AIM HANDBOOK 2025

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AIM Rules for Companies

1 January 2021

AIM Rules for Companies

Introduction

AIM opened on 19 June 1995. **AIM** is a market for smaller and growing companies and is a **UK** multilateral trading facility within the meaning set out in the Handbook of the **FCA** and is a **SME growth market**. **AIM** is operated and regulated by the **Exchange** in its capacity as a Recognised Investment Exchange under Part XVIII of **FSMA 2000,** as such **AIM** is a prescribed market under **FSMA 2000**.

This document contains the AIM Rules for Companies ("these rules") which set out the rules and responsibilities in relation to **AIM companies**. Defined terms are in bold and definitions can be found in the Glossary.

AIM companies also need to comply with any relevant national law and regulation as well as certain standards and regulations where applicable, such as **MAR**, the **DTR**, the **Prospectus Regulation** and the **Prospectus Rules**.

From time to time the **Exchange** issues separate **Notes** on specific issues which may affect certain **AIM companies**. The **Notes** form part of these rules.

Where an **AIM company** has concerns about the interpretation of these rules, it should consult its **nominated adviser**.

The rules relating to the eligibility, responsibilities and disciplining of **nominated advisers** are set out in the separate rulebook, **AIM Rules for Nominated Advisers**.

The procedures relating to disciplinary and appeals matters are set out in the **Disciplinary Procedures and Appeals Handbook**.

The rules for trading **AIM securities** are set out in "Rules of the London Stock Exchange".

Part One – AIM Rules

Retention and role of a nominated adviser

1. In order to be eligible for **AIM**, an **applicant** must appoint a **nominated adviser** and an **AIM company** must retain a **nominated adviser** at all times.

   The **nominated adviser** is responsible to the **Exchange** for assessing the appropriateness of an **applicant** for **AIM**, or an existing **AIM company** when appointed as its **nominated adviser,** and for advising and guiding an **AIM company** on its responsibilities under these rules.

   The responsibilities of **nominated advisers** are set out in the **AIM Rules for Nominated Advisers.**

   If an **AIM company** ceases to have a **nominated adviser** the **Exchange** will suspend trading in its **AIM securities**. If within one month of that suspension the **AIM company** has failed to appoint a replacement **nominated adviser**, the **admission** of its **AIM securities** will be **cancelled**.

Applicants for AIM

Early notification and pre-admission announcement

2. An **applicant's nominated adviser** must submit an early notification to the **Exchange**, in the form prescribed from time to time, as soon as reasonably practicable and in any event prior to the submission of any Schedule One information.

   An **applicant** must provide the **Exchange**, at least ten **business days** before the expected date of **admission** to **AIM**, with the information specified by Schedule One. A **quoted applicant** must provide the **Exchange**, at least twenty **business days** before the expected date of **admission** to **AIM**, with the information specified in Schedule One and its supplement.

   If there are any changes to such information prior to **admission**, the **applicant** must advise the **Exchange** immediately by supplying details of such changes. Where, in the opinion of the **Exchange**, such changes result in the information being significantly different from that originally provided, the **Exchange** may delay the expected date of **admission** for a further ten **business days** (or twenty **business days** in the case of a **quoted applicant**).

   The **Exchange** will **notify RNS** of information it receives under this rule.

Admission document

3. An **applicant** must produce an **admission document** disclosing the information specified by Schedule Two.

   An **applicant** must take reasonable care to ensure that the information contained in the **admission document** is, to the best of the knowledge of the **applicant**, in accordance with the facts and contains no omission likely to affect the import of such information.

A **quoted applicant** is not required to produce an **admission document** unless it is required to publish a **Prospectus** in relation to the issue of **AIM securities** which are the subject of **admission**.

Omissions from admission documents

4. The **Exchange** may authorise the omission of information from an **admission document** (other than a **Prospectus**) of an **applicant** where its **nominated adviser** confirms that:

   — the information is of minor importance only and not likely to influence assessment of the **applicant's** assets and liabilities, financial position, profits and losses and prospects; or

   — disclosure of that information would be seriously detrimental to the **applicant** and its omission would not be likely to mislead investors with regard to facts and circumstances necessary to form an informed assessment of the **applicant's** securities.

Application documents

5. At least three **business days** before the expected date of **admission**, an **applicant** must submit to the **Exchange** a completed **application form** and an electronic version of its **admission document**. These must be accompanied by the **nominated adviser's declaration** required by the **AIM Rules for Nominated Advisers**.

   At least three **business days** before the expected date of **admission**, a **quoted applicant** must submit to the **Exchange** an electronic version of its latest annual accounts and a completed **application form**. These must be accompanied by the **nominated adviser's declaration** required by the **AIM Rules for Nominated Advisers**.

   The **AIM fee** will be invoiced to the **applicant** and should be paid pursuant to rule 37.

Admission to AIM

6. **Admission** becomes effective only when the **Exchange** issues a **dealing notice** to that effect.

Special conditions for certain applicants

Lock-ins for new businesses

7. Where an **applicant's** main activity is a business which has not been independent and earning revenue for at least two years, it must ensure that all **related parties** and **applicable employees** as at the date of **admission** agree not to dispose of any interest in its securities for one year from the **admission** of its securities.

   This rule will not apply in the event of an intervening court order, the death of a party who has been subject to this rule or in respect of an acceptance of a takeover offer for the **AIM company** which is open to all **shareholders**.

Investing companies

8. Where the **applicant** is an **investing company**, a condition of its **admission** is that it raises a minimum of £6 million in cash via an equity fundraising on, or immediately before, **admission**.

   An **investing company** must state and follow an **investing policy**.

   An **investing company** must seek the prior consent of its **shareholders** in a general meeting for any material change to its **investing policy**.

Where an **investing company** has not substantially implemented its **investing policy** within eighteen months of **admission**, it should seek the consent of its **shareholders** for its **investing policy** at its next annual general meeting and on an annual basis thereafter, until such time that its **investing policy** has been substantially implemented.

Other conditions

9. Where matters are brought to the attention of the **Exchange** which could affect an **applicant's** appropriateness for **AIM**, it may refuse an **admission** to **AIM**, delay an **admission to AIM** and/or make the **admission** of an **applicant** subject to special conditions. The **Exchange** will inform the **applicant's nominated adviser** and may **notify RNS** that it has asked the **applicant** and its **nominated adviser** to undertake further due diligence.

   Circumstances where the **Exchange** is likely to refuse an **admission** to **AIM** include where it considers that**:**

   — the **applicant** does not or will not comply with any special condition which the **Exchange** considers appropriate and of which the **Exchange** has informed the **applicant's nominated adviser**; or

   — the **applicant's** situation is such that **admission** may be detrimental to the orderly operation, the reputation and/or integrity of **AIM**.

   Admission to **AIM** is at the **Exchange's** discretion. No **applicant** has a right for its securities to be **admitted** to trading on **AIM** even if it meets the requirements of Part One of these rules.

Principles of disclosure

10. The information which is required by these rules must be **notified** by the **AIM company** no later than it is published elsewhere. An **AIM company** must retain a **Regulatory Information Service** provider to ensure that information can be **notified** as and when required.

    An **AIM company** must take reasonable care to ensure that any information it **notifies** is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.

    It will be presumed that information **notified** to a **Regulatory Information Service** is required by these rules or other legal or regulatory requirement, unless otherwise designated.

General disclosure of price sensitive information

11. An **AIM company** must issue **notification** without delay of any new developments which are not public knowledge which, if made public, would be likely to lead to a significant movement in the price of its **AIM securities**. By way of example, this may include matters concerning a change in:

    — its financial condition;

    — its sphere of activity;

    — the performance of its business; or

    — its expectation of its performance.

Disclosure of corporate transactions

Substantial transactions

12. A substantial transaction is one which exceeds 10% in any of the **class tests**. It includes any transaction by a subsidiary of the **AIM company** but excludes any transactions of a revenue nature in the ordinary course of business and transactions to raise finance which do not involve a change in the fixed assets of the **AIM company** or its subsidiaries.

    An **AIM company** must issue **notification** without delay as soon as the terms of any substantial transaction are agreed, disclosing the information specified by Schedule Four.

Related party transactions

13. This rule applies to any transaction whatsoever with a **related party** which exceeds 5% in any of the **class tests**.

    An **AIM company** must issue **notification** without delay as soon as the terms of a transaction with a **related party** are agreed disclosing:

    — the information specified by Schedule Four;

    — the name of the **related party** concerned and the nature and extent of their interest in the transaction; and

    — a statement that with the exception of any **director** who is involved in the transaction as a **related party**, its **directors** consider, having consulted with its **nominated adviser**, that the terms of the transaction are fair and reasonable insofar as its **shareholders** are concerned.

Reverse takeovers

14. A reverse takeover is any acquisition or acquisitions in a twelve month period which for an **AIM company** would:

    — exceed 100% in any of the **class tests**; or

    — result in a fundamental change in its business, board or voting control; or

    — in the case of an **investing company**, depart materially from its **investing policy** (as stated in its **admission document** or approved by **shareholders** in accordance with these rules).

    Any agreement which would effect a reverse takeover must be:

    — conditional on the consent of its **shareholders** being given in general meeting;

    — **notified** without delay disclosing the information specified by Schedule Four and insofar as it is with a **related party**, the additional information required by rule 13; and

    — accompanied by the publication of an **admission document** in respect of the proposed enlarged entity and convening the general meeting.

    Where **shareholder** approval is given for the reverse takeover, trading in the **AIM securities** of the **AIM company** will be **cancelled**. If the enlarged entity seeks **admission**, it must make an application in the same manner as any other **applicant** applying for **admission** of its securities for the first time.

Fundamental changes of business

15. Any disposal by an **AIM company** which, when aggregated with any other disposal(s) over the previous twelve months, exceeds 75% in any of the **class tests,** is deemed to be a disposal resulting in a fundamental change of business and must be:

    — conditional on the consent of its **shareholders** being given in general meeting;

    — **notified** without delay disclosing the information specified by Schedule Four and insofar as it is with a **related party**, the additional information required by rule 13; and

    — accompanied by the publication of a circular containing details of the disposal and any proposed change in business together with the information specified above and convening the general meeting.

    Divestment or Cessation

    — Where the effect of a disposal is to divest the **AIM company** of all, or substantially all, of its trading business, activities or assets; and/or
    — Where an **AIM company** takes any other action, the effect of which is that it will cease to own, control or conduct all, or substantially all, of its existing trading business, activities or assets (in which case such action should be **notified** without delay and include all relevant information that **shareholders** may require)

    upon completion of the disposal or action, the **AIM company** will be regarded as an **AIM Rule 15 cash shell**.

    Within six months of becoming an **AIM Rule 15 cash shell**, the **AIM company** must make an acquisition or acquisitions which constitutes a reverse takeover under rule 14. For the purposes of this rule only, becoming an **investing company** pursuant to rule 8 (including the associated raising of funds as specified in rule 8) will be treated as a reverse takeover and the provisions of rule 14 will apply including the requirement to publish an admission document.

    Where an **AIM company** became an **investing company** (pursuant to rule 15) prior to 1 January 2016, the requirements of rule 15 set out in the AIM Rules for Companies (May 2014) will continue to apply. Accordingly, if such a company does not make an acquisition or acquisitions which constitutes a reverse takeover under rule 14 or otherwise fails to implement its **investing policy** to the satisfaction of the **Exchange** within twelve months of becoming an **investing company** in accordance with that rule, the **Exchange** will suspend trading in the **AIM securities** pursuant to rule 40.

Aggregation of transactions

16. Transactions completed during the twelve months prior to the date of the latest transaction must be aggregated with that transaction for the purpose of determining whether rules 12, 13, 14 and/or 19 apply where:

    — they are entered into by the **AIM company** with the same **person** or **persons** or their **families**; or

    — they involve the acquisition or disposal of securities or an interest in one particular business; or

    — together they lead to a principal involvement in any business activity or activities which did not previously form a part of the **AIM company**'s principal activities.

Disclosure of miscellaneous information

17. An **AIM company** must issue **notification** without delay of:

- any **relevant changes** to any **significant shareholders**, disclosing, insofar as it has such information, the information specified by Schedule Five;
- the resignation, dismissal or appointment of any **director**, giving the date of such occurrence and for an appointment, the information specified by Schedule Two paragraph (g) and any shareholding in the company;
- any change in its accounting reference date;
- any change in its registered office address;
- any change in its legal name;
- any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in the **admission document** or otherwise made public on its behalf;
- any decision to make any payment in respect of its **AIM securities** specifying the net amount payable per security, the payment date and the **record date**;
- the reason for the application for **admission** or **cancellation** of any **AIM securities** and consequent number of **AIM securities** in issue;
- the occurrence and number of shares taken into and out of treasury, as specified by Schedule Seven;
- the resignation, dismissal or appointment of its **nominated adviser** or **broker**;
- any change in the website address at which the information required by rule 26 is available;
- any subsequent change to the details disclosed pursuant to sub-paragraphs (iii) to (viii) inclusive of paragraph (g) of Schedule Two, whether such details were first disclosed at **admission** or on subsequent appointment;
- the admission to trading (or cancellation from trading) of the **AIM securities** (or any other securities issued by the **AIM company**) on any other exchange or trading platform, where such admission or cancellation is at the application or agreement of the **AIM company.** This information must also be submitted separately to the **Exchange**.

Half-yearly reports

18. An **AIM company** must prepare a half-yearly report in respect of the six month period from the end of the financial period for which financial information has been disclosed in its **admission document** and at least every subsequent six months thereafter (apart from the final period of six months preceding its accounting reference date for its annual audited accounts). All such reports must be **notified** without delay and in any event not later than three months after the end of the relevant period.

The information contained in a half-yearly report must include at least a balance sheet, an income statement, a cash flow statement and must contain comparative figures for the corresponding period in the preceding financial year (apart from the balance sheet which may contain comparative figures from the last balance sheet **notified**). Additionally the half-yearly report must be presented and prepared in a form consistent with that which will be adopted in the **AIM company's** annual accounts having regard to the accounting standards applicable to such annual accounts.

Annual accounts

19. An **AIM company** must publish annual audited accounts which must be sent to its **shareholders** without delay and in any event not later than six months after the end of the financial year to which they relate.

An **AIM company** incorporated in the **UK** or an **EEA country** must prepare and present these accounts in accordance with **International Accounting Standards**. Where, at the end of the relevant financial period, such company is not a parent company, it may prepare and present such accounts either in accordance with **International Accounting Standards** or in accordance with the accounting and company legislation and regulations that are applicable to that company due to its country of incorporation.

An **AIM company** which is not incorporated in either the **UK** or an **EEA country** must prepare and present these accounts in accordance with either:

— International Accounting Standards;

— US Generally Accepted Accounting Principles;

— Canadian Generally Accepted Accounting Principles;

— Australian International Financial Reporting Standards (as issued by the Australian Accounting Standards Board); or

— Japanese Generally Accepted Accounting Principles.

The accounts produced in accordance with this rule must provide disclosure of:

— any transaction with a **related party**, whether or not previously disclosed under these rules, where any of the **class tests** exceed 0.25% and must specify the identity of the **related party** and the consideration for the transaction; and

— details of **directors' remuneration** earned in respect of the financial year by each **director** of the **AIM company** acting in such capacity during the financial year.

Publication of documents sent to shareholders

20. Any document provided by an **AIM company** to its **shareholders**, must be made available pursuant to rule 26 without delay, and its provision must be **notified**.

An electronic copy of any such document must be sent to the **Exchange**.

Dealing policy

21. An **AIM company** must have in place from **admission** a reasonable and effective dealing policy setting out the requirements and procedures for **directors**' and **applicable employees** dealings in any of its **AIM securities**. At a minimum, an **AIM company's** dealing policy must set out the following:

— the **AIM company's** close periods during which **directors** and **applicable employees** cannot deal;

— when a **director** or **applicable employee** must obtain clearance to deal in the **AIM securities** of the **AIM company**;

— an appropriate person(s) within the **AIM company** to grant clearance requests;

— procedures for obtaining clearance for dealing;

— the appropriate timeframe for a **director** or **applicable employee** to deal once they have received clearance;

— how the **AIM company** will assess whether clearance to deal may be given; and

— procedures on how the **AIM company** will **notify** deals required to be made public under **MAR**.

Provision and disclosure of information

22. The **Exchange** may require an **AIM company** to provide it with such information in such form and within such limit as it considers appropriate. The **Exchange** may also require the **AIM company** to publish such information.

    For the avoidance of doubt, where the **Exchange** has jurisdiction pursuant to rule 43, rule 22 shall continue to apply to a company which ceases to have a class of securities **admitted** to trading on **AIM**, as if it were an **AIM company**.

23. The **Exchange** may disclose any information in its possession as follows:

    — to co-operate with any **person** responsible for supervision or regulation of financial services or for law enforcement;

    — to enable it to discharge its legal or regulatory functions, including instituting, carrying on or defending proceedings; or

    — for any other purpose where it has the consent of the **person** from whom the information was obtained and, if different, the **person** to whom it relates.

Corporate action timetables

24. An **AIM company** must inform the **Exchange** in advance of any **notification** of the timetable for any proposed action affecting the rights of its existing **shareholders**.

25. Any amendments to the timetable proposed by the **AIM company**, including amendment to the publication details of a **notification**, must be immediately disclosed to the **Exchange**.

Company information disclosure

26. Each **AIM company** must from **admission** maintain a website on which the following information should be available, free of charge:

    — a description of its business and, where it is an **investing company**, its **investing policy** and details of any **investment manager** and/or key personnel;

    — its country of incorporation and main country of operation;

    — its current constitutional documents (e.g. its articles of association);

    — details of any other exchanges or trading platforms on which the **AIM company** has applied or agreed to have any of its securities (including its **AIM securities**) admitted or traded;

    — the number of **AIM securities** in issue (noting any held as **treasury shares**) and, insofar as it is aware, the percentage of **AIM securities** that is **not in public hands**

together with the identity and percentage holdings of its **significant shareholders.** This information should be updated at least every 6 months and the website should include the date on which this information was last updated;

— details of any restrictions on the transfer of its **AIM securities**;

— the annual accounts published pursuant to rule 19 for the last three years or since **admission**, whichever is the lesser, and all half-yearly, quarterly or similar reports published since the last annual accounts pursuant to rule 18, and from 3 January 2018 the annual accounts published (on or after that date) pursuant to rule 19 and all half-yearly, quarterly or similar reports published (on or after that date) pursuant to rule 18 must be posted and maintained on its website for a period of at least five years;

— all **notifications** the **AIM company** has made in the past 12 months. An **AIM company** must also post and maintain on its website for a period of at least five years all inside information it is required to disclose publicly by **MAR** on or after 3 January 2018;

— its most recent **admission document** together with any circulars or similar publications sent to **shareholders** within the past 12 months and for a period of at least five years any **Prospectus** it has published on or after 3 January 2018;

— details of a recognised corporate governance code that the board of directors of the **AIM company** has decided to apply, how the **AIM company** complies with that code, and where it departs from its chosen corporate governance code an explanation of the reasons for doing so. This information should be reviewed annually and the website should include the date on which this information was last reviewed;

— the names of its **directors** and brief biographical details of each, as would normally be included in an **admission document**;

— a description of the responsibilities of the members of the board of **directors** and details of any committees of the board of **directors** and their responsibilities;

— where the **AIM company** is not incorporated in the **UK**, a statement that the rights of **shareholders** may be different from the rights of **shareholders** in a **UK** incorporated company;

— whether the **AIM company** is subject to the UK City Code on Takeovers and Mergers, or any other such legislation or code in its country of incorporation or operation, or any other similar provisions it has voluntarily adopted; and

— details of its **nominated adviser** and other key advisers (as might normally be found in an **admission document**).

Further issues of securities following admission

Further admission documents

27. A further **admission document** will be required for an **AIM company** only when it is:
    — required to issue a **Prospectus** under the **Prospectus Regulation** for a further issue of **AIM securities**; or
    — seeking **admission** for a new class of securities; or
    — undertaking a reverse takeover under rule 14.

Omissions from further admission documents

28. The **Exchange** may authorise the omission of information from further **admission documents** (other than a **Prospectus**) in the same circumstances as for an **applicant**

under rule 4.

In addition, an **AIM company** may omit the information required by section 18 of **Annex 1** from any further **admission document** (other than a **Prospectus**) provided that the **AIM company** has been complying with the requirements of these rules.

In such circumstances, the **nominated adviser** to an **AIM company** must confirm to the **Exchange** in writing that equivalent information is available publicly by reason of the **AIM company's** compliance with these rules.

Applications for further issues

29. At least three **business days** before the expected date of **admission** of further **AIM securities** an **AIM company** must submit an **application form** and, where required by rule 27, an electronic version of any further **admission document**.

    Where an **AIM company** intends to issue **AIM securities** on a regular basis, the **Exchange** may permit **admission** of those securities under a **block admission** arrangement.

    Under a **block admission** an **AIM company** must **notify** the information required in Schedule Six every six months.

Language

30. All **admission documents**, any documents sent to **shareholders** and any information required by these rules must be in English.

AIM company and directors' responsibility for compliance

31. An **AIM company** must:
    - have in place sufficient procedures, resources and controls to enable it to comply with these rules;
    - seek advice from its **nominated adviser** regarding its compliance with these rules whenever appropriate and take that advice into account;
    - provide its **nominated adviser** with any information it reasonably requests or requires in order for that **nominated adviser** to carry out its responsibilities under these rules and the **AIM Rules for Nominated Advisers**, including any proposed changes to the board of **directors** and provision of draft **notifications** in advance;
    - ensure that each of its **directors** accepts full responsibility, collectively and individually, for its compliance with these rules; and
    - ensure that each **director** discloses to the **AIM company** without delay all information which the **AIM company** needs in order to comply with rule 17 insofar as that information is known to the **director** or could with reasonable diligence be ascertained by the **director**.

Ongoing eligibility requirements

Transferability of shares

32. An **AIM company** must ensure that its **AIM securities** are freely transferable except where:
    - in any jurisdiction, statute or regulation places restrictions upon transferability; or

— the **AIM company** is seeking to limit the number of **shareholders** domiciled in a particular country to ensure that it does not become subject to statute or regulation.

Securities to be admitted

33. Only securities which have been unconditionally allotted can be **admitted** as **AIM securities**.

    An **AIM company** must ensure that application is made to **admit** all securities within a class of **AIM securities**.

34. *[Deleted pursuant to AIM Notice 27]*

Retention of a broker

35. An **AIM company** must retain a **broker** at all times.

Settlement

36. An **AIM company** must ensure that appropriate settlement arrangements are in place. In particular **AIM securities** must be eligible for electronic settlement.

General

37. An **AIM company** must pay **AIM fees** set by the **Exchange** as soon as such payment becomes due.

38. Details of an **AIM company** contact, including an e-mail address, must be provided to the **Exchange** at the time of the application for **admission** and the **Exchange** must be immediately informed of any changes thereafter.

