



INSIDE AIM

Issue 4 – September 2011

WELCOME TO INSIDE AIM

Welcome to our fourth edition of Inside AIM.

In this issue we have focussed on the investigations and enforcement function of AIM Regulation, with our main article providing an insight into the workings of the specialist team within AIM Regulation that undertakes this work.

In addition to technical guidance, we have included articles relating to the new Bribery Act and a review of Chinese companies on AIM.

AIM INVESTIGATIONS AND ENFORCEMENT

Our approach

An effective approach to investigations and enforcement action on AIM is in the interests of all market participants to ensure the integrity and reputation of the market for the long term.

Given the need for support and co-operation from nomads, Inside AIM seeks to provide some insight into how investigations are approached by AIM Regulation.

AIM Regulation investigates all alleged breaches of the rules that are brought to its attention. We are not enforcement-led; the emphasis is on education, deterrence and providing a proportionate and appropriate response for all market participants.

Investigations should not be seen as adversarial but as a means by which the Exchange and nomads can work together to ensure a good standard of practice by AIM companies and their nomads.

The investigation process

Breaches of the AIM Rules for Companies (“AIM Rules”) and the AIM Rules for Nominated Advisers (“Nomad Rules”) are brought to our attention from a variety of sources, including complaints from the public, notifications from other regulators as well as by nomads themselves (pursuant to their obligations under Nomad Rule 19).

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The initial investigation stage is focused on gathering relevant factual information so that we can fully understand the circumstances in question. We appreciate that this can be a time-consuming process for both the company and nomad. We try to keep questions to a minimum or, if it is more efficient, we may ask to view the files ourselves.

An open and transparent dialogue between AIM Regulation and the nomad/AIM company during the investigation process should make the process as effective and efficient as possible. Open communication with the Exchange is also a requirement of both the AIM Rules and Nomad Rules and we take failure to comply with this seriously.

It is therefore in the interests of all parties that AIM Regulation is given the full facts from the outset in order to reduce the need to ask follow-up questions.

Nomads sometimes ask us to hold meetings with the company and/or nomad at the investigation stage. However, due to the number of investigations that we undertake and also the need for us to have a clear, documented audit trail for the investigation, this is not usually practicable.

Decision making

The AIM Regulation team is made up of legal and financial practitioners who appreciate that advice and decisions are made in real-time, on the basis of information available at the time and that nomads also owe a duty of care to their client company, as well as to the Exchange.

Accordingly, we try not to make decisions based on the benefit of hindsight. We look at the particular circumstances and what was reasonable to expect at that time.

Sanctions

Sanction decisions are made after careful deliberation and based on the methodologies and principles that we have developed in order to ensure fairness and consistency.

Where we decide that enforcement action is necessary, we would usually seek to give the nomad or company a reasonable opportunity to comment on the case and our proposed sanction. We will of course take into account matters that they raise with us.

We usually also offer an opportunity for early settlement of an action and follow the 'Consent Orders' procedure laid out in the Disciplinary Procedures & Appeals Handbook.

Due to our desire to maintain a non-adversarial enforcement approach, we try to avoid the appointment of lawyers on either side, unless the matters in question are particularly complex.

We aim to reach an agreed factual position with a nomad or company, in order that enforcement action can be an appropriate and proportionate reflection of the breach that occurred.

CLOSE PERIOD RULE INTERPRETATION

We have become aware that, particularly in larger AIM companies, directors' dealings are sometimes taking place ahead of full compliance with AIM Rule 19 (publication of annual audited accounts).

The drafting of "close period" in the AIM Rules has always been interpreted by the Exchange to be publication of the accounts in accordance with Rule 19, rather than, for example, notification of preliminary results, the concept of which does not exist under the AIM Rules in contrast to the UKLA Listing Rules.

Given that AIM companies are often more closely held by owner/managers, the Exchange considers that the operation of the close period rule is particularly important, especially as more detailed requirements such as those in the Model Code do not apply.

In light of market feedback, we have considered what would be an appropriate interpretation of "close period" for AIM and have concluded the following:

1. The general position is that a close period ends when full compliance with Rule 19 has taken place.

We take this opportunity to remind nomads and AIM companies that annual accounts are required to be published "*without delay*", notwithstanding the 6 month period allowed, and of course Rule 11 (disclosure of PSI) applies in any event.

2. If, however, a nomad is satisfied that an AIM company has uploaded its annual accounts (which are compliant with Rule 19) to its website in accordance with Rule 26 and this fact and the key information in those accounts has been notified to the market, then the nomad can consider the close period ended with no derogation being required from AIM Regulation.

