

Minutes of the meeting held on: Thursday 27 September 2012 at 8:45am

Speechly Bircham LLP, 6 New Street Square, London EC4A 3LX

Present: Tom Shaw (in the Chair)	TS
Tim Ward	TW
Simon FT Cox	SC
Martin Kay	MK
Susan Hollingdale	SH
Maegan Morrison	MM
Stephen Hamilton	StH
Ross Bryson	RBr
Donald Stewart	DS
Ian Binnie	IB
Gary Thorpe	GT
Christian Lewis	CL
In attendance: Jaspal Sekhon (Minutes)	JSS
David Hicks	DH
Paul Arathoon	PA
Nilam Statham (Head of AIM Regulation)	NS
Marcus Stuttard (Head of AIM)	MS

ACTIONS**1. Apologies**

Apologies were received from Anthony Turner, Christopher Owen, Mebs Dossa, Carol Kilgore, June Paddock and Kate Jalbert.

2. Approve the minutes of the previous meeting (28 June 2012)

The minutes of the last meeting were approved, although some of the attendees listed in the minutes were incorrect.

3. Welcome to Nilam Statham (Head of AIM Regulation) and Marcus Stuttard (Head of AIM)

TS thanked NS and MS for attending the meeting.

NS and MS answered the points for discussion that were circulated ahead of the meeting.

General compliance

- 1. Has the recession brought any new or different challenges? Has there been any drop in the quality of companies coming to market or in Nomad conduct or any other particular issues that have been requiring more or different attention from AIM Regulation?*

MS said there were challenges on a number of levels but he did not think that the recession has had a significant impact on quality. The main challenge was one of perception, particularly in the media (for example, the high number of market cancellations). Looking at the pipeline of listings, it was clear that they are no longer looking at the same profile of small (and frankly poor) companies that were prevalent in circa 2003. The tightening up of the Nomad Rules has had a big impact in this area. Nevertheless, AIM does still see some companies which do not seem ideally suited to being public listed companies.

NS asked the committee members what their perceptions/experiences were. SC thought one of the main challenges has been around announcements, particularly timing. TS noted that quite a few fundraisings were falling over quite late in the day (e.g. at pathfinder stage) due to a lack of investor appetite. This did not really happen that much previously. MS thought that investor attitudes were leaning more towards getting to know the management teams. There is no doubt that investors have money to invest and everyone needs to ensure that the right companies are getting through.

NS said, as regards quality control on AIM, the framework still places a heavy reliance on the Nomads (i.e. the AIM Team is not pre-vetting applicants). That said, the AIM Team is still conscious about protecting the AIM “brand” so will want to look into companies and will have discussions with Nomads under Schedule 1 in order to form a high level view of a company. MS did not think that approach had changed much over AIM’s lifetime. The main purpose of the dialogue is to encourage Nomads to make sure they are comfortable with the company or particular transaction. The AIM Team are conscious that Schedule 1 is quite late in the process and they therefore encourage Nomads to come to them earlier on. Obviously if a deal is speculative or the details are too vague, it is difficult for the AIM Team to comment.

TS relayed a comment he received from a Nomad that the AIM Team had taken differing approaches to Schedule 1 for two very similar transactions. NS did not recognise that and explained that there is always some difference or nuance to be factored in which could lead to different approaches. MS said that specific circumstances can lead to different approaches (e.g. specific sectors or Nomads etc). AIM has also changed over its life from a mainly domestic market to an international one and it therefore becomes a more onerous responsibility on AIM. The challenge for AIM is that there is huge global competition and a trend for more prescriptive regulation. Whilst AIM tries to be pragmatic – for example it does not purport to be a zero-failure market – it also has to have regard to these factors and the current context. MS said that it is a difficult balance to strike. Some Nomads and individuals need to be looked at more closely or another common red flag is where convoluted structures are used. AIM recognises that Nomads should not be quasi-regulators; what makes them unique is that they should be “merchant banks” offering corporate and strategic advice.

DS asked about the approach taken with new Nomad applicants. MS said that Nomads are the gatekeepers for AIM and are fundamental to the integrity of the market and, therefore, the AIM Team sometimes have to make difficult decisions. For example, in 2005/2006, AIM was rejecting applications from some American banks on the basis that they did not understand what being a Nomad was about. AIM wants to ensure that any firm applying to be a Nomad has a long term interest, good market standing and a robust business model which allows them to be a long term player. MS pointed out that the risks are very real to the AIM Team, for example, dealing with the fallout when the Icelandic banks got into financial difficulties.