Nominated advisers

39. A **nominated adviser** must comply with the **AIM Rules for Nominated Advisers**.

Maintenance of orderly markets

Precautionary Suspension

40. The **Exchange** may suspend the trading of **AIM securities** where:
    — trading in those securities is not being conducted in an orderly manner;
    — it considers that an **AIM company** has failed to comply with these rules;
    — the protection of investors so requires; or
    — the integrity and reputation of the market has been or may be impaired by dealings in those securities.

    Suspensions are effected by a **dealing notice**.

Cancellation

41. An **AIM company** which wishes the **Exchange** to **cancel admission** of its **AIM securities** must **notify** such intended **cancellation** and must separately inform the **Exchange** of its preferred **cancellation** date at least twenty **business days** prior to such date and save where the **Exchange** otherwise agrees, the **cancellation** shall be conditional upon the consent of not less than 75% of votes cast by its **shareholders** given in a general meeting.

The **Exchange** will **cancel** the **admission** of **AIM securities** where these have been suspended from trading for six months.

Cancellations are effected by a **dealing notice**.

Sanctions and appeals

Sanctions against an AIM company

42. If the **Exchange** considers that an **AIM company** has contravened these rules, it may take one or more of the following measures in relation to such **AIM company**:
    - issue a **warning notice**;
    - fine it;
    - censure it; or
    - cancel the admission of its **AIM securities**; and
    - publish the fact that it has been fined or censured and the reasons for that action.

Jurisdiction

43. When an **AIM company** ceases to have a class of securities **admitted** to trading on **AIM**, the **Exchange** retains jurisdiction over the company for the purpose of investigating and taking disciplinary action in relation to breaches or suspected breaches of these rules at a time when that company was an **applicant** or had a class of securities **admitted** to trading on **AIM**.

Disciplinary process

44. The **Exchange** will take any proposed disciplinary action against an **AIM company** in accordance with the **Disciplinary Procedures and Appeals Handbook**.

Appeals

45. Any decision of the **Exchange** in relation to these rules may be appealed in accordance with the **Disciplinary Procedures and Appeals Handbook**.

Schedule One

Pursuant to rule 2, an **applicant** or **quoted applicant** must provide the **Exchange** with the following information:

(a) its name;

(b) its country of incorporation;

(c) its registered office address and, if different, its trading address;

(d) the website address at which the information required by rule 26 will be available:

(e) a brief description of its business (including its main country of operation) or in the case of an **investing company**, details of its **investing policy**. If the **admission** is being sought as a result of a reverse takeover under rule 14, this should be stated;

(f) the number and type of securities in respect of which it seeks **admission** and detailing the number and type of securities to be held as **treasury shares**, including details of any restrictions as to transfer of the securities;

(g) the capital to be raised on **admission**, if applicable, and its anticipated market capitalisation on **admission**;

(h) the percentage of **AIM securities not in public hands** at **admission** (insofar as it is aware) and details of any other exchange or trading platform on which the **AIM securities** (or any other securities of the company) are or will be **admitted** or traded as a result of an application or agreement of the **applicant**;

(i) the full names and functions of its **directors** and proposed **directors** (underlining the first name by which each is known or including any other name by which each is known);

(j) insofar as is known to it, the full name of any **significant shareholder** before and after **admission**, together with the percentage of each such **person's** interest (underlining the first name by which each is known or including any other name by which each is known in the case of individuals);

(k) the names of any **persons** who will be disclosed in the **admission document** under Schedule Two, paragraph (h);

(l) its anticipated accounting reference date, the date to which it has prepared the main financial information in its **admission document** and the dates by which it must publish its first three reports as required by rules 18 and 19;

(m) its expected **admission** date;

(n) the name and address of its **nominated adviser** and **broker(s)**;

(o) (other than in the case of a **quoted applicant**) details of where any **admission document** will be available with a statement that this will contain full details about the **applicant** and the **admission** of its securities; and

(p) the corporate governance code the board of directors of the **applicant** has decided to apply.

Supplement to Schedule One, for quoted applicants only

A **quoted applicant** must in addition provide the **Exchange** with the following information:

(a) the name of the **AIM Designated Market** upon which its securities have been traded;

(b) the date from which its securities have been so traded;

(c) confirmation that, following due and careful enquiry, it has adhered to any legal and regulatory requirements involved in having its securities traded upon such market or details of where there has been any breach;

(d) a website address where any documents or announcements which it has made public over the last two years (in consequence of having its securities so traded) are available;

(e) details of its intended strategy following **admission** including, in the case of an **investing company**, details of its **investing policy**;

(f) a description of any significant change in financial or trading position of the **quoted applicant** which has occurred since the end of the last financial period for which audited statements have been published;

(g) a statement that its **directors** have no reason to believe that the working capital available to it or its group will be insufficient for at least twelve months from the date of its **admission**;

(h) details of any lock-in arrangements pursuant to rule 7;

(i) a brief description of the arrangements for settling transactions in its securities;

(j) a website address detailing the rights attaching to its securities;

(k) information equivalent to that required for an **admission document** which is not currently public, including any information that would be required as part of an **admission document** by the **Notes**;

(l) a website address of a page containing its latest published annual accounts which must have a financial year end not more than nine months prior to **admission**. The annual accounts must be prepared in accordance with rule 19. Where more than nine months have elapsed since the financial year end to which the latest published annual accounts relate, a website address of a page containing a set of interim results covering the period from the financial year end to which the latest published annual accounts relate and ending no less than six months from that date;

(m) the number of each class of securities held as **treasury shares**.

Schedule Two[1]

A company which is required to produce an **admission document** must ensure that document discloses the following:

(a) Information equivalent to that which would be required by **Annexes 1, 11** and **20** other than the information specified in paragraph (b)(i) below and as amended by paragraph (b)(ii) below, unless a **Prospectus** is required in accordance with the **Prospectus Regulation** in which case paragraphs (b)(i) and (ii) below shall not apply;

(b) (i) the information referred to in paragraph (a) above is as follows:

Annex 1:

— The Competent Authority approval information required under sub-section 1.5;

— Operating and Financial Review (Section 7);

— Capital Resources (Section 8);

— Profit Forecasts or Estimates (Section 11) (NB - Paragraph (d) below continues to apply);

— Administrative, Management and Supervisory Bodies and Senior Management (Section 12). (NB - Paragraph (g) below continues to apply);

— Remuneration and Benefits (section 13);

— The audit and remuneration committee information required under sub-section 14.3;

— Pro forma financial information (sub-section 18.4);

— Documents Available (section 21);

— The information required under sub-section 15.2 of **Annex 1** with respect to persons other than **directors**.

Annex 11:

— The Competent Authority approval information required under sub-section 1.5;

— Working capital statement (sub-section 3.1). (*NB - Paragraph (c) below continues to apply*);

— Capitalisation and indebtedness (sub-section 3.2);

— Interest of natural and legal persons involved in the issue/offer (sub-section 3.3);

— Terms and Conditions of the Offer of Securities to the Public (section 5);

— Admission to Trading and Dealing Arrangements (section 6);

Annex 20:

— Annex 20 in its entirety.

[1] Schedule Two (and corresponding **Annex** references) updated with effect from 21 July 2019 pursuant to AIM Notice 56

(ii) the information required by paragraph (a) above is amended as follows: the information required by section 18 of **Annex 1** must be presented in accordance with one of the applicable standards set out in rule 19.

(c) a statement by its **directors** that in their opinion having made due and careful enquiry, the working capital available to it and its group will be sufficient for its present requirements, that is for at least twelve months from the date of **admission** of its securities;

(d) where it contains a profit forecast, estimate or projection (which includes any form of words which expressly or by implication states a minimum or maximum for the likely level of profits or losses for a period subsequent to that for which audited accounts have been published, or contains data from which a calculation of an approximate figure for future profits or losses may be made, even if no particular figure is mentioned and the words "profit" or "loss" are not used):

(i) a statement by its **directors** that such forecast, estimate or projection has been made after due and careful enquiry;

(ii) a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast, estimate or projection. The assumptions must be readily understandable by investors and be specific and precise;

(iii) confirmation from the **nominated adviser** to the **applicant** that it has satisfied itself that the forecast, estimate or projection has been made after due and careful enquiry by the **directors** of the **applicant**; and

(iv) such profit forecast, estimate or projection must be prepared on a basis comparable with the historical financial information;

(e) on the first page, prominently and in bold, the name of its **nominated adviser** and the following paragraphs:

"*AIM is a market designed primarily for emerging or smaller companies to which a higher investment risk tends to be attached than to larger or more established companies. AIM securities are not admitted to the official list of the United Kingdom's Financial Conduct Authority.*

A prospective investor should be aware of the risks of investing in such companies and should make the decision to invest only after careful consideration and, if appropriate, consultation with an independent financial adviser.

Each AIM company is required pursuant to the AIM Rules for Companies to have a nominated adviser. The nominated adviser is required to make a declaration to the London Stock Exchange on admission in the form set out in Schedule Two to the AIM Rules for Nominated Advisers.

The London Stock Exchange has not itself examined or approved the contents of this document.";

(f) where rule 7 applies, a statement that its **related parties** and **applicable employees** have agreed not to dispose of any interests in any of its **AIM securities** for a period of twelve months from the **admission** of its securities;

(g) the following information relating to each **director** and each proposed **director**:

(i) the **director's** full name and age together with any previous names;

(ii) the names of all companies and partnerships of which the **director** has been a **director** or partner at any time in the previous five years, indicating whether or not the **director** is still a **director** or partner;

(iii) any unspent convictions in relation to indictable offences;

(iv) details of any bankruptcies or individual voluntary arrangements of such **director**;

(v) details of any receiverships, compulsory liquidations, creditors' voluntary liquidations, administrations, company voluntary arrangements or any composition or arrangement with its creditors generally or any class of its creditors of any company where such **director** was a **director** at the time of or within the twelve months preceding such events;

(vi) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such **director** was a partner at the time of or within the twelve months preceding such events;

(vii) details of receiverships of any asset of such **director** or of a partnership of which the **director** was a partner at the time of or within the twelve months preceding such events; and

(viii) details of any public criticisms of such **director** by statutory or regulatory authorities (including recognised professional bodies), and whether such **director** has ever been disqualified by a court from acting as a **director** of a company or from acting in the management or conduct of the affairs of any company;

(h) the name of any **person** (excluding professional advisers otherwise disclosed in the **admission document** and trade suppliers) who has:

(i) received, directly or indirectly, from it within the twelve months preceding the application for **admission** to **AIM**; or

(ii) entered into contractual arrangements (not otherwise disclosed in the **admission document**) to receive, directly or indirectly, from it on or after **admission** any of the following:

— fees totalling £10,000 or more;

— its securities where these have a value of £10,000 or more calculated by reference to the issue price or, in the case of an introduction, the expected opening price; or

— any other benefit with a value of £10,000 or more at the date of **admission**; giving full details of the relationship of such **person** with the **applicant** and of the fees, securities or other benefit received or to be received;

(i) the name of any **director**, or member of a **director's family**, who has a **related financial product** referenced to its **AIM securities** or securities being **admitted**, together with the date and terms of the **related financial product(s)** and the detailed nature of the exposure;

(j) where it is an **investing company**, details of its **investing policy**.

(k) the information required by the **Notes** and any other information which it reasonably considers necessary to enable investors to form a full understanding of:

(i) the assets and liabilities, financial position, profits and losses, and prospects of the **applicant** and its securities for which admission is being sought;

(ii) the rights attaching to those securities; and

(iii) any other matter contained in the **admission document**.

(l) in addition to the information required under sub-sections 14.4 and 14.5 of **Annex 1**, details of the recognised corporate governance code that the board of directors of the **applicant** has decided to apply, how the **applicant** complies with that code, and where it departs from its chosen corporate governance code an explanation of the reasons for doing so.

Schedule Three

The **class tests** for determining the size of a transaction pursuant to rules 12, 13, 14, 15 and 19 are as follows:

The Gross Assets test

$$\frac{\text{Gross assets the subject of the transaction}}{\text{Gross assets of the } \textbf{AIM company}} \times 100$$

Figures to use for the Gross assets test:

1. The "Gross assets of the **AIM company**" means the total non current assets plus total current assets. These figures should be taken from the most recent of the following:
   (a) the most recently **notified** consolidated balance sheet; or
   (b) where an **admission document** has been produced for the purposes of **admission** following a reverse takeover, any pro forma net asset statement published in the **admission document** may be used, provided it is derived from information taken from the last published audited consolidated accounts and that any adjustments to this information are clearly shown and explained; or
   (c) in a case where transactions are aggregated pursuant to rule 16, the most recently **notified** consolidated balance sheet (as at a date prior to the earliest aggregated transaction).

2. The "Gross assets the subject of the transaction" means:
   (a) in the cases of an acquisition of an interest in an undertaking which will result in consolidation of the undertaking's net assets in the accounts of the **AIM company**, or a disposal of an interest in an undertaking which will result in the undertaking's net assets no longer being consolidated in the accounts of the **AIM company**, the assets the subject of the transaction means the value of 100% of the undertaking's assets, irrespective of what interest is acquired or disposed.
   (b) in the case of an acquisition or disposal which does not fall within paragraph 2(a), the assets the subject of the transaction means:
      — for an acquisition, the consideration plus any liabilities assumed (if any); and
      — for a disposal, the book value of the assets attributed to that interest in the **AIM company's** last audited accounts.
   (c) in the case of an acquisition of assets other than an interest in an undertaking, the assets the subject of the transaction means the book value of the assets.

The Profits test

$$\frac{\text{Profits attributable to the assets the subject of the transaction}}{\text{Profits of the } \textbf{AIM company}} \times 100$$

Figures to use for the Profits test:

3. The "Profits of the **AIM company**" means profits before taxation and extraordinary items as stated in the following:

   (a) the last published annual consolidated accounts;

   (b) the last **notified** preliminary statement of annual results; or

   (c) in a case where transactions are aggregated pursuant to rule 16, the last such accounts or statement prior to the earliest transaction.

   In the case of an acquisition or disposal of an interest in an undertaking of the type described within paragraph 2(a), the "profits attributable to the assets the subject of the transaction" means 100% of the profits of the undertaking irrespective of what interest is acquired or disposed.

The Turnover test

$$\frac{\text{Turnover attributable to the assets the subject of the transaction}}{\text{Turnover of the } \textbf{AIM company}} \times 100$$

Figures to use for the Turnover test:

4. The "Turnover of the **AIM company**" means the turnover figure as stated in the following:

   (a) the last published annual consolidated accounts;

   (b) the last **notified** preliminary statement of annual results; or

   (c) in a case where transactions are aggregated pursuant to rule 16, the last such accounts or statement prior to the earliest transaction.

   In a case of an acquisition or disposal of an interest in an undertaking of the type described within paragraph 2(a), the "turnover attributable to the assets the subject of the transaction" means 100% of the turnover of the undertaking irrespective of what interest is acquired or disposed.

The Consideration test

$$\frac{\text{Consideration}}{\text{Aggregate market value of all the ordinary shares (excluding } \textbf{treasury shares}\text{) of the } \textbf{AIM company}} \times 100$$

Figures to use for the Consideration test:

5. The "Consideration" means the amount paid to the vendors, but the **Exchange** may require the inclusion of further amounts.

   (a) Where all or part of the consideration is in the form of securities to be **listed**, or traded on **AIM**, the consideration attributable to those securities means the aggregate market value of those securities.

   (b) If deferred consideration is, or may be, payable or receivable by the **AIM company** in the future, the consideration means the maximum total consideration payable or receivable under the agreement.

6. The "Aggregate market value of all the ordinary shares of the **AIM company** (excluding **treasury shares**)" means the value of its enfranchised securities on the day prior to the **notification** of the transaction (excluding **treasury shares**).

The Gross Capital test

$$\frac{\text{Gross capital of the company or business being acquired}}{\text{Gross capital of the } \textbf{AIM company}} \times 100$$

Figures to use for the Gross capital test:

7. The "Gross capital of the company or business being acquired" means the aggregate of:
   (a) the consideration;
   (b) if a company, any of its shares and debt securities which are not being acquired;
   (c) all other liabilities (other than current liabilities), including for this purpose minority interests and deferred taxation; and
   (d) any excess of current liabilities over current assets.
8. The "Gross capital of the **AIM company**" means the aggregate of:
   (a) the aggregate market value of its securities (excluding **treasury shares**);
   (b) all other liabilities (other than current liabilities), including minority interest and deferred taxation; and
   (c) any excess of current liabilities over current assets.

The figures to be used must be the aggregate market value of the enfranchised securities on the day prior to the **notification** of the transaction (excluding **treasury shares**).

Substitute Tests

In circumstances where the above tests produce anomalous results or where the tests are inappropriate to the sphere of activity of the **AIM company**, the **Exchange** may (except in the case of a transaction with a **related party**), disregard the calculation and substitute other relevant indicators of size, including industry specific tests. Only the **Exchange** can decide to disregard one or more of the **class tests**, or substitute another test.

Schedule Four

In respect of transactions which require **notifications** pursuant to rules 12, 13, 14 and 15 an **AIM company** must **notify** the following information:

(a) particulars of the transaction, including the name of any other relevant parties;
(b) a description of the assets which are the subject of the transaction, or the business carried on by, or using, the assets;
(c) the profits (or if applicable, losses) attributable to those assets;
(d) the value of those assets if different from the consideration;
(e) the full consideration and how it is being satisfied;
(f) the effect on the **AIM company**;
(g) details of the service contracts of any proposed **directors**;
(h) in the case of a disposal, the application of the sale proceeds;
(i) in the case of a disposal, if shares or other securities are to form part of the consideration received, a statement whether such securities are to be sold or retained; and
(j) any other information necessary to enable investors to evaluate the effect of the transaction upon the **AIM company**.

Schedule Five

Pursuant to rule 17, an **AIM company** must make **notification** of the following:

(a) the identity of the **significant shareholder** concerned;
(b) the date on which the disclosure was made to it;
(c) the date on which the **relevant change** to the **holding** was effected;
(d) the price, amount and class of the **AIM securities** concerned;
(e) the nature of the transaction;
(f) the nature and extent of the **significant shareholder's** interest in the transaction; and
(g) where the **notification** concerns a **related financial product**, the detailed nature of the exposure.

Schedule Six

Pursuant to a **block admission**, an **AIM company** must make **notification** of the following:

(a) name of the company;
(b) name of the scheme;
(c) period of return (from/to);
(d) number and class of securities not issued under the scheme;
(e) number of securities issued under the scheme during the period;
(f) balance under the scheme of securities not yet issued at the end of the period;
(g) number and class of securities originally **admitted** and the date of **admission**; and
(h) a contact name and telephone number.

Schedule Seven

Pursuant to rule 17, an **AIM company** must make **notification** of the following:

(a) the date of the movement into or out of **treasury shares**;
(b) the number of **treasury shares** of each class transferred into or out of treasury;
(c) the total number of **treasury shares** of each class held by the **AIM company** following such movements;
(d) the number of shares of each class that the **AIM company** has in issue less the total number of **treasury shares** of each class held by the **AIM company** following such movements.

Glossary

The following terms have the following meanings when used in these rules unless the context otherwise requires.

Term	Meaning
admission/admitted	Admission of any class of securities to **AIM** effected by a **dealing notice** under rule 6.
admission document	A document produced pursuant to rules 3 or 27.
AIM	A market operated by the **Exchange**.
AIM company	A company with a class of securities **admitted** to **AIM**.
AIM Designated Market	A market whose name appears on the latest publication by the **Exchange** of the document entitled "AIM Designated Markets".
AIM fee	The fees charged by the **Exchange** to an **AIM company** in respect of **admission** and trading as set out in the price list published by the **Exchange** from time to time.
AIM Rule 15 cash shell	An **AIM company** that falls within the 'Divestment or Cessation' section of rule 15.
AIM Rules for Nominated Advisers	The AIM Rules for Nominated Advisers published by the **Exchange** from time to time.
AIM securities	Securities of an **AIM company** which have been **admitted**.
Annex 1, Annex 11 and **Annex 20**	Annex 1, Annex 11 and Annex 20 of the **Prospectus Regulation** and as linked in the **Prospectus Rules** (as may be amended from time to time).
applicant	An issuer that is applying to have a class of its securities **admitted** to **AIM** and which is seeking to have a **notification** issued pursuant to rule 2. This includes **quoted applicants** save for rules 2 – 5 inclusive where separate provisions apply.
application form	The latest publication of the standard form which must be completed by an **applicant** or a **quoted applicant** under rule 5.

applicable employee	Any employee of an **AIM company**, its subsidiary or parent undertaking who: (a) for the purposes of rule 7, together with that employee's **family**, has a **holding** or interest, directly or indirectly, in 0.5% or more of a class of **AIM securities** (excluding **treasury shares**); or (b) for the purposes of rule 21, other than a **director**, is a 'person discharging managerial responsibilities' as defined in Article 3(25) of **MAR.**
authorised person	A **person** who, under European Union directive or United Kingdom domestic legislation, is authorised to conduct investment business in the United Kingdom.
block admission	The **admission** of a specified number of **AIM securities**, which are to be issued on a regular basis pursuant to rule 29.
broker	A **member firm** which is appointed by an **AIM company** pursuant to rule 35.
business day	Any day upon which the **Exchange** is open for business and any reference to business days shall be to clear business days.
cancel/cancelled/cancellation	The cancellation of any class of securities to **AIM** effected by a **dealing notice.**
class tests	The tests set out in Schedule Three which are used to determine whether rules 12, 13, 14, 15 or 19 of these rules apply.
dealing notice	A **notification** by the **Exchange** disseminated through **RNS** which either admits securities to **AIM** or **cancels** or suspends them from trading on **AIM** or restores them to trading on **AIM**.
director	A **person** who acts as a **director** whether or not officially appointed to such position.
directors' remuneration	The following items for each **director** of the **AIM company**: (a) emoluments and compensation, including any cash or non-cash benefits received; (b) share options and other long term incentive plan details, including information on all outstanding options and/or awards; and (c) value of any contributions paid by the **AIM company** to a pension scheme.
Disciplinary Procedures and Appeals Handbook ("the Handbook")	The most recent publication by the **Exchange** of the document so entitled for **AIM**.

