

Inside AIM

Preparation for Market Abuse Regulation

On 3 July 2016, the Market Abuse Regulation (MAR) will come into force. MAR is an EU regulation which is directly applicable across all member states. MAR includes disclosure obligations for issuers admitted to trading on regulated markets or MTFs, and accordingly, will apply to AIM.

As set out in in AIM Notice 44, London Stock Exchange is consulting on changes to the AIM Rules for Companies (“the AIM Rules”) as a consequence of the introduction of MAR.

This Inside AIM sets out information to support nominated advisers as they work with their clients to prepare them for the introduction of MAR and consequent changes to the AIM Rules. The contents of this Inside AIM are based on the assumption that the proposals set out in AIM Notice 44 are implemented.

We will continue to keep the operation of our rules under review.

Overview of MAR obligations

The key disclosure obligations in MAR relate to the disclosure of inside information and disclosure of deals by persons discharging managerial responsibilities (“PDMR”) and closely associated persons. MAR will also introduce mandatory close period rules.

AIM Rule 11

The purpose of AIM Rule 11 is to maintain a fair and orderly market in securities and to ensure that all users of the market have simultaneous access to the same information in order to make investment decisions. The disclosure obligation in respect of inside information under Article 17 of MAR protects investors from market abuse (see recital 49 of MAR).

Whilst there is clearly overlap in respect of both sets of obligations, they should be considered separately. In particular, we note that “inside information” has a specific and technical definition (given its context) whereas consideration of AIM Rule 11 by an AIM company (with the guidance of its nomad) is a principles based consideration in the context of the maintenance of a fair and orderly market. Therefore, the separate disclosure tests and guidance to AIM Rule 11 must be complied with.

Importantly, compliance with MAR does not mean that an AIM company will have satisfied its obligations under the AIM Rules, just as compliance with the AIM Rules does not mean that an AIM company will have satisfied its obligations under MAR. An AIM company must comply with the AIM Rules and MAR at all times.

For example, the guidance to AIM Rule 11 which sets an expectation that an AIM

company should keep impending developments confidential under the AIM Rules would not restrict an AIM company from making such a disclosure if required under Article 17 of MAR. Equally, the ability to delay the publication of inside information under MAR would not override the disclosure obligation contained in the AIM Rules. In this regard an AIM company must consider whether it is able to delay the information pursuant to the guidance to AIM Rule 11.

An AIM company should continue to consider its AIM Rules disclosure obligations in conjunction with the advice and guidance of its nominated adviser pursuant to AIM Rule 31. It will not be a defence to a breach of the AIM Rules that the AIM company had received legal advice that it was MAR compliant. In this regard, we do not expect a different approach by AIM companies and nominated advisers to compliance with AIM Rule 11 post MAR. The AIM Rules are principles based and accordingly, as is the case currently, the consideration of AIM Rule 11 disclosure obligations should not be overly narrow or technical. We consider this approach to compliance with AIM Rules 11 and 31 is fundamental to ensuring market integrity. Failure by an AIM company to comply with AIM Rule 11 or to seek the advice and guidance of its nominated adviser (and take that guidance into account) pursuant to AIM Rule 31, will be regarded as a serious breach of the AIM Rules and may result in the London Stock Exchange taking disciplinary action in addition to our powers to suspend or cancel an admission.

Collaboration with FCA

FCA is the competent authority for MAR in the UK and its powers are contained in Article 23. Therefore, whilst FCA will have powers to intervene as competent authority and will be responsible for the investigation and enforcement of breaches of MAR, we intend to work closely with the FCA to co-ordinate our approach to obtaining any necessary information from AIM companies whilst minimising duplication of activities.

It is important for the effective overall operation of the market that real time monitoring and

management of the market continues to be undertaken by the Exchange, as market operator. In practice, where there is a query as to whether an AIM company should make a disclosure, we will continue to liaise with the AIM company's nominated adviser regarding its AIM Rules obligations and will provide the FCA with information about these discussions, where relevant to MAR. It is open to the FCA to consider an AIM company's compliance with MAR at any time.

For the avoidance of doubt, we will not be able to opine on MAR obligations/compliance. Any guidance provided by AIM Regulation in respect of disclosure will only be in relation to an AIM company's obligations under the AIM Rules.

PDMR dealings

Article 19 of MAR (PDMR transactions) contains notification requirements which will apply to issuers, PDMRs and persons closely associated with them. Article 19 will also include mandatory close period rules. Given the scope of MAR, duplicate obligations will be removed from the AIM Rules.

However, we consider it is important for the integrity of the market that AIM companies have in place systems and controls to manage these obligations. We therefore have proposed to amend AIM Rule 21 to require all AIM companies to have a dealing policy and to require nominated advisers to consider this as part of their responsibilities.

We do not intend to prescribe the detailed content of the dealing policy but we have in AIM Notice 44 set out the minimum provisions that we would expect to be included in the policy. We expect AIM companies and nominated advisers to consider the design and implementation of the policy in a meaningful way, to ensure it is capable of working in practice, taking into account the nominated adviser's knowledge of the company and its management. This obligation will be separate to an AIM company's compliance with Article 19. Accordingly, an AIM company's compliance with MAR will not mean it will have automatically satisfied its obligations under AIM Rule 21.

Insider lists

Following implementation of MAR, all AIM companies will be required to maintain a list of all those persons working for them that have access to inside information. The FCA, as competent authority for MAR in the UK will be responsible for enforcing compliance with this provision. Accordingly, AIM companies will need to implement systems and controls to comply with these obligations.

Although MAR includes provisions for issuers on SME Growth Markets to draw up a list only when requested by the regulator, the SME Growth Market regime will not come into force until MiFID II is implemented in January 2018. AIM is currently not a SME Growth Market, so AIM companies will therefore be required to comply with Article 18.