

London Stock Exchange

AIM Rules for Nominated Advisers
Consultation Document (under AIM Notice 38)
27 January 2014

Responses or queries on this consultation should be sent on or before 3 March 2014 by email to: aimnotices@lseg.com

Introduction

Pursuant to the **AIM Rules for Companies**, a **nominated adviser** is responsible to the **Exchange** for assessing the appropriateness of an **applicant** for **AIM**, or an existing **AIM company** when appointed its **nominated adviser**, and for advising and guiding an **AIM company** on its responsibilities under the **AIM Rules for Companies**.

The **AIM Rules for Companies** state that a **nominated adviser** must be approved by the **Exchange** and included on the current **register** maintained by the **Exchange**. A copy of this **register** is available for public inspection on the **Exchange's** website: www.londonstockexchange.com/aim, although the definitive list is kept by the **Exchange**.

These **AIM Rules for Nominated Advisers** ("these rules") set out the eligibility, ongoing obligations and certain disciplinary matters in relation to **nominated advisers**.

These rules should be read in conjunction with the **AIM Rules for Companies** and the **Disciplinary Procedures and Appeals Handbook**.

Terms in bold in these rules have the meanings set out in the **AIM Rules for Companies**, or as otherwise set out in the Glossary at the end of these rules.

Part One

Nominated adviser eligibility criteria and approval process

Criteria for becoming a nominated adviser

1. General

The **Criteria** (set out in rule 2 below) are the requirements that an applicant must satisfy before the **Exchange** will consider approving it as a **nominated adviser**. These **Criteria** are in addition to any legal or regulatory authorisation required by an applicant in any jurisdiction in which it operates. The **Exchange** is able to exercise discretion as to the application and interpretation of the **Criteria**, as it thinks fit.

An applicant will not necessarily be approved even if it satisfies the **Criteria**. When deciding whether or not an applicant should be approved as a **nominated adviser**, the **Exchange's** overriding consideration will be the preservation of the reputation and integrity of **AIM** (including the regulatory obligations of the **Exchange** as a Recognised Investment Exchange under the **FSMA Recognition Requirements**). Accordingly, the **Exchange** reserves the right to decline an application or impose conditions on approval as the **Exchange** thinks fit notwithstanding that an applicant otherwise satisfies the **Criteria**.

2. The Criteria

An entity seeking approval as a **nominated adviser** must:

- be a firm or company (individuals are not eligible);
- have practised **corporate finance** for at least the last two years;
- have acted on at least three **Relevant Transactions** during that two-year period; ~~and~~
- employ at least four **Qualified Executives**; and in this regard the Exchange will take in to account the overall experience of the **Qualified Executives** on an individual basis and as a team.

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The **Exchange** may, at its sole discretion, waive the requirement for the applicant firm to have a two-year track record and/or three **Relevant Transactions** where it determines that the applicant has highly experienced **Qualified Executives** (for example where substantially the entire team of **Qualified Executives** transfers from an existing **nominated adviser**); as part of a management buyout.

The requirement to practise **corporate finance** means that the entity (or in some cases a separate division of it) should have practised as its principal business the provision of **corporate finance** advice, such as advising on public market fundraisings. This should be distinguished from the provision of legal advice or accounting services in relation to **corporate finance** transactions, which would not qualify for the purposes of the **Criteria**.

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3. Overriding principle of the preservation of the reputation and integrity of AIM

As stated above, in addition to the **Criteria**, the **Exchange** will consider whether the approval of an applicant or a **Qualified Executive** might endanger the reputation or integrity of **AIM** and reserves the right to reject an applicant on these grounds even if an applicant otherwise meets the **Criteria**.

In considering whether an applicant might endanger the reputation and integrity of **AIM**, the **Exchange** will examine matters including:

- whether the applicant is appropriately authorised and regulated and the applicant's standing with its regulators;
- the applicant's general reputation;
- whether the applicant or its executives have been the subject of disciplinary action by any legal, financial or regulatory authority or whether the applicant is facing such disciplinary action; and
- insofar as is relevant, the commercial and regulatory performance of its clients to whom it has given **corporate finance** advice.

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4. Qualified Executives

A **Qualified Executive** is:

- a full-time employee of an applicant (or **nominated adviser** in relation to continuing eligibility);

~~someone~~ who can demonstrate a sound understanding of the UK **corporate finance** market and **AIM** in particular, and who satisfies one of the following:

- ~~in respect of a person applying to be approved as a **Qualified Executive**~~ has acted in a **corporate finance** advisory role, ~~which may include the regulation of corporate finance,~~ for at least the last three years; and

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- ~~someone~~ who has acted in a lead **corporate finance** role on at least three **Relevant Transactions** in that three-year period; or

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~~A proposed~~

- ~~in respect of an existing **Qualified Executive** must be able to demonstrate a sound understanding of who was approved as a **Qualified Executive** within the UK past five years, and has been a **Qualified Executive** on a continuous basis within that period, has acted in a lead **corporate finance** market and role on at least three **Relevant Transactions** within the last five years; or~~

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- in respect of an existing **Qualified Executive** who has been approved as a **Qualified Executive** for five or more years on a continuous basis, has acted in a lead **corporate finance** role on at least one **Relevant Transaction** in the last five-year period and can demonstrate to the satisfaction of the **Exchange** that they are involved in an active capacity in the provision of **corporate finance** advisory work, and in relation to **AIM** in particular.