DTR	The Disclosure Guidance and Transparency Rules published by the **FCA** from time to time.
DTR company	An **AIM company** that is required to make disclosures in accordance with chapter 5 of the **DTR**. A non-DTR company is an **AIM company** that is not required to make disclosures in accordance with chapter 5 of the **DTR**.
EEA country	A European Economic Area (EEA) country.
electronic communication	Any communications sent by e-mail or made available on an **AIM company**'s website pursuant to rule 26.
Euroclear	Euroclear UK & Ireland Limited.
Exchange	The London Stock Exchange plc.
family	In relation to any **person** his or her spouse or civil partner and any child where such child is under the age of eighteen years. It includes any trust in which such individuals are trustees or beneficiaries and any company over which they have control or more than 20% of its equity or voting rights (excluding **treasury shares**) in a general meeting. It excludes any employee share or pension scheme where such individuals are beneficiaries rather than trustees.
FCA	The Financial Conduct Authority.
financial instrument	Any financial instrument requiring disclosure in accordance with **DTR** 5.3.1 with the addition that, for the purposes of this definition, all **AIM companies** shall be treated as if they are **DTR companies** regardless of their country of incorporation.
FSMA 2000	The Financial Services and Markets Act 2000.
holding	Any legal or beneficial interest, whether direct or indirect, in the **AIM securities** of a **person** who is a **director** or, where relevant, an **applicable employee** or **significant shareholder**. It includes holdings by the **family** of such a **person**. In addition, when determining whether a **person** is a **significant shareholder**, a holding also includes a position in a **financial instrument**.

International Accounting Standards	(a) For an **AIM company** incorporated in the **EEA**, this means standards adopted for use in the European Union in accordance with Article 3 of the IAS Regulation (EC) No. 1606/2002, as adopted from time to time by the European Commission. (b) For an **AIM company** incorporated in the **UK**, this means UK-adopted International Accounting Standards in accordance with section 474(1) Companies Act.
investing company	Any **AIM company** which has as its primary business or objective, the investing of its funds in securities, businesses or assets of any description.
investment manager	Any **person** external to the **investing company**, who, on behalf of that **investing company**, manages their investments. This may include an external adviser who provides material advice to the investment manager or the **investing company**.
investing policy	The policy the **investing company** will follow in relation to asset allocation and risk diversification. The policy must be sufficiently precise and detailed to allow the assessment of it, and, if applicable, the significance of any proposed changes to the policy. It must contain as a minimum: — assets or company in which it can invest; — the means or strategy by which the investing policy will be achieved; — whether such investments will be active or passive and, if applicable, the length of time that investments are likely to be held for; — how widely it will spread its investments and its maximum exposure limits, if applicable; — its policy in relation to gearing and cross-holdings, if applicable; — details of investing restrictions, if applicable; and — the nature of returns it will seek to deliver to **shareholders** and, if applicable, how long it can exist before making an investment and/or before having to return funds to **shareholders**.
listed	Admitted to the Official List of the United Kingdom by the Competent Authority for the United Kingdom.
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse, as applied in the **UK**.
member firm	A partnership, corporation, legal entity or sole practitioner admitted currently to **Exchange** membership.

nominated adviser	An adviser whose name appears on the **register**.
nominated adviser's declaration	The latest form of declaration contained in the **AIM Rules for Nominated Advisers**.
Notes	Separate notes published by the **Exchange** from time to time which form part of these rules. At the date of these rules, these comprise the AIM Note for Investing Companies, and the AIM Note for Mining and Oil & Gas Companies.
not in public hands	**AIM securities** held, directly or indirectly (including via a **related financial product**) by: (a) a **related party**; (b) the trustees of any employee share scheme or pension fund established for the benefit of any **directors/**employees of the **applicant/AIM company** (or its subsidiaries); (c) any person who under any agreement has a right to nominate a person to the board of directors of the **applicant/AIM company**; (d) any person who is the subject of a lock-in agreement pursuant to rule 7 or otherwise; or (e) the **AIM company** as **treasury shares**.
notify/notified/notification	The delivery of an announcement to a **Regulatory Information Service** for distribution to the public.
person	An individual, corporation, partnership, association, trust or other entity as the context admits or requires.
Prospectus	A prospectus, including an EU Growth prospectus, prepared and published in accordance with the **Prospectus Regulation**.
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council as applied in the UK.
Prospectus Rules	The Prospectus Regulation Rules sourcebook published by the **FCA**.
quoted applicant	An issuer which has had its securities traded upon an **AIM Designated Market** for at least 18 months prior to applying to have those securities **admitted** to **AIM** and which seeks to take advantage of that status in applying for the **admission** of its securities.
record date	The last date upon which investors must appear on the share register of the **AIM company** in order to receive a benefit from the company.

register	The latest publication of the register of **nominated advisers** held by the **Exchange**. The definitive **register** is kept by the **Exchange**.
Regulatory Information Service	A service approved by the **FCA** for the distribution to the public of regulatory announcements and included within the list maintained on the **FCA's** website, http://www.fca.org.uk/.
related financial product	Any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of **AIM securities** or securities being **admitted**, including a contract for difference or a fixed odds bet.
related party	(a) any **person** who is a **director** of an **AIM company** or of any company which is its subsidiary or parent undertaking, other subsidiary undertaking of its parent company; (b) a **substantial shareholder**; (c) an associate of (a) or (b) being; (i) the **family** of such a **person**; (ii) the trustees (acting as such) of any trust of which the individual or any of the individual's **family** is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme as defined in regulation 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or an employees' share scheme which does not, in either case, have the effect of conferring benefits on **persons** all or most of whom are related parties). (iii) any company in whose equity shares such a **person** individually or taken together with his or her **family** (or if a **director**, individually or taken together with his **family** and any other **director** of that company) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) to the extent that they are or could be able: — to exercise or control the exercise of 30% or more of the votes (excluding **treasury shares**) able to be cast at general meetings on all, or substantially all, matters; or — to appoint or remove **directors** holding a majority of voting rights at board meetings on all, or substantially all, matters;

(iv) any other company which is its subsidiary undertaking, parent undertaking or subsidiary undertaking of its parent undertaking;

(v) any company whose **directors** are accustomed to act in accordance with (a)'s directions or instructions;

(vi) any company in the capital of which (a), either alone or together with any other company within (iv) or (v) or both taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) interested in the manner described in (iii);

(d) for the purposes of rule 13, any **person** who was a **director** of an **AIM company** or any of its subsidiaries, sister or parent undertakings or a **substantial shareholder** within the twelve months preceding the date of the transaction.

relevant changes — Changes to the **holding** of a **significant shareholder** above 3% (excluding **treasury shares**) which increase or decrease such **holding** through any single percentage.

RNS — The **Regulatory Information Service** operated by the **Exchange**.

shareholder — A holder of any legal or beneficial interest, whether direct or indirect, in an **AIM security**.

significant shareholder — Any person with a **holding** of 3% or more in any class of **AIM security** (excluding **treasury shares**).

SME growth market — A multilateral trading facility that is registered as an SME growth market for the purposes of Chapter 5.10 of the **FCA's** Market Conduct Sourcebook.

substantial shareholder — Any **person** who holds any legal or beneficial interest directly or indirectly in 10% or more of any class of **AIM security** (excluding **treasury shares**) or 10% or more of the voting rights (excluding **treasury shares**) of an **AIM company** including for the purpose of rule 13 such **holding** in any subsidiary, sister or parent undertaking and excluding, for the purposes of rule 7: (i) any **authorised person**; (ii) any **investing company** whose **investing policy** is externally managed on a fully discretionary basis by an **investment manager** that is an **authorised person**; and (iii) any company with securities quoted upon the **Exchange's** markets, unless the company is an **investing company** which has not substantially implemented its **investing policy**.

treasury shares	Shares which meet the conditions set out in paragraphs (a) and (b) of subsection 724(5) of the Companies Act 2006.
UK	United Kingdom. For the purposes of rule 19, a **UK** country shall also be deemed to include the Channel Islands and the Isle of Man.
warning notice	A private letter issued by the **Exchange** pursuant to the **Disciplinary Procedures and Appeals Handbook** to an **AIM company** or **nominated adviser** outlining a breach of these rules or of the **AIM Rules for Nominated Advisers**.

Part Two – Guidance Notes

Eligibility for AIM

An **AIM company** or **applicant** must be appropriate for **AIM**'s regulatory framework. An **AIM company** or **applicant** should usually be a similar structure to a **UK** plc, and where it is an **investing company**, must be a closed-ended fund and not require a restricted investor base. It should not be complex in terms of its structure and securities and should issue primarily ordinary shares (or equivalent).

Rule 1: Nominated adviser

Nominated advisers must be approved by the **Exchange**. A copy of the **register** of approved **nominated advisers** is available on the **Exchange's** website, www.londonstockexchange.com/aim, however the definitive copy is kept by the **Exchange**.

An **AIM company** can only retain the services of one **nominated adviser** at any one time.

Where an **AIM company** needs to **notify** the loss of its **nominated adviser** it should first liaise with AIM Regulation so that where no replacement has been appointed the necessary suspension may be put in place to coincide with the **notification**.

Where a new **nominated adviser** is appointed a **notification** will be required under rule 17 and a new **nominated adviser's declaration** should be submitted to the **Exchange** pursuant to the **AIM Rules for Nominated Advisers**.

Applicants for AIM

Rule 2: Early notification and pre-admission announcements

An early notification form is available on the **Exchange's** website. In addition to the information required to be provided in the early notification form, a **nominated adviser** must ensure it fully and clearly discloses to the **Exchange** all matters known to it which may be relevant to the **Exchange** in considering the application for **admission** to trading and understanding whether **admission** of the **AIM securities** may be detrimental to the orderly operation, the reputation and/or integrity of **AIM**.

The submission of an early notification form does not replace a **nominated adviser's** obligations to the **Exchange** concerning an **applicant's** appropriateness.

Submission of an early notification form that does not allow for adequate time for discussion with the Exchange may contribute to a delay. Following the submission of an early notification form, a **nominated adviser** must update the **Exchange** as soon as practicable should it become aware of any material new information and/or any change to the information submitted or circumstances of the **applicant**.

Early notification submissions and Schedule One announcements should be sent by e-mail in the standard format, available on the **Exchange's** website, to aimregulation@lseg.com.

The **Exchange** will arrange for **notification** of the Schedule One to **RNS**.

Announcements are disseminated publicly by **RNS** under the heading "**AIM**".

Any issuer may use the usual form of **admission** process for **AIM** involving a pre-admission announcement and an **AIM admission document** at any time. However, a **quoted applicant** may take advantage of this expedited route where it meets the relevant requirements.

The website (**notified** in accordance with paragraph (j) of the Supplement to Schedule One) may also, to the extent permitted by law, contain other information which the issuer considers may be useful to investors.

Rule 3: Admission document

Where an **admission document** is also a **Prospectus**, the requirements of Schedule Two apply in addition to the requirements of the **Prospectus Regulation** and the **Prospectus Rules**.

If at any time after an **admission document** is submitted and before the date of **admission** there arises or is noted any material new factor, mistake or inaccuracy relating to the information included in the **admission document**, a supplementary **admission document** must be published and submitted to the **Exchange** containing details of such new factor, mistake or inaccuracy in accordance with the relevant part(s) of Schedule Two. For the avoidance of doubt, if the **admission document** is a **Prospectus**, any supplementary document must comply with the **Prospectus Regulation** and the **Prospectus Rules**.

A **quoted applicant** must make the additional disclosures in its pre-admission announcement, which is required by rule 2 and the Supplement to Schedule One.

Where a **quoted applicant** is also making an offer to the public, whether in the United Kingdom and/or other jurisdictions, it should satisfy itself that there are no legal or regulatory requirements outside these rules which compel it to produce any form of prospectus. Where there is a requirement for such a prospectus, this should be made available to the public under paragraph (o) of Schedule One as if it were an **admission document**.

Rule 4: Omissions from admission documents

Where an **admission document** is also a prospectus under the **Prospectus Rules**, application for a derogation from any requirements of the **Prospectus Regulation** and the **Prospectus Rules** should be made to the **FCA**. The **Exchange** itself may not authorise exemptions from any requirement under the **Prospectus Rules**. The **FCA's** Listing Transactions team can be contacted through their dedicated help desk on +44 (0)20 7066 8348.

Rule 5: Application documents

The **application form** and **nominated adviser's declaration** should be sent to Admissions, London Stock Exchange plc, 10 Paternoster Square, London EC4M 7LS by the **nominated adviser**. The electronic version of the **admission document** should be sent to admissions@lseg.com.

The **application form** and **nominated adviser's declaration** are available from the **Exchange's** website, www.londonstockexchange.com.

The **nominated adviser** should liaise with AIM Regulation to confirm that any **admission** conditions have been met.

Under rule 33 **AIM securities** must be unconditionally allotted. The **Exchange** may require proof of allotment for any securities which are being issued on **admission**. A copy of the **applicant's** board minutes allocating such securities or confirmation from its **nominated adviser** will suffice in most cases.

Allotted includes provisionally allotted securities where such provisional allotments are unconditional. For example, nil paid rights must be allotted without condition (even if further action is required by the holders of provisional allotments to transform them into another class of securities such as fully paid shares).

Rule 6: Admission to AIM

Note also rules 32 and 33 (in respect of free transferability and allotment).

A **dealing notice** will be released through **RNS** under the heading "**AIM**".

Special conditions for certain applicants

Rule 7: Lock-ins for new businesses

To minimise the risk of parties to lock-in arrangements subsequently being deemed to constitute concert parties under the City Code on Takeovers and Mergers, **applicants** or their advisers may wish to consult the Panel on Takeovers and Mergers, 10 Paternoster Square, London EC4M 7LS (telephone +44 (0)20 7382 9026) prior to drafting any lock-in agreement.

The **Exchange** will not require a **substantial shareholder** to be the subject of a lock-in under rule 7 where that **shareholder** became a **substantial shareholder** at the time of an **AIM**

company's admission and at a price which was more widely available, for example as part of an offer to the public.

Rule 8: Investing companies

The **investing policy** must be sufficiently precise and detailed so that it is clear, specific and definitive. The **investing policy** must be prominently stated in the **admission document** and any subsequent circular relating to the **investing policy**, for example pursuant to rules 8 or 14. The **investing policy** should be regularly **notified** and at a minimum should be stated in the **investing company's** annual accounts.

The circular convening a meeting of **shareholders** for the purposes of obtaining consent for a change in **investing policy** should contain adequate information about the current and proposed **investing policy** and the reasons for and expected consequences of any proposed change. It should also contain the information required by paragraph 4.2 of the AIM Note for Investing Companies.

In making the assessment of what constitutes a material change to the published **investing policy**, consideration must be given to the cumulative effect of all the changes made since **shareholder** approval was last obtained for the **investing policy** or, if no such approval has been given, since the date of **admission**. Any material change to the specific points set out in the definition of **investing policy** is likely to constitute a material change requiring **shareholder** consent.

In making the assessment of whether or not an **investing company** has substantially implemented its **investing policy**, the **Exchange** would consider this to mean that the **investing company** has invested:

— a substantial portion (usually at least in excess of 50%) of all funds available to it, including funds available through agreed debt facilities;

— in a range of investments; and

— in accordance with its **investing policy**.

In relation to any requirement to obtain **shareholder** approval of the **investing policy** in these rules, if such **shareholder** approval is not obtained, the **AIM company** would usually be expected to propose amendments to its **investing policy** and seek **shareholder** approval for those amendments, as soon as possible. A resolving action such as the return of funds to **shareholders** should be considered if consent is again not obtained. The **nominated adviser** must keep the **Exchange** informed if such a situation occurs. For the avoidance of doubt, if **shareholder** approval for the change to **investing policy** is not obtained, the company's existing **investing policy** will continue to be effective.

Rule 9: Other conditions

The **Exchange** can impose a delay of no more than ten **business days** under rule 9. At the end of this period, the **nominated adviser** must decide whether and if so, when, to proceed.

Principles of disclosure

Rule 10: Principles of disclosure

Where it is proposed to announce at any meeting of **shareholders** information which might lead to significant movement in the price of those securities, arrangements must be made for **notification** of that information so that the disclosure at the meeting is made no earlier than the time at which the information is **notified**.

A list of **Regulatory Information Service** providers can be found on the **Exchange's** website, www.londonstockexchange.com/aim

General disclosure of price sensitive information

Rule 11: General disclosure

(a) This rule promotes prompt and fair disclosure of price sensitive information to the market.

(b) Article 17 of **MAR** provides separate disclosure obligations for an **AIM company**. The competent authority for **MAR** is the **FCA**. All queries relating to the disclosure obligations pursuant to **MAR** should be directed to the competent authority. The **Exchange** will not opine on **MAR** compliance and any discussion it has about an **AIM company's** disclosure obligations are in the context of these rules. Where the **Exchange** becomes aware of a possible breach of **MAR**, it will refer to the competent authority, whose remit is to investigate and enforce breaches of **MAR**. For the avoidance of doubt, compliance with **MAR** does not mean that an **AIM company** will have satisfied its obligations under these rules and vice versa.

(c) The requirements of rule 11 are in addition to any requirements regarding **notification** contained elsewhere in the rules.

(d) Information that would be likely to lead to a significant movement in the price of its **AIM securities** includes but is not limited to information which is of a kind which a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

(e) Unless disclosure is required under Article 17 of **MAR**, an **AIM company** may delay **notifying** information under this rule if it is an impending development or a matter in the course of negotiation provided such information is kept confidential. The **AIM company** must ensure it has in place, in accordance with rule 31, effective procedures and controls designed to ensure the confidentiality of such information to minimise the risk of a leak.

In such circumstances, where an **AIM company** is able to delay **notifying** information about impending developments or matters in the course of negotiation it may give such information in confidence to the following category of recipient:

(i) the **AIM company's** advisers and advisers of any other **persons** involved or who may be involved in the development or matter in question;

(ii) **persons** with whom the **AIM company** is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or places of its securities);

(iii) representatives of its employees or trades unions acting on their behalf;

(iv) any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority; and

(v) the **AIM company's** lenders.

The **AIM company** must be satisfied that such recipients of information are bound by a duty of confidentiality and aware that they must not trade in its **AIM securities** before the relevant information has been **notified**.

(f) However, if the **AIM company** has reason to believe that a breach of such confidence has occurred or is likely to occur and, in either case, the matter is such that knowledge of it would be likely to lead to significant movement in the price of its **AIM securities**, it must without delay issue at least a warning **notification** to the effect that it expects shortly to release information regarding such matter.

(g) Where such information has been made public the **AIM company** must **notify** that information without delay.

Disclosure of corporate transactions

Rules 12 and 13: Substantial and related party transactions

Note the definition of a substantial transaction is different from that of a **related party** transaction.

A transaction under this rule includes non pre-emptive issues of securities.

Rule 14: Reverse takeovers

The **admission document** must be made available to the public under rule 26.

An **AIM company** is able to send an **admission document** (subject to any other applicable regulations, including the **Prospectus Rules** where it is a **Prospectus**) to **shareholders** in compliance with this rule if it is sent by **electronic communication** in compliance with the applicable guidance notes to rules 18 and 19, together with the notice of the **shareholder** meeting required by rule 14.

Following the announcement of a reverse takeover that has been agreed or is in contemplation, the relevant **AIM Securities** will be suspended by the **Exchange** until the **AIM company** has published an **admission document** in respect of the proposed enlarged entity unless the target is a **listed** company or another **AIM company**.

It should be noted that the **Exchange** expects the negotiations leading to a reverse takeover to be kept confidential, as allowed by the guidance to rule 11, until the point at which the **AIM company** can **notify** that a binding agreement that effects a reverse takeover has been entered into, which should, as far as is possible, be accompanied by the publication of the requisite

admission document. If for any reason this is not possible, the **nominated adviser** should seek the advice of the **Exchange** at the earliest opportunity.

If the new entity wishes its securities to be **admitted**, it will need to issue a ten day announcement pursuant to rule 2. In addition, it will need to submit a further fee, an electronic version of its **admission document**, a **nominated adviser's declaration** and a company **application form** at least three **business days** prior to **admission** pursuant to rule 5 and abide by all other requirements to which an **applicant** may be subject under these rules.

However, the new entity may make an application in advance of the general meeting so that its securities are **admitted** on the day after the general meeting which approves the reverse takeover.

Rule 15: Fundamental changes of business

The consent of **shareholders** for a disposal may not be required where it is as a result of insolvency proceedings. The **Exchange** should be consulted in advance in such circumstances.

The **nominated adviser** must inform the **Exchange** when an **AIM company** for which it acts becomes an **AIM Rule 15 cash shell** or there is a possibility that it has become an **AIM Rule 15 cash shell**. Where there is any question as to whether an **AIM company** has become an **AIM Rule 15 cash shell** or the point at which it becomes an **AIM Rule 15 cash shell**, the **Exchange** must be consulted as soon as possible.

Where an **AIM Rule 15 cash shell** does not intend or wish to undertake a reverse takeover in accordance with rule 15, it should seek to **cancel** its **admission** in accordance with rule 41 (in the case of a disposal requiring **shareholder** consent under this rule, this should most usually occur concurrently with the **shareholder** approval required for the disposal). In such circumstances, the **AIM company**, taking the advice of its **nominated adviser**, should consider whether funds should concurrently be returned to **shareholders**, seeking the approval of **shareholders** where appropriate or necessary.

Where, within six months, an **AIM Rule 15 cash shell** does not complete a reverse takeover as set out in rule 15, the **Exchange** will suspend trading in the **AIM securities** pursuant to rule 40.

Rule 16: Aggregation of transactions

The **Exchange** will only consider that an **AIM company** has 'a principal involvement in any business activity or activities which did not previously form a part of the **AIM company's** principal activities' where collectively a **class test** for any twelve month period exceeds 100%. In cases of doubt the **Exchange** should be consulted.

Disclosure of miscellaneous information

Rule 17: Miscellaneous information

(a) Article 19 of **MAR** includes notification obligations for **AIM companies** and persons discharging managerial responsibilities. The **DTR** contains guidance on certain of those

notification obligations. All queries relating to an **AIM company's** disclosure obligations pursuant to **MAR** should be directed to the **FCA**.

(b) **Significant shareholder** disclosures for **DTR companies: DTR companies** are required to comply with the provisions of the **DTR** in respect of **significant shareholder** notifications. All queries relating to the shareholder notification requirements of the **DTR** should be directed to the **FCA**.

In addition, **DTR companies** are required to comply with the **significant shareholder** disclosures contained in rule 17. However, compliance with the **DTR** in respect of **AIM securities** will usually mean that a **DTR company** is complying with the **significant shareholder** disclosure obligations in rule 17, save that:

(i) notwithstanding the time limits for disclosure set out in the **DTR**, **DTR companies** are required under rule 17 to **notify** such information "*without delay*"; and

(ii) the information required to be released pursuant to rule 17 must be **notified**, rather than 'made public' in accordance with the **DTR**.

(c) An **AIM company** must inform the **Exchange**, via its **nominated adviser**, if the **FCA** takes any action under Chapter 1A.3.1 of the **DTR** (**FCA's** ability to require publication of information).

(d) **Significant shareholder** disclosures for non-**DTR companies:** All non-**DTR companies** are required to use all reasonable endeavours to comply with rule 17 notwithstanding that the local law applicable to some **AIM companies** does not contain provisions that are similar to the **DTR**. In that instance, such an **AIM company** is advised to include provisions in its constitution requiring **significant shareholders** to notify the relevant **AIM company** of any **relevant changes** to their shareholdings in similar terms to the **DTR**, noting the differences set out at (b)(i) and (ii) above. Such **AIM companies** are also advised to make appropriate disclosure of the fact that statutory disclosure of **significant shareholdings** is different and may not always ensure compliance with the requirements of rule 17.

