



London
Stock Exchange

Feedback Statement and Consultation: AIM Rules Review



London
Stock Exchange Group

1.0 Introduction

On 11 July 2017, London Stock Exchange published a discussion paper seeking views from a wide range of AIM market participants and stakeholders on core areas of the AIM Rulebooks. We received 53 formal responses to the discussion paper from a broad cross-section of stakeholders including nominated advisers, investors, AIM companies and trade bodies. During the consultation period we held discussions with many of these stakeholders.

The number and quality of the responses, as well as the constructive conversations generated amongst market participants, highlights the depth of interest and expertise that exists across the AIM community, contributing to AIM's ongoing success. We would like to thank all respondents for their feedback and remain committed to ensuring that AIM retains its status as the pre-eminent international growth market.

The consistent view of respondents was that the AIM Rulebooks largely meet the requirements of new applicants, AIM companies and their investors. Overall, responses supported London Stock Exchange maintaining a principles based approach to regulation which underpins its success and differentiates AIM from the Main Market. Respondents recognise the benefits of the AIM market model which provides small and medium sized growth companies with the opportunity to join a public market that both supports their development and provides investors with comprehensive standards of disclosure and a fair and orderly market. In particular, the nominated adviser model provides AIM companies with access to regulatory guidance from a choice of experienced corporate finance advisers with specific AIM knowledge. This enables investors to fully understand the businesses in which they are investing and the relevant risks attached to such investments.

Having carefully considered and taken into account all views received, we set out below an overview of the feedback and, where London Stock Exchange is proposing to make targeted amendments to the AIM Rules for Companies ("AIM Rules") and AIM Rules for Nominated Advisers, our proposals for consultation. A marked up draft of the proposed changes to the AIM Rulebooks can be found at this [link](#). Annex 1 sets out the list of questions from the discussion paper.

We are proposing to consult on the following rule changes referred to in the discussion paper:

- formalising an early notification process for nominated advisers;
- providing guidance to nominated advisers on appropriateness considerations; and
- requiring AIM companies to comply or explain against a recognised corporate governance code.

We will not be taking forward proposed changes in respect of:

- prescriptive criteria regarding free float;
- a minimum fund raise upon admission for AIM applicants; and
- automatic fines for certain breaches of the AIM Rules.

As set out in AIM Notice 48 (see [link](#)) published on 5 December 2017, London Stock Exchange has applied to the FCA for AIM to be registered as an SME Growth Market and is expecting to receive confirmation of final approval to take effect from 3 January 2018. Small consequential changes have been made to AIM Rule 26 which will be implemented on 3 January 2018.

2.0 Role of London Stock Exchange

Formalising the early notification process

We asked whether it would be beneficial to the IPO process to further extend and formalise the existing early notification process for nominated advisers in respect of key information about AIM applicants.

2.1 Feedback

The majority of respondents supported the proposal to formalise the early notification process, which would occur prior to the submission of the Schedule One form. The Schedule One form sets out certain key information regarding the proposed applicant and is issued as a public gazetting notice at least 10 business days before proposed admission.

Respondents agreed that the proposals would reduce the likelihood of delays developing later in the admission process and would provide greater clarity for the nominated adviser and the applicant as they prepare for admission to AIM. Those who disagreed were mainly concerned that a more formal notification process could lead to unnecessary delays.

Respondents had a variety of views regarding the most appropriate timing for such discussion, noting the need for the notification to be sufficiently early in the admission process, before substantial preparation has been carried out, but allowing an opportunity for initial diligence to have been completed to support a meaningful discussion. Respondents generally agreed with the proposed list of information required.

2.2 Proposed rule amendments

London Stock Exchange notes the strong support for the proposal and accordingly, changes to AIM Rule 2 are proposed, to introduce a formal requirement for early notification whilst leaving the exact timing of initial communication to the nominated adviser's discretion. The type of information required to be disclosed as part of the early notification process will be similar to that proposed in the discussion paper and will be published in the form of a new template which will be available from London Stock Exchange's website.

The proposal was intended to assist nominated advisers and applicants rather than extend the admission process and accordingly we do not propose to mandate the timing of early notification. However, we would highlight that if a matter is not brought to the attention of London Stock Exchange at a sufficiently early stage, this may cause delays.

The early notification process neither diminishes nor substitutes a nominated adviser's obligations to London Stock Exchange to be satisfied about an applicant's appropriateness nor the nominated adviser's ongoing obligation to update London Stock Exchange on any new information or any changes of circumstances that arise during the admission process.

Guidance to nominated advisers on appropriateness consideration and London Stock Exchange AIM Rule 9 powers

We asked if it would be beneficial for London Stock Exchange to set out guidance, by way of a non-exhaustive list of factors, which a nominated adviser should consider in its assessment of appropriateness.

2.3 Feedback

Respondents overwhelmingly agreed that providing such guidance would be helpful and welcomed the increased certainty that would be created by providing a set of non-exhaustive examples. Those who disagreed thought that a number of the statements could be considered to be self-evident.