If an individual ceases to be an employee of a nominated adviser or the firm ceases to be a **nominated adviser**, that person shall cease also to be a **Qualified Executive** and will be required to apply again if such status is required in respect of another current **nominated adviser** or **nominated adviser** applicant.

An individual will not be considered for approval as ~~or regarded as a **Qualified Executive**~~ by the **Exchange** (or be eligible to be a **Qualified Executive** on a continuing basis) where that ~~employee person~~ has been subject to disciplinary action or similar by a regulator or law enforcement agency in the context of financial services, **corporate finance** or similar or has any unspent convictions in relation to indictable offences.

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As part of the **Qualified Executive** approval process, the **Exchange** reserves the right to conduct interviews in order to assess the competence and suitability of the individual. If, as a result of any interview which it conducts, the **Exchange** considers that the individual has an inadequate understanding of **corporate finance**, market practice, the legal or regulatory framework for **corporate finance** or these rules and the **AIM Rules for Companies**, it will not approve the individual as a **Qualified Executive**. Accordingly, the **Exchange** reserves the right to decline an application for **Qualified Executive** status notwithstanding that an individual otherwise meets the requirements set out in this rule.

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5. Relevant Transactions

A **Relevant Transaction** is:

- a transaction requiring a **Prospectus** or equivalent in any EEA country; or
- a transaction involving acting for the offeror on the take-over of a public company within an EEA country which requires the publication of an offer document (or similar document where it is being effected by a scheme of arrangement);

in each above case in respect of shares quoted on a regulated market (as defined by the Market in Financial Instruments Directive (2004/39/EEC), as amended from time to time); or

- in the case of a proposed or current **Qualified Executive**, or in relation to the continuing eligibility a **nominated adviser**, a transaction requiring the publication of an **admission document** where he or she has been employed by the acting **nominated adviser**.

The **Exchange** will at its discretion consider (i) similar initial public offerings or other major corporate transactions for publicly quoted companies on major stock exchanges (including mergers and acquisitions requiring the publication of a public document) whether within an EEA country or elsewhere in the world and (ii) documents equivalent to a **Prospectus** where they were produced prior to the implementation of the **Prospectus Rules**.

The **Exchange** will generally not consider a transaction as a **Relevant Transaction** unless the applicant or employee (or **nominated adviser** in relation to continuing eligibility) acted as a lead corporate financial adviser and was (in the case of an applicant or **nominated adviser**) named prominently and unequivocally as such in the public documentation pertaining to that transaction. Copies of this public documentation must be included with the application to become a **nominated adviser**.

Where an applicant has acted as lead financial adviser on one of the above transactions but was not, for example, the **UK Official List sponsor** or **nominated adviser**, the Exchange will take into account whether the activities conducted by the applicant in relation to such transaction(s) are similar to those set out in Schedule Three to these rules.

Both a proposed **Qualified Executive** and an existing **Qualified Executive** may cite the same **Relevant Transaction** if they have each been involved to an appropriate extent.

Process for becoming a nominated adviser

6. Application forms and documentation

An applicant seeking approval as a **nominated adviser** must complete and submit to the **Exchange** the following (all of which are available at www.londonstockexchange.com/aim):

- Form NA1;
- Form NA2 in respect of each proposed **Qualified Executive** (a minimum of 4 will therefore be required);
- all supporting documentation requested within the above Forms (and in particular at the beginning of Form NA1); and
- a cheque made payable to London Stock Exchange plc in respect of the application fee payable (the current fee is set out in the publication entitled 'AIM Fees for Companies and Nominated Advisers' as published by the **Exchange** from time to time).

The **Exchange** reserves the right to request any other information, documentation or confirmations from the applicant or other **persons** as it might require in order to consider or progress an application.

Upon receipt of the above information the **Exchange** will indicate to the applicant the likely time period required to process and consider the application.

7. Application fees

At the same time that any application form is submitted, the applicant must submit the requisite fee to the **Exchange** in order for its application to be processed.

This fee is non-refundable whether or not the applicant is subsequently approved as a **nominated adviser** except in the circumstances in which an application is withdrawn prior to gazetting (see below) where half the application fee will be refunded.

The application fee is in addition to the annual fee which is payable upon approval as a **nominated adviser**, and subsequently, at the rates set out in and in accordance with the 'AIM Fees for Companies and Nominated Advisers' as published by the **Exchange** from time to time.

8. Interview

The **Exchange** may conduct interviews of some or all of the proposed **Qualified Executives** put forward by an applicant to ensure that they have sufficient understanding of **corporate finance**, market practice and the legal or regulatory framework for **corporate finance** (including these rules and the **AIM Rules for Companies**). Such interviews will be conducted either at the **Exchange** or at the applicant's premises. Costs incurred by the **Exchange** (for example accommodation and travel) in visiting the applicant's premises will be reimbursed by the applicant.

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9. Gazetting

At least fourteen days before the **Exchange** determines whether to approve an applicant, it will **notify** the applicant's name and its proposed **Qualified Executives** together with any other information the **Exchange** thinks necessary in order to give public notice of the application and to invite comment from market participants.

