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Dear Sirs,

AIM Notice 38: AIM Rules for Companies Consultation Document (under AIM Notice 38) and AIM Rules for Nominated Advisers (under AIM Notice 38)

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance, Corporate Finance Advisors, Legal and Share Schemes Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. We generally welcome the proposed changes, as we view them as a good opportunity to adjust the AIM Rules to better deal with current issues affecting small to mid-size quoted companies. However, we believe that some areas require further attention.

We particularly welcome the amendments to Rule 26, which seeks to generate disclosure by AIM companies of their corporate governance behaviour and arrangements. We recently carried out a review with UHY Hacker Young on corporate governance behaviours, analysing a sample of 100 small and mid-size quoted companies' corporate governance disclosures on the Main List, AIM and ISDX. While we did not evaluate the disclosures qualitatively, the level of disclosure on governance issues by small and mid-size quoted companies varies widely. We hope that this AIM Rule change will help to improve the level of corporate governance behaviours and reporting by AIM companies. In our response below to the specific rules, we suggest some amendments to the precise wording of this change in order to improve the quality of disclosure.

We have addressed both consultation documents, on the AIM Rules for Companies and on the AIM Rules for Nominated Advisers, in one single response. Our response focuses on those rules which, in our view,

may raise future issues, and offers suggestions for changes where appropriate and also areas for future consultation. Other smaller corrections to the text are also provided.

A. Comments on the proposed amendments to the AIM Rules for Companies

Part One – AIM Rules

Rule 9 – Other conditions

In the first bullet point, the ''s' in 'applicant's' in line 1 should be deleted and, in the second line of the second bullet point, the first 'or' and the second comma should both be deleted.

Rule 11 – General disclosure of price sensitive information

We understand that the reference to a 'substantial' movement in price is amended to a 'significant' movement in price so to bring Rule 11 more in line with the terminology used in the Financial Services and Markets Act 2000 (FSMA). We believe that, if the AIM Rules for Companies were to use the word 'significant' but assign a meaning to it different from that of FSMA, this would lead to a worse position than the current situation where 'substantial' is a different word implying a different meaning. Therefore, we consider that bringing the definition entirely in line with the FSMA definition, including the wording of s. 118C(6) of the Act. Interpreting it in the same way would bring greater certainty to the application of the AIM Rules for Companies.

Additionally, we suggest that it would be helpful if the AIM team could provide some clarification linking the use of 'significant' to the reasonable investor test and the connected guidance provided in the Disclosure and Transparency Rules (DTR) 2.2.4 G and DTR 2.2.5 G. That would eliminate any potential ambiguity and ensure that the standard of disclosure is aligned with that required under the DTR.

With the proposed (and potentially significant) new wording, we suggest that it would be helpful to insert 'in relation to it' and 'of which it becomes aware' after the words 'new developments' in line 1.

Rule 19 – Annual accounts

We believe that the AIM team should consult on whether AIM companies could use the new Financial Reporting Standards (FRS) 100 and 102, as an alternative to the International Financial Reporting Standards (IFRS). The new FRS 100 and FRS 102 are based on IFRS for SMEs (an internationally recognised financial reporting standard), and unlike IFRS for SMEs, could potentially be used by publically accountable entities.

Rule 21 – Restriction on deals

We believe that this consultation offers a good opportunity to widen the exemptions for share schemes, and include in the AIM Rules for Companies the exemptions which Main List companies have written into the Model Code for share schemes. We believe that there is little reason for any difference in the markets, and all-employee schemes in particular should be treated similarly.

We also suggest that the AIM team ensures that the exclusions to dealing in Rule 21 are in line with the new Market Abuse Regulation, once it comes into force.

We would also welcome further clarification in the AIM Rules for Companies on the definition of a close period and director dealings. Inside AIM 4 established that directors are not allowed to deal shares until the annual report and accounts have been published in accordance with Rule 19, and if dealings are required before this, then the company must get a derogation approved by the AIM team. However, many AIM companies have historically granted share options just after they publish their preliminary statements (indeed their scheme rules may provide for this). If companies do not send out their annual report and accounts to shareholders at the same time as they issue their preliminary statements, granting awards at this time is only possible if they apply through their nominated advisers for a derogation.

We believe that it would be clearer and more straightforward for companies if the AIM rules were changed to introduce the concept of company preliminary statements (for companies that wish to produce them) and to explore what should be included in a company's preliminary statements so that a company could easily comply with AIM Rule 21, rather than each AIM company having to approach AIM individually for a derogation. We believe that this would introduce more transparency in the market and we would welcome further consultation on this issue. In this context, it is interesting to note that when a company reports quarterly or half yearly, the close period ends on announcement of these results – not when they are sent to shareholders.

