



London
Stock Exchange

23 November 2009

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**STOCK EXCHANGE
AIM DISCIPLINARY NOTICE**

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**PUBLIC CENSURE –
ENVIRONMENTAL RECYCLING TECHNOLOGIES PLC**

AIM DISCIPLINARY COMMITTEE

PUBLIC CENSURE

In relation to the conduct of

ENVIRONMENTAL RECYCLING TECHNOLOGIES PLC

for

**Breach of Rules 10, 11, 17, 29, 31 and 33 of the
AIM Rules for Companies February 2007 (the “AIM Rules”)**

SUMMARY

1. The London Stock Exchange plc (the “Exchange”) of 10 Paternoster Square, London, EC4M 7LS, announces that for the reasons listed below, and having agreed with Environmental Recycling Technologies plc (“Environmental” or the “Company”) the facts and matters set out below, that on 18 November 2009 the AIM Disciplinary Committee (“ADC”) approved a consent order agreed between the above parties which imposes a public censure on Environmental.

2. These sanctions were imposed on Environmental in respect of breaches of the AIM Rules for Companies (the “AIM Rules”) during the period from July 2007 to June 2008 (the “Relevant Period”). The relevant breaches can be summarised as follows:
 - The Company raised funds in July 2007 for the purpose of paying off a significant loan (the “Loan”). Prior to this date, the Loan had been paid down by issuing shares to the lender, resulting in the dilution of existing shareholdings and market impact as the issued shares were sold by the lender following their issuance.
 - Due to uncertainty as to the outstanding amount of the Loan and the Company’s failure to meet its trading expectations in 2007, the Company did not in fact use the fundraising proceeds to pay off the Loan. Instead, the Company used the funds raised for working capital purposes and to pay off pre-existing debt (unrelated to the Loan); and continued to pay down the Loan via share issuances.
 - Throughout the Relevant Period, the Company failed to inform the market of the material underperformance of its business (compared with the prior financial period and its internal expectations), the alternative use of the placing proceeds or the continued share issuances to pay down the Loan. The Company also made certain announcements which misleadingly suggested that the Loan would be or had been repaid, when in reality the funds raised for that purpose were used for other purposes.
 - The Company failed to submit the required applications or to liaise appropriately with the Exchange regarding the admission of the issued shares to trading on AIM or to make associated announcements required under the AIM Rules.
 - The Company failed to liaise appropriately with its nomad in respect of the above matters during the Relevant Period.

BACKGROUND

3. The Company’s shares were admitted to trading on AIM on 23 October 2002. The Company (formerly known as 3DM Worldwide plc) is a developer of technologies focusing on plastic waste recycling. The Company holds the intellectual property rights to a number of technologies related to this sector.
4. On 16 May 2006 (just over a year before the matters dealt with in this censure), the Exchange issued a private warning by letter to the Company regarding breaches of the AIM Rules arising from, *inter alia*, certain non-disclosures in its admission document and later announcements (in respect of which the Company subsequently took remedial action). In response to the Exchange’s letter, the Company provided specific confirmation at the Exchange’s request that it

understood its obligations under the AIM Rules, in particular relating to disclosure requirements.

RELEVANT REGULATORY PROVISIONS

5. Under the AIM Disciplinary and Procedures Handbook (the "Handbook"), if the Exchange considers that an AIM company has breached its responsibilities under the AIM Rules, it can refer the matter to the AIM Disciplinary Committee ("ADC").
6. Pursuant to the Handbook, if the ADC finds, on the balance of probabilities, that the AIM company has breached the AIM Rules it may impose one or more of the following sanctions:
 - a fine;
 - a censure;
 - publish the fact that the AIM company has been fined and/or censured and the reasons for such fine or censure; and/or
 - cancel the admission of its AIM securities.

AIM Rules

7. Under AIM Rule 10, an AIM company must take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.
8. Under AIM Rule 11, an AIM Company must issue notification without delay of any new developments which are not public knowledge concerning a change in
 - its financial condition;
 - the performance of its business;
 - its sphere of activity; or
 - its expectation of its performancewhich, if made public, would be likely to lead to a substantial movement in the price of its AIM securities.
9. Under AIM Rule 17, an AIM company must issue notification without delay of, *inter alia*, the reason for the application for admission or cancellation of any AIM securities.
10. Under AIM Rule 29, at least three business days before the expected date of admission of further AIM securities an AIM company must submit an application form to the Exchange.
11. Under AIM Rule 31, an AIM company must, *inter alia*:
 - seek advice from its nominated adviser regarding its compliance

- with the AIM Rules whenever appropriate and take that advice into account; and
 - provide its nominated adviser with any information it reasonably requests or requires in order for the nominated adviser to carry out its responsibilities under the AIM Rules and the AIM Rules for Nominated Advisers.
12. Under AIM Rule 33, an AIM company must ensure that application is made to admit all securities within a class of AIM securities and must liaise with the Exchange concerning any change to the number of AIM securities in issue.