In relation to Rule 20 (publication of documents), a further notification on the sending of the hard-copy accounts to shareholders will not be required, assuming the content of the accounts remains unchanged.

3. If a director wishes to undertake a dealing ahead of (1) or (2) above, then, in certain circumstances and using Listing Rule 9.7A.1 as a benchmark, AIM Regulation will consider derogation requests from nomads.

In terms of the start of the close period, nomads should consider the above when looking at when the close period should commence.

We will continue to keep the operation of this rule under review with a view to maintaining the principle behind it, whilst enabling appropriate director dealings to take place.

AIM RULE 7 – LOCK-INS FOR NEW BUSINESSES

AIM Rule 7 is an important component of the AIM rules, particularly since AIM companies are not required to have an established trading history before seeking admission.

The underlying purpose of the rule is to ensure that directors and key shareholders of a company show a commitment to the business and also that they do not take unfair advantage of any uplift in the share price created by admission at the expense of other investors.

Derogations from AIM Rule 7

Given its fundamental importance to the AIM framework, AIM Regulation takes a cautious approach to derogation requests from AIM Rule 7. We would not, for example, usually consider derogations for the following reasons:

- to allow share disposals simply to improve a company's free float – we would expect free float issues to be resolved as part of the pre-IPO structuring;
- the company is a new applicant as it is undertaking a reverse takeover – directors and founders are expected to show a commitment to the new enlarged entity; or
- the company is admitting to AIM via the AIM Designated Market (“ADM”) route – for ADM applicants, Rule 7 applies even where a company's shareholders are free from restrictions on another exchange. The rationale for this is that if a company is seeking investors through AIM, which we would expect to usually be the case, the same rules should apply as for all other applicants.

Potential scope for derogations

We may consider derogating in circumstances where the underlying beneficial holder of the shares remains the same or the market effect is neutral.

For example:

- transfers between spouses or into a pension plan; or
- an intra-group transfer.

However, the new holder must agree to be bound by the terms of the lock-in for the remainder of the period.

Any form of security, such as a charge or pledge over shares (especially where the chargee gains any rights over the AIM securities, now or in the future), will be prohibited by AIM Rule 7. However, we recognise that giving security over assets such as shares may, in some circumstances, form an important cornerstone of financing arrangements for growing companies and AIM Regulation may consider a derogation in exceptional circumstances.

Further acquisition of securities

Further acquisitions of securities by the locked-in party during the lock-in period (for value or otherwise) will also be subject to the terms of the lock-in for the remainder of the period. This includes shares or options issued to directors as a bonus or as part of the admission process.

“A price more widely available”

Rule 7 lock-ins will not be required for substantial shareholders who invest at a price more widely available, as per the Guidance Note to that rule, on the basis that:

- a price more widely available is expected to equate to the company's market price at admission; and
- the shareholder will not benefit from an uplift in the share price on admission.

The price more widely available exemption is generally available only if shareholders at admission invested as part of an offer to the public or if there is a significant placing that could be seen as analogous or is equivalent to market price if the company is undertaking a reverse. Generally, this exemption will not apply to a private placing, unless the company is able to sufficiently demonstrate that the placing price equates to the first day dealing price, or that an offer is made to a sufficiently wide number of places.

FAQ

Q - I'm looking for statistical information on AIM companies. What information is available and where can I find it?

A - The Exchange publishes a monthly fact sheet around the second week of each month. The fact sheet contains all key AIM statistics including recent admissions and cancellations, further issues and top 50 AIM companies by market capitalisation. It can be accessed via this link:

<http://www.londonstockexchange.com/statistics/history/aim/aim.htm>

If you are looking for details of a company's nomad, you can find this at:

www.londonstockexchange.com/exchange/companies-and-advisors/aim/for-companies/information-search/aim-company-search.html

A list of all companies and securities across all of the Exchange's markets can be found via the following link, which includes information such as FTSE sector and market capitalisation:

<http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-and-issuers.htm>

It can be filtered to show only AIM companies, by sector, country of incorporation and other key criteria.

THE BRIBERY ACT 2010

The Bribery Act 2010 (“the Act”) came into force on 1 July 2011.

Along with other offences, the Act created a new offence that can be committed by organisations that fail to prevent persons associated with them from bribing another person on their behalf. Directors and employees can be individually liable.

The defence to this is if an organisation can prove it has adequate procedures in place to prevent such activity. The Ministry of Justice (“MoJ”) has issued guidance on this.

