Note) to be too restrictive. The view of these respondents was that the class tests should be carved-out for all investments that are in line with a company's investing policy.

Whilst the Exchange understands the intention behind this concept and notes the Main Market position, no amendments to the rules have been made. The reasons for this are outlined below for Rule 12 and 14 respectively:

**Rule 12** – Rule 12 is purely a disclosure requirement and therefore there is no compelling reason to carve-out investments representing 10% of the company's gross assets, market capital or gross capital from the requirements of the Rule.

**Rule 14** – The AIM Rules contain only a very limited number of instances where shareholder approval for an AIM company's action is required. As a result, the Exchange feels unable to provide a full carve-out from one of these instances. Furthermore, we believe it is reasonable that an AIM company seeks shareholder approval for an investment that exceeds 100% in the Gross Assets, Consideration or Gross Capital class tests.

### **RULE 5.6 – APPLICATION OF AIM RULE 15 (FUNDAMENTAL DISPOSALS)**

A significant number of respondents felt the requirement to re-seek shareholder approval for the company's investing policy, following a fundamental disposal, was unduly onerous and unnecessary.

The Exchange has evaluated this point and has amended the rule so

that shareholder approval of the investing policy is not required following a fundamental disposal in line with this policy.

For the sake of clarity, please note that the requirement to complete a reverse takeover or otherwise implement the investing policy within twelve months, in other words paragraph three of Rule 15, will continue to apply, as will Rule 8 in relation to changes to the investment policy.