

STOCK EXCHANGE AIM DISCIPLINARY NOTICE

AD 17

14 December 2017

SECTION C2.2 NOTICE

In addition to the public censure published on 5 October 2017 via AIM Disciplinary Notice 16, London Stock Exchange (the “Exchange”) has concluded a number of disciplinary actions for breaches of the AIM Rules for Companies and AIM Rules for Nominated Advisers (“AIM Rules” or “Nomad Rules”, respectively).

The Exchange has a range of sanctions it can impose in respect of breaches of its rules including public and private censures with fines. The choice of sanctions enables the Exchange to take action that it considers reflects the circumstances of the case, deterring future behaviour, educating the market on expected standards and holding AIM companies and nominated advisers to account.

In order to provide guidance to AIM companies and nominated advisers on the expected standards of conduct, we set out below a summary of enforcement matters brought by the Exchange that were concluded as private censures and fines during 2017.

AIM Companies

Private censure and fine of £110,000 against an AIM Company

An AIM company (“the Company”) has been privately censured and fined £110,000 (discounted to £75,000 for early settlement) for breaches of the AIM Rules.

The breaches relate to a notification made by the Company regarding a transaction which involved a substantial shareholder and other related parties. Whilst the Company included in its notification a substantial amount of information regarding the transaction, the Company could have provided further detail which would have been helpful in better understanding the disclosure made. Further, as the Company did not properly apply the related party rules, no fair and reasonable opinion was provided nor disclosed in respect of the related party element of the transaction. Accordingly, the Company was found to be in breach of AIM Rules 10 and 13. The Company subsequently issued a notification updating the market.

Further, the Company did not keep the nominated adviser properly informed of the terms of the transaction in breach of AIM Rule 31 which contributed to the breaches outlined above.

Guidance to Companies

AIM companies have a primary responsibility to comply with their AIM Rules obligations. When considering disclosure, AIM companies need to ensure that the information included in any notification provides a complete picture of the matters being disclosed. Accordingly, whilst the Company determined that certain information was not material in and of itself, it did not give sufficient consideration as to whether the information was necessary to ensure that a reader of the Company’s notifications would gain a full understanding of the transaction. AIM companies should also take care to ensure that related party involvement in transactions is properly disclosed, and

should check their understanding and application of the related party rules with their nominated adviser.

This matter underlines the importance of an AIM company providing its nominated adviser with information it requires so that the nominated adviser can provide advice on the application of the AIM Rules and perform its role and meet its responsibilities to the Exchange. Had the Company provided its nominated adviser with full and accurate information regarding the transaction, the risk of the Company failing to meet certain of its disclosure obligations may have been mitigated.

The Exchange has previously emphasised that proper communication between an AIM company and its nominated adviser is a key obligation under the AIM Rules. The Exchange will continue to pursue disciplinary action, where appropriate, where AIM companies breach this fundamental rule.

Nominated Advisers

Private Censure and fine of £190,000 against a Nominated Adviser

A nominated adviser has been privately censured and fined £190,000 (discounted to £130,000 for early settlement) for breaches of the Nomad Rules.

The nominated adviser was found to have breached Nomad Rule 16 for failing to exercise due skill and care in respect of certain guidance provided to an AIM company on its AIM Rules responsibilities.

Further, it was determined that in several aspects the nominated adviser's liaison with the Exchange fell below the expected standards resulting in a breach of Nomad Rule 19 and this was compounded by failure to retain sufficient records pursuant to Nomad Rule 25.

The Exchange considers the breaches above were primarily a consequence of the nominated adviser's breach of Nomad Rule 23 by failing to maintain proper procedures, in allowing one individual to work in isolation and without sufficient oversight, governance and control. Since these events, the nominated adviser has undertaken remedial action including staffing changes and the senior management have provided assurances to the Exchange regarding its future compliance.

Private Censure and fine of £150,000 against a Nominated Adviser

A nominated adviser has been privately censured and fined £150,000 (discounted to £100,000 for early settlement) for breaches of the Nomad Rules.