PARTICULARS OF BREACHES

July 2007 fundraising and subsequent announcements

- 13 On 30 July 2007, the Company released an announcement giving notice that an Extraordinary General Meeting would be held on 23 August 2007. The EGM Notice sent to shareholders in a circular stated, *inter alia*, that:
- *“The Company currently has outstanding £2,375,000 of debt due to Cornell Capital Partners Offshore LP (“Cornell”) and to Montgomery Equity Partners LP (“Montgomery”) [ie the Loan] which is subject to conversion into Ordinary Shares at Cornell’s and Montgomery’s option. Cornell and Montgomery have been, over the past 21 months, exercising their conversion rights in small tranches and then selling their shares in to the market with the result that there has been continuing downward pressure on the Company’s share price.”*
 - *“the Company has entered into conditional subscription agreements with certain existing and new shareholders to raise a total of £2.8 million with which to repay the entire debt due to Cornell and Montgomery.”*
 - *“The remaining balance due to Cornell and Montgomery is repayable, unless previously converted into equity by 29 December 2007. It is the Company’s intention that the amounts will be settled before that date but in any event, subject to the necessary approvals being granted at the EGM, no further conversions to equity by Cornell or Montgomery will occur and all of the outstanding debt will have been paid off by 29 December 2007” [emphasis added].*
14. In July 2007, Cornell and Montgomery were restructured and the assets of the two companies (including the Loan) were transferred to YA Global Investment Limited (“YA Global”). Under the terms of the

Loan, YA Global had the ability to convert existing loans into shares of the Company up to a maximum of £300,000 per week with certain price restrictions. The conversions were made solely at the instigation of YA Global and the Company had no control over these conversions provided that they fell within the parameters of the loan conversion terms.

15. On 31 July 2007, the Company announced a 'Proposed Equity Placing' which stated, *inter alia*, that *"the Company has entered into placing agreements with a number of new and existing shareholders to raise £2,800,000... The funds will be used to repay the outstanding debt due to Cornell and to Montgomery"* [emphasis added]. The announcement also repeated the statements emphasised at paragraph 13 above.
16. Between 23 August (the date of the EGM approving the placing) and 17 September 2007, the Company received the fundraising proceeds from the equity placing totalling £2,800,000.
17. On 31 August 2007, the Company released an announcement which identified that the total issued share capital was 246,698,889 shares.
18. On 1 October 2007, the Company released its Interim Results which stated, *inter alia*, that: *"The placing that was authorised at the EGM on 23 August 2007 has raised £2.8 million and provided the company with the ability to repay the YA Global loan and leave a small balance to fund ongoing business... The interim report, including the financial information contained therein, is the responsibility of, and has been approved by the directors."*

Use of the fundraising proceeds

19. The Company's 31 July and 1 October 2007 announcements identified that the proceeds from the July fundraising would be used to repay the Loan, which would leave a small amount to fund "ongoing business". At the time of the fundraising, the balance of the Loan amounted to £2,275,000 with a projected £320,000 in interest payable. The repayment of the Loan from the placing proceeds would therefore have left £205,000 of the funds available for working capital purposes.
20. Contrary to the statements in the EGM Notice sent to shareholders on 30 July 2007 and the Company's announcements on 31 July and 1 October 2007, the proceeds from the fundraising were in fact utilised as follows:
 - General working capital (including payments to creditors and salary payments): £1,173,000
 - Long outstanding debt (unrelated to the Loan): £109,000
 - Convertible loans (unrelated to the Loan): £877,000

- Product development costs: £640,000

21. The non-payment of the Loan and the Company's use of the majority of the fundraising proceeds for working capital purposes occurred, as a result of delays in quantifying the balance of the Loan still to be repaid (despite the Company's repeated attempts to confirm the outstanding balance) and the Company's trading underperformance during the second half of 2007, increasing working capital needs.

Trading underperformance

22. In the financial year ended 31 December 2006, the Company's turnover was £319,000 with an operating loss of £2,620,000.
23. As at 21 September 2007, the Company's internal forecasts estimated revenues for the 2007 financial year of £2,486,435 with an operating loss of £1,670,000. The Company did not perform as it expected, however, and the Company's turnover for 2007 only amounted to £243,000 with operating losses of £4,740,000 (ie 24% and 81% below the prior year's figures respectively).
24. The Company did not notify the market of its trading underperformance (compared to both the prior year and its internal expectations) until 1 July 2008 when it released its Preliminary Results for the year to 31 December 2007.

