
AIM NOTICE

14 June 2016

AIM NOTICE 45

For the attention of all AIM companies, applicant AIM companies and nominated advisers

FEEDBACK ON AIM NOTICE 44 AND CONFIRMATION OF CHANGES TO AIM RULES

1. INTRODUCTION

On 13 April 2016, London Stock Exchange plc (the “**Exchange**”) issued AIM Notice 44 which proposed changes to the AIM Rules for Companies (the “**AIM Rules**”) and consequential changes to the AIM Rules for Nominated Advisers (the “**Nomad Rules**”) and the AIM Note for Investing Companies (the “**Note**”) in relation to the Market Abuse Regulation (“**MAR**”).

This Notice provides feedback on AIM Notice 44 and confirms the resulting rule changes.

2. FEEDBACK ON RESPONSES RECEIVED TO AIM NOTICE 44

The Exchange received eight responses to AIM Notice 44 from a range of market participants. We would like to thank everyone who responded. In addition to this consultation we have met with a number of nominated advisers and relevant industry associations.

Responses were broadly supportive of the approach we proposed in the consultation, although two respondents did disagree to our approach to AIM Rule 11, which is discussed further below.

Attached to this Notice is a statement which provides the Exchange’s feedback on areas of the proposed rule changes that attracted the most comment.

3. IMPLEMENTATION OF NEW RULES

The rule changes proposed in AIM Notice 44 will be implemented in full (save for certain consequential changes¹). The new versions of the AIM Rules, the Nomad Rules and the Note are available to download, in clean and marked-up versions, from the Exchange’s [website](#).

The revised rules will come into force on 3 July 2016 to coincide with MAR.

We will continue to keep the operation of our rules under review and in particular will monitor how they work in practice following the implementation of MAR. We will also monitor any changes in the Level 2 and Guidelines related to MAR that are made post 3 July 2016 which may require further changes to these rules.

¹ The further changes are highlighted in the AIM Rules and relate to the definition of applicable employee and guidance to rule 21. The document ‘Extract to AIM Notice 45’ details the consequential changes to the Nomad Rules and the Note.

AIM NOTICE

14 June 2016

AIM NOTICE 45

4. QUERIES ON THIS NOTICE

Queries from AIM companies on this Notice should be addressed to their nominated adviser.

Queries from nominated advisers should be sent to AIM Regulation at: aimregulation@lseg.com.

Nilam Statham
Head of AIM Regulation

AIM NOTICE

14 June 2016

AIM NOTICE 45

FEEDBACK STATEMENT IN RELATION TO AIM NOTICE 44

AIM RULES FOR COMPANIES

AIM Rule 11	<p>Two respondents commented that the AIM Rules should not retain the current AIM Rule 11 with one of them commenting that retaining AIM Rule 11 would be burdensome. Both respondents suggested that the Exchange might as an alternative simply provide for an AIM company to comply with MAR.</p> <p>We recognise that as a result of retaining this key disclosure obligation, AIM companies will be subject to the relevant AIM Rules in addition to MAR. However, we do not consider that retaining AIM Rule 11 will be overly burdensome due to the fact that: (i) we intend to work closely with the FCA to reduce any duplication of regulation and in this regard we will be sharing information on our real time discussions regarding disclosure; and (ii) the current application of AIM Rule 11 by nominated advisers and companies will not change.</p> <p>Further, we do not consider that it is a viable option to merely replicate Article 17 in the AIM Rules as suggested. This is because it is not possible to retain or exercise our enforcement powers in respect of legislation which is not within our remit. It is the FCA who is the competent authority in the UK who will determine the application of MAR and take enforcement action and it would not be appropriate or possible for the Exchange to be involved in this.</p> <p>We consider that retaining a disclosure obligation which is principles-based and which can be enforced by the Exchange, is important for the maintenance of the integrity of AIM.</p> <p>As noted previously, we will keep the operation of this rule under close review.</p>
Guidance to AIM Rule 11(e)	<p>Three respondents commented that the guidance note AIM Rule 11(e) should be aligned with Article 17(4) where an issuer may delay disclosure to the public provided certain conditions are met and/or the Exchange should provide guidance regarding circumstances when they may not align.</p> <p>Whilst we appreciate the reasons for this commentary, given that the application and interpretation of MAR is not within our remit, we cannot comment on whether in all circumstances a delay under Article 17(4) will also align with an ability to delay under AIM Rule 11. However, we anticipate that given their experience of AIM, the judgment of whether a notification may be delayed pursuant to the guidance to AIM Rule 11 should in most cases be a simple one for the company's nominated adviser to confirm. Where this is not the case, the nominated adviser is able to seek guidance from AIM Regulation as to application and interpretation of the AIM Rules. We consider this real time liaison between nominated advisers and AIM Regulation is important to the operation and integrity of the market.</p> <p>So in the circumstances where an AIM company is in possession of information which is both inside information and price sensitive information and if it is unable to delay that information under Article 17(4), the AIM company will have an obligation to notify that information under MAR. However, if an AIM company has decided that it may delay that information in accordance with Article 17(4), in parallel it must consider whether any AIM Rules exemptions also allow the AIM company to delay that information.</p> <p>For example, ESMA draft guidelines for "legitimate interests of the issuer for delaying disclosure of inside information" include a scenario where the financial viability of the</p>

