

STOCK EXCHANGE AIM DISCIPLINARY NOTICE

AD 20

7 December 2018

PUBLIC CENSURE AND FINE – BUSHVELD MINERALS LIMITED

1. London Stock Exchange plc (“**Exchange**”) announces that it has agreed settlement terms with Bushveld Minerals Limited (“**Company**”) for a public censure and fine of £700,000 for breaches by the Company of the AIM Rules for Companies (“**AIM Rules**”). The Exchange has agreed with the Company that the fine of £700,000 be discounted to £490,000 for early settlement.
2. The Exchange is publishing details of this Public Censure for the purpose of educating the market on the expected standards of conduct for AIM companies under the AIM Rules.

SUMMARY OF EVENTS

3. The Company was admitted to AIM on 26 March 2012 and was, at the time of the relevant events, a mineral development company with interests in a portfolio of vanadium and titanium-bearing iron ore and tin assets and a coal project in Southern Africa.
4. In or around March 2016 the Company was considering entering into exclusivity arrangements in relation to a potential transaction to acquire an interest in a vanadium mine and plant (“**transaction**”). The transaction, if completed, would constitute a reverse takeover pursuant to AIM Rule 14 (“**reverse in contemplation**”).
5. Pursuant to the terms of an exclusivity agreement entered into on 24 March 2016 relating to the transaction, the Company was required to place US\$500,000 (“**Exclusivity Fee**”) on deposit with its lawyers, subject to a solicitor’s undertaking (“**undertaking**”) to release the Exclusivity Fee to the proposed vendor upon fulfilment of certain conditions.
6. The Exclusivity Fee was, at the time, a material sum in the context of the Company’s financial position. The Company’s nominated adviser advised the Company that, when the undertaking was given, the Company had committed itself to a binding obligation regarding the Exclusivity Fee which gave rise, on account of its materiality, to a without delay disclosure obligation pursuant to AIM Rule 11. Further, such notification would involve disclosing the reverse in contemplation and, pursuant to the guidance to AIM Rule 14, the Company’s securities would be suspended on notification.
7. The nominated adviser explicitly advised the Company on its disclosure obligations, prior to the Company authorising the giving of the undertaking. The Company disagreed with the nominated adviser and sought separate advice from its lawyers on its AIM Rules disclosure obligations. The advice conflicted with that of the nominated adviser.
8. The Company’s preference was to avoid or delay suspension of its shares until a point in time when it was more likely, in its view, that the reverse in contemplation would proceed. This was because the Company considered that a suspension would be prejudicial to its plans to complete a fundraising to provide funds for the transaction, to fund the development of its existing assets and, it hoped, reduce the materiality of the Exclusivity Fee. The Company and its lawyers argued against the nominated adviser’s AIM Rules advice.

9. In parallel to these arguments, the Company also asked its nominated adviser to liaise with the Exchange to discuss whether or not, upon notification, a suspension was required on the basis of a reverse in contemplation pursuant to the guidance to AIM Rule 14.
10. When the undertaking was given on 7 April 2016, this gave rise to a without delay notification obligation. However, the Company did not inform its nominated adviser that the undertaking had been given at this time. This was notwithstanding that during the period when its nominated adviser was providing AIM Rules advice and/or liaising with the Exchange, the Company knew or ought to have known that the nominated adviser was operating under the assumption that the undertaking had not yet been given (and therefore that the development which gave rise to a notification obligation had not yet arisen).
11. The matter only came to light in the course of the Company discussing with the nominated adviser a development regarding the status of the Company's fundraising activities. Following this, details of the exclusivity agreement, the undertaking and the Exclusivity Fee were disclosed on 22 April 2016 and the Company's securities were suspended in accordance with AIM Rule 14.
12. The Company has acknowledged the error of judgement in not taking into account the nominated adviser's advice in respect of its disclosure obligations and in not informing the nominated adviser of the giving of the undertaking, albeit at a time when the Company was focused on seeking to raise new funds to complete the transaction. The Company has confirmed to the Exchange that it has subsequently strengthened its corporate governance to address these matters going forward.

