

New AIM Rules for Nominated Advisers

Following its consultation last October, the London Stock Exchange has published its new AIM Rules with immediate effect from 20 February 2007. There are now two sets of AIM Rules: one for AIM companies and a separate rule-book for nominated advisers. The principal changes likely to be relevant to you in practice are summarised below.

Prescribed responsibilities and more detailed involvement

Schedule Three to the new Rules prescribes detailed responsibilities for NOMADs on admission, on taking on a new NOMAD role in relation to an existing AIM company and on an ongoing basis. Although the LSE has stated that these responsibilities are meant to reflect good market practice, its approach indicates a tighter regulation of NOMADs. These responsibilities include:

- assessing the appropriateness of a company and its securities for AIM (including gaining appropriate knowledge of the company's area of business and, particularly where an admission is concerned, using specialists or external experts and/or undertaking site visits if necessary);
- assessing the efficacy of the board and the suitability of directors and proposed directors of a company (including obtaining third party checks where appropriate), as well as its key managers, consultants and substantial shareholders as necessary, and ensuring that the company's directors understand their obligations under the AIM Rules for Companies;
- on taking on a new NOMAD role, being satisfied that the company has in place sufficient systems, procedures and controls in order to comply with the AIM Rules for Companies;
- on an admission, overseeing the due diligence process (including ensuring that the appropriate working capital and financial reporting systems and controls reviews are undertaken and obtaining specialist input where necessary); and
- on an admission, overseeing and having an active involvement in the preparation of the admission document (including drafting the key sections relating to the company's business).

The new Rules also prescribe ongoing responsibilities for NOMADs, such as maintaining regular contact with your clients so that you are kept up-to-date with any current or future developments, reviewing announcements prepared by your clients to ensure compliance with the AIM Rules for Companies and monitoring the trading activity in the securities of your clients. The new Rules also impose an obligation on NOMADs to contact the LSE if they have any concerns about the appropriateness of a company's continued listing post-admission.

NOMAD's declaration

The LSE had originally proposed replicating the wording of the NOMAD's declaration on the front cover of each admission document. However, due to the concerns this raised about increasing the liability of NOMADs and giving rise to frivolous claims, this proposal has been abandoned. The new Rules simply require that the front cover of an admission document states that every NOMAD is required to give a declaration to the LSE in the form set out in Schedule Two to the AIM Rules for Nominated Advisers.

As a result of the restructuring of the rules, what used to be known as a "Rule 39 Letter" from the issuer and its advisers will now effectively be a "NOMAD's declaration letter" to be given in the context of the NOMAD's declaration, which is now set out in Schedule Two to the Rules for NOMADs. As previously, this will have to be given on admission and when the NOMAD takes on a new role in relation to an existing AIM company. The NOMAD's declaration will also be judged in hindsight against the responsibilities set out in Schedule Three.

Audit trail

The new Rules emphasise the importance of retaining sufficient records to maintain an audit trail of your key discussions, advice and decisions relating to your clients. Such records should be retained whilst you continue to act as NOMAD to the relevant clients and for at least three years afterwards.

Annual returns and compliance visits

There will now be a more formulaic annual reporting procedure by NOMADs to the LSE on transactions completed and the activities of your "qualified executives". In January 2007, the LSE sent annual returns to all NOMADs for the purposes of assessing ongoing eligibility. The LSE has also stated that it intends to undertake compliance visits in respect of all NOMADs over the next couple of years.

Status and allocation of qualified executives

Any qualified executives who are the subject of regulatory disciplinary action or who no longer meet the eligibility criteria set out in the new Rules may have their qualified executive status removed. The LSE also reserves the right to conduct interviews and/or "tests" of the NOMAD and its qualified executives at any time, although it is currently unclear exactly what the LSE expects this will involve.

The draft Rules included a requirement that a NOMAD would be required to allocate at least two qualified executives in relation to each AIM company for which it acts. However, this has now been amended to require, in relation to each AIM company, the allocation of at least one qualified executive and one other "appropriately qualified" member of staff.

Moratorium and removal of nominated adviser status

Under certain circumstances, the LSE may impose a moratorium on a NOMAD, preventing it from acting as a NOMAD for any other AIM companies until the LSE is satisfied that the situation has been resolved. Under the new Rules, the LSE also has a formal power to remove NOMAD status (e.g. due to disciplinary action or failure to meet the eligibility criteria). The LSE may make any such moratorium or removal of NOMAD status public by way of an RIS announcement or by indicating this on its register of NOMADs.

LSE's greater disciplinary powers

The new Rules introduce the concept of a "warning notice", which the LSE may issue to a company or NOMAD where there has been a breach of the Rules. The warning notice is private, although the LSE reserves the right to publish details of any warning notices issued without revealing the identity of the party concerned. The cap on the fine which may be imposed on a company or NOMAD has been increased from £25,000 to £50,000 per breach.

If you require any further information on any of the changes outlined in this note, please contact Alasdair Steele on 020 7295 3000 or your usual contact at the firm. A separate note on the changes affecting AIM companies is available from our website at <http://www.traverssmith.com/whatsnew/briefings.html>.

Travers Smith

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10 Snow Hill, London EC1A 2AL

Tel: +44 (0)20 7295 3000 Fax: +44 (0)20 7295 3500

www.traverssmith.com