(e) Where an **admission** or **cancellation** of **AIM securities** is being **notified**, the reason need only be brief, e.g. "exercise of options". Any changes in the number of shares in issue requires liaison with Admissions (telephone +44 (0)20 7797 4310) so that they can arrange for the appropriate **dealing notice** to be released.

(f) Where an **AIM company** needs to **notify** the loss of its **nominated adviser** it should first liaise with AIM Regulation so that where no replacement **nominated adviser** has been appointed the necessary suspension pursuant to rule 1 may be put in place to coincide with the **notification**.

(g) Where an **AIM company** changes its legal name it should send a copy of any change of name certificate to Admissions, London Stock Exchange plc, 10 Paternoster Square, London EC4M 7LS or by fax to +44 (0)20 7920 4607.

(h) Information required to be submitted to the **Exchange** should be emailed to aimregulation@lseg.com.

(i) The **notification** in relation to the trading of **AIM company** securities on any other exchange or trading platform should include details which exchange or platform (including details of any segment, tier or similar) and which securities this relates to.

Half-yearly reports and accounts

Rule 18 and 19: Half-yearly reports and accounts

Where the half-yearly report has been audited it must contain a statement to this effect.

In relation to rule 18, the financial period to which financial information has been disclosed in its **admission document** may be the financial period of the main trading subsidiary of the **AIM company**, for example, where the **AIM company** is a holding company. The **nominated adviser** should contact AIM Regulation if there is any uncertainty as to the reporting timetable required by these rules.

The **Exchange** will suspend **AIM companies** which are late in publishing their half-yearly report or their annual accounts, pursuant to rule 40.

Where an **AIM company** wishes to change its accounting reference date its **nominated adviser** should contact AIM Regulation in advance to discuss the revised reporting timeframe.

An **AIM company** should prepare and **notify** a second half-yearly report in accordance with rule 18, if the effect of the change to the accounting reference date is to extend its accounting period to more than 15 months. This should be agreed in advance with AIM Regulation.

The **Exchange** would encourage all **AIM companies** to use **International Accounting Standards** both on **admission** and in the preparation of all post-**admission** financial information. With the end of the Brexit transition period on 31 December 2020, **AIM companies incorporated** in the **UK** must use UK-adopted **International Accounting Standards** for financial years that begin on or after 1 January 2021. **AIM companies** incorporated in the **UK** with financial years that begin before 1 January 2021, can continue to use EU-adopted **International Accounting Standards** as it stands at the end of the transition period.

The choice of accounting standard should be consistently implemented and any change between those standards available to a particular **AIM company** should only be made with the prior approval of AIM Regulation.

In respect of each **AIM company**, the term ‘parent’ should be interpreted in accordance with applicable law. Any other queries over interpretation of these provisions should be addressed by the **AIM company’s nominated adviser** to AIM Regulation at the earliest opportunity.

Subject to its constitution and any legal requirements in its jurisdiction of incorporation, an **AIM company** is able to satisfy the requirement in rule 19 to send accounts to **shareholders** by sending such accounts by **electronic communication** to **shareholders:**

(a) in compliance with the requirements of the **UK** Companies Act 2006; or

(b) providing the following requirements have been satisfied:

(i) a decision to use **electronic communication** to **shareholders** has been approved by **shareholders** in a general meeting of the **AIM company**;

(ii) appropriate identification arrangements have been put in place so that **shareholders** are effectively informed; and

(iii) **shareholders** individually:

— have been contacted in writing to request their consent to receive accounts by means of **electronic communication** and if they do not object within 28 days, their consent can be considered to have been given;

— are able to request at any time in the future that accounts be communicated to them in writing; and

— are contacted alerting them to the publication of the accounts on an **AIM company's** website.

Publication of documents sent to shareholders

Rule 20: Documents sent to shareholders

Electronic copies of annual accounts and half-yearly reports that have been sent to shareholders are not required to be sent to the **Exchange** unless such documents are relevant for the purposes of rules 24 and 25. All other documents provided to shareholders must still be sent electronically to the **Exchange**, in accordance with rule 20.

Dealing policy

Rule 21: Dealing policy

Compliance with rule 21 does not mean that an **AIM company** will have satisfied its obligations under Article 19 of **MAR**.

In determining whether it is appropriate to give clearance under its dealing policy, the **Exchange** would expect an **AIM company** to consider its wider obligations under **MAR**.

The **Exchange** would expect an **AIM company** to appoint an individual of sufficient seniority to grant such clearance request. The procedures should also give consideration as to an alternate individual where such individual is not independent in relation to a clearance request.

Provision and disclosure of information

Rule 22

The **AIM company** must use all due skill and care to ensure that information provided to the Exchange pursuant to this rule is correct, complete and not misleading.

If it comes to the subsequent attention of the **AIM company** that information provided does not meet this requirement, the **AIM company** should advise the **Exchange** as soon as practicable.

All communications between the **Exchange** and an **AIM company** are confidential to the **Exchange** and its **nominated adviser** and should not be disclosed without the consent of the **Exchange**, save to appropriate advisers to the **AIM company** or as required by any other regulatory body or agency.

Corporate action timetables

Rules 24 and 25: Corporate action timetables

Except in the case of a dividend timetable **notification**, the reference to 'in advance' in rule 24 means that the **Exchange** should receive the proposed timetable by no later than 09:00 on the **business day** before the proposed **notification**.

A dividend timetable which follows the guidelines set by the "Dividend Procedure Timetable", published on the **Exchange's** website, www.londonstockexchange.com, need not be disclosed to the **Exchange** in advance, provided the **notification** of the dividend includes:

- the net amount;
- the record and payment dates; and
- the availability of any scrip or DRIP options.

A **notification** is not required for interest payments, however, the **Exchange** must receive notice of any payment no later than seven **business days** prior to the **record date**. This notice must include:

- the appropriate net or gross amount;
- the record and payment dates; and
- any conversion period details.

Where fixed payment details are available the **AIM company** may use one timetable to inform the **Exchange** of all future payments, providing any amendments are disclosed to the **Exchange** immediately.

The timetable for an open offer must ensure that valid claims through the market can be promptly satisfied and must comply with the following:

- the open offer must remain open for acceptance for at least ten **business days**. For the purposes of calculating the period of ten **business days**, the first **business day** is the date on which the offer is first open for acceptance. The ten **business days** must exclude the 'ex' date; and
- where possible, the open offer **record date** should be the **business day** before the expected 'ex' date. A **record date** preceding the 'ex' date by more than three **business days** will only be approved in exceptional circumstances.

The **Exchange** may request amendments to a timetable as and when considered necessary. The **Exchange** will liaise with the **AIM Company** and its advisers as appropriate. A timetable which has not been cleared in advance with the Stock Situations Analysis team of the **Exchange** but which has been **notified**, may be subject to change if required by the **Exchange**. If this situation occurs a further correcting **notification** must be made.

Rule 26:

The information required by this rule should be kept up-to-date and the last date on which it was updated should be included. The information should be easily accessible from one part of the website and a statement should be included that the information is being disclosed for the purposes of rule 26. Any redirection of a user to other areas of a website or to a document included on the website should be to a specific location for that information. Users should not have to enter search criteria in order to locate information.

The website where this information is available should be the company's website, although it is acknowledged that such a site may be hosted by a third party provider.

The requirement to disclose restrictions on the transfer of shares relates to the disclosure of jurisdictional exemptions or restrictions that an **AIM company** is seeking to make use of and that may operate by virtue of non-**UK** securities laws, such as the US Securities Act 1933 or similar (noting, however, the requirements of rule 32).

An **AIM company** should take appropriate legal advice on how to make available any prospectus, **admission document**, circular or similar **shareholder** publication in compliance with this rule so as not to infringe any securities laws that may apply to it.

The disclosure of information in relation to the trading of **AIM company** securities on any other exchange or trading platform should include details which exchange or platform (including details of any segment, tier or similar) and which securities this relates to.

"main country of operation" should be interpreted as the geographical location from which the **AIM company** derives (or intends to derive) the largest proportion of its revenues or where the largest proportion of its assets are (or will be) located, as is most appropriate depending on the business of the company.

Pursuant to the Finance Act 2014, stamp duty and the stamp duty reserve tax are not chargeable on transactions in securities admitted to trading on **AIM** provided that they are not also listed on a Recognised Stock Exchange (as defined in section 1005(3)-(5) Income Tax Act 2007). If the **AIM company** lists on a Recognised Stock Exchange or ceases to be listed on such an exchange, the Exchange would remind the **AIM company** that, in addition to updating its website, **Euroclear** requires the **AIM company** to inform it of these changes without delay as they are likely to impact its stamp duty reserve tax status. **Euroclear** can be contacted in relation to this at: growthmarketstampexemption@euroclear.com.

Further issues of securities following admission

Rule 28: Omissions from admission documents

Where the further **admission document** is also a **Prospectus**, application for omission of information should be made to the **FCA**. The **Exchange** itself may not authorise exemptions from any requirement under the **Prospectus Rules**.

Where the further **admission document** is not a **Prospectus**, the information required under section 18 of **Annex 1** may be omitted from the further **admission document** at the **nominated adviser's** discretion (in addition to the information listed in Schedule Two, paragraph (b)). The information covered by section 18 of **Annex 1** (Financial Information concerning the Issuer's Assets and Liabilities, Financial Position and Profits and Losses) will already be available to the market in the event of further **admission** if the **AIM Company** has complied with these rules and therefore there is no need to duplicate that information in the further **admission document**.

Rule 29: Applications for further issues

Under rule 33 **AIM securities** must be unconditionally allotted. Accordingly, the **Exchange** is likely to require proof of allotment for any securities which are being issued on **AIM**. A copy of the **AIM company's** board minutes allocating such securities or confirmation from its **nominated adviser** will suffice in most cases.

Allotted includes provisionally allotted securities where such provisional allotments are unconditional. For example, nil paid rights must be allotted without condition (even if further action is required by the holders of provisional allotments to transform them into another class of securities such as fully paid shares).

A **dealing notice** will be released via **RNS** under the heading "**AIM**".

Applications for **block admissions** should be indicated as such in the "Nature of Admission" section of the **application form**.

A **block admission** cannot be used where the securities to be issued under the **block admission** exceed more than 20% of the existing class of an **AIM security**. Additionally, **block admissions** can only be used in the following circumstances:

- employee share schemes;
- personal equity plans;
- dividend reinvestment plans;
- ordinary shares arising from the exercise of warrants; and
- ordinary shares arising from a class of convertible securities.

Where an **AIM company** wishes to use **a block admission** in circumstances outside of these it should contact AIM Regulation to discuss.

It is the responsibility of the **AIM company** to ascertain whether a **Prospectus** is required under any **block admission** and the issue of securities pursuant to a **block admission**.

Rule 30: Language

Where the original documents or information is not in English, an English translation may be provided.

Rule 31: Directors responsibility for compliance

Notwithstanding the provisions set out in this rule, each **nominated adviser** should include in its engagement letter or **nominated adviser** agreement with each **AIM company** for which it acts details of what it requires from such company.

Ongoing eligibility requirements

Rule 32: Transferability of shares

Where an **AIM company** wishes to rely on the exceptions stated in rule 32, its **nominated adviser** should apply to AIM Regulation for a confirmation of the acceptance of this.

Rule 33: Securities to be admitted

Any change in the number of **AIM securities** in issue requires liaison with Admissions (telephone +44 (0)20 7797 1473).

If an **AIM company** is preparing dividend timetables, undertaking any corporate actions or issuing new shares where there are settlement implications, its **nominated adviser** should contact Stock Situation Analysis (telephone +44 (0)20 7797 1579) for prior discussion of the timetable.

Confirmation of allotment must be received no later than 16:30 on the **business day** prior to the intended date of **admission** unless otherwise agreed by the **Exchange**.

Rule 35: Retention of a broker

The **broker** will, for all **AIM companies** for which it acts, use its best endeavours to find matching business if there is no registered market maker.

Any **member firm** of the **Exchange** may act as a **broker** subject to any requisite authorisation by any other regulator.

A list of current **member firms** is available on the **Exchange's** website, www.londonstockexchange.com

There is also a separate list of **brokers** who have already been appointed by **AIM companies** on the **Exchange's** website.

Rule 36: Settlement

For **UK** registered companies a simplified procedure exists for rendering their securities eligible for such settlement under the Uncertificated Securities Regulations 2001 (SI/3755) as amended.

Within the **UK**, issuers may wish to contact **Euroclear** at 33 Cannon Street, London EC4M 5SB (telephone +44 (0)20 7849 0000).

Rule 37: General

Details of fee scales for **AIM companies** and **nominated advisers** are published separately and are available from the **Exchange's** website.

Maintenance of orderly markets

Rule 40: Suspension

The general principle applied by the **Exchange** when considering requests for a suspension of trading in **AIM securities** is that interruptions to trading should be kept to a minimum.

An **AIM company** should request a suspension in circumstances where it is required under these rules to make a notification but is unable to comply with its obligations under rule 10 (having used all reasonable endeavours to do so). Any such suspension is at the discretion of the **Exchange**. The **Exchange** will not suspend the trading in **AIM securities** if it is not satisfied that the circumstances justify suspension.

Should the **Exchange** effect the request for suspension, the **AIM company** must make a **notification** stating the reason for suspension to the fullest extent possible.

An **AIM company**, while suspended, must continue to comply with these rules.

The **Exchange** may impose conditions on the lifting of suspension as it considers appropriate. Once the circumstances leading to the suspension have been resolved or clarified sufficiently for the **AIM company** to make a **notification** that informs the market about relevant matters, such a **notification** should be made without delay. Restorations are effected by a **dealing notice**.

Rule 41: Cancellation

An **AIM company** should state the reason for **cancellation** in its **notification**.

The **Exchange** should be informed of the intended cancellation by email from the **nominated adviser** to aimregulation@lseg.com.

The period of twenty **business days** is a minimum. Where earlier communication is sent to **shareholders** convening such a meeting, an **AIM company** must **notify** that such meeting has been convened without delay. The **notification** should set out the preferred date of **cancellation**, the reasons for seeking the **cancellation**, a description of how **shareholders** will

be able to effect transactions in the **AIM securities** once they have been **cancelled** and any other matter relevant to **shareholders** reaching an informed decision upon the issue of the **cancellation**.

For the avoidance of doubt, the threshold of 75% set out in this rule refers to the percentage of votes cast (rather than 75% of the class) in respect of each class of **AIM security**. Consent may be granted through **shareholders** voting in person or by proxy at a general meeting.

Circumstances where the **Exchange** might otherwise agree that **shareholder** consent in general meeting is not required would be where:

(a) the **AIM securities** are already or will be admitted to trading on an EU or **UK** regulated market or an **AIM Designated Market** to enable **shareholders** to trade their **AIM securities** in the future; or

(b) pursuant to a takeover which has become wholly unconditional, an offeror has received valid acceptances in excess of 75% of each class of **AIM securities**; or

(c) pursuant to a takeover effected by a **UK** scheme of arrangement that has been approved by shareholders at a general meeting and subsequently sanctioned by the courts.

Cancellation will not take effect until at least five **business days** have passed since **shareholder** approval has been obtained and a **dealing notice** has been issued.

Sanctions and appeals

Rules 44 and 45: Disciplinary process and appeals

The "**Disciplinary Procedures and Appeals Handbook**" is available from the **Exchange's** website, www.londonstockexchange.com/aim

Schedule One

(e) "main country of operation" should be interpreted as the geographical location from which the **AIM company** derives (or intends to derive) the largest proportion of its revenues or where the largest proportion of its assets are (or will be) located, as is most appropriate depending on the business of the company.

(f) The requirement to disclose restrictions on the transfer of shares relates to the disclosure of jurisdictional exemptions or restrictions that an **AIM company** is seeking to make use of and that may operate by virtue of non-**UK** securities laws such as the US Securities Act 1933 or similar (noting, however, the requirements of rule 32).

(h) The disclosure of information in relation to the trading of **AIM company** securities on any other exchange or trading platform should include details which exchange or platform (including details of any segment, tier or similar) and which securities this relates to.

(l) Where there is any uncertainty as to the reporting timetable that would be required, the **nominated adviser** should consult AIM Regulation in advance in accordance with the guidance to rules 18 and 19.

(k) Where the expected **admission** date is uncertain, an **applicant** should **notify** a broader timeframe (for example 'early August').

Supplement to Schedule One

(c) A disclosure as to any breach should only be made after prior consultation with AIM Regulation.

(d) Such documents or announcements must be made available following **admission** at the website required pursuant to rule 26.

(f) This should include any significant change to indebtedness.

(k) In ascertaining whether disclosures are required pursuant to this paragraph, the requirements of Schedule Two should be fully considered. Information made public is that which is made available at an address in the **UK** or at a website address accessible to users in the **UK**.

(l) A reconciliation to an applicable accounting standard under rule 19 may be presented where the accounts are not prepared under those standards although the requirements of rule 19 will apply on an ongoing basis.

Schedule Two

(a) If upon **admission**, a **Prospectus** is required (or voluntarily produced) in accordance with the **Prospectus Rules**, such **Prospectus** shall serve as the **admission document** provided it also includes the information required under Schedule Two, paragraphs (c) – (k). The **Exchange** itself may not authorise exemptions from any requirement under the **Prospectus Rules** and therefore Schedule Two, paragraph (b) does not apply to **Prospectuses**.

The **persons** responsible for the information provided in the **admission document** are the same **persons** that would be responsible for the information contained in a **Prospectus** pursuant to the **Prospectus Rules**.

The requirements of section 18 of **Annex 1** may be satisfied (other than for a **Prospectus**) by the inclusion of an accountants' report in the **admission document** on the reported historical financial information.

Financial information provided in accordance with these rules must be presented with respect to the **applicant** and all its subsidiaries and should be in consolidated form when possible.

(b)(i) The information listed in this paragraph need only be included in an **admission document** to the extent it is required by these rules (in particular Schedule Two, paragraph (k)).

An **applicant** must give regard to the part of section 18.1.4 of **Annex 1** that states that the last audited historical financial information, containing comparative information for the previous year, included in the **admission document** must be presented and prepared in a form consistent with the accounting standards framework that will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements, bearing in mind the ongoing requirements of rule 19.

(d)(iii) Where a **nominated adviser** gives the confirmation under this rule the **Exchange** would expect it to be founded upon an appropriate basis such as an accountants' report.

(g) Whilst **directors** are usually only required to disclose directorships held over the last five years, the requirements contained in (g)(iv)-(vii) which relate to bankruptcies, receiverships and liquidations are not limited to the last five years.

(k) When considering the information to be included pursuant to this paragraph consideration should be given to the relevance of any information specified in Schedule Two, paragraph (b).

Schedule Three

Further amounts, which may be included as part of consideration, includes for instance where the purchaser agrees to discharge any liabilities, such as the repayment of inter-company or third party debt.

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23 March 2022

London Stock Exchange

Inside AIM

Coronavirus – Update of financial reporting deadlines

In response to the coronavirus (COVID-19) pandemic, London Stock Exchange implemented temporary measures for reporting deadlines that are required by the AIM Rules for Companies ("**AIM Rules**").

This Inside AIM advises that the temporary measures in place for both half-yearly reports (pursuant to AIM Rule 18) and annual audited accounts (pursuant to AIM Rule 19) will no longer be available for any annual financial periods and any half-year financial periods ending after 28 June 2022.

Date: 23 March 2022

27 January 2021

Inside AIM

Coronavirus – Financial reporting deadlines

In response to the coronavirus (COVID-19) pandemic London Stock Exchange announced on 26 March 2020 and 9 June 2020 temporary measures for reporting deadlines in relation to the publication of audited annual results and half-yearly reports that are required by the AIM Rules for Companies ("**AIM Rules**"). This Inside AIM confirms that these temporary measures remain available for AIM companies until further notice of an orderly transition back to standard reporting periods. For ease of reference we set out in this Inside AIM the protocol for an extension to an AIM company's reporting deadline.

An AIM company seeking an extension of its reporting deadline for its annual audited accounts pursuant to AIM Rule 19 can apply to AIM Regulation for an extension of up to three months. The request for the extension must be made by the AIM company's nominated adviser and submitted prior to the current AIM Rules reporting deadline. AIM companies should continue to refer to guidance published by Companies House in respect of the temporary changes to UK filing requirements and note that at the moment the automatic extension ends for any filing deadlines that fall on 6 April 2021 or later[1]. Thereafter, an application will need to be made to Companies House for filing deadline extensions.

For an AIM company wishing to utilise the additional one month period for its half yearly report, it must notify its intention to do so, via a RIS, prior to its reporting deadline under AIM Rule 18. The company's nominated adviser must inform AIM Regulation of this separately.

We also note the joint FCA and FRC statement dated 27 January 2021 reminding listed companies extended financial information timelines continue to apply. London Stock Exchange welcomes this practical support for listed companies. The statement can be found here.

Date: 27 January 2021

[1] See paragraph 1.7 https://www.gov.uk/government/publications/the-companies-etc-filing-requirements-temporary-modifications-regulations-2020/temporary-changes-to-companies-house-filing-requirements

19 August 2020

London Stock Exchange

Inside AIM

Coronavirus – IFRS 16 Amendment

This Inside AIM sets out temporary relief for AIM companies who choose to use the Accounting for Lease Modifications (Amendment to IFRS 16 – Covid-19-Related Rent Concessions) before adoption by the EU ("IFRS 16 Amendment").

London Stock Exchange (the "Exchange") refers AIM companies and nominated advisers to the FRC statement providing background as to the reasons for the IFRS 16 Amendment and notes the FRC's confirmation that it will not pursue regulatory action where issuers take advantage of the IFRS 16 Amendment, prior to it being adopted by the EU ("FRC Statement"). See link.

We welcome the FRC's statement and appreciate the practical difficulties AIM companies may face in applying the existing IFRS 16 lease modifications requirements to Covid-19-related rent concessions. For the purpose of the financial reporting requirements under the AIM Rules for Companies (AIM Rules 18 and 19), the Exchange will deem compliance with the AIM Rules should an AIM company, that prepares their accounts in accordance with EU adopted IFRS, take advantage of the IFRS 16 Amendment as set out in the FRC Statement.

Date: 19 August 2020

9 June 2020

London Stock Exchange

Inside AIM

Coronavirus – Temporary measures for publication of half-yearly reports

This Inside AIM sets out temporary changes relating to an AIM company's obligation to notify half-yearly reports in accordance with the AIM Rules for Companies ("**AIM Rules**").

Inside AIM dated 26 March 2020 set out our intention to keep under review the requirements for reporting of half-yearly reports pursuant to AIM Rule 18. Currently under the AIM Rules, an AIM company must notify its half-yearly report without delay and in any event within three months from the end of the period to which it relates.