In addition, where an applicant operates mainly outside the United Kingdom, at least fourteen days before it makes its decision, the **Exchange** may issue a newspaper advertisement in a leading domestic financial newspaper(s) in the jurisdiction in which the applicant is registered or in which it operates stating the same information and inviting any objections.

The **Exchange** will take into account any comments which it receives as a result of the above gazetting process when considering whether to approve the application.

Where an application does not proceed to the gazetting stage, the **Exchange** will refund half of the application fee.

10. Appeals

An applicant will be informed privately, in writing (including by email), of the decision of the **Exchange** concerning whether to approve the applicant or not as a **nominated adviser**.

If an applicant is approved, the **Exchange** will include with its written decision a list of the **nominated adviser's** employees which it has accepted as **Qualified Executives**.

Any such decision of the **Exchange** may be appealed by an applicant (but not an individual) as a non-disciplinary appeal in accordance with the **Disciplinary Procedures and Appeals Handbook**.

Continuing eligibility for nominated advisers

11. Continuing eligibility and notification requirements

A **nominated adviser** and each **Qualified Executive** of a **nominated adviser**, once approved, must satisfy the requirements of rules **21** – 5 inclusive on a continuing basis at all times as if

it/he/she were a new applicant. In addition, a **nominated adviser** must meet the requirements of rule 24 on an on-going basis in order to remain eligible for **nominated adviser** status.

A **nominated adviser** must regularly consider whether it and its **Qualified Executives** continue to meet the requirements of rules **21** – 5 inclusive. If at any time a **nominated adviser** believes it or a **Qualified Executive(s)** might not satisfy these requirements, it must inform **AIM Regulation** forthwith.

A **nominated adviser** must inform **AIM Regulation** as soon as possible (by telephone and by email) of any matters that may affect it being a **nominated adviser** including:

- changes to its name, its address or places of business;
- receipt of any formal warning or disciplinary communication from any other regulatory body;
- any material adverse change in its financial or operating position that may affect its ability to act as a **nominated adviser**, including where it is considering appointing administrators or similar practitioners;
- any potential changes to the structuring or organisation of the directors, partners or employees which impacts the **nominated adviser** services provided by the firm; or
- any potential change of control.

Should the **Exchange** deem a change of control to have occurred a new application for **nominated adviser** status will be required. For the avoidance of doubt, the **Exchange** will consider the new controller when determining eligibility of the nomad firm, in particular the ability of the new controller to satisfy the requirements set out in rules 1-3 in its own right.

The **Exchange** may at any time request any information from a **nominated adviser** and/or a **Qualified Executive** it requires, including submission of all or any of the forms and documentation set out at rule 6, in order for it to consider and determine whether a **nominated adviser** is still eligible.

The **Exchange** may at any time conduct interviews and/or tests of the **nominated adviser** and its **Qualified Executives** in order to ensure that it has maintained an understanding of **corporate finance** and these rules and the **AIM Rules for Companies**. The provisions of rule 8 in relation to interviews will apply as appropriate.

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If the **Exchange** finds that a **nominated adviser** has fallen below the Criteria or a **Qualified Executive** no longer fulfils the requirements of rule 4, the **Exchange** may remove **nominated adviser** or **Qualified Executive** status or impose conditions on the **nominated adviser's** ability to act as a **nominated adviser** (including the imposition of a moratorium pursuant to rule 30). Any such decision of the **Exchange** may be appealed by such **nominated adviser** as a non-disciplinary appeal in accordance with the **Disciplinary Procedures and Appeals Handbook**.

12. Departing or new **Qualified Executives**

If a **Qualified Executive** leaves the full-time employ of a **nominated adviser** for whom he/she was a **Qualified Executive**, the **nominated adviser** must inform the **Exchange** by submission of a Form NA3.

On leaving the full-time employ of a **nominated adviser**, a person who was a **Qualified Executive** will no longer be a **Qualified Executive** under these rules. However, if he/she joins another **nominated adviser**, that firm can submit a Form NA2 to apply for approval of that person as a **Qualified Executive** of that **nominated adviser**. The **Exchange** may, at its discretion, waive the requirement to submit a Form NA2 on submission by a person who was (until very recently) previously approved as a **Qualified Executive**.

A **nominated adviser** can submit at any time a Form NA2 in respect of any employee who it proposes be approved as a **Qualified Executive**.

13. Payment of annual fees ~~and notification requirements~~

In order to remain eligible, a **nominated adviser** must pay the annual fees as set by the **Exchange** from time to time in respect of each year it wishes its name to remain on the **register**. It must make such payments within the time limits imposed by the **Exchange**.

~~A **nominated adviser** should inform **AIM Regulation** (by email) as soon as possible of any matters that may affect it being a **nominated adviser** including:~~

- ~~• changes to its name, controlling **shareholders** or partners, its address or places of business;~~
- ~~• receipt of any written warning or disciplinary communication from any other regulatory body;~~
~~or~~
- ~~• any material adverse change in its financial or operating position, including where it is considering appointing administrators or similar practitioners.~~

Part Two

Continuing Obligations of a Nominated Adviser

General obligations

14. Appropriateness of an AIM company

The **nominated adviser** to an **AIM company** is responsible to the **Exchange** for assessing the appropriateness of an applicant for **AIM**, or an existing **AIM company** when appointed as its **nominated adviser**.

