



New AIM Rules: key changes for Nomads and AIM companies

On 20 February 2007, the London Stock Exchange issued the AIM Rules for Nominated Advisers as well as changes to its AIM Rules for Companies and its AIM Disciplinary Procedures and Appeals Handbook following the consultation it launched in October 2006. The new rules came into immediate effect. This alert looks at some of the key changes for nominated advisers and AIM companies.

Background

The London Stock Exchange (the “LSE”) has been very successful at attracting both UK and overseas issuers to AIM. One reason for its attractiveness has been its approach to regulating AIM issuers, which has been relatively light. That approach has, however, drawn criticism and comment recently from various quarters in the US, though in part at least this may reflect concern at the diversion to AIM of companies which would previously have been prime candidates for a US listing. Certainly, the LSE has responded to the perceived slight over the quality of its junior market in no uncertain terms, Chief Executive Clara Furse in turn accusing the US capital markets of placing undue emphasis on the burden of the US regulatory environment post-Sarbanes Oxley as the reason for AIM's attractiveness over its US rivals.

All that said, the LSE has taken steps recently to address concerns about the quality of a small number of AIM issuers and, in some sectors, about the comparatively poor performance of certain new joiners to AIM. In March 2006, notably, the LSE issued specific guidance for AIM companies in the mining and oil & gas sectors as to the contents of their admission documents and their ongoing obligations. And the latest changes, described in this alert, are aimed at providing additional detail on the role and responsibilities of a nominated adviser (a “Nomad”) and enhancing the disclosure of core information by AIM issuers.

AIM Rules for Nominated Advisers

The new AIM Rules for Nominated Advisers contain, among other things, the eligibility requirements for Nomads and their continuing obligations.

Eligibility

This section of the new rules sets out the criteria and the process for becoming a Nomad and the continuing eligibility requirements. It incorporates the old Nominated Adviser Eligibility Criteria but with some amendments.

The criteria for becoming a Nomad have largely remained the same. The rules now include guidance on the requirement that the Nomad must have practised corporate finance for at least the last two years. The guidance states that the Nomad (or a division of it) should have practised as its principal business the provision of corporate finance advice, such as advising on public market fundraisings. There has also been some tweaking with the types of transactions that constitute “Relevant Transactions” (there being a requirement to carry out at least three of these transactions during the qualifying two year period).

The Nomad and its Qualified Executives (being, as was the case before, at least four employees of the Nomad with at least three years of suitable corporate finance experience) will have to satisfy their eligibility requirements on a continuing basis. The LSE has also introduced a requirement for Nomads to submit an annual return to the LSE which will set out the core information in relation to their work as Nomad on AIM including details of the “Relevant Transactions” they have completed in the period and the Qualifying Executives they employ. The LSE will use this information when it assesses whether a Nomad continues to be eligible. The final rules expressly allow the LSE to remove Nomad or Qualified Executive status or to impose conditions on a Nomad’s ability to act as a Nomad.

A Nomad’s continuing obligations

The responsibilities of Nomads were previously set out in the AIM Rules for Companies but have been moved to the new rules, which set out these responsibilities in much greater detail than before.

One of the main changes is to introduce a schedule of responsibilities which, according to the LSE, reflect current good market practice. Those responsibilities are phrased as high-level principles and, under each principle, there is a list of actions that the Nomad should “usually do” either during or after a company’s admission to AIM. The responsibilities have to be exercised with due skill and care and after due and careful enquiry. For example, one principle states that the Nomad should oversee and be actively involved in preparing the admission document. The actions under this principle provide, among other things, that the Nomad should usually oversee and be actively involved in the drafting of the sections of the admission document that relate to the applicant’s business and the risk factors and be satisfied that the financial and additional information sections have been appropriately prepared.

The principles must always be satisfied. The actions under each principle represent a non-exhaustive list of tasks that the LSE would usually expect a Nomad to fulfil in satisfying that principle. Other actions can be substituted to satisfy each principle or a Nomad may decide that a particular action is not appropriate.

The LSE will use these principles and actions to assess whether a Nomad has complied with the AIM Rules for Nominated Advisers and the undertakings given in a Nomad’s declaration (submitted as part of the application for admission) and they will be used during compliance visits to assess the standard of work performed by Nomads.

Action points for Nomads

A Nomad must contact the LSE if it believes that an AIM company for which it acts as Nomad is no longer appropriate for AIM. A Nomad must also advise the LSE as soon as possible if it believes that it or an AIM company has breached the AIM Rules for Companies or the AIM Rules for Nominated Advisers, and this rule is not limited to AIM companies for which the Nomad acts. Nomads will need to establish procedures for regularly monitoring their client AIM companies to check that they are still appropriate for AIM and that they are complying with the AIM Rules.