Share issuances

25. As a result of the non-payment of the Loan, YA Global continued its loan conversions into equity and YA Global was issued with shares on thirteen separate occasions during the Relevant Period, none of which were announced. This continued until the nomad identified certain share discrepancies in May 2008 and, following a review of the above matters, instructed the Company to release a corrective announcement on 11 June 2008 and to apply to the Exchange for admission of the issued shares to trading.
26. The announcement on 11 June 2008 stated, *inter alia*, that:

"following completion of the [July 2007] Placing the Board was unable to obtain information from Cornell and Montgomery as to the exact amounts due to them, including accrued interest and to reach an acceptable settlement with regard to the waiver of circa £300,000 as a reduction in accrued interest. The Directors were subsequently advised that Cornell and Montgomery had been restructured and the debts previously due by the Company to Cornell and Montgomery were now due to YA Global Investments Limited. As a result of the delay in making payment, there arose other circumstances which the Board considered were more important to deal with than the debt due to YA

Global Investment Limited.

...

The amount due to YA Global Investments Limited has been reduced by £725,000 through the issue of 24,123,420 shares [from 12 September 2007 to 3 June 2008].

...

Currently the outstanding amount owed to YA Global Investments Limited including estimated accrued interest, is £1,850,000 but this will continue to be reduced as YA Global Investments Limited requests further shares to be issued to it."

27. Immediately following the announcement on 11 June 2008, the Company's share price fell from 2.625p to 1.625p (a drop of 38%), before closing at 2.25p (a drop of 14%). A further corrective announcement was released on 10 July 2008 following the identification of further shares which had been issued to YA Global during the Relevant Period.

Conclusion

28. As a result of the above matters, the Company was in breach of the AIM Rules as set out below.

AIM Rule 11

29. The Company breached AIM Rule 11 by failing to notify the market that the Loan had not been paid off as previously intended and the proceeds of the July 2007 fundraising had instead been used to meet working capital needs and to pay off other outstanding debt. These matters constituted price sensitive information requiring notification under AIM Rule 11, particularly in circumstances where:
- (a) the Company had notified the market in July and October 2007 that the funds would be used to pay off the Loan;
 - (b) the consequences of not paying off the Loan were (i) issuances of shares to YA Global causing further dilution of existing shareholdings; and (ii) the subsequent sale of the issued shares by YA Global which generated downward pressure on the Company's share price.
30. The Company was also in breach of AIM Rule 11 by failing to issue notification without delay concerning its trading underperformance in the second half of 2007. Given the significant shortfall in expected revenues and the increase in operating losses for 2007 compared with the prior financial period, the Exchange considers that a trading update

should have been made before 1 July 2008, when the Company released its Preliminary Results for the year to 31 December 2007 (over 6 months after the year end).

AIM Rule 10

31. The Company breached AIM Rule 10 by failing to take reasonable care to ensure that the announcements made on 31 July 2007 and 1 October 2007 were not misleading, false or deceptive. In particular, the announcements misleadingly implied that the Loan would be or had been paid off and that no further shares would be issued in respect of the Loan.

AIM Rules 17, 29 and 33

32. Shares were issued to YA Global in respect of the Loan on thirteen separate occasions during the Relevant Period.
33. The Company breached AIM Rule 17 by failing to notify these share issuances without delay. The Company also breached AIM Rules 29 and 33 by not submitting the required applications for admission of the shares to trading on AIM and by not liaising with the Exchange regarding the change to the number of shares in issue.

AIM Rule 31

34. The Company breached AIM Rule 31 by failing to seek the advice of its nomad about the above matters. This failure contributed to the Company's breaches of the AIM Rules since the nomad was not in a position to advise the Company as to its compliance with the AIM Rules referred to in this censure.

SANCTION

35. In determining the appropriate sanction against the Company in respect of the above breaches of the AIM Rules, the following matters have been taken into account:
 - The timely release of accurate information to the market in accordance with the AIM Rules is a key requirement of AIM, as reflected in AIM Rules 10 and 11.
 - Appropriate liaison with the Company's nomad in accordance with AIM Rule 31 is also a fundamental requirement of AIM.
 - Just over a year before the matters referred to in this censure, the Exchange issued a private warning by letter to the Company regarding, *inter alia*, non-disclosures in breach of the AIM Rules. In response, the Company provided confirmation that it understood its disclosure obligations under the AIM Rules.

- The main purpose of the July 2007 fundraising was to pay off the Loan. Contrary to the Company's announcements during this period, the Loan was not paid off and shares continued to be issued in respect of the Loan (and subsequently sold) without the market being aware.
- The number, nature and duration of the breaches evidence a disregard for the AIM Rules by the Company, amounting to reckless conduct during the Relevant Period.
- Immediately following the corrective announcement on 11 June 2008, the Company's shares fell by 38% before recovering to a price which was 14% below the previous day's closing price.
- The Company's board of directors has undergone significant changes since the matters referred to in this censure took place.
- In light of the Company's financial position, the Exchange has not, in this case, sought the imposition of a fine.