Where a **nominated adviser** believes that an **AIM company** for which it acts as **nominated adviser** is no longer appropriate for **AIM** it must contact **AIM Regulation**.

15. Compliance with the rules

A **nominated adviser** shall be bound by and observe:

- these rules and the **AIM Rules for Companies**, including any guidance notes issued by the **Exchange**;
- any rules and procedures set out in any supplementary documentation issued by the **Exchange** under these rules;
- the provisions of any notices issued by the **Exchange**; and
- any requirement, decision or direction of the **Exchange**.

Each **nominated adviser** should nominate a person within its firm to act as the **Exchange's** principal contact on compliance matters. That person should be a senior person within the firm's compliance function or its corporate finance team.

16. Due skill and care

A **nominated adviser** must act with due skill and care at all times.

Nominated adviser responsibilities

17. Advising and guiding an AIM company

The **nominated adviser** is responsible to the **Exchange** for advising and guiding an **AIM company** on its responsibilities under the **AIM Rules for Companies** both in respect of its **admission** and its continuing obligations on an ongoing basis. A **nominated adviser** must be available to advise and guide **AIM companies** for which it acts at all times.

A **nominated adviser** should allocate at least two appropriately qualified staff to be responsible for each **AIM company** for which the **nominated adviser** acts in that capacity, including at least one **Qualified Executive**, in order to ensure an appropriate corporate finance contact with knowledge of the **AIM company** is available at all times.

18. Nominated adviser responsibilities

In deciding whether a **nominated adviser** has complied with these rules and the undertakings it has provided to the **Exchange** in its **nominated adviser's declaration**, the **Exchange** will have regard to the matters set out in Schedule Three, which should be exercised with due skill and care and after due and careful enquiry.

Information obligations

19. Liaison with the Exchange

A **nominated adviser** must provide the **Exchange** with any information, in such form and within such time limits as the **Exchange** may reasonably require. A **nominated adviser** should reasonably satisfy itself that all such information provided by it is correct, complete and not misleading and, if it comes to the subsequent attention of the **nominated adviser** that the information provided does not meet this requirement, the **nominated adviser** should advise the **Exchange** as soon as practicable.

A **nominated adviser** must liaise (and be available to liaise) with the **Exchange** when requested to do so by the **Exchange** or an **AIM company** for which it acts and should be contactable at all times, in particular during the **Exchange's** market hours.

A **nominated adviser** must, at the earliest opportunity, seek the advice of the **Exchange** (via **AIM Regulation**) in any situation where it is unsure as to the application or interpretation of these rules or the **AIM Rules for Companies** or it has a concern about the reputation or integrity of **AIM**. It should be noted that on detailed or specific regulatory matters the **Exchange** will not liaise with **nominated advisers** (or **AIM companies** or other advisers) on a 'no-names' basis.

A **nominated adviser** should advise the **Exchange** as soon as practicable if it believes that it or an **AIM company** has breached the **AIM Rules for Companies** or these rules.

All communications between the **Exchange** and a **nominated adviser** are confidential to the **Exchange** and should not be disclosed, except as required by any other regulatory or statutory body. Such communications can be disclosed to appropriate advisers to the **nominated adviser** or to the relevant **AIM company**, unless the **Exchange** states otherwise.

20. Becoming or ceasing to be nominated adviser to an AIM company

A **nominated adviser** must submit to the **Exchange** a completed **nominated adviser's declaration** in relation to any **applicant** seeking **admission** (in accordance with the **AIM Rules for Companies**) or where that **nominated adviser** becomes **nominated adviser** to an existing **AIM company**.

Where a **nominated adviser** ceases to act for an **AIM company**, it must inform **AIM Regulation** as soon as possible (by email) and must include with that notification the reason why it has ceased to act.

Independence and conflicts

21. Independence on a continuing basis

A **nominated adviser** must be able to demonstrate to the **Exchange** that both it and its executives are independent from the **AIM companies** for which it acts such that there is no reasonable basis for impugning the **nominated adviser's** independence.

Where the **Exchange** requires a **nominated adviser** to demonstrate clearly that neither its independence nor that of any of its executives has or will be compromised by any potential conflict of interest, the burden of proof will be upon the **nominated adviser**.

In cases of doubt about its independence a **nominated adviser** should consult the **Exchange** in advance of entering into any arrangements.

Schedule One sets out further rules in relation to the independence of a **nominated adviser**.

22. Conflicts of Interest

A **nominated adviser** must not have, and must take care to avoid, the semblance of a conflict between the interests of the **AIM companies** for which it acts and those of any other party.

In particular, a **nominated adviser** must not act for any other party to a transaction or take-over other than its **AIM company** client.

Procedures, staff and records

23. Proper procedures

A **nominated adviser** must ensure that it maintains procedures which are sufficient for it to discharge its ongoing obligations under these rules. The **nominated adviser** should ensure that its compliance and procedures manual (or similar) reflects and takes account of the requirements of these rules, as appropriate.