AIM Regulation has received a number of queries from nomads asking whether we have any position or guidance in relation to the Act’s applicability to AIM. It is not for the Exchange to attempt to supplement legislation or MoJ guidance. We have, however, considered the Act in three key areas and make the following points:

Application to AIM companies

The Exchange has no further information in relation to the application of the Act to AIM companies other than referring to the guidance issued by the MoJ in which it is stated that:

“The Government would not expect, for example, the mere fact that a company’s securities have been admitted to the UK Listing Authority’s Official List and therefore admitted to trading on the London Stock Exchange, in itself, to qualify that company as carrying on a business or part of a business in the UK and therefore falling within the definition of a ‘relevant commercial organisation’ for the purposes of section 7.”

We also note the SFO’s subsequent comments in this area.

Each overseas company therefore needs to consider whether it could fall within the scope of the Act, and nomads may wish to make sure that overseas client companies are aware of this new legislation and have undertaken this review.

Nomad obligations in relation to AIM companies

One of the main queries we have received is requesting guidance on the extent to which nomads should be considering compliance with the Act by their AIM company clients, particularly as part of the appropriateness consideration on admission, as well as after.

As mentioned above, whilst the Exchange would not seek to supplement existing guidance from the MoJ, we expect nomads to consider any significant and relevant legislation, its impact on their clients and the extent to which it may impact appropriateness for AIM. The significance of this particular Act to a company will inevitably vary depending on business type and jurisdiction.

Application to nomads

Nomad firms will also need to consider the potential application of the new Act to themselves.

The Exchange takes its obligations under the Act very seriously and we take this opportunity to highlight that the Exchange:

- prohibits bribery in any form whether direct or indirect;
- has implemented within the London Stock Exchange Group appropriate internal controls and systems, policies and procedures to counter bribery, including but not limited to, anti-corruption, gifts & hospitality, vetting agents and advisers; and
- has provided training and guidance for its employees.

Companies doing business with the Exchange, including nomads, should strictly abide by the provisions of the Act, implement appropriate internal policies and controls and apply robust ethical standards on bribery and corruption.

AIM Notice 37 – Corporate action timetables

Minor changes have been made to the Guidance Notes to AIM Rules 24 and 25 of the AIM Rules to reflect the amendments made by the FSA to LR9.5.7A, relating to open offer timetables.

By way of a reminder, all timetables must be cleared in advance of the announcement with the Exchange’s Stock Situations team. This team is responsible for the review and analysis of corporate action events that impact on a company’s shares or its shareholders.

For more information on the service the team provides, please visit:

<http://www.londonstockexchange.com/products-and-services/reference-data/corporate-actions/corporate-actions.htm>

They can be contacted on 020 7797 1579/1920 or ssn@londonstockexchange.com

CHINESE COMPANIES ON AIM

Earlier this year we conducted a statistical review of Chinese companies on AIM in order to capture some data on this sector. As part of the research we reviewed 84 AIM companies that had or continue to have major operations in mainland China, Hong Kong, Macau and Taiwan ("Chinese companies" for ease of reference).

Sector

Both by number and value, Real Estate was the biggest sector, followed by the Mining and General Financial sectors. The combined market value of companies from these three sectors accounted for over half of the Chinese companies' aggregate market value at admission.

Country of incorporation

All these companies were incorporated outside China, mostly in the UK, Channel Islands and British Virgin Islands.

Number of admissions

2006 saw the most Chinese companies, 34, coming to AIM. After the surge in 2006, the number of Chinese admissions accounted for approximately 5% of all AIM admissions each year from 2007 to 2010.

Fund raising

£1,644 million was raised on admission and £1,210 million on-market by these companies. Most of these companies came to market via a placing and half of them had a market capitalisation at admission between £10 and £50 million.

In terms of fundraising on market, each Chinese company raised on average more money than the market average in 2007, 2008 and 2010. However, 49% did not raise any money after admission (compared to 38% of non-Chinese AIM companies).

Points to consider relating to due diligence and ongoing governance

As for any AIM company, due diligence should not be seen as a "box ticking" exercise and therefore the type and scope of due diligence for a company with key operations outside the UK needs careful consideration by a nomad.

Nomads need to consider the challenges of timezones, language, culture and business practice differences. By way of example, nomads should be mindful of the way Chinese names are written in English. Some start with the surname and others with the first name. English spellings of Chinese names only reflect the pronunciation not the actual Chinese characters, which means search criteria need careful thought.