Rule 26 – Company information disclosure

As noted previously, we strongly welcome the inclusion of the two new bullet points on company information disclosure obligations in Rule 26. As the QCA Corporate Governance Code for Small and Mid-Size Quoted Companies (QCA Code) becomes a widely recognised industry standard for those growing companies for which the UK Corporate Governance Code may not be appropriate, it is very rewarding to see the AIM Rules ask for the disclosure of the details of which corporate governance code the company applies and how it is being applied.

However, we propose that the wording of Rule 26, paragraph 13 is amended as follows:

> *details of the corporate governance code that the AIM company has decided to apply, how* ***and to what extent*** *the AIM company* ***applies*** *that code, or, if no code has been adopted, this should be stated* ***and the AIM company should make an appropriate statement to explain its corporate governance arrangements****.*

We believe that the wording regarding those companies who do not adopt a corporate governance code needs to be expanded to ensure that those who do not follow a corporate governance code must provide a meaningful explanation. The wording proposed under AIM Notice 38 would allow a situation in which a "code compliant" AIM company would have to provide detailed narrative on how the company complies with the relevant code, but a non-compliant company would simply have to state "no code has been adopted". We believe that it is extremely important for investors that companies who do not apply a corporate governance code are requested to disclose why they do not and what their corporate governance arrangements are.

Alternatively, this could also be addressed by changing the rule to be more outcome orientated and reflect the purpose of corporate governance as set out in the QCA Code: “if no code has been adopted explain how the AIM company’s board is composed, structured and operates to ensure that the company is

managed in a flexible, efficient and effective manner within an entrepreneurial environment to deliver growth in long-term shareholder value".

We also welcome the new requirement in Rule 26 to disclose whether the company is subject to the City Code or other Takeover Code.

Finally, we note that in the last line of the tenth bullet point the word "report" should be replaced by the word "accounts".

Rule 27 – Further admission documents

In the first bullet point, the words "under the Prospectus Rules" should be deleted.

Rule 42 – Disciplinary action against an AIM company

We believe that fining a company because a director or the board has not complied with the AIM Rules is penalising the shareholders for the faults of the director or the board and is unlikely to be justified. Similarly, cancellation of admission could unfairly prejudice shareholders and this should clearly be a last resort.

Rather than fine companies, we believe that directors ought to be censured so that there is clear risk of reputational damage for individual wrongdoing.

Rule 43 – Jurisdiction

Generally, we are uncertain as to how the AIM team intends to enforce AIM Rule 43 on overseas companies. Given that the Takeover Panel has recently considered this point and decided not to seek jurisdiction over non-UK companies due to the practical difficulty in this, we wonder what consideration the AIM team has given to the practical implications of Rule 22 and 43. We would advise the AIM team to clarify how this could be implemented.

In the fourth line "a company" should be replaced by "that company".

Schedule Three

Regarding Profits and Turnover Tests, the reference to 'consolidated' accounts has been deleted from the text and only the word 'accounts' is left. We consider this to be inconsistent with the Assets Test, where reference to the consolidated accounts remains. Also, we believe that it would be impractical as typically the AIM company (i.e. the entity admitted to trading) is the holding company of a group and would not be recognising revenue or profits in the company accounts, only in consolidated accounts.

Part Two – Guidance Notes

Guidance Note to Rule 11

In the new wording in (b) rather than the phrase "non-binding agreement", we would prefer the text to mention "non-binding arrangements". We also consider that, in the last line of paragraph (b), "to prevent the risk" is too high a standard, and we would prefer wording such as "to minimise the risk". In addition, we believe that it would be helpful if (i) expressly allowed disclosure to financiers.

Guidance Note to Rules 24 and 25

In the new text concerning open offer timetables, in the sentence which starts "For the purposes of the calculating", the word "the" before "calculating" should be deleted.

Guidance Note to Rule 40

In the fourth of the new paragraphs, there should be a comma after "suspended".

Additional Comments

We believe that the AIM Note for Investing Companies and the Note for Mining, Oil and Gas Companies and any similar additional guidance/rules should be incorporated into the AIM Rules for Companies.

B. Comments on the proposed amendments to the AIM Rules for Nominated Advisers

Part One – Nominated adviser eligibility criteria and approval process

Rule 2 – The Criteria

While only an example, the addition of 'as part of a management buyout' to paragraph 2 on the criteria for becoming a nominated adviser appears to be prejudicing the case of new applicants who are existing companies (e.g. existing broking or advisory firm, who seek to acquire a team for the purpose of gaining nominated adviser status). We believe that it is unclear if this is what the AIM team is intending or what purpose the additional wording here is seeking to achieve. We are concerned that the changes to eligibility may hinder the entry of new nominated advisers to this market.