2.4 Proposed rule amendments

London Stock Exchange notes the strong support for guidance and accordingly, a non-exhaustive list is proposed to be incorporated in Schedule Three to the AIM Rules for Nominated Advisers. We consider that setting out such guidance on appropriateness should assist in providing consistency of approach and maintaining regulatory standards. Further, changes to AIM Rule 9 are also being proposed to emphasise London Stock Exchange's discretion to refuse admission.

It remains an important aspect of the AIM model that the assessment of appropriateness of an AIM company remains, in the first instance, the obligation of the nominated adviser under the AIM Rules for Nominated Advisers. It is the nominated adviser who is required under the AIM Rulebooks to have an in depth understanding of the applicant as part of its due diligence and other preparation work during the IPO process. However, London Stock Exchange retains ultimate discretion to refuse or impose conditions on an admission.

3.0 AIM eligibility criteria

Free float: maintaining an orderly market

We asked whether market participants consider London Stock Exchange's approach to free float remains appropriate. It is our view that a qualitative approach rather than prescribed thresholds is more meaningful for AIM companies.

3.1 Feedback

There was strong support that the current approach to free float strikes the right balance and that a qualitative approach is of benefit to the market. Respondents also commented that it remains of fundamental importance that a growth market has flexibility and is not hampered by numeric constraints which may result in potentially arbitrary outcomes for smaller companies.

A small number of respondents expressed a preference for the certainty of outcome that a prescribed limit potentially creates, however, there was no consensus regarding an appropriate limit.

3.2 Proposal

London Stock Exchange welcomes the strong support for its position to maintain the current approach to free float requirements. London Stock Exchange's guidance on free float is set out in Inside AIM (1 June 2015). We believe the guidance currently available together with early discussions with nominated advisers strikes an appropriate balance.

Minimum fundraising for new applicants to AIM

We asked whether a minimum fundraising eligibility rule should be introduced.

3.3 Feedback

This topic generated the greatest level of feedback, reflecting a range of perspectives. The majority of responses raised concerns about the potential unintended consequences of introducing a minimum threshold, including concerns that companies which may otherwise be appropriate and benefit from being admitted to AIM, may be prevented from joining.

On balance, respondents were not in favour of this proposed change, nor did they support applying a threshold solely to non-revenue generating companies.

3.4 Proposal

For the reasons set out in the discussion paper, we believe that the benefits of introducing a minimum fundraising requirement would have been to increase certainty about a company's financial resources and the support of recognised institutions would provide confidence to the wider market about the company's governance and business model. However, having carefully considered the feedback we do not propose to proceed with introducing this change but will look to provide further guidance, if required, to nominated advisers in the context of their appropriateness considerations.

4.0 Corporate governance requirements for AIM companies

London Stock Exchange considers that the adoption of appropriate corporate governance measures provides significant benefits to AIM companies and their investors. In 2014, a requirement for AIM companies to disclose their corporate governance arrangements on their websites along with other disclosures required in AIM Rule 26 was introduced. In the discussion paper we asked a number of questions regarding the most appropriate approach to corporate governance for AIM companies.

4.1 Feedback

The responses largely supported London Stock Exchange's view that companies benefit from adopting appropriate governance measures, and recognised that, to be effective, these measures should be tailored to a company's individual requirements and take into account its particular stage of development. The majority of respondents believe that the current principles based approach provides flexibility and is not disproportionately burdensome or costly, a key consideration for small and medium growing companies.

Notwithstanding this view, a majority of respondents also agreed that it would be beneficial to require AIM companies in their existing AIM Rule 26 disclosures to comply or explain against a recognised industry code.

Respondents agreed that the roles of Chairperson, Finance Director and Non-Executive directors are integral to the board, but there were divergent views about whether the AIM Rules should prescribe minimum board composition requirements. Many respondents considered that an AIM company, with the guidance of its nominated adviser, should be able to implement a board structure which is appropriate for its size and stage of development.

Respondents had mixed views regarding the frequency of reporting on the corporate governance approach. Many respondents considered annual reporting to be unnecessary and thought it would be of greater benefit to encourage disclosure when there has been a material change to those arrangements.

4.2 Proposed rule amendments

London Stock Exchange notes the majority of respondents supported a requirement for AIM companies to comply or explain against a recognised industry code. Accordingly, changes to AIM Rule 26 are proposed. There will be no requirement for an annual update. However, under AIM Rule 26 the information must be kept up to date and the last date on which it was updated should be included. Consequential amendments are also being proposed to Schedule One and Schedule Two of the AIM Rules.

Subject to consultation responses, the implementation of the requirements in AIM Rule 26 for existing AIM companies is proposed to take effect from 30 June 2018 to allow AIM companies and nominated advisers with adequate time to prepare for the proposed change.

We believe that the comply or explain approach is a helpful approach to yield the long term benefits that can be gained from good corporate governance. We therefore expect AIM companies to ensure that meaningful

information is provided to investors for them to be able to understand an AIM company's approach to governance. In individual circumstances there are likely to be specific reasons why a company may choose not to comply and explaining this to investors should aid meaningful engagement. Investors are encouraged to engage with AIM companies on the quality of their corporate governance disclosures.