People from Hong Kong usually have an official English name along with their Chinese one, but for mainland Chinese people, their English name is usually self-given.

Further, there is limited public information in English about Chinese companies and directors. Nomads should therefore conduct due diligence in both Chinese and English and are usually expected to commission a third party to obtain further information in the relevant jurisdictions about the business and key individuals involved, in accordance with the Admission Responsibilities set out in Schedule 3 of the Nomad Rules.

As set out in Issue 2 of Inside AIM, nomads are expected to consider and advise on the corporate governance measures that their AIM company clients will follow. A company with significant overseas operations may not be considered appropriate for AIM simply because English speaking directors or UK-based directors have been appointed or audit and remuneration committees have been established. A more substantive consideration of what is appropriate for the market is required to ensure ongoing suitability and compliance with the rules.

We expect nomads to have direct communication with and access to key decision makers on the board who are able to articulate corporate matters in English over the phone and to access up-to-date management information.

In China, as in many jurisdictions, face-to-face meetings are thought essential for building trust. Site visits and meetings therefore help both the nomad and directors to enhance their understanding and for the nomad to provide deeper education about the AIM rules.

Nomads should adopt a proactive and tailored approach to due diligence before admission and on an on-going basis, to ensure not only that their Chinese client companies are appropriate for AIM but that they remain appropriate and are able to maximise the benefits of being admitted to AIM.

Nomad Annual Returns – update

In relation to the Nomad Annual Returns (which focus on firm and individual eligibility) that we asked nomads to submit earlier this year, we can confirm that we have now closed nearly all outstanding issues. Where matters of concern arose, we have written to the firm to advise them of this or will be doing so shortly. We are intending to again request a Return for this calendar year which will be sent out around the end of the year.

SUSPENSIONS RELATING TO AIM RULES 10 & 11

AIM Rule 11 is the key AIM disclosure rule. It is fundamental to any public market that all participants have all appropriate and correct information they are entitled to on a timely basis.

In some circumstances, a company may not be able to fully comply with AIM Rule 11, and in particular may not be able to issue a complete announcement in accordance with AIM Rule 10.

Where this is a possibility, the nomad of an AIM company should contact AIM Regulation at the earliest opportunity to discuss the situation.

It is possible that we may allow a suspension of that company's AIM securities if the company cannot make an immediate notification, or if it is concerned that such notification may not be sufficient to properly inform the market. These situations will be rare – we find that it is usually possible for a company to make the requisite announcement, even though it may be commercially sensitive. Our paramount objective, however, is to ensure there is no false market in the shares, and this will be the key consideration in any decision we make.

This can be particularly relevant for mining, oil and gas companies or other sectors dealing with technical information, where certain results are being evaluated and accordingly the company does not have all the information it needs to make an announcement which complies with AIM Rule 10, yet finds itself bound to comply with its obligation under AIM Rule 11 to release price sensitive information to the market without delay.

Some further guidance relating to suspensions:

- In most cases, AIM Regulation would expect both the request and the reason for the suspension to be notified to the market by the AIM company itself.
- A suspension should not be for a prolonged period of time as the AIM company should use its best endeavours to ensure that it makes a further announcement as soon as possible which will enable the suspension to be lifted.
- AIM Regulation is not likely to agree to a suspension request which is made for administrative reasons or marketing convenience.

AIM RULE 26 – WEBSITE DISCLOSURE

Since AIM Rule 26 was introduced in 2007, feedback from all market participants has been overwhelmingly positive. However, websites are only as useful as the quality of the information made available on them and it is important that the information is kept up to date and complies with the Rule on an ongoing basis. To help, we have identified some areas where issues sometimes arise.

AIM securities not in public hands and details of significant shareholders

This information is required to be updated every six months and should tally with the previous regulatory announcements made. Where discrepancies are identified, a corrective announcement is required pursuant to AIM Rule 17.

Removing old admission documents

At the time AIM Rule 26 was introduced, certain derogations were granted with respect to the inclusion of admission documents that were felt to be obsolete due to the passage of time. This was, however, only done on a case-by-case basis. Removing an admission document from a website requires a specific derogation from AIM Regulation.

Websites under construction or out of order

When a company's website is not available for more than a very short period of time, we suggest that an appropriate regulatory announcement is made. All reasonable endeavours should then be made to resolve the issue as soon as possible. Please contact AIM Regulation when this issue arises so that we are aware of the problem as we often get calls from members of the public.