The nominated adviser was found to have breached Nomad Rules 16 and 18 in failing to meet the standards required of it in respect of certain of its admission responsibilities pursuant to Schedule Three of the Nomad Rules.

The events relate to an application for admission that was ultimately withdrawn by the nominated adviser. The Exchange has determined that the nominated adviser's approach to the admission process gave rise to a risk that it did not have a sufficiently sound understanding of the applicant and its business. As a result, the nominated adviser compromised its ability to perform certain aspects of its admission responsibilities to the standards expected. This included not having completed outstanding due diligence and not having properly dealt with certain material issues arising from its due diligence, prior to submission of the Schedule One.

The nominated adviser was also found to have breached Nomad Rule 19 in relation to the quality of the information initially provided in response to certain of the Exchange's questions during the admission discussions.

Since these events, the nominated adviser has undertaken remedial action and senior management have provided assurances to the Exchange regarding future compliance.

Guidance to Nominated Advisers

Under the AIM Rules and Nomad Rules, a nominated adviser owes certain obligations solely to the Exchange. The proper performance of these obligations is important to maintain the integrity and reputation of AIM.

Liaison with the Exchange

Nomad Rule 19 is fundamental to enable the Exchange to undertake its role as market operator and to maintain standards consistently across the market. A nominated adviser's liaison with the Exchange must be open and transparent to ensure the integrity of the market. The Exchange considers any Nomad Rule 19 failing to be a serious matter given the potential impact on the Exchange's ability to undertake its work if it is not provided with full and accurate information. In circumstances where nominated advisers fail to meet the required standards for liaison with the Exchange, the Exchange will pursue disciplinary action.

Supervision and Controls

Nominated advisers are required to ensure that their procedures and controls enable them to comply with their obligations to the Exchange as required by Nomad Rule 23. This should include management supporting a robust compliance culture and maintaining an appropriate framework for the oversight, assurance and controls relating to the work of the individuals advising AIM companies.

Further, nominated advisers should be aware that failure to maintain an audit trail as required by Nomad Rule 25, is considered to be a serious breach as, amongst other matters, it has the potential to obstruct or delay the Exchange in its supervisory work.

Admission Process

Given the role of the nominated adviser in the admission process, it is of fundamental importance that it is able to meet its admission responsibilities owed to the Exchange. Accordingly, the nominated adviser must ensure the admission process is organised so as to allow it the opportunity to properly undertake its admission responsibilities. Further, whilst we ask nominated adviser firms to discuss with us relevant matters on proposed applicants as early as possible, at the time of submitting the final Schedule One, the nominated adviser must have completed its due diligence. It must also have considered, challenged and addressed the significant matters arising from its due diligence during the admission process to demonstrate, if required to by the Exchange, that any material issues arising from its due diligence have been robustly dealt with or otherwise do not affect the appropriateness of an applicant for AIM.

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

Pursuant to AIM Rule 42 if the Exchange considers that an AIM company has contravened the AIM Rules, it may take one or more of the following measures:

- 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.

Pursuant to AIM Rule 44, where the Exchange proposes to take any of the steps described in Rule 42, the Exchange will follow the procedures set out in the Disciplinary Procedures and Appeals Handbook.

AIM Rules for Nominated Advisers

Pursuant to Nomad Rule 29 if the Exchange (in accordance with the procedures set out in the Disciplinary Procedures and Appeals Handbook) considers that a nominated adviser is either in breach of its responsibilities under these rules or the AIM Rules for Companies or that the integrity and reputation of AIM has been or may be impaired as a result of its conduct or judgment, the Exchange may in relation to such nominated adviser take one or more of the following actions:

- issue a warning notice;
- levy a fine;
- issue a censure; or
- remove the nominated adviser from the register; and
- publish the disciplinary action the Exchange has taken and the reasons for that action.

AIM Disciplinary Procedures and Appeals Handbook, Section C2.2

Under this section, the Exchange retains the right to publish, without disclosing the identity of any party concerned, in part, in summary or in full the findings of the AIM Executive Panel, where the Exchange believes to do so would be of assistance to the market.