From today, AIM Regulation will permit AIM companies that need extra time to prepare their half-yearly report an additional one month in which to notify them. This extension is temporary whilst the UK faces the disruption resulting from the coronavirus pandemic. We will keep these temporary measures under review and when the disruption to AIM companies eases, we will announce an orderly transition to standard reporting periods under AIM Rules 18 and 19[1].

An AIM Company wishing to utilise the additional one month period must notify via an RIS its intention to do so prior to the AIM company's reporting deadline under AIM Rule 18 and the Company's nominated adviser must separately inform AIM Regulation.

An AIM company should continue to consider its AIM Rules disclosure obligations in conjunction with the advice and guidance of its nominated adviser.

[1] The accounting period to which an extension for annual audited accounts may be sought pursuant to Inside AIM dated 26 March 2020 is superseded by this Inside AIM and such extensions will be available until further notice of an orderly transition back to standard reporting periods.

26 March 2020

London Stock Exchange

Inside AIM

Coronavirus – Temporary measures for publication of annual audited accounts

This Inside AIM sets out temporary changes relating to an AIM company's obligation to publish annual audited accounts in accordance with the AIM Rules for Companies ("**AIM Rules**").

The unprecedented events of recent weeks mean that there may be circumstances where an AIM company is unable to publish its annual audited accounts under normal legal and regulatory reporting deadlines.

Currently under the AIM Rules, an AIM company has six months after the end of its financial year to publish its annual audited accounts. This reporting requirement is consistent with the legal filing deadline for UK incorporated public companies under the Companies Act 2006.

We note the joint initiative of the Department of Business, Energy & Industrial Strategy and Companies House, to allow UK companies to apply to Companies House for a three month extension of the legal filing deadline[1].

Noting the above and to assist AIM companies in the preparation of their annual accounts in the current difficult circumstances, from today an AIM company will also be able to apply to AIM Regulation for a three month extension to the reporting deadline for the publication of its annual audited accounts pursuant to AIM Rule 19. This extension will be available for AIM companies with financial year ends between 30 September 2019 to 30 June 2020.

The request for extension must be made to AIM Regulation by the nominated adviser, prior to the AIM company's current AIM Rules reporting deadline.

London Stock Exchange will keep under review the operation of the AIM Rules and in particular, the requirements for reporting of half yearly reports under AIM Rule 18.

[1] https://www.gov.uk/government/news/companies-to-receive-3-month-extension-period-to-file-accounts-during-covid-19

20 March 2020

London Stock Exchange

Inside AIM

Coronavirus – Temporary Measures

This Inside AIM sets out temporary measures that will be implemented by AIM Regulation to support AIM companies and nominated advisers as they seek to navigate some of the challenges arising from the unprecedented Coronavirus (COVID-19) pandemic.

Until further notice, AIM Regulation will be applying discretion to the application of certain of the AIM Rules for Companies and the AIM Rules for Nominated Advisers ("**AIM Rules**"), as set out below. We will continue to keep the situation under review, in particular the potential impact on financial reporting and will provide further guidance as necessary.

Temporary suspension of trading

Timely and accurate disclosure is a key requirement under the AIM Rules and all AIM companies should continue to meet their disclosure obligations without delay. It is therefore important that nominated advisers have a sound understanding of how their AIM companies are planning and responding to the events as they unfold, so that they are able to make disclosures in accordance with their AIM Rules obligations.

However, we recognise that an AIM company may face material new developments as a consequence of the restrictions and challenges being caused by Coronavirus (COVID-19). Accordingly, where an AIM company requires more time to make a fully compliant notification, than would be the case in ordinary circumstances, the nominated adviser should approach AIM Regulation to discuss whether a temporary suspension is required. Given the importance of disclosure, such a request will need to fully explain why the suspension is appropriate in the circumstances and any decision to suspend is at the discretion of AIM Regulation. If granted, such a temporary suspension will be for a limited period to enable the AIM company to make a fully compliant notification.

Suspended AIM companies

Currently where an AIM company has been suspended for more than six months, pursuant to AIM Rule 41 the company's securities will be cancelled. We appreciate that, given the logistical challenges during this period, further time might be required to resolve the reason for suspension. Accordingly, we will be using discretion to extend the period to 12 months for any AIM company that has been suspended between 30 September 2019 and 1 July 2020.

Engagement responsibilities for a nominated adviser

When taking on a new client, as part of its due diligence, a nominated adviser is generally required to undertake a site visit to the AIM company's material place of operations and meet the directors and key managers. Where travel restrictions and social distancing measures make it difficult to meet this obligation, provided that a nominated adviser uses alternative measures that are reasonably available (such as virtual meetings), we will temporarily suspend the requirement for a physical site visit. Once any applicable restrictions have been lifted, nominated advisers will be expected to undertake the site visit in order to fulfil its obligations under the AIM Rules.

We also recognise that in the current circumstances for the purposes of providing directors' AIM Rules education, nominated advisers are likely to be undertaking telephone or virtual meetings with directors instead of physical meetings.

28 May 2019

Inside AIM

AIM Designated Market Route

Companies whose shares have for the last 18 months been traded on certain markets may be eligible to use an AIM Designated Market route to admission. This route to market, streamlines the AIM admission process by dispensing with the requirement of producing an AIM admission document.

Today we have issued an updated AIM Designated Market Route publication. The new publication updates the list of AIM Designated Markets by introducing a new category extending to EU Regulated Markets and SME Growth Markets. The addition of the new category reflects harmonisation of investor protections and regulations in relation to securities admitted to trading on UK and European trading venues.

Potential applicants exploring this route to AIM should discuss details with a nominated adviser.

AIM Designated Market Route.

28 May 2019

London Stock Exchange

Inside AIM

Staffing of Nominated Advisers

We work closely with nominated advisers to ensure that they can maintain up to date and relevant AIM knowledge within their corporate finance functions to enable them to carry out the obligations they owe to London Stock Exchange under the AIM Rules for Nominated Advisers ("**Nomad Rules**").

In this Inside AIM, we set out answers to some of the frequently asked questions in respect of staffing, particularly taking into account wider market conditions and trends.

Relevant Transactions

Market conditions can have an impact on the number of Relevant Transactions undertaken, as defined in Nomad Rule 5. Rule 5 provides discretion for us to consider equivalent work undertaken in respect of IPOs or other major public transactions where the work performed by the nominated adviser is similar to that of an AIM admission. When considering alternative transactions, we look for evidence that firms have undertaken work equivalent to the Admission Responsibilities set out in Schedule Three of the Nomad Rules and that the firm has retained overall management and responsibility for the transaction and transaction documentation. Below are examples of transactions we may consider accepting[1]:

- **Schemes of arrangement:** a UK takeover which is effected by way of scheme of arrangement where the nominated adviser has acted for the offeree and has led the drafting of the main scheme document.
- **Aborted transactions:** Transactions (that would otherwise be Relevant Transactions) which do not complete due to market conditions and where all relevant due diligence has been completed and the relevant documents are in final form.
- **Complex Relevant Transactions:** AIM Regulation would usually only expect one approved Qualified Executive ("**QE**") to be the lead adviser on each Relevant Transaction, or a maximum of two if the Relevant Transaction is sufficiently complex to require it. Where a nominated adviser firm considers a Relevant Transaction to be complex, details should be provided of the roles of the two QEs executives as well as an explanation of why both should be credited with acting in a lead corporate advisory role.

We would also highlight that, as set out in Nomad Rule 5 and Inside AIM (Issue 1), both an applicant QE and an existing QE may cite the same Relevant Transaction if they have each been involved to an appropriate extent.

[1] Such discretion is unlikely to be applied in relation to an entity seeking approval as a nominated adviser pursuant to Nomad Rule 2.

QE Applications

We have regular conversations with nominated advisers about their current and future resourcing plans and we work with, and support, nominated advisers as they develop their wider corporate finance staffing. One question we receive regularly is whether a QE in an existing firm will automatically transfer as a QE if they change firm or join a firm which is considering applying to become a nominated adviser.

QE status is considered in the context of the firm and is not an individual qualification	The wider staffing of the nominated adviser function beyond the minimum number of QEs is an important consideration for us (at both a junior and senior level). Accordingly, QE applications are considered in the context of the firm's overall staffing, management controls, senior management supervision (of the nominated adviser team), junior support and compliance function. Underpinning this is the principle that QE status is not an individual qualification, but a designation granted to the firm denoting those individuals within the firm who are authorised by the Exchange to lead AIM Rules advice for that nominated adviser. Accordingly, QE status is not automatically transferrable.
A number of factors will be taken into account when considering QE applications	We will consider applications for QEs where a firm supports that individual to act as a QE on its behalf. Where an applicant is not able to demonstrate that all the required Relevant Transactions have been completed we may use the provisions of Nomad Rule 27 such as the requirement for ongoing supervision, as a condition of approval. In such circumstances we will look at a range of factors. For example, we will seek evidence that the applicant has a sound understanding of the UK corporate finance market and AIM in particular. We will also consider the support the applicant will receive and will take into account the wider staffing and controls within the firm.
Maintenance of standards is our key objective	The criteria for QE approval are designed to ensure that a nominated adviser firm is in a position to meet its obligations owed to London Stock Exchange and thus to maintain standards across the market. We expect nominated adviser firms to bear this in mind when supporting a QE application and we will also take this into account in our considerations.

Ensuring coverage for nominated adviser obligations

We are sometimes asked by nominated advisers about team working arrangements.

Individual working arrangements will be considered	Nomad Rule 4 refers to a 'full-time employee'. The intention underlying the reference to 'full-time' is to ensure that QEs give full attention to the role and thereby to address the circumstances of individuals who undertake other professional services or employment outside of the business of the firm, such as NED roles. The designation of QE is for the benefit of the firm so that it can demonstrate that its AIM company clients have real-time access to appropriately experienced staff to lead regulatory support and

	advice. Therefore, a firm may consider individual working arrangements such as part-time or other forms of flexible working.
Nominated advisers to ensure alternative arrangements do not impact performance of their obligations	Nominated adviser firms need to demonstrate that satisfactory arrangements are in place such that the role of a nominated adviser can be fully discharged. For example, this will mean that AIM company clients have ongoing access to QEs that have full knowledge of the company and its developments to be able to advise and guide it on its AIM Rules obligations in a real-time market environment. If part-time or flexible working arrangements are agreed, then this should be arranged in a way that supports the performance of such obligations. For example, by ensuring that clients have access to more than one QE with the requisite knowledge of its business.

Compliance

An important element of the wider staffing of a nominated adviser firm is the compliance function. In addition to ensuring it has sufficient QEs, we encourage firms to consider what a "good" compliance function looks like, having regard to its specific structure and services. In our experience, the success of a compliance function is dependent on an engaged senior management team. When considering its compliance needs, amongst other things, a firm should consider a compliance function that:

- Has sufficient resources to be able to provide an appropriate level of attention to the compliance needs of the nominated adviser function;
- Is knowledgeable of the obligations set out within the Nomad Rules, as well having an appreciation of the wider UK corporate finance market;
- Provides oversight of compliance with the firm's corporate finance manual, including responsibility for any training in relation to the manual and for updates to it, where necessary;
- Understands and appreciates relevant risks and how these are managed;
- Is fully engaged with the nominated adviser team and provides a source of senior input; and
- Has a mandate from management and the experience to provide independent challenge.

Maintenance of knowledge and experience

Nominated advisers ask us about the benefits of commissioning an external review or training in respect of their obligations to London Stock Exchange and their understanding of the AIM Rules. Whilst we appreciate that firms might consider that taking external advice could evidence a commitment to their compliance with the Nomad Rules, we question the benefits of this approach noting that the role of a nominated adviser is different to that of other professional services firms. We think it is more meaningful for a nominated adviser to engage the experience and expertise within its team when conducting a review.

We generally find that the nominated adviser firms that share knowledge internally, have experienced staff beyond individual QEs, focus on individual and collective performance and supervision, and have good levels of management engagement along with an embedded compliance culture, are better placed to meet their nominated adviser obligations. We are always very happy to provide support and to provide firms with our experience gained from engagement across the market when they are considering or designing an internal review.

26 July 2018

Inside AIM

Preparation for Corporate Governance Changes

From 28 September 2018, AIM companies will be required to disclose details of the recognised corporate governance code they have decided to apply. Companies will have to explain how they comply with their chosen corporate governance code and, where they depart from the code, provide an explanation of the reasons for doing so.

Good corporate governance is supported by a detailed explanation of a company's practices against the principles of a chosen code, in a manner that enables shareholders to evaluate how the principles have been applied, rather than simply identifying areas of non compliance. This principles-based approach to corporate governance is consistent with our overall approach to AIM. Accordingly an AIM company should exercise due care to ensure that the information in their corporate governance statement is informative and not misleading.

We have engaged with nominated advisers in preparation for the changes. The feedback has indicated that AIM companies are progressing well. The guidance below addresses some of the common questions received from nominated advisers as part of our engagement.

Timing of disclosure

On 8 March 2018 the Exchange confirmed that it would introduce a requirement for AIM companies to disclose on their website how they 'comply or explain' against a recognised corporate governance code. To provide AIM companies and nominated advisers with adequate time to prepare for the change, we confirmed that AIM companies have until 28 September 2018 to implement the new corporate governance disclosure requirements.

After 28 September 2018, an AIM company will have to review its corporate governance disclosures annually. We expect that in most cases this review will take place at the same time as the company prepares its annual report and accounts. An AIM company's website should include the date when it last reviewed its compliance with its chosen code and, in conjunction with this review, update its AIM Rule 26 disclosures to remain accurate.

Where to make your corporate governance disclosure

AIM Rule 26 requires an AIM company's corporate governance statement to be published on its website. The disclosure on its website should be clearly presented and easily accessible from the 'AIM Rule 26' landing page on its website. It is acceptable for the statement to incorporate by reference (for example disclosures that are provided in a clearly delineated corporate governance section of the annual report) provided that the material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material (for example, the relevant pages or section of the annual report or the URL for the relevant web page).

If an AIM company has not yet made disclosure against a recognised code in its annual report, the corporate governance statement must be disclosed on its website by 28 September 2018, in accordance with AIM Rule 26.

Recognised code

The Exchange has not prescribed a list of recognised codes as it remains preferable for AIM companies to have a range of options to suit their specific stage of development, sector and size.

However, we have referred to established benchmarks for AIM company codes such as the QCA Corporate Governance Code and the UK Corporate Governance Code. Further, for AIM companies that have a dual listing in their home state, we have confirmed it is acceptable to report using an appropriate standard in their home jurisdiction. For example, an AIM company which is incorporated in Australia and listed on both ASX and AIM is able to rely on its disclosures pursuant to the ASX Listing Rules (i.e. recommendations set by the ASX Corporate Governance Council) so long as this disclosure is available on its website and reviewed annually, in accordance with AIM Rule 26

It is important to note that the requirements of the code applied by AIM companies are not set by the Exchange, but by third parties. Accordingly, AIM companies should ensure they keep informed of any changes to the recognised code they apply.

Good corporate governance and investor engagement

Good corporate governance is not simply about codes or rules; it involves strong leadership, a positive culture, robust systems and risk management. These all encourage and reinforce behaviours that ensure company representatives act to protect the interests of the company and its shareholders. In order to facilitate discussions with investors, disclosure is essential. Accordingly, the new corporate governance requirements are intended to provide information to investors to enhance the engagement between investors and the boards of AIM companies. However, disclosure alone does not constitute good corporate governance.

It is for investors to determine whether the corporate governance policies, practices and any reasons stated for non compliance with the adopted code, are appropriate for the AIM company, taking into account factors such as its stage of development, sector and size.

Date: 26 July 2018

12 December 2016

Inside AIM

Interaction of social media with disclosure obligations under the AIM Rules

Social media and other forms of electronic communication are powerful tools which can be of significant value to AIM companies when communicating with a broad range of investors and stakeholders. Such communications may include 'twitter', non-regulatory news feeds, an AIM company's website etc. Whatever the form of public communication, these are subject to the same rules regarding disclosure of regulatory information.

With the increased use of such forms of communication, AIM companies should consider with their nominated adviser how to manage social media in the context of their obligations under the AIM Rules for Companies ("the AIM Rules").

Requirement for notification to a RIS "no later than it is published elsewhere"

The fact that information released through other outlets may be, or may eventually become publically available, is not a substitute for making a notification under the AIM Rules no later than it is disclosed elsewhere. This includes releasing the information to the media even on an embargoed basis. So, disclosure by social media alone will not meet an AIM company's disclosure requirements and an AIM company must continue to use traditional means of regulatory dissemination which take precedence.

AIM Rules 10 and 11 are important in ensuring there is equal, fair and timely disclosure of regulatory information to the market and that integrity in the market is maintained. The consequence of not doing so, from an AIM Rules perspective, may be the suspension of an AIM company's securities from trading pending a compliant notification where there has been unusual share price movement because of an inequality of information in the market. We may also require an AIM company to issue a clarification notification where comments made via social media by directors, or persons on behalf of an AIM company are inconsistent with notifications made via a RIS.

Further, if London Stock Exchange considers that an AIM company has breached AIM Rules 10 and/or 11, it will investigate and take such disciplinary action as it considers appropriate.

An AIM company should, of course, have regard to MAR which is within the remit of the FCA and must be considered separately to its AIM Rules obligations. Where premature or selective disclosure has been made, or where communications are designed to cause share price volatility (e.g. through a tip or leak of confidential information about the AIM company) this may also give rise to issues beyond the AIM Rules, and are within the

remit of the FCA's powers relating to market abuse.

Systems, procedures and controls

AIM companies that make use of social media should consider with their nominated adviser how the dissemination of information is supervised and monitored to ensure compliance with its disclosure obligations under the AIM Rules.

The systems, procedures and controls an AIM company puts in place (as required by AIM Rule 31) should take into account the use of social media and other forms of electronic communication used by the company in order to manage its' disclosure obligations under the AIM Rules. Communication policies should be considered in a meaningful way, taking into account the needs of the particular company and in this context, some obvious things to consider, by way of example only, include:

- Does the AIM company have a clear policy on the use of social media as part of its existing communications policies;
- How effective is that policy in practice, for example, how does the AIM company ensure that the policy is read and understood by all relevant persons;
- How regularly is the policy reviewed and how does the AIM company identify and ensure the policy is updated when necessary;
- If an AIM company engages third parties to disseminate regulatory information on its behalf including via social media, how has it satisfied itself that the third party will not compromise compliance with the AIM Rules; and
- In the context of an AIM company's obligations under AIM Rules 10 and 31, what are its protocols in talking to its nominated adviser in advance of the release of information via social media.

As a final point, consideration should be given by an AIM company and its nominated adviser (as part of its OR3 obligations) as to how to be reasonably be kept informed about social media posts, for example relevant internet discussion forums. This is important in the context of enabling the nominated adviser to be alerted to potential disclosure issues for its AIM companies such as whether a false market might be developing in an AIM company's securities, as well as indicating a leak of confidential information.

An AIM company through its nominated adviser should continue to make London Stock Exchange aware of significant rumours or problems relating to internet discussions, which may impact on the orderly market in the securities. Whether the AIM company is required to make a notification will depend on the particular circumstances.

Date: 12 December 2016

2 August 2016

London Stock Exchange

Inside AIM

Market Abuse Regulation – Closed periods and preliminary results

AIM Notice 45 referred to FCA's supervisory approach in respect of closed periods and preliminary results under the Market Abuse Regulation ("MAR"). The Notice welcomed FCA's approach and confirmed that we would review the AIM Rules for Companies ("the AIM Rules") once further clarification was provided by ESMA. In this regard we note that on 13 July 2016 ESMA updated its 'Questions and Answers' on MAR ("Q&A").

ESMA's Q&A mirrors the approach of the FCA set out in their statement published on 25 May 2016. We refer AIM companies and their advisers to this new ESMA Q&A for further information.

Given this clarification by ESMA, we do not consider it necessary to amend the AIM Rules.

We continue to support the use of Listing Rule 9.7A.1 by AIM companies as a benchmark in relation to the preparation of a preliminary results announcement.

Frequently asked questions for AIM companies and their nominated advisers in respect of MAR and the AIM Rules are now available at this link.

Date: 2 August 2016

29 April 2016

Inside AIM

Preparation for Market Abuse Regulation

On 3 July 2016, the Market Abuse Regulation (MAR) will come into force. MAR is an EU regulation which is directly applicable across all member states. MAR includes disclosure obligations for issuers admitted to trading on regulated markets or MTFs, and accordingly, will apply to AIM.

As set out in in AIM Notice 44, London Stock Exchange is consulting on changes to the AIM Rules for Companies ("the AIM Rules") as a consequence of the introduction of MAR.

This Inside AIM sets out information to support nominated advisers as they work with their clients to prepare them for the introduction of MAR and consequent changes to the AIM Rules. The contents of this Inside AIM are based on the assumption that the proposals set out in AIM Notice 44 are implemented.

We will continue to keep the operation of our rules under review.

Overview of MAR obligations

The key disclosure obligations in MAR relate to the disclosure of inside information and disclosure of deals by persons discharging managerial responsibilities ("PDMR") and closely associated persons. MAR will also introduce mandatory close period rules.

AIM Rule 11

The purpose of AIM Rule 11 is to maintain a fair and orderly market in securities and to ensure that all users of the market have simultaneous access to the same information in order to make investment decisions. The disclosure obligation in respect of inside information under Article 17 of MAR protects investors from market abuse (see recital 49 of MAR).

Whilst there is clearly overlap in respect of both sets of obligations, they should be considered separately. In particular, we note that "inside information" has a specific and technical definition (given its context) whereas consideration of AIM Rule 11 by an AIM company (with the guidance of its nomad) is a principles based consideration in the context of the maintenance of a fair and orderly market. Therefore, the separate disclosure tests and guidance to AIM Rule 11 must be complied with.

Importantly, compliance with MAR does not mean that an AIM company will have satisfied its obligations under the AIM Rules, just as compliance with the AIM Rules does not mean that an AIM company will have satisfied its obligations under MAR. An AIM company must comply with the AIM Rules and MAR at all times.

For example, the guidance to AIM Rule 11 which sets an expectation that an AIM

company should keep impending developments confidential under the AIM Rules would not restrict an AIM company from making such a disclosure if required under Article 17 of MAR. Equally, the ability to delay the publication of inside information under MAR would not override the disclosure obligation contained in the AIM Rules. In this regard an AIM company must consider whether it is able to delay the information pursuant to the guidance to AIM Rule 11.

An AIM company should continue to consider its AIM Rules disclosure obligations in conjunction with the advice and guidance of its nominated adviser pursuant to AIM Rule 31. It will not be a defence to a breach of the AIM Rules that the AIM company had received legal advice that it was MAR compliant. In this regard, we do not expect a different approach by AIM companies and nominated advisers to compliance with AIM Rule 11 post MAR. The AIM Rules are principles based and accordingly, as is the case currently, the consideration of AIM Rule 11 disclosure obligations should not be overly narrow or technical. We consider this approach to compliance with AIM Rules 11 and 31 is fundamental to ensuring market integrity. Failure by an AIM company to comply with AIM Rule 11 or to seek the advice and guidance of its nominated adviser (and take that guidance into account) pursuant to AIM Rule 31, will be regarded as a serious breach of the AIM Rules and may result in the London Stock Exchange taking disciplinary action in addition to our powers to suspend or cancel an admission.