Now that the new rules apply, Nomads will need to amend their compliance and procedures manuals and should ensure that their Qualified Executives and other employees are properly trained on the new rules and on the changes to those manuals. During compliance visits in 2007, the LSE will be checking that Nomads have incorporated the final rule changes into their operating procedures. Nomads should also review engagement agreements with their client companies to see if any changes are required to reflect the new rules. Companies may want to ensure that engagement agreements oblige Nomads to comply with the new rules.

AIM Rules for Companies

Overall, the changes to these rules are not substantial and include the following items.

Additional company information disclosures on websites

A new rule 26 requires an AIM company to maintain a website from admission on which key company information is made available free of charge, including:

- a description of the company's business;
- information about the company's directors and their responsibilities;
- where the company is incorporated and the main country of operation;
- for non-UK incorporated companies, a statement that shareholders' rights may be different from shareholders' rights in a UK incorporated company;
- its current constitutional documents (e.g. its articles of association);
- the number of AIM securities (i.e. securities admitted to AIM) in issue (noting any held as treasury shares), the percentage of AIM securities that is "not in public hands" and the identity and percentage holdings of shareholders who hold three per cent. or more of the company's securities. This information must be updated at least every six months;
- details of any restrictions on the transfer of its AIM securities;
- its most recent annual report and all subsequent half-yearly, quarterly or similar reports;
- all announcements to a Regulatory Information Service ("RIS") that the company has made in the past 12 months; and
- its most recent admission document and any circulars or similar publications sent to shareholders within the past 12 months. By making these kinds of documents available, companies must be careful not to infringe overseas securities laws. Appropriate disclaimers may need to be included on the website.

This information must be kept up to date and the last date on which it was updated should be included. The information should be easily accessible from one part of the website and a statement should be included that the information is being disclosed for the purposes of rule 26. Any redirection of a user to other areas of a website or to a document included on the website should be to a specific location for that information.

Action points for AIM companies

Even though applicants and AIM companies have until **20 August 2007** to implement this requirement, they may want to start planning for it now. Companies may want to appoint a person who will be responsible for gathering and preparing the required information and who will have on-going responsibility for keeping it current. Companies that do not have a website should take steps to establish one.

Existing companies should include in an RIS announcement the website address where the information required by rule 26 is available. New companies must disclose this information in the pre-admission announcement.

Other miscellaneous changes

The LSE has made other miscellaneous changes to the AIM Rules for Companies. These include the following:

- it has been made clear that the Nomad must assess the appropriateness of an applicant for AIM (or an existing AIM company when appointed its Nomad) and advise and guide an AIM company on its responsibilities under those rules. This is also made clear in the AIM Rules for Nominated Advisers;
- AIM companies will be required to announce:
 - any change in the website address at which “rule 26 information” is available;
 - changes to the details about their directors that they are required to disclose in the admission document (for instance, unspent criminal convictions for indictable offences), whether those details were first disclosed at admission or on subsequent appointment; and
 - in certain circumstances, the admission to trading (or cancellation from trading) of their securities on any other exchange or trading platform. The LSE must also be informed;
- Japanese GAAP has been added to the list of permissible accounting standards that a non-EEA incorporated company can use to prepare its annual accounts;
- an AIM company must:
 - have in place sufficient procedures, resources and controls to enable it to comply with the AIM Rules for Companies; and
 - provide its Nomad with any information it reasonably requests or requires for it to carry out its responsibilities under the AIM Rules for Companies and the AIM Rules for Nominated Advisers (including draft RIS announcements and details of proposed changes to the board of directors); and
- additional language must be included on the front cover of an admission document which states that each AIM company must have a Nomad and that the Nomad must make a declaration to the LSE on admission. The additional language that was originally proposed has been amended following concerns from respondents that it may lead to claims against Nomads.

Certain changes have been made to the AIM Disciplinary Procedures and Appeals Handbook but, as they are not substantial, they are not discussed here.

- **If you have any questions or require specific advice on any matter discussed in this publication, please contact Eric Campbell (DDI: +44 (0)20 7782 8965 or E-mail: ecampbell@mayerbrownrowe.com) or your regular contact at Mayer, Brown, Rowe & Maw.**

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London Office: 11 Pilgrim Street, London EC4V 6RW Tel:+44(0)20 7248 4282 Fax:+44(0)20 7248 2009

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