AIM NOTICE

14 June 2016

AIM NOTICE 45

AIM RULES FOR COMPANIES

	<p>issuer is in grave and imminent danger and disclosure of the options to resolve this may jeopardise the conclusion of any negotiations aimed at ensuring the financial recovery of the issuer. Whilst the circumstances <i>may</i> also allow delay of disclosure under the AIM Rules, an AIM company must consider with the advice and guidance of the nominated adviser whether it <i>can</i> also delay that information under the AIM Rules. In such circumstances, the nominated adviser would usually seek the guidance of AIM Regulation in respect of the AIM Rules given the importance of preserving an orderly market in the AIM company's securities. This conversation would typically explore what disclosure had already been made about the financial problems the AIM company was experiencing, the options to resolve the financial uncertainty and how viable such options were. Importantly, the nominated adviser and the AIM company would have an understanding of AIM Regulation's guidance on the application of the rule in the particular circumstances. These discussions are also important as they inform the Exchange's determination on whether to suspend trading in that AIM company's securities.</p> <p>Given the above, we would reiterate the need for an AIM company to seek the guidance of its nominated adviser in making this determination in the context of the AIM Rules, which are principles-based and will be separate to an AIM company's consideration of MAR. As noted in Inside AIM (29 April 2016) it will not be a defence to a breach of the AIM Rules that the AIM company had received legal advice instead of consulting its nominated adviser.</p>
Definition of applicable employee	<p>Given certain commentary regarding the definition of applicable employee, the following amendment is being made:</p> <p>"for the purposes of rule 21, other than a director, who is a 'person discharging managerial responsibilities' as defined in Article 3(25) of MAR".</p>
AIM Rule 21 - Dealing policy	<p>The majority of respondents supported the new obligation for an AIM company to have a dealing policy with one noting that it 'codifies market practice'.</p> <p>One respondent however commented that should the Exchange retain AIM Rule 21 as revised, AIM companies would be subject to a higher standard than premium listed issuers, following the UKLA's decision to delete the Model Code (PS 16/13). We are cognisant of the reasons why the UKLA has determined not to retain the Model Code, however, noting the different profile and resources of premium listed issuers when compared to AIM companies, we consider it is important for AIM companies be required to establish a dealing policy that complies with minimum provisions.. This is particularly key for AIM companies, which are by their nature smaller with major shareholders also often being directors of the company.</p> <p>Further, we note that AIM companies are already required to have sufficient procedures, resources and controls under AIM Rule 31 and in this regard will have in place existing controls on close period dealings further. The new AIM Rule 21 is intended to provide high-level assistance to AIM companies to understand what should be included as a minimum. Given this, we do not consider this requirement to be disproportionate for an AIM company.</p> <p>Three respondents sought clarification as to what the Exchange means by a dealing policy that is "reasonable and effective". The design of the policy should be considered in a meaningful way, taking into account the needs of the particular company and ways to ensure that the policy is understood and applied effectively in practice. In particular, the adoption of boilerplate templates which are not tailored to</p>

AIM NOTICE

14 June 2016

AIM NOTICE 45

AIM RULES FOR COMPANIES

	<p>the company's circumstances should be avoided.</p> <p>Two respondents commented that the Exchange should allow a grace period for existing AIM companies to implement the new dealing policy noting that clarification from ESMA on certain aspects of Article 19 is still outstanding. In this regard we note that the FCA on 26 May 2016 has issued an update on its website in relation to closed periods and preliminary results which addresses some of those concerns. In any event we do not consider that clarification from ESMA should delay an AIM company having put in place a dealing policy by 3 July 2016, as we do not consider the provisions disproportionate as they reflect what is considered to be a sensible approach for AIM companies and noting that the obligations under MAR come into effect on that date.</p> <p>Finally, one respondent commented that the dealing policy requirements is not sufficiently detailed with regard to MAR terminology. However, we note that the guidance to the rule specifically requires an AIM company to consider its wider MAR obligations and accordingly, the requirement is intended to support the company with its MAR compliance by ensuring that it has a policy in place that is consistent with MAR and is appropriate for its needs.</p>
Preliminary Results	<p>As noted above the FCA has issued an update on its website in relation to closed periods and preliminary results. We welcome FCA's supervisory approach on this matter which refers to issuers (including AIM companies) which choose to publish preliminary results, whilst it awaits clarification from the European Commission and ESMA. We will consider making changes to the AIM Rules once further clarification on this point becomes available. View FCA guidance at this link.</p>
Nomad Rules	<p>One respondent commented that the Exchange should make it clear that the nominated adviser's advice and guidance under the AIM Rules for Companies should be limited to the AIM company's responsibilities and obligations under the AIM Rules and should not extend to an AIM company's obligations under MAR.</p> <p>We can confirm that the nominated adviser's responsibilities and obligations under the Nomad Rules are owed solely to the Exchange and do not extend to advising and guiding an AIM company on its obligations beyond the AIM Rules, including MAR. This is also set out in AIM Rule 1 and the guidance AIM Rule 11(b) makes clear that MAR contains separate disclosure obligations for AIM companies, and in the UK, the FCA is the competent authority for those obligations.</p>