



**London**  
**STOCK EXCHANGE**

1 February 2008

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## **STOCK EXCHANGE AIM DISCIPLINARY NOTICE**

**AD4**

### **PUBLIC CENSURE – SUBSEA RESOURCES PLC**

#### **AIM DISCIPLINARY COMMITTEE**

#### **PUBLIC CENSURE**

**In relation to the conduct of  
SUBSEA RESOURCES PLC**

**for**

**Breach of Rules 10, 11, 13, 17 and 31 of the  
AIM Rules for Companies (the “AIM Rules”)<sup>1</sup>**

#### **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 SubSea Resources plc (“SubSea” or “the Company”) the facts and matters set out below, that on 1 February 2008, the AIM Disciplinary Committee (“ADC”) has approved a consent order agreed between the above parties which imposes a public censure on SubSea in the terms set out below.
2. This sanction was imposed on SubSea in respect of breaches of AIM Rules 10, 11, 13, 17 and 31 during the period from September 2005 to October 2006, as summarised below:

<sup>1</sup> References to the AIM Rules refer to the AIM Rules for Companies dated July 2005 and August 2006, as applicable.

- **AIM Rule 10:** SubSea failed to take reasonable care to ensure its announcement on 8 September 2005 in respect of the wreck 'Ella' and its announcement on 12 July 2006 disclosing a sale and leaseback agreement were not misleading, false or deceptive and did not omit anything likely to affect the import of such information.
- **AIM Rule 11:** SubSea failed to notify without delay new developments which were not public knowledge (and which, if made public, would have been likely to lead to a substantial movement in its share price) concerning a change in the expectation of its performance, as disclosed in its announcement dated 22 November 2005.
- **AIM Rule 13:** SubSea failed to notify without delay details of funding that it had received from a substantial shareholder in 2006, together with a statement that the terms of the transaction were fair and reasonable insofar as SubSea's shareholders were concerned.
- **AIM Rule 17:** SubSea failed to notify without delay a material change between SubSea's actual trading performance and the forecast it notified on 22 November 2005.
- **AIM Rule 31:** SubSea failed to ensure that advice from its nominated adviser was sought when negotiating completion of the sale and leaseback agreement from July to October 2006 and/or on receipt of the interim funding from related parties; and failed to ensure that its nominated adviser's advice to eliminate forecasts from the announcement dated 16 October 2006 was taken into account.

## **RELEVANT REGULATORY PROVISIONS**

3. Under the AIM Disciplinary and Procedures Handbook (the "Handbook"), if the Exchange considers that an AIM company has breached its responsibilities under the AIM Rules, it can refer the matter to the ADC.
4. Pursuant to the Handbook, if the ADC finds, on the balance of probabilities, that the AIM company has breached the AIM Rules it may impose one or more of the following sanctions:
  - a fine;
  - a censure;
  - publish the fact that the AIM company has been fined and/or censured and the reasons for such fine or censure; and/or
  - cancel the admission of the company's AIM securities.
5. Under AIM Rule 10, an AIM company must take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.

6. Under AIM Rule 11, an AIM company must issue notification without delay of any new developments which are not public knowledge concerning a change in, *inter alia*, its expectation of its performance, which, if made public, would be likely to lead to a substantial movement in the price of its AIM securities.
7. Under AIM Rule 13, an AIM company must issue notification without delay of any transaction whatsoever with a related party<sup>2</sup> which exceeds 5% in any of the class tests contained in Schedule Three of the AIM Rules. The notification must disclose the following:
  - the information specified by Schedule Four of the AIM Rules;
  - the name of the related party concerned and the nature and extent of their interest in the transaction; and
  - a statement that with the exception of any director who is involved in the transaction as a related party, its directors consider, having consulted with its nominated adviser, that the terms of the transaction are fair and reasonable insofar as its shareholders are concerned.
8. Under AIM Rule 16, transactions completed within a 12 month timeframe must be aggregated to determine whether AIM Rule 13, *inter alia*, applies where the transactions are entered into by the AIM company with the same person(s) or their families.
9. Under AIM Rule 17, an AIM company must issue notification without delay of, *inter alia*, any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in the admission document or otherwise made public on its behalf.
10. Under AIM Rule 31, an AIM company, *inter alia*, must ensure that each of its directors seeks advice from its nominated adviser regarding its compliance with these rules whenever appropriate and takes that advice into account.

## **BACKGROUND**

11. SubSea was admitted to trading on AIM on 4 November 2004. Its principal activity is the recovery of cargoes from shipwrecks and the collation of data relating to such cargoes.
12. Trading in the Company's AIM securities was suspended on 8 November 2006, pending clarification of the Company's financial position. The Company's AIM securities were restored to trading on 18 December 2006 once the Company's financial position had been clarified.