In particular, it must ensure that any members of staff who are not approved as **Qualified Executives** are properly supervised by a **Qualified Executive** at all appropriate times in relation to matters relating to **AIM companies**.

24. Adequacy of Staff

A **nominated adviser** must ensure that it has sufficient **Qualified Executives** (and other corporate finance staff) to discharge its obligations as a **nominated adviser** under these rules at all times. In assessing whether it has sufficient staff, a **nominated adviser** must have regard to the number and type of **AIM companies** for which it acts, and the experience in relevant corporate finance matters of the corporate finance team as a whole.

25. Maintenance of appropriate records

A **nominated adviser** must retain sufficient records to maintain an audit trail of the key discussions it holds with, advice which it has given to, and the key decisions it has made in respect of, the **AIM companies** for which it acts as **nominated adviser**. A **nominated adviser** should ensure that it is able (including by keeping appropriate records) to demonstrate the basis for advice given and key decisions taken, such as internal considerations and any actions taken prior to the advice being given. Such records must be retained whilst a firm is **nominated adviser** to a company and for at least three years after it ceases to be **nominated adviser**.

When performing a review of a **nominated adviser**, the **Exchange** will look for clear evidence that at least those matters set out in Schedule Three have been considered and that appropriate actions have been taken in order to ensure compliance with these rules and the **AIM Rules for Companies**.

Part Three

Review and Discipline of a Nominated Adviser

26. Review of nominated advisers

A **nominated adviser** may be subject to a formal review by the **Exchange** to ensure that it has fully discharged its responsibilities under these rules and the **AIM Rules for Companies**. A **nominated adviser** must ensure that its **Qualified Executives** co-operate fully with the **Exchange** and that the **Qualified Executive** who was responsible for a transaction is available to answer any questions by the **Exchange** about any relevant matter.

A **nominated adviser** must allow **Exchange** officers access to its records (hard and electronic copies) and business premises when so requested by the **Exchange**.

27. Removal of Qualified Executives

The **Exchange** may remove the **Qualified Executive** status of an employee of a **nominated adviser** where that employee is subject to bankruptcy, disciplinary action by another regulator, mentally incapacitated or has been shown by a formal review by the **Exchange** of the **nominated adviser** or otherwise to have failed to act with due skill and care or in accordance with these rules or the **AIM Rules for Companies** in relation to his/her employer's role as a **nominated adviser**.

28. Appeals against the removal of Qualified Executives

Either a **nominated adviser** or the **Qualified Executive** may appeal against a decision to disqualify that executive in accordance with the non-disciplinary appeals procedures set out in the **Disciplinary Procedures and Appeals Handbook**.

29. Disciplinary action against a nominated adviser

If the **Exchange** (in accordance with the procedures set out in the **Disciplinary Procedures and Appeals Handbook**) considers that a **nominated adviser** is either in breach of its responsibilities under these rules or the **AIM Rules for Companies** or that the integrity and reputation of **AIM** has been or may be impaired as a result of its conduct or judgment, the **Exchange** may in relation to such **nominated adviser** take one or more of the following actions:

- issue a **warning notice**;
- levy a fine;
- issue a censure; or
- remove the **nominated adviser** from the **register**; and
- publish the action the **Exchange** has taken and the reasons for that action.

30. Moratorium on acting for further AIM companies

Where, in the opinion of the **Exchange**, a **nominated adviser** no longer meets the requirements of Part One of these rules or it is not meeting its responsibilities under these rules or it has insufficient staff pursuant to rule 24 of these rules or it is the subject of disciplinary action by the **Exchange** or if there is a possible change of control or there has been a change in its financial position or operating position that may affect its ability to act as a **nominated adviser**, the **Exchange** may prevent that **nominated adviser** from acting as a **nominated adviser** to any additional **AIM companies** until that situation is resolved to the **Exchange's** satisfaction.

The **Exchange** may make the imposition of any moratorium public by way of an AIM notice published by **RNS** and/or marking the **register** accordingly.

31. Appeals by nominated advisers

Where the **Exchange** takes any steps against a **nominated adviser** pursuant to these rules, any decision of the **Exchange** in relation to these rules or the **AIM Rules for Companies** in respect of a **nominated adviser** may be appealed by that **nominated adviser** in accordance with the procedures set out in the **Disciplinary Procedures and Appeals Handbook**.

32. Publication of the removal of nominated adviser status

Where the **Exchange** removes **nominated adviser** status (for example, due to disciplinary action or it failing to continue to meet the eligibility criteria set out in Part One of these rules) or where a **nominated adviser** requests to have that status removed, the **Exchange** will notify such removal by way of an AIM notice published on **RNS** and/or mark the **register** accordingly.

Glossary

AIM Regulation	The AIM Regulation team at the Exchange contactable at aimregulation@londonstockexchange.com aimregulation@lseg.com and 020 7797 4154
<u>corporate finance</u>	<u>(in Part One of these rules and rule 24), the UK primary capital markets, including in particular AIM.</u>
Criteria	The criteria set out in rule 2 of these rules.
FSMA Recognition Requirements	Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 and the FSAFCA Handbook implementing these regulations.
nominated adviser's declaration	The declaration to be given by the nominated adviser to an AIM company as required in the AIM Rules for Companies which should be in the form set out in Schedule Two of these rules.
Qualified Executive	As defined in rule 4 of these rules.
Relevant Transaction	As defined in rule 5 of these rules.