Collaboration with FCA

FCA is the competent authority for MAR in the UK and its powers are contained in Article 23. Therefore, whilst FCA will have powers to intervene as competent authority and will be responsible for the investigation and enforcement of breaches of MAR, we intend to work closely with the FCA to co-ordinate our approach to obtaining any necessary information from AIM companies whilst minimising duplication of activities.

It is important for the effective overall operation of the market that real time monitoring and management of the market continues to be undertaken by the Exchange, as market operator. In practice, where there is a query as to whether an AIM company should make a disclosure, we will continue to liaise with the AIM company's nominated adviser regarding its AIM Rules obligations and will provide the FCA with information about these discussions, where relevant to MAR. It is open to the FCA to consider an AIM company's compliance with MAR at any time.

For the avoidance of doubt, we will not be able to opine on MAR obligations/compliance. Any guidance provided by AIM Regulation in respect of disclosure will only be in relation to an AIM company's obligations under the AIM Rules.

PDMR dealings

Article 19 of MAR (PDMR transactions) contains notification requirements which will apply to issuers, PDMRs and persons closely associated with them. Article 19 will also include mandatory close period rules. Given the scope of MAR, duplicate obligations will be removed from the AIM Rules.

However, we consider it is important for the integrity of the market that AIM companies have in place systems and controls to manage these obligations. We therefore have proposed to amend AIM Rule 21 to require all AIM companies to have a dealing policy and to require nominated advisers to consider this as part of their responsibilities.

We do not intend to prescribe the detailed content of the dealing policy but we have in AIM Notice 44 set out the minimum provisions that we would expect to be included in the policy. We expect AIM companies and nominated advisers to consider the design and implementation of the policy in a meaningful way, to ensure it is capable of working in practice, taking into account the nominated adviser's knowledge of the company and its management. This obligation will be separate to an AIM company's compliance with Article 19. Accordingly, an AIM company's compliance with MAR will not mean it will have automatically satisfied its obligations under AIM Rule 21.

Insider lists

Following implementation of MAR, all AIM companies will be required to maintain a list of all those persons working for them that have access to inside information. The FCA, as competent authority for MAR in the UK will be responsible for enforcing compliance with this provision. Accordingly, AIM companies will need to implement systems and controls to comply with these obligations.

Although MAR includes provisions for issuers on SME Growth Markets to draw up a list only when requested by the regulator, the SME Growth Market regime will not into come into force until MiFID II is implemented in January 2018. AIM is currently not a SME Growth Market, so AIM companies will therefore be required to comply with Article 18.

28 October 2015

Inside AIM

Market Abuse Regulation

On 3 July 2016, the Market Abuse Regulation ("MAR") will come into force. MAR is an EU Regulation which has direct effect across all EEA member states and will supersede the existing Market Abuse Directive.

MAR disclosure obligations will apply to financial instruments admitted to all multilateral trading facilities, as well as regulated markets. Accordingly, these obligations will apply to all issuers admitted to European growth markets including AIM.

The key disclosure obligations in MAR relate to the disclosure of inside information and disclosure of deals by persons discharging managerial responsibilities and closely associated persons. MAR will also introduce mandatory close period rules.

This article sets out our preliminary thoughts on how we expect MAR obligations to sit alongside the disclosure obligations in the AIM Rules for Companies ("AIM Rules").

AIM Disclosure Rules

The disclosure obligations under MAR will be within the remit of Financial Conduct Authority ("FCA") as the UK competent authority and we have been working closely with the FCA to co-ordinate our approach to the implementation of MAR for AIM companies.

We have given consideration to whether it remains appropriate to retain the disclosure provisions contained within AIM Rule 11 following the implementation of MAR. On balance, we consider that retaining a disclosure rule in the AIM Rules is important to the integrity of AIM and the maintenance of an orderly market. We also consider that the disclosure requirement in AIM Rule 11 (as currently drafted or with minor amendments) will continue to reinforce our expectations of AIM companies to provide equality of information on a timely basis, allowing investors to make informed investment decisions.

Retaining AIM Rule 11, should not materially change a company's approach to disclosure compared to existing market practice. Although we appreciate that retaining the AIM disclosure rules will mean that AIM companies will have obligations to both AIM Regulation and the FCA, we will work closely with FCA to minimise any duplication. For example, in respect of real time disclosure, it is currently envisaged that in the first instance AIM Regulation will continue to have discussions with nominated advisers and will co-ordinate with the FCA as necessary.

Whilst we consider that the above approach will mitigate the need for an AIM company to engage separately with two regulators in most situations, it should be noted that only the FCA, as the competent authority under MAR, will be able to opine on MAR compliance and will retain the right to engage directly with an AIM company if necessary.

The AIM Rules already sit alongside wider regulatory and legal obligations owed by an AIM company as described at AIM's Regulatory Landscape.

Although we have already sought views from various market participants, we will undertake a market consultation if changes to the AIM Rules are required. In the meantime, we would welcome further feedback from market participants which should be addressed to aimregulation@lseg.com.

24 September 2015

Inside AIM

AIM Company Disclosures relating to Equity Financing Products

Introduction

This Inside AIM article relates to AIM company disclosures arising from equity financing products that involve AIM securities and in which AIM companies or their directors may have an interest. By way of illustration only, these products include:

- equity financing facilities, which provide AIM companies with a line of funding in return for equity;
- equity swap facilities; and
- crowd funding type products targeted at non-institutional investors.

Given the importance of ensuring correct disclosures to the orderly operation of the market, it should be noted that London Stock Exchange has required correction of notifications that had incorrectly disclosed the terms of such equity financing arrangements.

Complexity and Non Standard Terms

Some of these equity financing products may, by their nature, be complex. AIM companies and their nominated advisers should carefully evaluate the structure of, and any non-standard terms contained within, such facilities when considering disclosure requirements to ensure that the information provided is sufficient to give a proper understanding to investors. This may involve providing more detail than would ordinarily be the case for more commonly used forms of financing and in all cases should properly reflect the substance of the transaction.

As an example, depending on the nature of the product, the AIM company and its nominated adviser should consider whether in respect of company equity financing facilities, the circumstances of a draw-down request (and the notice of such) gives rise to an AIM Rules disclosure obligation in its own right, pursuant to AIM Rules 10 and 11 and not just the actual draw down itself. Matters which may be relevant to such consideration could include:

- the expectation the notification is likely to set regarding the company's funding requirements and it's expected use of the facility;
- the size of the draw down; and
- the company's financial position at the time of draw down.

Disclosure of Directors Share Dealings

In addition to equity financing arrangements available to AIM companies, products are available to directors of public companies to enable them to use their own holding in the AIM company as a means of personal financing by way of, for example, share sale and repurchase agreements.

In order to comply with the AIM Rules, it is important that AIM companies carefully evaluate the consequences of these agreements, most particularly in relation to the requirements on the AIM company to correctly and fully disclose directors' dealings under the AIM Rules.

The definition of a "deal" under the AIM Rules is, of course, very broad and encompasses almost any action a director might take in relation to his interest in his holding of securities in that AIM company. Accordingly, the nature of any director's dealings arrangements should be clearly and fully disclosed, most usually at the time that a transfer of an interest in the shares becomes binding (whether that transfer occurs now or in the future).

Further, care should be taken when using terminology to describe the nature of the arrangement to ensure appropriate and sufficient disclosure. For example, share sale and repurchase agreements are distinct from secured loans/share pledges in a number of key areas (in particular, in relation to the point at which an interest in shares is transferred). The transfer of voting rights is also an important consideration that may require disclosure.

After the initial disclosure of any equity financing arrangements, AIM companies should make appropriate updates, for example, where there are changes to director's previously stated intentions or if a director does not meet a margin call that results in that director's holding in the AIM company changing including, for example, losing rights under the relevant agreement.

Systems and Controls for Disclosure

In respect of directors' personal deals, given that an AIM company is often not a party to these equity financing arrangements, an AIM company's agreements with its directors should ensure that it can obtain from directors all information that the AIM company will need in order to comply with its director dealing notification requirements under AIM Rule 17 where a director enters into arrangements relating to his or her AIM company holding. This is an important element of the requirements of AIM Rule 31.

Consideration should also be given to who within the AIM company is best placed to be involved in the preparation of notifications to the market where key executive directors, or a number of directors, are involved in equity financing arrangements. London Stock Exchange would expect, as part of an AIM company's AIM Rule 31 processes, that appropriate independence is exercised in the preparation of a notification.

AIM companies are advised to consult with their nominated adviser at the earliest opportunity about the proper disclosure of these types of arrangements. Nominated advisers should consult with AIM Regulation if they are in any doubt as to the disclosure requirements.

7 August 2015

Inside AIM

Regulation S, Category 3 Securities

Due to certain restrictions under US securities laws, equity securities issued by US companies and other companies that do not qualify as "foreign private issuers" under US securities laws were historically not eligible for electronic settlement in the CREST system operated by Euroclear UK & Ireland ("**EUI**"). Such securities were generally settled in certificated form and flagged as Regulation S, Category 3 securities in the trading system ("Regulation S, Category 3 securities").

The introduction of the EU Regulation on Central Securities Depositories (Article 3(2)) requires transactions in transferable securities that take place on a trading venue (such as AIM) to be recorded in book entry form in a CSD (i.e. settled electronically). Accordingly, the Exchange has been working with EUI and other relevant parties for a resolution that will allow such securities to be able to be settled electronically.

The Exchange welcomed the publication by EUI on 11 May 2015 of its whitebook relating to its proposed "Euroclear UK & Ireland: Regulation S Category 3 Settlement Service". The service provides issuers of Regulation S, Category 3 securities with an electronic settlement service through CREST.

We expect all existing Regulation S, Category 3 securities to be eligible for electronic settlement by no later than 1 September 2015. We have updated the Rules of the London Stock Exchange for member firms (rule 1550) and accompanying guidance to the rule, which relates to all member firms trading Regulation S, Category 3 securities.

For further details see Stock Exchange Notice N17/15 published on 7 August 2015.

New AIM applicants that propose to issue Regulation S, Category 3 securities are reminded to request a derogation from Rule 32 of the AIM Rules (transferability of shares) prior to admission and clearly disclose on the AIM Application form whether they are Regulation S, Category 3 securities, as they will be identified as such on the trading system with the letters "REG S". It should be noted that derogations from Rule 36 of the AIM Rules will no longer be available for such securities.

Further background can also be found in AIM Notice 41 published on 7 August 2015.

1 June 2015

London Stock Exchange

Inside AIM

Systems, Procedures and Controls – Financing Policies and Procedures

Pursuant to AIM Rule 31, AIM companies are required to have in place sufficient systems, procedures and controls to enable them to comply with AIM Rules. This is an area which the nominated adviser is also required to consider.

Such consideration involves, for example, the review of financial policies and procedures documentation prepared by the company (in conjunction with its reporting accountants). Nominated advisers should approach this consideration in a meaningful way, which would go beyond merely a review of the relevant documents to include an assessment of whether those policies are capable of working in practice, taking into account the nominated adviser's knowledge of the company and its management.

The Exchange also notes that such systems, procedures and controls must be in place by the time of admission.

1 June 2015

London Stock Exchange

Inside AIM

Consideration of free float

AIM is an international market for growth companies covering a broad range of sectors with a wide range of market capitalisations. Given this, the AIM Rules take a principles based approach to ensure that they are relevant to the needs of such companies.

A company's free float is an important qualitative assessment, which can have a significant impact on the ability of the company to attract investors and the functioning of the secondary market. Whilst we do not prescribe levels of free float, the issue of free float is something that we consider an important factor in the work a nominated adviser undertakes when bringing an applicant to market. Sufficient free float is fundamental to the orderly trading and liquidity of the securities once admitted to AIM, which is inextricably linked to the company's appropriateness to be admitted to AIM.

Nominated advisers will be aware that we often ask them to provide us with details about the factors they have considered in relation to free float when seeking to bring a company to AIM. As a consequence, this is an area where we thought it would be helpful to clarify some of the factors we often discuss with nominated advisers, including the following:

— Consideration should be given to how the securities are likely to trade when admitted to AIM, following discussion with the company's broker(s) and potential market makers. We would expect consideration to be given to the spread and nature of the shareholders comprising the free float;

— Failure to raise initial target funds (which in itself might give rise to free float questions) may be indicative of more fundamental issues of appropriateness and is a matter that should be properly explored by the nominated adviser;

— Limited free float should give rise to questions about the rationale for the applicant to seek admission to AIM;

— Where there are concentrated shareholdings (e.g. connected due to family, business or other interests/ connections) free float issues should be considered in conjunction with issues of undue influence, control and ongoing corporate governance arrangements within the company.

INSIDE AIM

Issue 5 – October 2012

CONTENTS

WELCOME TO INSIDE AIM

Welcome to our fifth edition of Inside AIM. In this edition we have focussed on some of the matters relevant to a nomad's consideration of directors, in particular: directors' education; directors' due diligence; and directors' participation in fundraisings.

For ease of reference we have created an index of all rules covered by Inside AIM which can be found together with previous editions of Inside AIM at:

www.londonstockexchange.com/companies-and-advisors/aim/advisers/inside-aim-newsletter/inside-aim-newsletter.htm

EDUCATION OF DIRECTORS ON THEIR AIM RULES OBLIGATIONS

Given the diversity of experience within AIM company boards, education of directors about their AIM Rules obligations can have a hugely beneficial impact on the ability of the board to ensure a robust compliance culture and in mitigating the risk of AIM Rules breaches. For this reason, a nomad is required to ensure an appropriate level of education is provided to directors on their AIM Rules responsibilities.

We would encourage nomads to approach directors' education in a practical and meaningful way, tailoring it to the individual characteristics of each board so that the education can be as effective as possible. We set out below some non-exhaustive guidance:

- As a starting point, the approach to directors' education should be of the same standard whether for new admissions, take-on of existing AIM companies or in relation to the appointment of new directors to existing AIM company clients. For example, a nomad should still undertake an education exercise with the directors of an existing company it is taking-on and not simply make the assumption that the outgoing nomad will have done this previously; it is the incoming nomad that is giving the nomad declaration and it needs to satisfy itself.

- The education should be led by the nomad so that the nomad can satisfy itself as to the level of understanding and needs of that particular board. We would hope this also presents a nomad with a good opportunity to get to know its client further and establish the basis of their working relationship for the future so that each understands their respective roles.

- In all cases (whether admission or take-on) the nomad should make an assessment as to the most effective way of ensuring that the directors understand their responsibilities. We would suggest that ordinarily this will involve 'in person' education and discussion by the nomad.

- It has occasionally been suggested to us that the education of directors is not always necessary, or may be satisfied by way of an emailed written presentation, on the assumption that directors of an existing AIM company have previous AIM experience and sufficient knowledge and understanding of the AIM Rules. We do not agree this assumption is universally true but do recognise that there may be limited occasions when a nomad may reasonably decide this is sufficient. In such circumstances the nomad should be able to demonstrate to the Exchange how their approach is appropriate and reasonable.

- Education is more effective when it is tailored and the requirements of the individual directors and the board as a whole have been taken into consideration, with appropriate emphasis given to matters such as the size of the board and roles and experience of individual directors. Consideration should also be given to the AIM Notes for Mining and Oil & Gas Companies, and Investing Companies where relevant, and the differences between AIM and other exchanges for dual-listed companies.

DUE DILIGENCE ON AIM DIRECTORS

The nomad's judgement regarding the appropriateness of a company for AIM has a crucial role to play in maintaining the quality of the market. Accordingly, the quality of due diligence on directors and the substantive judgements applied by a nomad in assessing such information is vital.

We set out some general guidance here but would also refer nomads to the important guidance contained in AIM Notice AD11.

Undertaking meaningful due diligence:

- As a starting point, directors' due diligence procedures should be applied consistently for an AIM admission, the take-on of an existing AIM company from another nomad, and the appointment of a new director to an existing AIM company client.
- Due diligence on directors should be a substantive tool in assessing appropriateness rather than a function which is undertaken merely for the purpose of completing a regulatory process.
- Due diligence on directors should be based on a nomad's reasonable judgement as to what information it requires in order to make an informed decision on an individual's suitability to be a director of an AIM company. We refer to AR2 of Schedule Three of the Nomad Rules when considering this.
- We would expect nomads to use a range of sources when undertaking due diligence including a suitable director's questionnaire, web-based general searches, Companies House or similar overseas checks, interviews, reviewing references etc. The nomad should evaluate this information and consider whether it is appropriate to undertake further due diligence from independent sources such as via diligence companies.
- For overseas directors particularly, we would expect it to be the norm rather than the exception for a nomad to undertake third party due diligence. The objective of third party due diligence is to provide substantive and reliable independent information which will be beyond what nomads are able to ascertain from desktop searches.

APPLICATION FORMS

When applying for admission of new companies and / or further issues of shares to AIM, please ensure the latest forms and documents are used. Submitting old forms may cause a delay in the application process. The current forms are available to download from the Exchange's website.

Delays to admission are likely to occur if forms are not submitted in time. Accordingly, a nomad should contact the Admissions Team as soon as possible where an application might be lodged late to understand the implications to the admission timetable.

Consideration of due diligence:

- Having gathered the results of a due diligence exercise, a nomad should take a step back and consider all the issues arising from the information it has assembled.
- There should be an appropriate forum within each nomad firm where risks are identified and the issues substantively considered and challenged by experienced members of the firm who are independent from the transaction team, where possible.
- Where issues of concern are raised from due diligence, a nomad must reconcile those concerns by way of further reasonable enquiry and upon a verifiable basis.
- If any concerns arise that cannot be reconciled, a nomad should consider how they impact upon appropriateness. It is of key importance that if the concerns are material and cannot be resolved, then a nomad may be unable to conclude that the individual is suitable to be a director. Depending on the circumstances, this may extend to concerns that remain unproven.
- In circumstances where a nomad is required to conduct due diligence into substantial shareholders or an individual able to exert significant influence or control over the company, the principles regarding due diligence on directors above can be equally applied as guidance.

DIRECTORS' PARTICIPATION IN A FUNDRAISE

Where a forthcoming fundraise itself constitutes unpublished price sensitive information the company will be in a close period and Rule 21 will apply in relation to dealings by directors and applicable employees. In this context, the commitment to deal prior to any announcement will constitute a "deal" as defined by the AIM Rules.

In such instances, and where the company has satisfied all other relevant legal requirements, the company's nomad may seek a derogation from Rule 21 from AIM Regulation in advance, in order to enable directors and applicable employees to participate in the fundraise. It should be noted that AIM Regulation routinely grants derogations from Rule 21 in the following circumstances:

- where the only existing close period is due to the fundraise itself; or
- where the company is in a close period for accounts provided those accounts do not contain unpublished price sensitive information; or
- where the company is in a close period in connection with a transaction which is inextricably linked to the fundraise, such as an acquisition for which the fundraise is being undertaken, provided announcement of all matters such as the fundraise, acquisition and dealings by directors or applicable employees take place concurrently.

Please note that notwithstanding the above, AIM Regulation will still consider each submission for a derogation on a case by case basis. When making a submission to AIM Regulation, nomads should supply some brief background to the fundraise including for example:

- whether the directors or applicable employees will participate in the fundraise on exactly the same terms as the other investors; and
- whether the company is in a close period for any other reason apart from the fundraise itself (e.g. for accounts or a corporate transaction) together with details of any such matter; and
- whether the investors in the fundraise require the directors to participate.

A nomad will also need to consider the implications of Rule 13 (related party transactions), Rule 16 (aggregation of transactions) and Rules 18 & 19 (interim and annual accounts) in respect of any directors' participation in a fundraise.

CAPITAL REORGANISATIONS

When an AIM client company is undertaking any form of capital reorganisation, nomads are reminded that they should contact Stock Situations, in accordance with AIM Rules 24 and 25, in order to clarify the company's corporate action obligations. Please also note that an application for admission of shares arising from such an event needs to be lodged with the Admissions Team.

CLOSE PERIODS FOR ACCOUNTS

Further to the publication of *Inside AIM, Issue 4*, a number of nomads have requested agreement to end a close period for accounts upon the publication of preliminary results. AIM Regulation is routinely able to agree this. To assist nomads we have set out below some further guidance in relation to common questions we have received:

- If a company ends its close period for accounts at the point of notification of preliminary results (with the prior approval of AIM Regulation), the directors will still need to consider whether the company remains in a close period by reason of it being in possession of any other unpublished price sensitive information.

- Regardless of whether a company has published preliminary results, if a company fails to publish its annual audited accounts within 6 months from the end of the financial period to which they relate, the Exchange will suspend trading in that company's AIM securities in accordance with Rule 40. AIM Regulation should be contacted as soon as possible by the nomad if this is a possibility.

- If a company is intending for its preliminary results to end the close period for accounts (having sought prior approval from AIM Regulation), the directors and / or applicable employees should not have dealt in the company's AIM securities in the two months prior to the intended notification of the preliminary results. This does not override the prohibition on dealing for any extended period where the company is in a close period due to the possession of any other unpublished price sensitive information. Accordingly, it is important that an AIM company determines its financial reporting timetable at any early stage so that directors and applicable employees are clear about the timing of the close period for accounts.

Where a nomad is in any doubt about the application of the close period rules for accounts, it should contact the AIM Regulation team for further guidance.

AIM RULE 41 – CANCELLATION OF AN AIM COMPANY

Rule 41 outlines the circumstances in which a company can cancel its admission from AIM and requires, amongst other things, that cancellation is conditional upon the consent of not less than 75% of the votes cast by the holders of AIM securities in a general meeting.

The threshold is set to ensure that shareholders cannot seek to take a company off market without the support of a 75% majority.

The cancellation of a company from market can have a significant impact upon shareholders, especially where there is no comparable dealing facility in place and accordingly the company and nomad should be mindful the importance of Rule 41 in protecting the rights of shareholders, together with the underlying spirit of the rule.

Comparable dealing facilities

Pursuant to the Guidance Notes to Rule 41, AIM Regulation may use its discretion to waive the requirement for shareholder consent if an AIM company's securities will continue to be traded on a comparable dealing facility. For example, an EU Regulated Market.

The waiver is not an automatic carve out and a submission to AIM Regulation is required from the nomad. AIM Regulation will take into account all the relevant circumstances including, for example, the cancellation policy of the other dealing facility and the stated intentions of the company to remain trading on that dealing facility.

Local legislation

A company admitted to AIM must take care to ensure that it can comply in full with its AIM obligations, including Rule 41. Any less stringent rules which may apply under the laws of another jurisdiction do not override Rule 41. Accordingly, where local laws do impact, nomads should seek to ensure that where possible, a company's AIM obligations are enshrined in its constitutional documents (pursuant to Nomad Rule 14).

