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For the attention of the nominated advisers / advisers /  
finance directors / company secretaries, all AIM companies **AIM11**

## STOCK EXCHANGE AIM NOTICE

### AIM RULES – CONSULTATION

#### INVESTING COMPANIES AND OTHER RULE CHANGES

##### Introduction

1. The Exchange is consulting on a number of proposed changes to the *AIM Rules for Companies* (“the AIM Rules”). The proposed substantive changes are mainly in respect of:
  - the admission criteria for and continuing obligations of investing companies;
  - disposals by AIM companies which result in a fundamental change of business;
  - sanctions available to the Exchange in respect of nominated advisers;
  - rights to delay/refuse admission; and
  - nomad independence.

##### The Current Position

2. *Investing companies*

An investing company is defined in the AIM Rules as any AIM company which, in the opinion of the Exchange, has as a primary business the investing of its funds in the securities of other companies or the acquisition of a particular business.

Paragraph (j) of Schedule Two states that where the applicant is an investing company, its AIM admission document must contain details of its investing strategy. The guidance notes specify the type of information required to satisfy this requirement.

3. *Disposals resulting in a fundamental change of business*

Currently any transaction exceeding 10% in any of the class tests (subject to certain carve outs) needs to be disclosed under Rule 11. Under this Rule, an AIM company must issue notification disclosing the information required by Schedule Four. Save in respect of reverse take-overs, there is currently no requirement that such transactions are subject to shareholder approval.

4. *Sanctions available to the Exchange*

Under Rule 41, where the Exchange considers that an AIM Company has breached the AIM Rules it may take the following measures:

- fine it;
- censure it;
- publish the fact that it has been fined or censured; and/or
- cancel the admission of its AIM securities

Under Rule 42, if the Exchange considers that a nominated adviser is either in breach of its responsibilities under Rule 38 or that the integrity and reputation of the market has been or may be impaired as a result of its conduct or judgement, the Exchange may:

- censure the nominated adviser;
- remove it from the register; and/or
- publish the action it has taken and the reasons for that action.

5. *Delaying or refusing admission to AIM*

Under Rule 8, the Exchange may make the admission of an applicant or quoted applicant subject to a special condition. The Exchange may refuse an admission to AIM if the applicant or quoted applicant has not complied with any special condition which the Exchange considers appropriate and of which the Exchange has informed the applicant and nominated adviser.

Where matters are brought to attention of the Exchange which could affect an applicant's or quoted applicant's appropriateness for AIM, the Exchange may delay the application for up to two business days.

6. *Guidance on nominated adviser independence.*

The eligibility criteria states that one of the key ongoing obligations of a nominated adviser is that it must be able to demonstrate 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 its independence.

By way of example, it is stated in the eligibility criteria that a nominated adviser may not act as both reporting accountant and nominated adviser to an AIM company unless it has satisfied the Exchange that appropriate safeguards are in place.

## **Proposed Rules**

### **7. *Investing companies***

The number of investing companies seeking admission to AIM was one of the features of the market in 2004. The Exchange recognises the benefits acquisitive investing companies bring to AIM.

The Exchange wants to continue to encourage ambitious and acquisitive investing companies to join AIM. However, the Exchange acknowledges that under the current AIM Rules it is possible for an investing company with limited cash balances to be admitted to AIM and never make an investment or acquisition. The Exchange questions whether the admission of such companies is in the best interests of shareholders and the reputation of the market as a whole.

In order to ensure that the quality of such companies is maintained it is proposed that a new Rule be inserted into the AIM Rules specifically for investing companies. The Exchange is proposing that an investing company must raise at least £3 million in cash on admission. The fundraising requirement has been set at a level which should necessitate some institutional participation, ensuring an extra level of scrutiny over the viability of its investment strategy, the experience of the applicant's directors and the company's valuation on admission. This fundraising requirement will not apply where an AIM company becomes an investing company following a disposal resulting in a fundamental change of business (see below).

Given that investing companies will under these proposals have to raise a minimum of £3 million on admission, we believe that the investing company should pursue its investing strategy and not simply sit on the cash balances provided by its shareholders. To this end it is proposed that an investing company must, within twelve months of its admission, make an acquisition or acquisitions, which in aggregate exceed 50% in each of the relevant class tests. The relevant class tests are deemed to be the gross assets, gross capital and consideration tests as set out in Schedule Three of the AIM Rules.

In the case of an AIM company that becomes an investing company following a disposal it is proposed that, within twelve months, it must make an acquisition or acquisitions that constitute a reverse takeover under the AIM Rules.

If the investing company does not make the necessary acquisitions within the prescribed twelve month period it is proposed that its AIM securities will be automatically suspended. If a requisite acquisition is made within six months following suspension, the company's AIM securities will be restored to trading on AIM. If it does not make a requisite admission within six months from its suspension, the Exchange will cancel the admission of its AIM securities.

The Exchange is also proposing to amend the definition of substantial shareholder in the glossary. At present, for the purposes of Rule 7 any authorised person or any company with securities quoted upon the Exchange's markets are excluded from this definition. The effect of these proposals is to ensure that where a company with securities quoted upon the Exchange's market is an investing company, it should not be excluded from the definition of substantial shareholder under Rule 7. The rationale for this is that a founder may decide to hold an interest in a start-up AIM company through an investing company. Under the current Rules that interest would not be locked-in under Rule 7 but if the interest was held directly it would. The Exchange is proposing to remove this anomaly.