As regards change of control for Nomads, NS said that where two Nomads are merging there is less of an issue. The main focus is on integration, staffing levels, management and client lists. Where the buyer is a third party, AIM will be much more rigorous. AIM is quite clear that Nomad licences are not to be bought and sold.

SC had received some comments about a small number of trades having a very significant effect on the share price of a company and asked whether that was something that the AIM Team were looking into. NS said it is a key issue for Nomads along with liquidity, share capital structure and the investor base. It is something that AIM will discuss with Nomads during the Schedule 1 process (i.e. particularly discussions around orderly markets). AIM certainly looks out for sudden price movements. MS said that liquidity is a difficult issue. Although a low float can be an issue, it does not always mean that there will be liquidity issues. Similarly, a high technical free float does not automatically mean there is a higher level of liquidity. AIM has analysed the data and it shows that there is no correlation and, accordingly, there is no clear solution.

2. *Could you talk us through a site visit to a nomad by AIM Regulation? What questions are asked and how are files are reviewed particularly now that so much information is stored electronically?*

NS said the process is very focussed. There is a lot of desktop analysis looking at experience, staffing and general management issues. It is not a tick box exercise and the emphasis is on understanding the Nomad’s business and

offering advice and feedback. The Nomad letter will go into some detail about issues and things the Nomad could have done differently. The Nomad then goes away to digest the contents of the letter.

Site visits comprise a team of people from different disciplines (e.g. lawyers, accountants etc.) over a period of 2 or 3 days. It is a detailed and time consuming process. Nomads are given at least 3 weeks' notice of a site visit. NS said that AIM is required to pass on information to regulators (e.g. the FSA) but the FSA arrow visits are looking at different issues.

In between Nomad site visits, the AIM Team spend quite a lot of time in discussions with Nomads looking at transactions, staffing levels and other issues that would be relevant to a site visit but on an ongoing basis.

3. *Are there any general themes or lessons that should be learned from recent enforcement actions?*

NS said there have been some recent private censures and the key issues will be summarised in *Inside AIM* soon. The main issue has been around Rule 31 (companies liaising with the Nomad). Most issues could have been avoided if the company had talked to its Nomad earlier. With the public censures, 2 key issues are common. First, as regards directors' due diligence, Nomads need to ensure that the process is meaningful and that they follow through. Second, there is regular contact between the board and the Nomad and again that the Nomad follows up appropriately.

Admissions

4. *What view is the AIM team taking on the percentage of shares not in public hands at admission?*

AIM does not look at percentages per se but the key issue is making sure that Nomads are satisfied and AIM will ask questions of the Nomads. Sometimes Nomads will be asked to give specific assurances.

MK asked whether a 12 month lock-in is a blunt instrument. MS said that questions are often asked about it but it is a very valuable tool for AIM to prevent shares being dumped on the market. MS said that AIM has not carried out any analysis about what happens at the end of a lock-in period, which in itself suggests that there are no significant issues.

5. *Are there any particular sensitivities regarding overseas companies, for example background checks on directors and language skills of directors?*

This goes back to appropriateness generally. I.e. the Schedule 3 tests for a Nomad to satisfy.

6. *Does the AIM team have a view on what should be covered in agreements designed to ensure that the board operates independently of significant shareholders?*

NS said that AIM does not really get involved in that side of it but they will ask Nomads if they are satisfied that the company can operate independently of the controlling shareholder and that there is real and effective enforcement between the company and the shareholder.

7. *Are there any red light warnings that go on for proposed new admissions that make the AIM team pay particular attention to an application?*

As noted above, some Nomads and individuals need to be looked at more closely or another common red flag is where convoluted structures are used.

Rules

8. *Are any rule changes being considered?*

The AIM Rules are looked at continuously but there is no pressing need to change the rules. *Inside AIM* is not intended to amend the AIM Rules but is there to offer guidance, set out lessons learned and themes to help educate Nomads.

Policy and regulation

MS also wanted to talk about policy and regulation more generally.

MS said there is concern about short selling regulations. The general move from the European Commission has been towards securities being traded on market, electronically and centrally cleared. On 10 September 2012, the short selling regulations came into force and are designed to ensure there is no clearing backlog. The regulations do not take into account non-standard circumstances, for example, market making in the UK. AIM is working with LCH Clearnet, the FSA and market participants to find a solution. It could include a differentiated filing regime on a company-by-company basis if certain stocks should be moved outside the order book environment. MS said that about 4 years ago AIM looked at stocks outside the AIM top 50 and asked market participants if those stocks should be moved off the order book system and very few responded in favour of doing so. MS said AIM needs to make the case to the Commission that this is not a regulatory loophole but a feature of the London small-cap market.