Schedules

Schedule One - Independence in relation to rule 21

For the avoidance of doubt:

- A **nominated adviser** may not act as both reporting accountant and/or auditor on the one hand and **nominated adviser** to an **AIM company** on the other unless it has satisfied the **Exchange** that appropriate safeguards are in place;
- No partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may hold the position of a director of an **AIM company** for which the firm acts as **nominated adviser**;
- No **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee either individually or collectively may be a **substantial shareholder** (i.e. 10% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an **AIM company** for which the firm acts as **nominated adviser**;
- A **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may be a **significant shareholder** (i.e. 3% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an **AIM company** for which the firm acts as **nominated adviser** provided adequate safeguards are in place to prevent any conflict of interest;
- No **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may deal in the securities of an **AIM company** or any related financial product for which the firm acts as **nominated adviser** during any **close period** of that company;
- When calculating an interest in a client company a **nominated adviser** is permitted to disregard any interest in shares pursuant to rules 5.1.3 to 5.1.5 inclusive of the **DTR**; and
- If a **nominated adviser** breaches any of the above limits as a result of its underwriting activities it must make best endeavours to sell down its holding to within the guidelines as soon as reasonably practicable.

Note: As guidance, bullet points 3 – 5 inclusive above will only apply to the corporate finance function of a **nominated adviser** firm and not to other areas adequately separated by chinese walls or similar safeguards. In such situations the burden of proof required of the **nominated adviser** under rule 21 remains.

Schedule Two - Nominated adviser's declaration

This **nominated adviser** confirms that:

SECTION A:

to the best of its knowledge and belief having made due and careful enquiry and considered all relevant matters under the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** in relation to this application for **admission**, all applicable requirements of the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** have been complied with and, in particular, (i) the **admission document** complies with Schedule Two of the current **AIM Rules for Companies**, or (ii) (in the case of a **quoted applicant** only) the requirements of Schedule One and its supplement have been complied with; and

SECTION B:

- (a) it is satisfied that the **applicant** and its securities are appropriate to be admitted to **AIM**, having made due and careful enquiry and considered all relevant matters set out in the **AIM Rules for Companies** and the **AIM Rules for Nominated Advisers** and;
- (b) the directors of the **applicant** have received advice and guidance (from this **nominated adviser** and other appropriate professional advisers) as to the **applicant's** responsibilities and obligations under the **AIM Rules for Companies** in order to facilitate due compliance by the **applicant** on an ongoing basis; and
- (c) it will comply with the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** as applicable to it in its role as **nominated adviser** to this **applicant**.

NOTE:

Sections A and B must be completed where securities are being admitted to **AIM** pursuant to an **admission**.

Only Section B must be completed where this form is being completed pursuant to a change of **nominated adviser** and Section A will not be applicable. In such cases, the term **applicant** should be deemed to read **AIM company**.

Terms used in this **nominated adviser's declaration** are as defined in the **AIM Rules for Companies**.

Schedule Three - Nominated Adviser Responsibilities

The responsibilities set out in this Schedule Three consist of numbered principles in bold followed by a list of actions. The numbered principles must be satisfied in all cases. The actions which follow each principle represent a non-exhaustive list of tasks that the **Exchange** would usually expect a **nominated adviser** to ~~fulfill~~ fulfil in satisfying that principle.

Other actions can therefore be substituted in order to satisfy each overriding principle or the **nominated adviser** may decide that a particular action set out below is not appropriate. The reasons for this should be noted as part of the record keeping duties under rule 25 in order to evidence to the **Exchange** that a **nominated adviser** has acted with due skill and care.

Admission Responsibilities

These apply to a **nominated adviser** that is acting for an **applicant** (including in relation to a reverse takeover coming within rule 14 of the **AIM Rules for Companies** and also including, as applicable, a **quoted applicant**) in respect of its **admission to AIM**.

THE APPLICANT AND ITS SECURITIES

AR1 - In assessing the appropriateness of an applicant and its securities for AIM, a nominated adviser should achieve a sound understanding of the applicant and its business

In meeting this, the **nominated adviser** should usually:

- ensure it has, or has access to, appropriate knowledge of the **applicant's** area of business (taking into account its country of incorporation and operation), using in-house specialists or external experts where necessary to achieve this
- consider the **applicant's** sector, proposition, business plan or similar, historical financial information and other corporate information, including the due diligence performed further to AR3
- consider any issues relating to the **applicant's** country of incorporation and operation and any other issues that might affect its appropriateness
- undertake a visit to the **applicant's** material site(s) of operation and meet the **directors** and key managers. The necessity of meeting any other relevant material stakeholders (e.g. key **shareholders**) should also be considered
- consider appointing its own legal advisers who are independent from the **applicant** to assist in the **nominated adviser's** understanding of the **applicant** and to provide advice to the **nominated adviser** that is independent of the **applicant**

DIRECTORS AND BOARD

AR2 – In assessing the appropriateness of an applicant and its securities for AIM, a nominated adviser should (i) investigate and consider the suitability of each director and proposed director of the applicant; and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company will be admitted to trading on a UK public market