Rule 4 – Qualified Executives

We generally welcome the changes proposed under Rule 4, since the AIM team has acknowledged the concerns of the industry, which we and other firms and organisations have been voicing. However, we believe that there are three points which could be further expanded or clarified:

- In relation to an existing Qualified Executive (QE) who has been approved as a QE for five or more years on a **continuous basis**, AIM is not clear whether a new application (e.g. one move to another nominated adviser) means that the applicant is being assessed under the first criteria again (i.e. 3 relevant transactions in 3 years), or the third criteria (i.e. 1 relevant transaction in 5 years). This comes back to how the AIM team considers a 'continuous basis'. Given that AIM would also want notification of QE departure, for example, on commencement of garden leave, then any rigid application of continuous will be breached in many cases.

- Furthermore, while we are cognisant that the AIM team does want to look at the balance of the team of QEs who are employed by a nominated adviser, the inability to transfer a QE's status places nominated adviser firms at significant commercial risk when the AIM team will also not provide guidance on pre-vetting or allow advance QE applications.

- Under the proposed amendment to Rule 4, the AIM team seeks to clarify that if an individual ceases to be an employee of a nominated adviser, that person shall cease also to be a QE and will be required to apply again in respect of his new employer. While it is appropriate for records to be

amended where QEs change firms, we consider that this should be by way of notification rather than re-application or, if re-application is required, this should be a straightforward largely administrative task. A person who, by the objective criteria set out in Rule 4, is deemed a QE at one firm should not have such status threatened due to a change of employer; we consider that this approach provides an unnecessary barrier to the free movement (subject to contractual employment terms) of personnel between firms. The AIM team's approach is at odds with that of the professional bodies and other regulators, including the approved persons regime at the FCA and the UKLA's approach to sponsor competence, and we would urge the AIM team to reconsider this aspect of the proposed rules and its practices. Clearly, the AIM Rules for Nominated Advisers should contain powers to reconsider the competence of an existing QE. However, the trigger for this should be that person's performance in a nominated adviser context, or other fitness or propriety concerns, and not as a result of a change of employer.

Rule 5 – Relevant Transactions

We consider that, in Rule 5, there is an opportunity to add to the definition of "Relevant Transaction" to include offeree advisory roles. While in many circumstances the bulk of the documentary requirement falls to an offeror (and its advisers), it would be considered under the Takeover Code that the role and function of a Rule 3 adviser might have even higher regulatory criteria as well as carrying the weight of providing advice on the offer to shareholders. This exclusion puts the emphasis on production of public documents rather that carrying out roles where there is significant regulatory duty in the provision of advice on the back of an adviser's due diligence.

At the very least, we believe that the second bullet point of the definition of "Relevant Transaction" should be expanded to allow offeree advisers to include as Relevant Transactions where they have acted on offers effected by way of scheme of arrangement, given the nature of this role and the documentation.

Additional Comments

The AIM Rules for Nominated Advisers place responsibilities on nominated advisers regarding the suitability of individual directors and the composition of boards. However, there is no corresponding duty on the company in the AIM Rules for Companies regarding the suitability of directors and the composition of boards. We believe that the two sets of rules ought to be aligned by placing an obligation on companies to have suitable boards.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Corporate Finance Advisors Expert Group

Samantha Harrison (Chairman)	RFC Ambrian Limited
Richard Evans (Deputy Chairman)	Strand Hanson Limited
David Foreman/Mark Percy	Cantor Fitzgerald Europe
Robert Darwin/Maegen Morrison	Hogan Lovells International LLP
Charles Simpson	Saffery Champness
Neil Baldwin/Mark Brady	SPARK Advisory Partners
Leighton Thomas	PricewaterhouseCoopers LLP
Richard Metcalfe	Mazars LLP
Simon Charles/David Bennett	Marriott Harrison
Sean Geraghty	Dechert
Richard Crawley	Liberum Capital Ltd
Tim Bird/Amerjit Kalirai	Field Fisher Waterhouse
James Green	K & L Gates LLP
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Martin Finnegan	Causeway Law
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Anita Skipper	Aviva Investors
Julie Stanbrook	Hogan Lovells International LLP
Nicholas Stretch	CMS Cameron McKenna LLP
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Sara Cohen	Lewis Silkin
Karen Cooper	Osborne Clarke
Rory Cray	FIT Remuneration Consultants
John Daughtrey	Equiniti
Matthew Findley	Pinsent Masons LLP
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Ross Bryson	Mishcon De Reya
Jo Chattle /Simon Cox/Julie Keefe	Norton Rose Fulbright LLP

David Davies	Bates Wells & Braithwaite LLP
Mebs Dossa	McguireWoods
David Fuller	CLS Holdings PLC
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Martin Kay	Blake Lapthorn
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June Paddock	Fasken Martineau LLP
Donald Stewart	Progility plc
Mark Taylor	Dorsey & Whitney
Anthony Turner	Farrer & Co