Finally, in order to ensure that investing companies have clear investing strategies in their AIM admission document it is proposed that the criteria set out in the guidance to Schedule Two be moved to Schedule Two itself.

It should be noted that should these proposals be implemented existing investing companies admitted to AIM prior to 1 April 2005, will have until 1 September 2005, or twelve months from the date of its admission to AIM (whichever is the longer period) to make an acquisition or acquisitions, which constitute a reverse takeover under the AIM Rules. Where an investing company believes that this requirement is unsuitable given its stated investing strategy, its nominated adviser may apply to the Exchange for derogation.

**Question 1 - Do you believe that these measures are appropriate?**

**Question 2 - Should the minimum fundraising amount be set at a higher or lower level? If so, what amount should the minimum fundraising amount be?**

**Question 3 - Should the class test percentage threshold be set at a higher or lower level? If so, what should the percentage level be set at?**

**Question 4 - Do you believe that the twelve month timeframe set out above is appropriate? If not, then what do you believe would be an appropriate timeframe?**

8. *Disposals resulting in a fundamental change of business.*

At present, shareholder approval is only required where an AIM company makes an acquisition which would be deemed a reverse takeover under the AIM Rules.

The Exchange is proposing to extend the need for shareholder approval to instances where an AIM company makes a disposal which results in a fundamental change of business. This is defined as any disposal, when aggregated with any other disposal or disposals in the previous twelve months, which exceeds 75% in any of the class tests.

In such circumstances it is proposed that the AIM company must send a circular to shareholders containing the information specified by Schedule Four and convening the general meeting. The disposal must be conditional on the consent of its shareholders being given in the general meeting.

Further, where the effect of the disposal is to divest the AIM company of all, or substantially all of its business activities, the AIM company will be treated as an investing company going forward and the circular containing the information specified by Schedule Four convening the general meeting must also state its proposed investing strategy in accordance with Schedule Two paragraph (j).

As an investing company, the AIM company will then have twelve months to make the requisite acquisition(s) otherwise it will be suspended. If it does not make a requisite admission within six months from suspension, the Exchange will cancel the admission of its AIM securities.

Note: Existing AIM companies with no trading business or no investing strategy will have until 1 September 2005, to either make an acquisition or acquisitions that constitute a reverse takeover or to have obtained the consent of shareholders in general meeting to approve its investing strategy.

**Question 5 - Do you agree with this proposal?**

**Question 6 - Is the proposed percentage threshold set at the right level? If not, please state what you feel to be the appropriate level.**

**Question 7 - Do you agree that the information required in the circular in such cases is sufficient to enable shareholders to vote on the disposal? For example, should there be an accountant's report detailing the effect of the disposal on the AIM company?**

9. *Sanctions available to the Exchange in respect of nominated advisers.*

At present the Exchange has the ability pursuant to Rule 41 to fine AIM Companies for a breach of the AIM Rules but there is no equivalent right under Rule 42 in respect of nominated advisers.

It is therefore proposed to extend the provisions relating to fining AIM Companies to nominated advisers.

Note - under the *'Disciplinary Procedures and Appeals Handbook'*, the Exchange's internal 'AIM Executive Committee' (comprised of senior members of the Exchange's regulatory staff) has the authority to levy a fine up to £25,000.

The Exchange's external 'AIM Disciplinary Committee' (comprising of market practitioners) can impose any fine that they feel appropriate for the breach. There is no specified limit imposed on the AIM Disciplinary Committee.

**Question 8 - Do you agree with this proposal?**

**Question 9 - Do you think the maximum amount the 'AIM Executive Committee' can fine is set at the appropriate level?**

10. *Delaying or refusing admission to AIM*

The Exchange must ensure that business conducted by means of its facilities is conducted in a fair and orderly manner and so as to afford proper protection to investors.

Under the Exchange's main market *'Admission and Disclosure Standards'* ("Standards"), the Exchange has an express right to refuse admission of securities where it considers that admission may be detrimental to the orderly operation of the Exchange's markets or to the reputation of the markets as a whole or where the applicant does not or will not comply with the Standards or with any special condition imposed upon the applicant by the Exchange.

The Exchange proposes to amend its existing right under Rule 8 to impose special conditions or delay admission to bring it in line with the Standards. It is also proposing to extend the period for which it can delay an admission from two business days to one month.

**Question 10 - Do you believe this proposal is appropriate? If not then please give reasons.**

11. *Further guidance on nominated adviser independence*

The following additional guidance is proposed:

- 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) 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) (but not a substantial shareholder) 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 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 for which the firm acts as nominated adviser during any closed period of that company; and
- When calculating an interest in a client company a nominated adviser is permitted to disregard any interest in shares pursuant to Section 209 Companies Act 1985.

**Question 11 - Do you agree with each of these proposals?**

**Question 12 - Do you agree that the proposed percentage thresholds are set at the right levels?**

**Question 13 - Do you have any other comments on the proposed changes to the AIM Rules?**

12 **Responding to the consultation**

Responses to this consultation should be sent by 4 March 2005 to:

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The Exchange will confirm the results of this consultation as soon as reasonably practical following the end of the consultation period. Final Rules detailing the changes will be available from this time and will come into effect on 1 April 2005.

The AIM Rules detailing these proposed changes are available to download in a clean and marked up version from our website:

[www.londonstockexchange.com/aimnotices](http://www.londonstockexchange.com/aimnotices)

***Hard copies of the AIM Rules (as amended) will be available by 1 July 2005.***

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Manager, AIM Regulation