MS highlighted recent proposals regarding technology companies and the recent 10% announcement. MS thinks the government has done a pretty good job with seed financing (e.g. EIS relief). The UK has one of the highest rates of start-ups. The challenges are that high growth and bigger companies are not as well supported. In April to June, 5 or 6 technology companies managed to raise £50m. MS is aware that some companies that have done well out of AIM are being courted to move to other international markets (particularly NASDAQ). The common theme is that there are not as many technology analysts in London and, therefore, valuations are lower. MS noted that although IPO valuations may be higher in the US, investors will sell out much quicker in times of volatility. AIM is working with the government to get a package of reforms to help to UK regain some lost ground. Some of the measures on the wish list include abolishing stamp duty for AIM companies and reducing CGT, however, these measures are not very likely to come in. However, the government is keen to show its commitment to easing the burden on SMEs, hence the 10% announcement which MS thinks has had a positive effect.

As regards the consultation PCP 2012/2, AIM has consulted on the free float requirements which will be published soon. The Premium market is unlikely to change but there might be room for flexibility for the Standard market which could provide another route to market. MS thinks there are two sticking points for high growth companies (particularly those that are VC-backed). First, free float is an issue and, second, are UK corporate governance standards. Although there is a "company or explain" system, the market expectation is that there should be more "comply" than "explain" for Premium companies. As regards the Standard market, MS did not think it was particularly well marketed by the LSE but it could still be a useful intermediate step.

TS thanked NS and MS again for attending and they left the meeting.

4. Current consultations

a) PCP 2012/1 - Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code

A separate working group made up of representatives from the Corporate Finance Advisors, Legal and Markets & Regulations Expert Groups is drafting a response.

b) PCP 2012/3 - Companies subject to the Takeover Code

The Panel is considering bringing the provisions on profit forecasts more in line with accounting and prospectus rules.

The Panel is proposing to remove the residency test, so that any company whose registered office is in the UK, Channel Islands and Isle of Man will be subject to the code.

5. Update on European Issues

{Please also refer to the update on European Legislation Reviews dated 20 September circulated ahead of the meeting}

- a) **MiFID II/MiFIR**
- b) **MAD/MAR**
- c) **European Commission Company Law Review– The Future of Company Law**
- d) **Transparency Directive**

TS requested that any consultations or issues to read up on should be circulated ahead of the next meeting. TW agreed to circulate a summary of current status, proposed new measures and timings etc.

TW/KJ

On other matters, TW reported that ESMA has set up an SME working group comprised of people such as Xavier Rolet. They have produced a report recommending certain measures to get small caps recognised as a distinct category.

MM had heard that there may be a financial services directive which is intended to sit on top of every other financial services directive but she is not sure what stage it is at.

DS reported that he was at a meeting in Lisbon with Carlos Tavares, the deputy head of ESMA and he asked him about SMEs. Worryingly, Carlos did not see any distinction between SMEs and other types of companies nor did he appreciate why they needed special treatment.

6. Communications

- a) **QCA/BDO Small and Mid-Cap Sentiment Index**

A new survey had been released and TW encouraged people to respond (<https://start.yougov.com/refer/vPDyfc9cTSHVQV>).

- b) **Corporate Governance Master Class**

This is being held on 7 November 2012 (<http://www.theqca.com/events/event-programmes/corporate-governance-master-class/>)

- c) **Guest invitations**

DS thought it might be good to invite a representative from ESMA or perhaps for a delegation to meet them in Paris.

TW said that Lloyds Development Capital attended the corporate finance expert group which was very interesting, particularly in relation to take privates. It could also be interesting for the legal expert group.

Other suggestions included:

- Fund managers

- Nomads
- Brokers who cover AIM as well as other markets.

d) Meeting dates 2013

This had been circulated ahead of the meeting

7. Review of actions from the last meeting (to the extent not already covered)

N/A

8. Any other business

None

Information for noting

- Consultation Update – Responses submitted:

None

- Next meeting(s)

- 8.45am Thursday 29 November 2012 (Venue: Speechly Bircham LLP)

9. Actions

Action	Person	Timing
Circulate a summary of current status, proposed new measures and timings etc.	TW/KJ	Ahead of next meeting