It should be noted that the proposed obligation to report will be the responsibility of the AIM company. The nominated adviser's responsibilities remain unchanged in this regard.

We do not propose to introduce mandatory board composition requirements. However, AIM companies and nominated advisers should be aware that we would normally expect the board of an AIM company to include a Chairperson, Finance Director and Non-Executive Directors.

5.0 Standards of conduct and approach to non-compliance with the AIM Rulebooks

The discussion paper sets out the regulatory and legal landscape within which AIM operates and the range of other regulators and bodies that have oversight of AIM companies and the advisers that support them. We asked market participants whether there are further ways that London Stock Exchange can assist with educating market participants about London Stock Exchange's remit. We also asked market participants for their views on whether it would be beneficial for London Stock Exchange to introduce concepts such as automatic fines for certain explicit breaches and whether they suggest any other changes to our disciplinary rules.

5.1 Feedback

Remit of London Stock Exchange

Many respondents acknowledged that in common with all public markets, the regulatory framework cannot guarantee company success. It was recognised that a higher investment risk may attach to an investment in an AIM company compared to the risk associated with more established companies and that investors should be aware of the risk factors associated with individual companies. Some respondents commented that we could further improve understanding of the market by continuing to develop the London Stock Exchange website.

Investigations and Enforcement

An overwhelming majority of respondents felt that automatic fines were not a helpful enforcement tool given the limited breaches that they could be applied to. Respondents supported the current approach, allowing London Stock Exchange to determine the appropriate course of disciplinary action based upon the circumstances of an individual case. The few respondents who considered that an automatic fine regime should be introduced thought that it would only be appropriate for objective breaches such as late accounts filing and failing to update AIM Rule 26 information.

Overall, respondents welcomed greater transparency around the statistics for investigations and disciplinary work undertaken by London Stock Exchange. Publicising outcomes of material disciplinary cases was also supported. London Stock Exchange will keep under review the educational value of publicising our work and will consider these comments as part of the changes we will be considering in our review of the AIM Investigation and Enforcement Handbook ("Disciplinary Handbook") as referred to in the discussion paper.

5.2 Proposals

London Stock Exchange does not propose to introduce an automatic fine regime. As referred to in the discussion paper, London Stock Exchange expects to issue a consultation on proposed changes to the Disciplinary Handbook in 2018.

6.0 Next steps

Responses to the consultation on the AIM Rules and AIM Rules for Nominated Advisers are invited to be sent to aimnotices@lseg.com by no later than 29 January 2018. London Stock Exchange will confirm the results of this consultation as soon as reasonably practicable following the end of the consultation period.

Nilam Statham
Head of Primary Market and AIM Regulation

11 December 2017

ANNEX 1 – LIST OF QUESTIONS

Q1	Do you agree that the proposed extension and codification of the existing early notification process would be beneficial?
Q2	At what point should this early notification be required in order to make it feasible for the nominated adviser to have identified the information required but also early enough in the process to enable the discussion to have a benefit to the parties in their preparation for admission?
Q3	Does the list proposed at section 4 cover the key information that should be set out in the early notification process and, if not, what additional information would be beneficial?
Q4	Do you agree that it would be helpful to publish a list of non-exhaustive examples of factors to be taken into account by nominated advisers when assessing appropriateness for AIM?
Q5	Do you agree with or have any comments on the proposed examples at section 4?
Q6	Do you agree that the current approach to free float strikes the right balance or do you consider that London Stock Exchange should consider the introduction of a minimum “shares in public hands” requirement?
Q7	If you believe London Stock Exchange should consider introducing specific free float requirement, what would you consider to be an appropriate minimum and the reasons why? What types of shareholders should be considered as “shares in public hands”?
Q8	Do you believe that it would be beneficial to extend a minimum fundraising criteria at admission, or should it continue to only apply to AIM investing companies?
Q9	Do you agree that such a proposal should only apply only to non-revenue generating companies? If yes or no, please explain why.
Q10	If a threshold is introduced, what level of minimum fundraising would be most appropriate on or immediately before admission and why? a) £2m b) £3m c) £6m d) other
Q11	Are there any other circumstance where a company should not have to meet a minimum fundraising criteria, beyond those referred to above with respect to companies with a historic track record?
Q12	Do you consider the current requirements set out in section 6, including duties of the nominated adviser at admission to consider the efficacy of the board and the adoption of appropriate corporate governance standards and disclosure under AIM Rule 26, to be effective? If not, please explain why?
Q13	Do you believe that AIM companies should be required to report annually against a governance code?
Q14	Are there further ways London Stock Exchange can helpfully educate market participants, particularly individuals, as to what London Stock Exchange can and can't do in respect of its remit, beyond the information already available on its website?
Q15	Do you agree with automatic fines for explicit breaches of the AIM Rules for Companies? If so, what types of breaches should the fine be applied to?

Q16	In respect of Q15, what do you believe is the appropriate level of fine?
Q17	Are there other changes to the Disciplinary Handbook that you think London Stock Exchange should consider?