

London Stock Exchange  
AIM Rules for Companies  
Consultation Document (under AIM notice 38)

Submitted by email: [aimnotices@lseg.com](mailto:aimnotices@lseg.com)

3 March 2014

Dear Sirs

**ICSA response to London Stock Exchange Consultation Document  
AIM Rules for Companies and Nominated Advisers (under AIM notice 38)**

We welcome the opportunity to respond to your Consultation Document on amendments to the AIM Rules for Companies. The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body that qualifies chartered secretaries and many of our members act for AIM companies. In preparing our response we have consulted with some relevant members. However, the views expressed in this response are not necessarily those of any individual member of the ICSA, nor of the companies they represent.

**AIM Rules for Companies**

We have the following specific observations on the AIM Rules for Companies:

**Rule 19 - Annual Accounts**

We believe that the use of UK GAAP should be an alternative to IFRS for UK companies. FRS 100-102 have been specifically designed by the Financial Reporting Council for the use of quoted companies, and we believe that this alternative will allow companies to report financial information with greater clarity.

**Rule 21 – Restriction on deals**

We believe that this is an appropriate opportunity to include the exemptions to restricted trading permitted under the Financial Conduct Authority's Listing Rules Model code (<http://fshandbook.info/FS/html/handbook/LR/9/Annex1>) in the AIM Rules for Companies, particularly insofar as they apply to employee share schemes.

### **Rule 26 – Company information disclosure**

We believe that there should be specific reference in Rule 26 to the UK Corporate Governance Code and to the QCA's Corporate Governance Code, and where no code is chosen an explanation of why this is appropriate and how the company ensures the quality of its governance. This might, perhaps, be in the form "whether the AIM company has decided to apply the UK Corporate Governance Code, the QCA's Corporate Governance Code or another corporate governance code or, if the company has decided not to apply such a code, an explanation of why this decision has been made and what steps the company takes to ensure that its corporate governance is effective."

### **Rule 42 – Disciplinary action against an AIM company**

We have some concerns about the implication in Rule 42 that a company may be fined or its admission cancelled where its directors have been at fault. Given that this effectively penalises shareholders for the misdeeds of directors, we believe that it is more appropriate that action be taken, where possible, against the individual(s) concerned, with fines only being levied where shareholders as a whole have benefitted from the wrongdoing, or the Board as a whole have been at fault. IN any case, we believe that cancellation of admission should only be a last resort. We accept that there may be situations in which this is an appropriate sanction, but would ask that it be used sparingly.

We also believe that there should be some additional requirements in the AIM Rules for Companies relating to governance. For example, in the AIM Rules for Nominated Advisers, Schedule 3, Admission Responsibility 2, Ongoing Responsibility 4 and Engagement Responsibility 2 all rightly requires Nomads to consider the suitability of individual directors and the effectiveness of the board as a whole. However, there is no such corresponding requirement on the companies themselves, and we believe that there should be.

### **AIM Rules for Nominated Advisers**

We have the following specific observations on the AIM Rules for Nominated Advisers:

#### **Rule 4 – Qualified Executives**

We note that a lot of work has been done to refine the criteria for becoming a Nomad and, in particular, for becoming a Qualified Executive within a Nomad. However, much of the approval criteria relates to the individual having acted in a (lead) corporate finance role with involvement in Relevant Transactions. We are concerned that, although such experience is exactly what is appropriate for a Nomad's involvement in bringing a company to market, it is not necessarily the appropriate experience for giving good advice on the application of the AIM rules on an ongoing basis or, particularly, on advising a company on governance issues. We believe that the LSE should provide in these Rules for a separate category of Qualified Executive, who is not able to advise companies being introduced to AIM, but is able to act as an adviser for existing AIM companies. We would respectfully submit that qualification as a member of ICSA should, with appropriate experience, be regarded as sufficient qualification in that regard.

### **Schedule 3 – Nominated Adviser Responsibilities**

#### ***Admission Responsibility 2***

#### ***Ongoing Responsibility 4***

#### ***Engagement Responsibility 2***

These responsibilities all require that the Nomad consider the suitability of individual directors and the effectiveness of the board as a whole. We believe that, as part of this process, the Nomad should be required to take into consideration the latest review of board effectiveness, especially where this has been independently facilitated. We believe that such reviews when performed well can be of great assistance to the chairman, and to the Nomad, in fulfilling responsibilities regarding the composition and performance of the board. Poor quality reviews, and poor results from reviews that are not then acted upon, are both very useful indicators that a board is not operating effectively.

On a related issue, two points in the QCA's Corporate Governance Code to which we do not believe that sufficient attention is always paid is the recommendation that the Company Secretary is not also a director and that the Company Secretary should report to the Chairman rather than to the CEO or Finance Director. We believe that the combination of roles, or a potentially conflicted reporting line, can create risk by restricting the corporate governance support available to the chairman. This should also be a point that Nomads are asked to consider when assessing the effectiveness of the board.

We hope our comments are useful and if you would like to discuss any comment in more details, please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Swabey', with a large, sweeping flourish above the name.

Peter Swabey  
Policy & Research Director