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<sup>2</sup> Definition of related party under the AIM Rules includes, *inter alia*, a director and a substantial shareholder of the AIM Company.

## PARTICULARS OF BREACHES

### *Sale and Leaseback Agreement*

13. On 12 July 2006, SubSea announced that: *“In a mixed arrangement of debt issuance and specific asset financing the Company **has raised** approximately £7.5 million. These funds will be applied to the Company’s working capital balance”* [emphasis added]. The funds were stated in the announcement to have been raised via a £4.5 million sale and leaseback agreement in respect of SubSea’s vessel John Lethbridge (the “S&L agreement”) and a £3 million debt issuance.
14. At the time of the announcement on 12 July 2006, the terms of the S&L agreement had been agreed, but SubSea had not in fact received any funds pursuant to it. From July to October 2006, SubSea was still in discussion with the counterparty regarding the fulfilment of the counterparty’s obligations under the S&L agreement. These discussions ultimately failed and the funds were never received.
15. On 1 November 2006, SubSea announced that the S&L agreement had not completed and was unlikely to proceed. The announcement made it clear that the funding of £4.5 million under the S&L agreement had never in fact been received by SubSea. The announcement also included a Progress Report on Project Celia in which the Company confirmed that, despite recent delays, Celia remained core to the Company’s planned work and it was expected that the John Lethbridge would continue work on the site over the forthcoming winter season.
16. Following the release of this announcement, SubSea’s share price dropped by 17%.
17. SubSea’s AIM securities were suspended from trading on 8 November 2006 due to uncertainty surrounding its financial position as a result of non-receipt of the funds from the S&L agreement.
18. By incorrectly stating in the announcement of 12 July 2006 that it had raised £4.5 million from the S&L agreement, SubSea was in breach of AIM Rule 10 by failing to take reasonable care to ensure the announcement was not misleading, false or deceptive and did not omit anything likely to affect the import of the information notified.

### *Ella*

19. On 29 April 2005 SubSea announced that it had entered into an agreement with underwriters in respect of a 19<sup>th</sup> century bullion cargo, Ella. The project to locate and recover the cargo was expected to start in July 2005.
20. On 8 September 2005 SubSea announced that it was *“pleased to report that it has concluded work in respect of the survey of the previously announced Ella Project, the Company is delighted to confirm that the **survey team have succeeded in locating this C19th bullion wreck...**”* [emphasis added].

21. However, on 12 February 2007 SubSea announced, *inter alia*, that “The Board now believes that the wreck located has not definitively been proven to be the Ella. Further work, including a further survey visit to the site of the wreck, would need to be carried out to definitively conclude the wreck is indeed the Ella.” In the same announcement, SubSea also stated that it was unlikely to secure a ship for interest contract for the 2007 season. SubSea’s share price decreased by 46% on the day of this announcement.
22. On 9 October 2007 SubSea announced that survey work in early October 2007 had proved definitively that the wreck was not Ella. SubSea’s share price decreased by 10% on the day of this announcement.
23. SubSea was misleading in its announcement on 8 September 2005 by stating that its survey team had succeeded in locating Ella (which had not been definitively established as at that date) and by failing to state that further work was required to confirm the identity of the wreck. On this basis, SubSea was in breach of AIM Rule 10 by failing to take reasonable care to ensure the announcement was not misleading, false or deceptive and did not omit anything likely to affect the import of the of the information notified.

**Related Party Transactions**

24. As set out in Table 1 below, a substantial shareholder of SubSea provided a number of loan advances to SubSea over the period from 6 June 2006 to 31 October 2006.

**Table 1 – Schedule of loan advances provided by a substantial shareholder of SubSea**

<b>Date of advance</b>	<b>Amount</b>
6 June 2006	GBP 600,000
5 July 2006	USD 200,000
24 August 2006	GBP 360,000
8 September 2006	GBP 240,000
31 October 2006	GBP 200,000
31 October 2006	USD 300,000

25. For each of the related party loans mentioned above, SubSea failed to consider whether AIM Rule 13 applied to the transactions on an individual basis. Furthermore, SubSea failed to assess whether the related party transactions should be aggregated under AIM Rule 16 to determine whether AIM Rule 13 would apply on an aggregated basis.
26. These related party loans would have breached the relevant class tests on an individual and/or aggregated basis. Therefore, as related party transactions under AIM Rule 13, the loans should have been announced by SubSea without delay, disclosing the information required by that Rule. However, SubSea only disclosed the appropriate Rule 13 information in its announcement on 18 December 2006 (some 2 to 6 months after the loans were made).