Takeover offers

Where an AIM company is the subject of a takeover offer which requires less than 75% of its shareholders to accept the offer for it to become wholly unconditional, holders of AIM securities must still pass a vote of at least 75% in favour in order to cancel from AIM in order to comply with Rule 41.

Members' Voluntary Liquidation

AIM Regulation will consider requests to waive the shareholder consent requirement in Rule 41 where 75% of votes cast at a general meeting of the company are required to approve the appointment of the liquidator *and* the fact that approving the Members' Voluntary Liquidation will result in cancellation of the company.

Twenty business day period

The Exchange does not provide derogations from the full twenty business day requirement. The twenty business day period cannot start running until a company has notified both the Exchange and the market of its intention to cancel. This is an important protection for shareholders.

Schemes of arrangement

A nomad should consider the guidance in *Inside AIM, Issue 2 (page 2)*, as regards schemes of arrangement.

If in doubt, a nomad should contact AIM Regulation at the earliest opportunity for guidance on the application of Rule 41.

NOMAD NOTIFICATION REQUIREMENTS

We would like to remind all nomads of the requirements of Nomad Rule 13, in particular the requirement that a nomad must inform AIM Regulation as soon as possible of any matters that may affect it being a nomad. This includes, for example:

- any material adverse change in its financial or operating position; or
- any changes in controlling shareholders or partners (see *Inside AIM, Issue 3* for further details); or
- receipt of any written warning or disciplinary communication from another regulator.

INVESTIGATIONS & ENFORCEMENT UPDATE

Public Censure

On 21 December 2011, the Exchange issued a public censure within AIM Notice AD11. The Exchange's case related to two key areas of the Nomad Rules:

- a nomad's obligation to provide advice and guidance to an AIM company in respect of its obligations to make announcements without delay, specifically relating to its changing financial situation and liabilities; and

- a nomad's obligation to the Exchange to undertake adequate due diligence and to properly assess the appropriateness of a company seeking admission to AIM.

In light of the key issues arising from AIM Notice AD11, we have set out some further guidance relating to due diligence on directors above on page 2.

To assist nomads, we also set out below some guidance in relation to the contact between a nomad and its AIM clients:

Contact between AIM companies and their nomads

The quality of a nomad's communication with its AIM company clients is an important aspect of the AIM regulatory framework and the obligations are set out in OR1 of Schedule Three of the Nomad Rules. Regular contact with an AIM company enables the nomad to keep up-to-date with the company's developments and also allows it to be satisfied that the company continues to understand and comply with its obligations under the AIM Rules.

The level and nature of contact with AIM clients is something we leave to nomads to determine on a case by case basis. Where a nomad has active and meaningful contact with its clients, then it should follow that in circumstances where a company's financial position is deteriorating, the nomad will be well placed to assist the company to fulfil its regulatory obligations to make timely and full disclosure to the market.

By way of general guidance, AIM Regulation would usually consider the following to be relevant:

- The nomad should consider asking pertinent questions of the board and consider requesting further information particularly where 'red flags' or concerns are raised by those discussions.

- A nomad should consider following up on matters or requests for information in a meaningful way.

- When reviewing notifications, we would encourage a nomad to consider in particular the spirit and underlying purpose of Rules 10 and 11, which are intended to provide a clear and meaningful update to the market. Nomads should advise their AIM clients to update the market on or before the expiry of any previously notified deadlines as previously set out in *Inside AIM, Issue 1 (page 7)*.

- In cases where an AIM company's financial position looks uncertain, or where a company cannot make an announcement which fully complies with Rule 10, nomads should contact AIM Regulation for guidance.

Private Censures

Two AIM companies have been privately censured and fined a total of £120,000 by the AIM Executive Panel. Both cases demonstrate the seriousness with which the Exchange views the failure of an AIM company to properly communicate with its nomad.

Case 1

The private censure against one of the companies involved an £80,000 fine for breaches of Rules 3, 10, 11, and 31. In summary:

- In breach of Rule 3, the historical financial information in the company's admission document failed to disclose significant loans to a third party that was a related party prior to admission.

- After admission, the company continued to provide loans to the third party. In breach of Rules 10 and 11, these loans were not properly disclosed in the company's notifications.

- In breach of Rule 31, the company did not inform its nomad about the continued funding for a substantive period after admission. The Exchange did not accept the company's argument that it was justified in breaching Rule 31 based on legal advice and would note that Rule 31 clearly requires a company to seek guidance on regulatory matters from its nomad.

Case 2

A second private censure involved a £40,000 fine for breaches of Rules 10 and 31. In summary:

- The company had received urgent enquiries from its nomad regarding press speculation and a corresponding rise in the company's share price. In response to these enquiries, the company

confirmed to its nomad that there were no new developments or corporate activity to announce.

- However, at the time of the nomad's enquiries, the company was undertaking a transaction that constituted unpublished price sensitive information (the "Transaction"). In breach of Rule 31, the Company failed to (i) let the nomad know about the Transaction upon being asked the specific question whether there were any undisclosed corporate transactions in the context of a price movement and (ii) further had failed to inform the nomad previously that it had been in discussions to imminently close the Transaction.

- In breach of Rule 10, a misleading notification was issued (with no reference to the imminent Transaction) which created the impression that the company had no news to announce. The Transaction was completed and was disclosed in a notification soon after. The news was accompanied by a significant change in the company's share price.

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Please note requests for derogations from the AIM Rules should be submitted in writing (including email) by the company's nomad.

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FEEDBACK

We would welcome any feedback on this edition of Inside AIM and any suggestions for issues that you would like us to address in future editions.

Please email any comments to:
aimregulation@londonstockexchange.com

REGULATORY STATUS OF INSIDE AIM

The guidance provided in this newsletter should be regarded as illustrative only. It is intended to give an indication of how AIM Regulation would usually expect certain aspects of the AIM Rules to be interpreted and this guidance is not definitive or binding. AIM Regulation should be contacted by a company's nomad if clarification or derogation from the rules is required in a specific situation.

Furthermore, AIM companies should continue to seek the guidance of their nomad when considering the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.

INSIDE AIM

Issue 4 – September 2011

CONTENTS

WELCOME TO INSIDE AIM

Welcome to our fourth edition of Inside AIM.

In this issue we have focussed on the investigations and enforcement function of AIM Regulation, with our main article providing an insight into the workings of the specialist team within AIM Regulation that undertakes this work.

In addition to technical guidance, we have included articles relating to the new Bribery Act and a review of Chinese companies on AIM.

AIM INVESTIGATIONS AND ENFORCEMENT

Our approach

An effective approach to investigations and enforcement action on AIM is in the interests of all market participants to ensure the integrity and reputation of the market for the long term.

Given the need for support and co-operation from nomads, Inside AIM seeks to provide some insight into how investigations are approached by AIM Regulation.

AIM Regulation investigates all alleged breaches of the rules that are brought to its attention. We are not enforcement-led; the emphasis is on education, deterrence and providing a proportionate and appropriate response for all market participants.

Investigations should not be seen as adversarial but as a means by which the Exchange and nomads can work together to ensure a good standard of practice by AIM companies and their nomads.

The investigation process

Breaches of the AIM Rules for Companies ("AIM Rules") and the AIM Rules for Nominated Advisers ("Nomad Rules") are brought to our attention from a variety of sources, including complaints from the public, notifications from other regulators as well as by nomads themselves (pursuant to their obligations under Nomad Rule 19).

The initial investigation stage is focused on gathering relevant factual information so that we can fully understand the circumstances in question. We appreciate that this can be a time-consuming process for both the company and nomad. We try to keep questions to a minimum or, if it is more efficient, we may ask to view the files ourselves.

An open and transparent dialogue between AIM Regulation and the nomad/AIM company during the investigation process should make the process as effective and efficient as possible. Open communication with the Exchange is also a requirement of both the AIM Rules and Nomad Rules and we take failure to comply with this seriously.

It is therefore in the interests of all parties that AIM Regulation is given the full facts from the outset in order to reduce the need to ask follow-up questions.

Nomads sometimes ask us to hold meetings with the company and/or nomad at the investigation stage. However, due to the number of investigations that we undertake and also the need for us to have a clear, documented audit trail for the investigation, this is not usually practicable.

Decision making

The AIM Regulation team is made up of legal and financial practitioners who appreciate that advice and decisions are made in real-time, on the basis of information available at the time and that nomads also owe a duty of care to their client company, as well as to the Exchange.

Accordingly, we try not to make decisions based on the benefit of hindsight. We look at the particular circumstances and what was reasonable to expect at that time.

Sanctions

Sanction decisions are made after careful deliberation and based on the methodologies and principles that we have developed in order to ensure fairness and consistency.

Where we decide that enforcement action is necessary, we would usually seek to give the nomad or company a reasonable opportunity to comment on the case and our proposed sanction. We will of course take into account matters that they raise with us.

We usually also offer an opportunity for early settlement of an action and follow the 'Consent Orders' procedure laid out in the Disciplinary Procedures & Appeals Handbook.

Due to our desire to maintain a non-adversarial enforcement approach, we try to avoid the appointment of lawyers on either side, unless the matters in question are particularly complex.

We aim to reach an agreed factual position with a nomad or company, in order that enforcement action can be an appropriate and proportionate reflection of the breach that occurred.

CLOSE PERIOD RULE INTERPRETATION

We have become aware that, particularly in larger AIM companies, directors' dealings are sometimes taking place ahead of full compliance with AIM Rule 19 (publication of annual audited accounts).

The drafting of "close period" in the AIM Rules has always been interpreted by the Exchange to be publication of the accounts in accordance with Rule 19, rather than, for example, notification of preliminary results, the concept of which does not exist under the AIM Rules in contrast to the UKLA Listing Rules.

Given that AIM companies are often more closely held by owner/managers, the Exchange considers that the operation of the close period rule is particularly important, especially as more detailed requirements such as those in the Model Code do not apply.

In light of market feedback, we have considered what would be an appropriate interpretation of "close period" for AIM and have concluded the following:

1. The general position is that a close period ends when full compliance with Rule 19 has taken place.

   We take this opportunity to remind nomads and AIM companies that annual accounts are required to be published "*without delay*", notwithstanding the 6 month period allowed, and of course Rule 11 (disclosure of PSI) applies in any event.

2. If, however, a nomad is satisfied that an AIM company has uploaded its annual accounts (which are compliant with Rule 19) to its website in accordance with Rule 26 and this fact and the key information in those accounts has been notified to the market, then the nomad can consider the close period ended with no derogation being required from AIM Regulation.

   In relation to Rule 20 (publication of documents), a further notification on the sending of the hard-copy accounts to shareholders will not be required, assuming the content of the accounts remains unchanged.

3. If a director wishes to undertake a dealing ahead of (1) or (2) above, then, in certain circumstances and using Listing Rule 9.7A.1 as a benchmark, AIM Regulation will consider derogation requests from nomads.

In terms of the start of the close period, nomads should consider the above when looking at when the close period should commence.

We will continue to keep the operation of this rule under review with a view to maintaining the principle behind it, whilst enabling appropriate director dealings to take place.

AIM RULE 7 – LOCK-INS FOR NEW BUSINESSES

AIM Rule 7 is an important component of the AIM rules, particularly since AIM companies are not required to have an established trading history before seeking admission.

The underlying purpose of the rule is to ensure that directors and key shareholders of a company show a commitment to the business and also that they do not take unfair advantage of any uplift in the share price created by admission at the expense of other investors.

Derogations from AIM Rule 7

Given its fundamental importance to the AIM framework, AIM Regulation takes a cautious approach to derogation requests from AIM Rule 7. We would not, for example, usually consider derogations for the following reasons:

- to allow share disposals simply to improve a company's free float – we would expect free float issues to be resolved as part of the pre-IPO structuring;
- the company is a new applicant as it is undertaking a reverse takeover – directors and founders are expected to show a commitment to the new enlarged entity; or
- the company is admitting to AIM via the AIM Designated Market ("ADM") route – for ADM applicants, Rule 7 applies even where a company's shareholders are free from restrictions on another exchange. The rationale for this is that if a company is seeking investors through AIM, which we would expect to usually be the case, the same rules should apply as for all other applicants.

Potential scope for derogations

We may consider derogating in circumstances where the underlying beneficial holder of the shares remains the same or the market effect is neutral.

For example:

- transfers between spouses or into a pension plan; or
- an intra-group transfer.

However, the new holder must agree to be bound by the terms of the lock-in for the remainder of the period.

Any form of security, such as a charge or pledge over shares (especially where the chargee gains any rights over the AIM securities, now or in the future), will be prohibited by AIM Rule 7. However, we recognise that giving security over assets such as shares may, in some circumstances, form an important cornerstone of financing arrangements for growing companies and AIM Regulation may consider a derogation in exceptional circumstances.

Further acquisition of securities

Further acquisitions of securities by the locked-in party during the lock-in period (for value or otherwise) will also be subject to the terms of the lock-in for the remainder of the period. This includes shares or options issued to directors as a bonus or as part of the admission process.

"A price more widely available"

Rule 7 lock-ins will not be required for substantial shareholders who invest at a price more widely available, as per the Guidance Note to that rule, on the basis that:

- a price more widely available is expected to equate to the company's market price at admission; and
- the shareholder will not benefit from an uplift in the share price on admission.

The price more widely available exemption is generally available only if shareholders at admission invested as part of an offer to the public or if there is a significant placing that could be seen as analogous or is equivalent to market price if the company is undertaking a reverse. Generally, this exemption will not apply to a private placing, unless the company is able to sufficiently demonstrate that the placing price equates to the first day dealing price, or that an offer is made to a sufficiently wide number of placees.

FAQ

Q - I'm looking for statistical information on AIM companies. What information is available and where can I find it?

A - The Exchange publishes a monthly fact sheet around the second week of each month. The fact sheet contains all key AIM statistics including recent admissions and cancellations, further issues and top 50 AIM companies by market capitalisation. It can be accessed via this link:
http://www.londonstockexchange.com/statistics/historic/aim/aim.htm

If you are looking for details of a company's nomad, you can find this at:
www.londonstockexchange.com/exchange/companies-and-advisors/aim/for-companies/information-search/aim-company-search.html

A list of all companies and securities across all of the Exchange's markets can be found via the following link, which includes information such as FTSE sector and market capitalisation:
http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-and-issuers.htm

It can be filtered to show only AIM companies, by sector, country of incorporation and other key criteria.

THE BRIBERY ACT 2010

The Bribery Act 2010 ("the Act") came into force on 1 July 2011.

Along with other offences, the Act created a new offence that can be committed by organisations that fail to prevent persons associated with them from bribing another person on their behalf. Directors and employees can be individually liable.

The defence to this is if an organisation can prove it has adequate procedures in place to prevent such activity. The Ministry of Justice ("MoJ") has issued guidance on this.

AIM Regulation has received a number of queries from nomads asking whether we have any position or guidance in relation to the Act's applicability to AIM. It is not for the Exchange to attempt to supplement legislation or MoJ guidance. We have, however, considered the Act in three key areas and make the following points:

Application to AIM companies

The Exchange has no further information in relation to the application of the Act to AIM companies other than referring to the guidance issued by the MoJ in which it is stated that:

"The Government would not expect, for example, the mere fact that a company's securities have been admitted to the UK Listing Authority's Official List and therefore admitted to trading on the London Stock Exchange, in itself, to qualify that company as carrying on a business or part of a business in the UK and therefore falling within the definition of a 'relevant commercial organisation' for the purposes of section 7."

We also note the SFO's subsequent comments in this area.

Each overseas company therefore needs to consider whether it could fall within the scope of the Act, and nomads may wish to make sure that overseas client companies are aware of this new legislation and have undertaken this review.

Nomad obligations in relation to AIM companies

One of the main queries we have received is requesting guidance on the extent to which nomads should be considering compliance with the Act by their AIM company clients, particularly as part of the appropriateness consideration on admission, as well as after.

As mentioned above, whilst the Exchange would not seek to supplement existing guidance from the MoJ, we expect nomads to consider any significant and relevant legislation, its impact on their clients and the extent to which it may impact appropriateness for AIM. The significance of this particular Act to a company will inevitably vary depending on business type and jurisdiction.

Application to nomads

Nomad firms will also need to consider the potential application of the new Act to themselves.

The Exchange takes its obligations under the Act very seriously and we take this opportunity to highlight that the Exchange:

- prohibits bribery in any form whether direct or indirect;
- has implemented within the London Stock Exchange Group appropriate internal controls and systems, policies and procedures to counter bribery, including but not limited to, anti-corruption, gifts & hospitality, vetting agents and advisers; and
- has provided training and guidance for its employees.

Companies doing business with the Exchange, including nomads, should strictly abide by the provisions of the Act, implement appropriate internal policies and controls and apply robust ethical standards on bribery and corruption.

AIM Notice 37 – Corporate action timetables

Minor changes have been made to the Guidance Notes to AIM Rules 24 and 25 of the AIM Rules to reflect the amendments made by the FSA to LR9.5.7A, relating to open offer timetables.

By way of a reminder, all timetables must be cleared in advance of the announcement with the Exchange's Stock Situations team. This team is responsible for the review and analysis of corporate action events that impact on a company's shares or its shareholders.

For more information on the service the team provides, please visit: http://www.londonstockexchange.com/products-and-services/reference-data/corporate-actions/corporate-actions.htm

They can be contacted on 020 7797 1579/1920 or ssn@londonstockexchange.com

CHINESE COMPANIES ON AIM

Earlier this year we conducted a statistical review of Chinese companies on AIM in order to capture some data on this sector. As part of the research we reviewed 84 AIM companies that had or continue to have major operations in mainland China, Hong Kong, Macau and Taiwan ("Chinese companies" for ease of reference).

Sector

Both by number and value, Real Estate was the biggest sector, followed by the Mining and General Financial sectors. The combined market value of companies from these three sectors accounted for over half of the Chinese companies' aggregate market value at admission.

Country of incorporation

All these companies were incorporated outside China, mostly in the UK, Channel Islands and British Virgin Islands.

Number of admissions

2006 saw the most Chinese companies, 34, coming to AIM. After the surge in 2006, the number of Chinese admissions accounted for approximately 5% of all AIM admissions each year from 2007 to 2010.

Fund raising

£1,644 million was raised on admission and £1,210 million on-market by these companies. Most of these companies came to market via a placing and half of them had a market capitalisation at admission between £10 and £50 million.

In terms of fundraising on market, each Chinese company raised on average more money than the market average in 2007, 2008 and 2010. However, 49% did not raise any money after admission (compared to 38% of non-Chinese AIM companies).

Points to consider relating to due diligence and ongoing governance

As for any AIM company, due diligence should not be seen as a "box ticking" exercise and therefore the type and scope of due diligence for a company with key operations outside the UK needs careful consideration by a nomad.

Nomads need to consider the challenges of timezones, language, culture and business practice differences. By way of example, nomads should be mindful of the way Chinese names are written in English. Some start with the surname and others with the first name. English spellings of Chinese names only reflect the pronunciation not the actual Chinese characters, which means search criteria need careful thought. People from Hong Kong usually have an official English name along with their Chinese one, but for mainland Chinese people, their English name is usually self-given.

Further, there is limited public information in English about Chinese companies and directors. Nomads should therefore conduct due diligence in both Chinese and English and are usually expected to commission a third party to obtain further information in the relevant jurisdictions about the business and key individuals involved, in accordance with the Admission Responsibilities set out in Schedule 3 of the Nomad Rules.

As set out in Issue 2 of Inside AIM, nomads are expected to consider and advise on the corporate governance measures that their AIM company clients will follow. A company with significant overseas operations may not be considered appropriate for AIM simply because English speaking directors or UK-based directors have been appointed or audit and remuneration committees have been established. A more substantive consideration of what is appropriate for the market is required to ensure ongoing suitability and compliance with the rules.

We expect nomads to have direct communication with and access to key decision makers on the board who are able to articulate corporate matters in English over the phone and to access up-to-date management information.

In China, as in many jurisdictions, face-to-face meetings are thought essential for building trust. Site visits and meetings therefore help both the nomad and directors to enhance their understanding and for the nomad to provide deeper education about the AIM rules.

Nomads should adopt a proactive and tailored approach to due diligence before admission and on an on-going basis, to ensure not only that their Chinese client companies are appropriate for AIM but that they remain appropriate and are able to maximise the benefits of being admitted to AIM.

Nomad Annual Returns – update

In relation to the Nomad Annual Returns (which focus on firm and individual eligibility) that we asked nomads to submit earlier this year, we can confirm that we have now closed nearly all outstanding issues. Where matters of concern arose, we have written to the firm to advise them of this or will be doing so shortly. We are intending to again request a Return for this calendar year which will be sent out around the end of the year.

SUSPENSIONS RELATING TO AIM RULES 10 & 11

AIM Rule 11 is the key AIM disclosure rule. It is fundamental to any public market that all participants have all appropriate and correct information they are entitled to on a timely basis.

In some circumstances, a company may not be able to fully comply with AIM Rule 11, and in particular may not be able to issue a complete announcement in accordance with AIM Rule 10.

Where this is a possibility, the nomad of an AIM company should contact AIM Regulation at the earliest opportunity to discuss the situation.

It is possible that we may allow a suspension of that company's AIM securities if the company cannot make an immediate notification, or if it is concerned that such notification may not be sufficient to properly inform the market. These situations will be rare – we find that it is usually possible for a company to make the requisite announcement, even though it may be commercially sensitive. Our paramount objective, however, is to ensure there is no false market in the shares, and this will be the key consideration in any decision we make.

This can be particularly relevant for mining, oil and gas companies or other sectors dealing with technical information, where certain results are being evaluated and accordingly the company does not have all the information it needs to make an announcement which complies with AIM Rule 10, yet finds itself bound to comply with its obligation under AIM Rule 11 to release price sensitive information to the market without delay.

Some further guidance relating to suspensions:

- In most cases, AIM Regulation would expect both the request and the reason for the suspension to be notified to the market by the AIM company itself.
- A suspension should not be for a prolonged period of time as the AIM company should use its best endeavours to ensure that it makes a further announcement as soon as possible which will enable the suspension to be lifted.
- AIM Regulation is not likely to agree to a suspension request which is made for administrative reasons or marketing convenience.

AIM RULE 26 – WEBSITE DISCLOSURE

Since AIM Rule 26 was introduced in 2007, feedback from all market participants has been overwhelmingly positive. However, websites are only as useful as the quality of the information made available on them and it is important that the information is kept up to date and complies with the Rule on an ongoing basis. To help, we have identified some areas where issues sometimes arise.

AIM securities not in public hands and details of significant shareholders

This information is required to be updated every six months and should tally with the previous regulatory announcements made. Where discrepancies are identified, a corrective announcement is required pursuant to AIM Rule 17.