In meeting this, the **nominated adviser** should usually:

- issue and review **directors'** questionnaires and review **directors'** CVs
- test the information revealed by the above questionnaires and CVs, for example by conducting press searches, Companies House checks, taking-up references and, where appropriate,

obtaining third party checks. For **directors** who are not **UK**-based, appropriate investigations should be undertaken

- extend these investigations and considerations as appropriate to key managers and consultants who are discussed in the **admission document**
- consider undertaking such investigations in relation to **substantial shareholders** at **admission** as appropriate, especially where there is uncertainty as to their identity or where they are not established institutions, in particular to enquire about the existence of **persons** exerting control over the **applicant**
- analyse any issues arising from these investigations, in particular as to how they could affect the **applicant's** appropriateness to be admitted to **AIM** and be publicly traded
- consider each **director's** suitability and experience in relation to their (proposed) company role and consider whether each (proposed) **director** is suitable to be a **director** of a **UK** public company
- consider the board of **directors** as a whole in relation to the **applicant's** needs, for example given its type, size, expected profile and the fact that the **applicant** will be admitted to a **UK**-based, English-language public market
- consider, with the **directors** of an **applicant**, the adoption of appropriate corporate governance measures

DUE DILIGENCE

AR3 – The nominated adviser should oversee the due diligence process, satisfying itself that it is appropriate to the applicant and transaction and that any material issues arising from it are dealt with or otherwise do not affect the appropriateness of the applicant for AIM

In meeting this, the **nominated adviser** should usually:

- be satisfied that appropriate financial and legal due diligence is undertaken by an appropriate professional firm(s)
- be satisfied that appropriate working capital and financial reporting systems and controls reviews are undertaken (usually including reports or letters from accountants to the **applicant**)
- consider whether commercial, specialist (e.g. intellectual property) and/or technical due diligence is required and be satisfied that it is undertaken where required
- agree the scope of all such due diligence and reports (including, in relation to the working capital report, assumptions and sensitivities)
- review and assess the above due diligence, reports and adviser comfort letters, considering any material issues, recommended actions or adverse analysis raised and be satisfied that appropriate actions have been undertaken to resolve such matters or otherwise be satisfied that such matters do not affect the appropriateness of the **applicant** for **AIM**

ADMISSION DOCUMENT

AR4 – The nominated adviser should oversee and be actively involved in the preparation of the admission document, satisfying itself (in order to be able to give the nominated adviser's declaration) that it has been prepared in compliance with the AIM Rules for Companies with due verification having been undertaken

In meeting this, the **nominated adviser** should usually:

- oversee and be actively involved in the drafting of the sections of the **admission document** that relate to the business of the **applicant** (usually the Key Information and Part 1 sections) and the risk factors, being satisfied that they take into account matters raised by due diligence
- be satisfied that the financial and additional information sections have been appropriately prepared

- consider whether any specialist third party reports are required (e.g. for companies in particular sectors such as property or biotechnology)
- be satisfied that appropriate verification of the **admission document** and any related **notifications** has taken place
- be satisfied (in the terms of the **nominated adviser's declaration**) that the **admission document** (or any appendix prepared by a **quoted applicant** in relation to paragraph (k) of the supplement to Schedule One of the **AIM Rules for Companies**) complies with the **AIM Rules for Companies**, liaising with **AIM Regulation** to the extent that rule derogations or interpretations may be required

Quoted applicants: Quoted applicants are not required to produce an **admission document** and therefore some of the provisions of AR4 will not be applicable. However, paragraph (k) of the supplement to Schedule One of the **AIM Rules for Companies** will necessitate a full consideration of the requirements of Schedule Two of the **AIM Rules for Companies**. In addition, the statements required to be given pursuant to the Supplement to Schedule One of the **AIM Rules for Companies** should be given after due and careful enquiry.

AIM RULE COMPLIANCE

AR5 – The nominated adviser should satisfy itself that the applicant has in place sufficient systems, procedures and controls in order to comply with the AIM Rules for Companies and should satisfy itself that the applicant understands its obligations under the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- be satisfied that procedures within the company have been established to facilitate compliance with the **AIM Rules for Companies**, e.g. release of **unpublished price sensitive information**, Rule 17 **notifications**, regulation of **close periods**
- be satisfied that the **directors** have been advised of their and the company's continuing responsibilities and obligations under the **AIM Rules for Companies** and that the **directors** are aware of when they should be consulting with or seeking the advice of the **nominated adviser**. The **nominated adviser** should be involved in the provision of this advice to the **directors** so that they are aware of the practical consequences of the requirements of the **AIM Rules for Companies**.

Ongoing Responsibilities

These apply on a continuing basis in respect of any **nominated adviser** who acts for an **AIM company**.