27. SubSea was therefore in breach of AIM Rule 13, by failing to notify without delay details of the funding that it had received from a substantial shareholder from June to October 2006, together with, *inter alia*, a statement that the terms of the transactions were fair and reasonable insofar as its shareholders were concerned.

#### **Forecasts**

28. SubSea's announcement dated 22 November 2005 included the following statement:

*"As outlined in previous reports the survey team associated with John Lethbridge could generate revenue in excess of USD 100 million in the next 12 to 18 months..."*

29. Throughout the whole forecast period of 12 to 18 months from the announcement on 22 November 2005, no survey work was commenced on any of the wrecks named in the announcement. During the forecast period (and particularly during its latter stages), there was therefore no realistic prospect of SubSea achieving its forecast revenues, notwithstanding a statement in the announcement that due to the nature of marine operations the actual timing of SubSea's proposed work programme may vary.

30. On 16 October 2006 SubSea announced changes in its future work programme, stating that they would *"impact only on the timing of the Company's revenue stream, not on the quantity"*. Contrary to advice received from SubSea's nominated adviser, the announcement stated that SubSea *"is now planning total revenues in the next 12 months of approximately GBP 50 million to be generated at a cost of approximately GBP 15 million."* SubSea's share price decreased by approximately 24% following the release of this announcement.

31. In the absence of any survey work having been commenced by SubSea, the Exchange considers that SubSea was or should have been aware before October 2006 that it would not achieve the forecast revenues announced on 22 November 2005. No updating announcement to this effect was made during the relevant period, as required by AIM Rules 11 and 17. When the revised forecast was made public, it led to a substantial movement in SubSea's share price.

32. Based on these facts, SubSea breached AIM Rules 11 and 17 by failing to notify without delay material changes in its expectation of performance and between its actual trading performance or financial condition and a profit forecast, estimate or projection otherwise made public.

#### **Directors' Responsibility**

33. Despite being aware that funds from the S&L agreement had not been received at the time of the announcement on 12 July 2006 (see paragraphs 13 to 18), SubSea failed to ensure that advice was sought from its nominated adviser during the period from July 2006 to October 2006 regarding its non-receipt of funds under the S&L agreement.

34. Separately, SubSea did not discuss the interim funding received from a related party (as set out in paragraphs 24 to 27) with its nominated adviser in order to assess its AIM Rule 13 obligations.
35. When SubSea was drafting the announcement dated 16 October 2006 (see paragraph 30), it sought advice from its nominated adviser but failed to take into account their advice to eliminate forecasts from that announcement.
36. SubSea was therefore in breach of AIM Rule 31 during this period, by failing to ensure that advice was sought from its nominated adviser when negotiating completion of the S&L agreement from July to October 2006 and/or on receipt of interim funding from a related party over a similar period; and by failing to take into account advice from its nominated adviser to eliminate forecasts from the announcement dated 16 October 2006.

## **SANCTION**

37. In determining the appropriate sanction against SubSea in respect of the above breaches of the AIM Rules during the period from September 2005 to October 2006, the following matters have been taken into account:
  - The breaches set out in this public censure were serious in nature, including (but not limited to):
    - o notification of misleading information to the market;
    - o failure to notify the market, without delay, of material developments, particularly in respect of SubSea's revenue forecasts; and
    - o failure to seek and/or take into account advice from its nominated adviser regarding the application of the AIM Rules.
  - SubSea's share price decreased by 24% following the announcement of changes in its future work programme and revised revenue forecasts on 16 October 2006. There was a further decrease of 17% following the Company's announcement on 1 November 2006 that the S&L agreement would not complete and giving a progress report on Project Celia.
  - On announcing that it was unlikely to secure a ship for interest contract for the 2007 season and that the previously located wreck Ella had not definitively been proven to be the Ella on 12 February 2007, SubSea's share price decreased by 46%. It dropped by a further 10% when it was announced that this wreck was not Ella on 9 October 2007.
  - The number, nature and duration of the breaches evidence a disregard for the AIM Rules by SubSea, amounting to reckless conduct.
  - SubSea's Board of Directors has undergone significant changes since the matters referred to in this public censure took place during the period from September 2005 to October 2006. New controls have been put in place by SubSea in relation to the Board's decision-making procedures, the seeking of advice from its nominated adviser and the release of RNS announcements.

- As announced on 27 December 2007, SubSea's interim results for the six months ended 30 September 2007 were subject to an emphasis regarding its ability to continue as a going concern. The interim results also stated that SubSea "will require debt, equity or an alternative source of financing within the first few weeks of Calendar 2008". In light of the doubts as to SubSea's ability to continue as a going concern, and in order to facilitate SubSea's attempts to obtain new financing, the Exchange has not, in this instance, sought the imposition of a fine.

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