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AIM briefing – Lessons learned from Quindell

As the SFO, FCA and FRC all investigate Quindell plc, last Thursday the LSE published an **update** to its newsletter "Inside AIM" to provide guidance on disclosures regarding equity financing products involving AIM securities in which the company or its directors are interested.

This is the type of product into which certain Quindell directors entered and about which Quindell released a correcting announcement last November, noting poignantly that their previous announcement had followed precedent from other AIM companies. Such products include:

- equity financing facilities, which provide AIM companies with a line of funding in return for equity;
- equity swap facilities ; and
- certain crowd funding products targeted at non-institutional investors.

In practice the documentation for all such arrangements will need to be disclosed to the company's advisers and nomad in advance of being entered into to ensure an appropriate announcement can be made.

The guidance addresses the following issues:

Complexity and non-standard terms

AIM companies and their nominated advisers should:

- evaluate any non-standard terms in the facilities to ensure that any information disclosed is sufficient to give a proper understanding to investors. Such disclosures are likely to require greater detail than is necessary for more common forms of financing and should properly reflect the substance of the transaction; and
- consider whether, in respect of equity financing facilities, the circumstances of a draw-down request will themselves give rise to a disclosure obligation under the AIM Rules (in addition to the actual draw-down). The guidance provides examples of matters which may be relevant to such consideration.

Disclosure of directors' share dealings

The guidance also extends to products available to directors to enable them to use their own shareholding as a means of personal financing, for example by way of share sale and repurchase agreements.

In relation to such agreements, companies should:

- evaluate the consequences of the agreements, in particular in relation to the obligations to disclose directors' dealings under the AIM Rules. As the definition of a "deal" is very broad, the nature of any directors' dealings arrangements must be clearly and fully disclosed, usually at the time that a transfer of an interest in the shares becomes binding (irrespective of the date of the transfer);
- take particular care in relation to the terminology used to describe the nature of the arrangement and consider, in particular, the transfer of voting rights; and
- make appropriate updates, for example where the director's intentions have changed or if a director does not meet a margin call that results in that director's holding in the company changing.

Systems and controls

Companies should:

- ensure that they are able to obtain from directors all the information required in order to comply with their directors' dealing notification requirements where a director enters into arrangement relating to his / her AIM company holding; and
- consider who within the company is best placed to be involved in the preparation of notifications to the market where key executive directors are involved in equity financing arrangements. Appropriate independence must be exercised when preparing a notification.

The LSE states that companies must correct any incorrect disclosures of the terms of equity financing arrangements. Companies are also reminded to consult their nomads at the earliest opportunity about proper disclosure.

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