BREACHES OF THE AIM RULES

13. The Exchange has determined that the Company breached:
 - AIM Rule 11, by failing to comply with its disclosure obligations to notify information without delay when the undertaking was given. The Company's failure was against the background of being advised by its nominated adviser of the AIM Rules implications. An AIM company is able to delay disclosure of information of matters in the course of negotiation and which are kept confidential. However, in the particular circumstances of the Company, the giving of the undertaking created binding obligations in respect of the Exclusivity Fee which was a new development requiring disclosure without delay.
 - AIM Rule 31, by failing to provide its nominated adviser with information in relation to the provision of the undertaking, in circumstances where the Company knew or ought to have known that this was information the nominated adviser had reasonably requested and required in order to carry out its responsibilities owed to the Exchange. As a result, the Company also knew or ought to have known that the Exchange would not be in possession of facts and information which were relevant to its discussions with the nominated adviser.

EXPECTED STANDARDS FOR AIM COMPANIES

14. The AIM regulatory model provides an AIM company with the benefit of continued support and guidance from a nominated adviser who is authorised by the Exchange as the designated AIM specialist. The nominated adviser has the depth of knowledge and experience in dealing with and applying the AIM Rules through its own day to day experience with AIM companies and also through its liaison with the Exchange. The advice and guidance of a nominated adviser is designed to support an AIM company's compliance with its AIM Rules obligations.
15. This advice and guidance of a nominated adviser is particularly important when an AIM company is considering its disclosure obligations (such as in this case, the obligations arising under AIM Rule 11 and the guidance to that rule). As the Exchange has previously stated publicly, the application and interpretation of AIM Rule 11 should not be approached in a narrow way. The nominated adviser has experience in considering the disclosure obligations under AIM Rule 11 and does so with an understanding of an experienced AIM market practitioner. The fact that an AIM company has received separate advice from its lawyers on the interpretation of the AIM Rules, does not override the nominated adviser's advice and does not justify or mitigate a breach of the AIM Rules.

16. In its discussion with an AIM company, a nominated adviser should be able to have confidence that the AIM company will be providing it with all relevant information. An AIM company's failure to be fully transparent is detrimental to an AIM company's ability to comply with its AIM Rules obligations, as the nominated adviser cannot provide advice and guidance on the rules with a full understanding of the facts. In this case, the Company knew or ought to have known that, given the nominated adviser's advice on disclosure, it was relevant to tell the nominated adviser that the undertaking had been given.
17. Further, as the Company understood in this instance, where there is a question about the interpretation or application of a rule to the specific circumstances, a nominated adviser can seek guidance from the Exchange. However, the Company was aware that, having asked the nominated adviser to liaise with the Exchange, it had not provided it with the full facts thereby potentially affecting the Exchange's ability to make fully informed regulatory decisions.
18. The Exchange understands that at the time the Company received advice from its nominated adviser it was operating under challenging commercial conditions and that its focus and attention immediately following the advice was on raising funds in an effort, amongst other matters, to mitigate the materiality of the Exclusivity Fee and thereby not give rise to the requirement for a notification and suspension. However, the Company did not wait for the fundraising to be completed before the undertaking was given although it was aware or ought to have been aware, from the advice of the nominated adviser, that a notification obligation had arisen. Accordingly, the breaches identified above are serious and the Exchange considers that a public censure and a fine is the appropriate sanction.
19. The Exchange has set out guidance in respect of AIM Rule 11 and 31, in public notices and Inside AIM. Accordingly, AIM companies should be in no doubt as to what is required for compliance with these obligations and where there is a breach of these fundamental rules, the Exchange reserves the right to pursue disciplinary action and seek to impose significant fines.

Any queries relating to this AIM Notice should be addressed to: aimregulation@lseg.com

Nilam Statham
Head of Primary Market and AIM Regulation

Notes:

AIM Rules for Companies

Sanctions against an AIM company

42. If the **Exchange** considers that an **AIM company** has contravened these rules, it may take one or more of the following measures in relation to such **AIM company**:

- issue a **warning notice**;
- fine it;
- censure it; or
- cancel the admission of its **AIM securities**; and
- publish the fact that it has been fined or censured and the reasons for that action.

Disciplinary process

44. The **Exchange** will take any proposed disciplinary action against an **AIM company** in accordance with the **Disciplinary Procedures and Appeals Handbook**.