REGULAR CONTACT BETWEEN COMPANY AND NOMINATED ADVISER

OR1 – The nominated adviser should maintain regular contact with an AIM company for which it acts, in particular so that it can assess whether (i) the nominated adviser is being kept up-to-date with developments at the AIM company and (ii) the AIM company continues to understand its obligations under the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- maintain regular contact with the **AIM company**, in particular to be satisfied that the **nominated adviser** is kept up-to-date in order that it can advise the company on its obligations under the **AIM Rules for Companies** (especially the requirements of Rule 11 and to identify breaches of the **AIM Rules for Companies** (e.g. in relation to Rule 17 disclosures))

- assess whether the **AIM company** continues to understand its obligations under the **AIM Rules for Companies**, for example by having discussions with the **directors** where appropriate and be satisfied that any procedures required pursuant to AR5 continue to be effective

REVIEW OF NOTIFICATIONS

OR2 – The nominated adviser should undertake a prior review of relevant notifications made by an AIM company with a view to ensuring compliance with the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- review in advance (although without prejudice to the requirement of Rule 10 to release information without delay) all **notifications** to be made by an **AIM company** for which it acts to ensure as far as reasonably possible that they comply with the **AIM Rules for Companies**. Where the **nominated adviser** reasonably believes a company's **directors** have appropriate knowledge and experience of the **AIM Rules for Companies**, review of routine announcements (e.g. pursuant to rule 17) may not be necessary
- include the **nominated adviser's** name and a contact name on all such announcements that a **nominated adviser** reviews, other than routine announcements

MONITOR TRADING

OR3 – The nominated adviser should monitor (or have in place procedures with third parties for monitoring) the trading activity in securities of an AIM company for which it acts, especially when there is unpublished price sensitive information in relation to the AIM company

In meeting this, the **nominated adviser** should usually:

- use suitable alerts or other triggers to alert the **nominated adviser** to substantial price or trading movements. This can be satisfied via the **broker**
- contact an **AIM company** where appropriate if there is a substantial movement to ascertain whether an announcement or other action is required, liaising with the **Exchange** where appropriate
- consider the necessity for arranging relevant press monitoring, particularly when there is material **unpublished price sensitive information** in existence

ADVISE THE AIM COMPANY ON ANY CHANGES TO THE BOARD OF DIRECTORS

OR4 – The nominated adviser should advise the AIM company on any changes to the board of directors the AIM company proposes to make, including (i) investigating and considering the suitability of proposed new directors and (ii) considering the effect any changes have on the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to trading on a UK public market

In satisfying this, the **Exchange** would expect the **nominated adviser** to usually:

- be satisfied that the **AIM company** knows to liaise with the **nominated adviser** at the earliest opportunity about proposed changes to the board, in order to allow the **nominated adviser** appropriate time to comply with OR4
- in relation to new **directors**, consider the requirements of AR2 and take the appropriate actions including issuing and reviewing **director's** questionnaires, reviewing the **director's** CV and testing such information
- consider whether such proposed **directors** are suitable to be a **director** of a **UK** public company and consider the effect of the appointment on the efficacy of the board as a whole for the company's needs

- in relation to the removal of **directors**, consider how this affects the efficacy of the board as a whole for the company's needs, make any recommendations it thinks fit to the **AIM company** and considering whether this in turn affects the **AIM company's** appropriateness for **AIM**

Engagement Responsibilities

These apply when a **nominated adviser** is being engaged as a **nominated adviser** to an existing **AIM company**.

In satisfying these responsibilities, a **nominated adviser** should in addition refer to AR1 (in relation to ER1 below), AR2 (in relation to ER2) and AR5 (in relation to ER3) and consider what actions may be appropriate. The actions to be taken will depend on, for example, the circumstances surrounding the change of **nominated adviser** or the changes that have taken place in the company since **admission**. For example, it is unlikely that the due diligence reports usually obtained in preparation for **admission** as mentioned in part of AR1 would be required on engagement pursuant to ER1 or ER3 below.

THE AIM COMPANY AND ITS SECURITIES

ER1 - In assessing the appropriateness of an AIM company and its securities for AIM when taking on an existing AIM company, a nominated adviser should achieve a sound understanding of the AIM company and its business

In satisfying this, the **nominated adviser** should usually:

- gain a knowledge of any major developments relating to the company since **admission** and consider their effect on the appropriateness of the **AIM company**
- consider contacting the outgoing **nominated adviser** to discuss their experiences with the **AIM company**. An outgoing **nominated adviser** should be constructive and open (to the extent possible) with a new **nominated adviser** who contacts them for such discussion.

DIRECTORS AND BOARD

ER2 – In assessing the appropriateness of an existing AIM company and its securities for AIM, a nominated adviser should (i) investigate and consider the suitability of each director and proposed director of the AIM company and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to a trading on a UK public market

AIM RULE COMPLIANCE

ER3 – The nominated adviser should satisfy itself that the AIM company has in place sufficient systems, procedures and controls in order to comply with the AIM Rules for Companies and should satisfy itself that the AIM company and its directors understand their obligations under the AIM Rules for Companies

General

In this Schedule Three:

- Where a **nominated adviser** is expected to consider or satisfy itself of a particular matter, this is expected to be after due and careful enquiry and exercising due skill and care. The **nominated adviser** should keep an appropriate record to evidence this.

- A **nominated adviser** should seek advice and assistance from other professional advisers where appropriate in fulfilling these responsibilities but should retain overall management and responsibility (i) for any **admission** process in relation to **AIM companies** for which it acts and (ii) in relation to advising **AIM companies** on their ongoing compliance with the **AIM Rules for Companies**.