



3 March 2014

Our ref: ICAEW Rep 39/14

London Stock Exchange
10 Paternoster Square
London EC4M 7LS

By email: aimnotices@lseg.com

Dear sirs

AIM RULES AND NOMAD RULES CONSULTATION

ICAEW welcomes the opportunity to comment on the consultation paper in AIM Notice 38, *AIM Rules and Nomad Rules* published by the London Stock Exchange on 27 January 2014, a copy of which is available from this [link](#).

ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.

As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.

The comments in the Appendix to this response reflect consultation with ICAEW's Corporate Finance Faculty. The faculty is responsible for ICAEW policy on corporate finance issues. Its membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, consultants, academics and brokers. The faculty provides a range of services to its members, including a monthly magazine *Corporate Financier*.

Please contact me should you wish to discuss this response.

Yours faithfully

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APPENDIX

1. We are generally supportive of the London Stock Exchange's (Exchange's) proposed amendments to the AIM rules for Companies and Nominated Advisers, subject to the exceptions described below.

Amendments to the AIM Rules for Companies

2. We believe that the proposed clarification of the Profits class test (Schedule Three, AIM Rules for Companies) will result in acquisitions being treated as reverse takeovers irrespective of the company's intention. It is the case that the clarification formalises what has been the AIM team's practice when assessing profits (or losses) for the purposes of the class tests, however we are concerned that this outcome often ignores the substance of such transactions. It would be helpful if the circumstances were indicated under which the proposed rule would be disapplied in order to reflect the true nature or form of the transaction.
3. We note that new Rule 43 on jurisdiction and the corresponding clarification in Rule 22 appear to relate to open-ended periods and wonder whether the AIM team had a maximum period in mind during which this would be practical to enforce. We would observe that advisers may not retain transaction records or pertinent information for longer than is required by law or regulation.
4. It is unclear why, under Rule 20, it remains necessary to send to the Exchange an electronic copy of all documents other than annual accounts or half-yearly reports. It would be helpful if this were explained in the guidance notes in Part Two.

Amendments to the AIM Rules for Nominated Advisers

5. The proposed relaxation of the continuing eligibility criteria for Qualifying Executives (QEs) aims to ensure that the experience and knowledge of experienced QEs who are actively involved in providing corporate finance advice to AIM companies, are not lost because of the low volume of transactions since the beginning of the financial crisis. This objective should have a positive impact on the quality of advice given to AIM companies. However we consider that the impact will be limited for the reasons described below and we propose how this might be avoided.
6. The proposed criteria for continuing eligibility of a QE do not take into account the closure and merger of firms and departures or redundancies of QEs seen in recent years. This is most evident in the 'continuous basis' requirement in Rule 4. We believe that the drafting could be improved to enable more flexibility (at the Exchange's discretion) and a 'grandfathering' of persons who have a minimum number of years' QE experience and who leave the employment of a nominated adviser, to continue as a QE without having to meet the criteria from scratch. Accordingly, we would propose amending the fourth bullet point in Rule 4 as follows:

A Qualified Executive is:

...

- in respect of an ~~existing Qualifying Executive~~ individual who has been approved as a **Qualified Executive** for five or more years ~~on a continuous basis~~, has acted in a lead **corporate finance** role on at least one **Relevant Transaction** in the last five-year period and can demonstrate to the satisfaction of the **Exchange** that they are (or have recently been) involved in an active capacity in the provision of **corporate finance** advisory work, and in relation to **AIM** in particular.

7. The definition of a 'relevant transaction' excludes transactions other than IPOs or rights issues and there has been paucity of these since 2008. We believe it would be worth considering whether the definition of 'relevant transactions' in Rule 5 might be extended to include acting for the offeree in a public company takeover where that offer is effected by a scheme of arrangement.