Website review

Although many nomads already do this, we suggest that as part of its take-on procedures for a new AIM company, and, say, around every six months thereafter, a nomad should review the websites of all its existing AIM company clients.

Changes to AIM Regulation hours

Please note that the AIM Regulation helpdesk opening hours have changed. The helpdesk is open from 7.30am to 5.30pm Monday to Friday, excluding public holidays. Emergency advice is still available outside of those hours. You can obtain details of the out of hours contact numbers from the recorded out of hours voicemail message.

AIM POLICY UPDATE

THE UK BUDGET & VCTS

Following the recommendations we put forward recommending changes to the VCT scheme, we were pleased with the announcement in the March 2011 Budget to increase the VCT qualifying company limits from £7m gross assets and 50 employees to £15m gross assets and 250 employees.

Other changes being proposed in relation to the EIS / VCT schemes include an increase in the annual investment limit for qualifying companies to £10m and a consultation to ensure the schemes are targeted at genuine risk capital investments.

The day after the Budget the Financial Secretary to the Treasury, Mark Hoban, delivered the keynote address at the AIM conference, providing an insight into some of the Government's growth measures included in the Budget and praised the role that AIM plays in supporting growing businesses and the UK economy.

On 6 July, HM Treasury published its consultation on tax-advantaged venture capital schemes which includes a proposal for additional support for seed investment; simplification of the existing schemes; and refocusing the schemes to ensure they remain appropriately targeted.

We will continue to demonstrate the importance of VCTs to AIM and put forward supporting evidence to help obtain EU State Aid approval for the announced changes to the scheme.

CHANGES TO THE PROSPECTUS DIRECTIVE

On 8 July 2011, following HM Treasury's consultation on early implementation of amendments to the Prospectus Directive, it announced that the statutory instruments that will make the following key amendments to FSMA 2000 would come into effect on 31 July 2011 to:

- amend the number of investors to whom an offer of securities may be made before a prospectus is required, from 100 to 150 investors; and
- amend the total size of the offer that may be made before a prospectus is required from €2.5m to €5m.

We have supported the early implementation of these amendments which we believe will be positive and most significant in the case of further fundraisings conducted by smaller companies on our markets.

Over the longer term we expect these changes will help smaller companies attract a wider set of investors, helping to boost liquidity and lower their cost of capital.

PROSPECTUS DIRECTIVE – ESMA CONSULTATION

At the EU level, ESMA's consultation on Level II of the Prospectus Directive (closed on 15 July) focused on the following:

- format of the final terms of the base prospectus;
- format of the summary of the prospectus; and
- proportionate disclosure regime for pre-emptive offers and for offers by SMEs and companies with reduced market capitalisation.

We believe the proportionate prospectus regime - if implemented appropriately combined with the increase in thresholds that trigger the requirement for a prospectus to €5m consideration and 150 investors is a positive move to help facilitate access to finance for small companies.

However, as emphasised in our response to ESMA, we do not consider that a proportionate prospectus regime alone addresses the core issue of the need to widen the population of investors readily able and willing to invest in smaller companies. The regulatory focus should not simply be on attempting to alleviate costs by reducing transparency and disclosure. The cost of being a public company and/or of undertaking an offer to the public only becomes a barrier to issuers if it exceeds the associated benefits. Issuers assess the benefits against the level of investor interest, measured through the level of trading in their securities, and ultimately their cost of capital.

We therefore believe that any measures proposed under the Prospectus Directive- for smaller companies (or growth markets like AIM) should take into consideration the ongoing review of MiFID and the Market Abuse Directive.

If you would like to feed into our lobbying efforts at the UK or European level, please contact Umerah Akram at uakram@londonstockexchange.com.

For more details on the London Stock Exchange's responses to the abovementioned consultations, please refer to: www.londonstockexchange.com/policy.

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Please note requests for derogations from the AIM Rules should be submitted in writing (via email) by the company's nomad.

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FEEDBACK

We would welcome any feedback on this edition of Inside AIM and any suggestions for issues that you would like us to address in future editions.

Please email any comments to:

aimregulation@londonstockexchange.com

REGULATORY STATUS OF INSIDE AIM

The guidance provided in this newsletter should be regarded as illustrative only. It is intended to give an indication of how AIM Regulation would usually expect certain aspects of the AIM Rules to be interpreted and this guidance is not definitive or binding. AIM Regulation should be contacted by a company's nomad if clarification or derogation from the rules is required in a specific situation.

Furthermore, AIM companies should continue to seek the guidance of their nomad when considering the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.