Removing old admission documents

At the time AIM Rule 26 was introduced, certain derogations were granted with respect to the inclusion of admission documents that were felt to be obsolete due to the passage of time. This was, however, only done on a case-by-case basis. Removing an admission document from a website requires a specific derogation from AIM Regulation.

Websites under construction or out of order

When a company's website is not available for more than a very short period of time, we suggest that an appropriate regulatory announcement is made. All reasonable endeavours should then be made to resolve the issue as soon as possible. Please contact AIM Regulation when this issue arises so that we are aware of the problem as we often get calls from members of the public.

Website review

Although many nomads already do this, we suggest that as part of its take-on procedures for a new AIM company, and, say, around every six months thereafter, a nomad should review the websites of all its existing AIM company clients.

Changes to AIM Regulation hours

Please note that the AIM Regulation helpdesk opening hours have changed. The helpdesk is open from 7.30am to 5.30pm Monday to Friday, excluding public holidays. Emergency advice is still available outside of those hours. You can obtain details of the out of hours contact numbers from the recorded out of hours voicemail message.

AIM POLICY UPDATE

THE UK BUDGET & VCTs

Following the recommendations we put forward recommending changes to the VCT scheme, we were pleased with the announcement in the March 2011 Budget to increase the VCT qualifying company limits from £7m gross assets and 50 employees to £15m gross assets and 250 employees.

Other changes being proposed in relation to the EIS / VCT schemes include an increase in the annual investment limit for qualifying companies to £10m and a consultation to ensure the schemes are targeted at genuine risk capital investments.

The day after the Budget the Financial Secretary to the Treasury, Mark Hoban, delivered the keynote address at the AIM conference, providing an insight into some of the Government's growth measures included in the Budget and praised the role that AIM plays in supporting growing businesses and the UK economy.

On 6 July, HM Treasury published its consultation on tax-advantaged venture capital schemes which includes a proposal for additional support for seed investment; simplification of the existing schemes; and refocusing the schemes to ensure they remain appropriately targeted.

We will continue to demonstrate the importance of VCTs to AIM and put forward supporting evidence to help obtain EU State Aid approval for the announced changes to the scheme.

CHANGES TO THE PROSPECTUS DIRECTIVE

On 8 July 2011, following HM Treasury's consultation on early implementation of amendments to the Prospectus Directive, it announced that the statutory instruments that will make the following key amendments to FSMA 2000 would come into effect on 31 July 2011 to:

- amend the number of investors to whom an offer of securities may be made before a prospectus is required, from 100 to 150 investors; and
- amend the total size of the offer that may be made before a prospectus is required from €2.5m to €5m.

We have supported the early implementation of these amendments which we believe will be positive and most significant in the case of further fundraisings conducted by smaller companies on our markets. Over the longer term we expect these changes will help smaller companies attract a wider set of investors, helping to boost liquidity and lower their cost of capital.

PROSPECTUS DIRECTIVE – ESMA CONSULTATION

At the EU level, ESMA's consultation on Level II of the Prospectus Directive (closed on 15 July) focused on the following:

- format of the final terms of the base prospectus;
- format of the summary of the prospectus; and
- proportionate disclosure regime for pre-emptive offers and for offers by SMEs and companies with reduced market capitalisation.

We believe the proportionate prospectus regime - if implemented appropriately combined with the increase in thresholds that trigger the requirement for a prospectus to €5m consideration and 150 investors is a positive move to help facilitate access to finance for small companies.

However, as emphasised in our response to ESMA, we do not consider that a proportionate prospectus regime alone addresses the core issue of the need to widen the population of investors readily able and willing to invest in smaller companies. The regulatory focus should not simply be on attempting to alleviate costs by reducing transparency and disclosure. The cost of being a public company and/or of undertaking an offer to the public only becomes a barrier to issuers if it exceeds the associated benefits. Issuers assess the benefits against the level of investor interest, measured through the level of trading in their securities, and ultimately their cost of capital.

We therefore believe that any measures proposed under the Prospectus Directive- for smaller companies (or growth markets like AIM) should take into consideration the ongoing review of MiFID and the Market Abuse Directive.

If you would like to feed into our lobbying efforts at the UK or European level, please contact Umerah Akram at uakram@londonstockexchange.com.

For more details on the London Stock Exchange's responses to the abovementioned consultations, please refer to: www.londonstockexchange.com/policy.

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Please note requests for derogations from the AIM Rules should be submitted in writing (via email) by the company's nomad.

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FEEDBACK

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Please email any comments to:
aimregulation@londonstockexchange.com

REGULATORY STATUS OF INSIDE AIM

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Furthermore, AIM companies should continue to seek the guidance of their nomad when considering the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.

INSIDE AIM

Issue 3 - February 2011

CONTENTS

WELCOME TO INSIDE AIM

Welcome to our third edition of Inside AIM.

This issue covers some common themes that are often raised with us by nomads.

In particular we focus on Rule 13, which is a key protection for AIM shareholders given that related party transactions are common in companies of the type and size typically found on AIM, and because directors and founders are often major AIM shareholders.

When considering this rule (as with all AIM Rules) nomads should keep in mind the underlying spirit in its application: the rule is designed to protect shareholders by ensuring that there is no exploitation or perception of exploitation of the close relationship between a related party and the AIM company.

Rule 13 does not require that related party transactions receive shareholder consent, the intention being to find a proportionate means to protect shareholders. This makes the nomad's role in assessing the fair and reasonable statement central to the underlying protection afforded by this rule.

This rule is a good example of how the nomad role is clearly different from other corporate finance advisory roles and requires nomads to exercise the delegated regulatory responsibility that has been given to them by the Exchange.

We trust that 'Inside AIM' continues to provide a useful source of reference for nomads.

Nilam Statham – Head of AIM Regulation

AIM RULE 13 – RELATED PARTY TRANSACTIONS

Wording of fair and reasonable statements

The wording of the fair and reasonable statement as stated in Rule 13 should not be amended or caveated in any way, in either the same sentence or in surrounding paragraphs. Recently we have received requests from nomads to caveat the statement, something which is not acceptable. The rule contains the specific wording that must be used, to provide a consistent mechanism by which a transaction is assessed in lieu of shareholder approval.

Rule 13 derogation requests

We frequently receive requests to derogate on the requirement to provide a fair and reasonable statement on the basis that the transaction cannot be said to be the best possible one for a company or because the nomad feels unable to give such a statement. In particular, this appears to be a concern where the company is in a distressed situation.

Rule 13 requires a nomad to consider whether a transaction is fair and reasonable (with a view to protecting shareholders against the influence the relevant related party may have on the company) and it may not necessarily solely be a matter of considering whether it is the best deal that possibly could be made.

In circumstances where a related party transaction is being made in a distressed scenario or where few other options are available, shareholders arguably rely even more than usual on the confirmation that the transaction is fair and reasonable. Whilst the company might be in a difficult situation, nomads must consider carefully all of the reasonable options that are open to the company in the time available to it.

Lack of independent directors

In instances where there are no independent directors to provide the fair and reasonable statement, the nomad should contact AIM Regulation with a proposed alternative. Appropriate solutions can sometimes include the provision of a relevant statement by the nomad instead of the directors or shareholder approval of the transaction.

Directors' remuneration

In circumstances where directors are granted bonuses or options which are not part of their standard remuneration package, or where the terms of their remuneration package are revised, such transactions are caught by Rule 13 if they could be seen not to be within usual remuneration parameters. In addition, directors' participation should be aggregated in some situations, for example where there is a related option issued to directors.

RELEASE OF SCHEDULE ONE'S

We were pleased to see an increase in the level of Schedule Ones released towards the end of last year, something we hope continues throughout 2011 as market conditions continue to improve.

In the following FAQ we note some more routine matters that should be taken into account before submission of a Schedule One to help AIM Regulation release it in a timely manner.

We expect nomads to alert us well ahead of the submission of a Schedule One and ideally as soon as they become aware of any issue that might be of concern to the Exchange. In particular we expect nomads to highlight to us any individuals (directors, shareholders or key employees) who could cause the Exchange to question whether the reputation or integrity of AIM could be affected by the admission. Similarly, nomads should make AIM Regulation aware of applicants from jurisdictions or sectors that may be considered to carry a higher than normal risk.

We remind all nomads of the powers the Exchange has, pursuant to AIM Rule 9, to delay or refuse admission to AIM. Any potential issues of concern are therefore best dealt with at an early stage before significant work has been completed.

FAQ

Q. What are some of the matters I should be aware of before submitting a Schedule One?

A. Some matters to be aware of are:

Omitting data required by the form: only the following fields can be left as TBC:

- Details of securities to be admitted including any restrictions as to transfer of the securities (except the type of shares);
- Capital to be raised and market capitalisation (however an accurate estimate must be disclosed to AIM Regulation);
- Percentage of securities not in public hands (however an accurate estimate must be disclosed to AIM Regulation);
- Significant shareholders post admission (pre-admission shareholders must be included and any changes can be notified in a Schedule One update).

Accounting reference date: any changes to the company's financial reporting timetable including where stub periods will be reported on must be agreed with AIM Regulation at the point the Schedule One is submitted or prior to admission. This ensures the market is clearly informed about what financial information it can expect to receive and when.

Release of the form: nomads should not expect a Schedule One to be released immediately or at a specified time and should submit the form with sufficient time for any issues to be discussed with AIM Regulation. AIM Regulation does not review draft Schedule One forms, so please only submit final form documents in good time ahead of desired release.

AIM RULE 10 AND 11 – DEALING WITH INSIDERS

Compliance with the general disclosure Rules 10 and 11, which must be considered in conjunction with each other, is crucial to ensure the market is updated accurately and in a timely manner to avoid the risk of a disorderly or false market.

In Market Watch 37 (Sept 10), the FSA commented on the need to prevent information leaks. In addition to market abuse requirements AIM Rule 10 requires that regulatory information required by the AIM Rules is not published elsewhere before it is formally notified. AIM companies are expected to keep confidential impending developments and matters in the course of negotiation and must ensure they have in place effective systems and controls to ensure confidentiality of price sensitive information and prevent the risk of a leak (pursuant to AIM Rule 31).

Nomads to those AIM companies having dual quotations need to be particularly mindful of this requirement, given the two sets of rules the companies must comply with.

We expect nomads to monitor their AIM clients' share prices and trading volumes especially when there are forthcoming regulatory announcements to be made for significant events and they should have draft holding announcements prepared in advance to discuss with AIM Regulation should a potential leak situation arise.

Furthermore, care needs to be taken when AIM companies are making progressive updates about a matter that is yet to be concluded, to ensure that AIM Rules 10 and 11 are complied with and a misleading impression of the status of the matter is not given. The sequence of events which needs to occur before final conclusion/results/settlement must be clearly explained.

NOTE

Change to standard suspension and restoration times

Please note that AIM Regulation now usually suspends and restores AIM companies from 07:30hrs rather than 07:00hrs. We are still able to suspend and restore AIM companies intra-day where deemed appropriate. Usual practice is for a company's announcement about either of these events to occur at the same time as suspension / restoration, however if a nomad considers the market requires more time to assess the information an announcement can be released at 07:00hrs followed by our suspension/restoration notice at 07:30hrs. This should always be pre-agreed with AIM Regulation.

AIM RULE 14 – SUSPENSION ON ANNOUNCEMENT OR LEAK OF A REVERSE TAKEOVER

Our approach towards suspending companies pursuant to Rule 14, which are in the process of a reverse takeover that has leaked or been announced, has not changed despite amendments to the UKLA's approach for listed companies as communicated in LIST! 25 (July 2010).

If a reverse takeover has been announced or leaked, the requirement remains that an admission document must be published in respect of the enlarged AIM entity in order to avoid suspension of the company's shares. We have not changed this approach and continue to require audited financial information on the target.

It continues to be the case that we will not suspend an AIM company if the target is on the Main Market or is another AIM company. If the target is on an AIM Designated Market or other EU Regulated Market we will consider maintaining continuous trading where the nomad can demonstrate that information equivalent to that required by an admission document is publicly available, in English. In such circumstances the admission document for the enlarged entity can then be published at a later date. However, if only part of the target is being acquired suspension may still be required, depending on how the target's results have been presented. AIM Regulation should be contacted in advance in all cases to ascertain whether suspension is required.

The different nature of most companies on AIM from those on the Main Market means that a different approach remains sensible. Factors such as the market impact of a leak of information or a suspension, the nature of information available on a target entity and the requirements for admission documents (versus a prospectus) all differ for AIM compared to the Main Market.

FAQ

Q. When concluding queries and derogation requests, is AIM Regulation bound by precedent to follow previous decisions?

A. No. AIM Regulation deals with matters on a case-by-case basis. Nomads are welcome to make reference to previous cases but should not assume that the outcome will be the same in every case. Whilst previous decisions are considered to ensure consistency, the merits of each case are considered separately and our decision making takes into account wider policy decisions.

AIM RULE 15 – INVESTING POLICIES

Companies which become Rule 15 investing companies following a fundamental disposal must ensure their investing policy complies with the AIM Rules.

We are aware that some Rule 15 companies may be adopting a policy to develop organically into a trading business. This does not comply with the overall requirement that an investing company must have as its primary business or objective, the *investing* of its funds in securities, businesses or assets of any description. Rule 15 companies are not able to avoid the reverse takeover rules by seeking to implement a policy to develop into a trading business in small incremental steps. An investing company which wishes to become a trading company should either make an acquisition or acquisitions which constitute a reverse takeover or cancel and seek re-admission as a new operating entity.

FAQ

Q. What details about a QE applicant's role on a Relevant Transaction should be included in an NA2 application?

A. A nomad should ensure that sufficient information is included on an NA2 application in order for the Exchange to assess an applicant's role and responsibilities on the transactions cited.

The "details of work undertaken by applicant" section should detail the main tasks the applicant was responsible for, tailored for each transaction cited (as it is rarely the case that an applicant will have performed exactly the same tasks on every transaction cited). Reference to some of the key areas set out in Schedule 3 of the Nomad Rules is often helpful.

The role and responsibilities of the QE, or any other senior individuals involved in the transaction, should also be stated.

Where the nomad firm was engaged in a joint role, eg joint sponsor, please also indicate the areas of responsibility that each firm took.

AIM RULE 3 – WORKING CAPITAL STATEMENT IN ADMISSION DOCUMENTS

The working capital statement specified by Schedule Two and required to be included in an admission document pursuant to AIM Rule 3, requires the directors to confirm that, in their opinion and having made due and careful enquiry, the working capital available to it and its group will be sufficient for its present requirements and for at least twelve months from the date of admission of its securities. We should like to make it clear that, similar to the statement required by Rule 13, amendments and caveats to this statement are not permitted.

FAQ

Q. Can we obtain a derogation from the need to perform a site visit to a potential new MO&G AIM client for example if there are no physical assets to see or if a Competent Person has visited the site on the Nomad's behalf.

A. No derogation is given in these situations. The matter is for the nomad to determine. Site visits are part of the nomad's due diligence and we cannot derogate on due diligence requirements. We generally expect a nomad to conduct a site visit as indicated in the Nomad Rules (AR1) and the Guidance Note for Mining Oil and Gas Companies. However, there may be circumstances (which would be exceptional) when the nomad needs to decide whether a site visit is possible in order for it to conclude on an applicant's suitability. The conclusions from all visits should be documented and similarly where a nomad has concluded that a site visit is not reasonably possible, or rarely where it is not required, a record should be made noting the reasons supporting that decision.

NOTE

Nomad change of control

Nomad firms that are considering any significant change of ownership, including a change of control or sale of assets, are reminded of the need to make advance notification of any potential material changes under Nomad Rule 13. In cases where a change of ownership is being contemplated, the Exchange will consider whether the overall group entity of which the Nomad firm will be part will continue to meet the criteria, including having a 2 year corporate finance background and an appropriate reputation, in order for Nomad status to continue. A Nomad licence cannot be 'sold' or transferred but is individual to a firm in its current form. The Exchange has the ability to remove Nomad status if it believes the firm no longer meets the criteria, and so early liaison with AIM Regulation on any proposed changes in ownership is vital to ensure firms' continuing eligibility.

INVESTIGATIONS & ENFORCEMENT UPDATE

Since Issue 2 of Inside AIM (July 2010), one AIM company has been privately censured and fined by the AIM Executive Panel for breaches of AIM Rules 10, 11, 22 and 31. Points of interest in this case are:

- The AIM company released an announcement confirming that further to its previous release it was still expecting to meet market expectations. However, at the time of its announcement the company was in possession of additional material information which if disclosed would have affected the import of that announcement. AIM companies and their nomads should ensure that all relevant facts are included in announcements (per Rule 10).

- Although aware of material trading under-performance, the AIM company failed to update the market about the significant change in the financial performance of its business for at least 2 months.

- Despite the fact that the board was aware of the material underperformance, the AIM company confirmed to its nomad on numerous occasions that it was still on track to meet market expectations.

In this case, the final sanction imposed was a fine of £5,000 and a private censure, a size of fine which reflected the AIM company's extremely poor financial condition.

It is important to note that in other circumstances AIM Regulation expects that the AIM Executive Panel would have imposed a more severe sanction for these rule breaches including a fine in the region of £75,000 and potentially a public censure, to reflect matters such as poor co-operation by the AIM company during the investigation and difficulties caused by the provision, on a number of occasions, of incomplete and misleading information.

The Exchange would emphasise that it expects AIM companies and nomads to deal with it in an open and honest manner as supported by the Nomad Rules and takes a breach of this obligation seriously.

AIM POLICY UPDATE

THE UK FUNDING ENVIRONMENT

In July, the Coalition Government published its green paper on *Financing a private sector recovery*. The consultation recognised the importance of small and growing businesses to the UK's economic recovery.

Our response to this highlighted the importance of equity finance for smaller businesses and included a number of policy recommendations to help ensure that such companies can efficiently access the capital they need to grow:

- *Capital gains tax regime:* A reduced CGT rate or roll-over relief for capital gains on investment in companies on growth markets would not only boost liquidity but also encourage investors to re-invest their gains into smaller companies creating a more vibrant market for the longer term.

- *Venture Capital Trust scheme:* Allowing VCT participation in the secondary market would provide urgently needed liquidity through funds that are already accounted for by the Treasury, while increasing the gross assets limit on investee companies from £7 million to £15 million and the employee test limit from 50 to 250 employees would make investment capital available to a wider pool of growth companies.

- *ISAs:* To bring a wider set of investors and boost liquidity in the secondary market, the Exchange called for ISA rules to allow investment in unlisted companies, like those on AIM.

- *Stamp Duty:* Phasing out or abolishing Stamp Duty as part of a five year corporate tax strategy would further boost the efficiency of equity markets for UK companies, savers and investors. As a reduced measure, the Exchange would welcome a targeted abolition of Stamp Duty for SMEs as a means of supporting growth companies' access to equity capital.

- *Regional finance:* We highlighted the need to understand at what level and stage of development regional businesses struggle to raise capital and the importance of ensuring a central pool of investors and liquidity to ensure efficient access to capital.

The Government published its response on 1 November 2010, recognising the importance of ensuring businesses continue to have access to appropriate and diverse sources of finance at different stages of their business life cycle. Going forward, it will seek to expand the support available to SMEs; extend existing tax schemes; and help bring together investors and businesses.

We expect more specific details around tax policies to be announced in the Budget statement expected on 23 March 2011. Our Budget submission made on 4 February repeats many of the above recommendations and highlights their relevance to the wider UK funding environment and growth agenda.

PROSPECTUS DIRECTIVE REVIEW

In its response to *Financing a private sector recovery*, the Government has also committed to early implementation of the following amendments to the Prospectus Directive (PD):

- The consideration limit of offers to which the Directive does not apply is to increase from EUR 2.5 million to EUR 5 million.

- Increase in the limit of natural / legal persons to which an offer can be made without the requirement to publish a prospectus has increased from 100 to 150.

This is a hugely positive outcome following our extensive lobbying efforts first at the EU level to amend the PD (Level I) and subsequently at the UK level to ensure earliest implementation as part of the Government's efforts to help smaller companies raise capital efficiently.

We also continue to feed into the further development of the amended PD at the EU level, in particular to the request for technical advice by the European Securities and Market Authority on the delegated acts of PD (Level II). Most relevant to AIM companies, these will include details on the proportionate disclosure regime in relation to offers by companies whose shares are already admitted to trading on a regulated market or Multi-lateral Trading Facility provided that the issuer has not disapplied pre-emption rights. The deadline for this call for evidence is on 25 February and the formal consultation is planned for July 2011.

MIFID CONSULTATION

The recently closed EU Commission review of MiFID recognises the role of existing specialist SME markets and asks whether a new definition of 'SME market' and framework for such markets under MiFID would be welcome.

Given the primary and secondary market functions provided by such SME markets, we agree that their default regulatory status as Multi-lateral Trading Facilities (MTFs) does not appropriately reflect their function. We would therefore welcome a new definition of an 'SME market' on the basis that a separate regime would help increase investor interest in SMEs as an asset class rather than seeking to reduce disclosure and transparency requirements.

It is also critical that an SME market framework allows appropriate flexibility at a Member State and market operator level to enable domestic markets to account for local practices.

At this stage, our suggestion to the Commission is to bring together an industry group of exchanges that operate growth markets or who would be interested in doing so, together with the investor and advisory community.

The Exchange's full response to the consultation can be found at:

http://www.londonstockexchange.com/policy

If you would like to feed into our lobbying efforts at the UK or European level, please contact Umerah Akram at uakram@londonstockexchange.com.

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Emails for our Investigations & Enforcement team should be sent to:
aiminvestigations@londonstockexchange.com

Please note requests for derogations from the AIM Rules should be submitted in writing (including email) from the company's nomad.

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INSIDE AIM

Issue 2 - July 2010

CONTENTS

WELCOME TO INSIDE AIM

Welcome to our second edition of Inside AIM. Following positive feedback on our inaugural issue, in this edition we have followed a similar format, with a continuing objective of dealing with key or common matters that nomads should find useful.

CORPORATE GOVERNANCE ON AIM

Lucy Leroy
Head of UK Primary Market Regulation

Or should that be: *Corporate Governance on AIM?* At times, that has been a question levelled at the market.

Until the advent of the Nominated Adviser rules, there was no specific mention of the phrase 'corporate governance' within the AIM rules, although there are long-standing AIM company rules requiring a company to have "sufficient procedures, resources and controls in place". As well as this continuing requirement, under the current Nomad Rules, a nomad should "consider, with the directors of an applicant, the adoption of appropriate corporate governance measures".

Since the last issue of Inside AIM, the Exchange has amended the AIM Rules to provide for enhanced disclosure on directors' remuneration in AIM companies' annual accounts. With the continuing difficult economic situation, there has also been an increased focus on levels of executive pay and the Financial Reporting Council has updated the UK Corporate Governance Code ("CGC"). This therefore seems a good time to set out the Exchange's position on corporate governance for AIM companies.

The Exchange believes that good corporate governance is just as relevant and important for AIM companies as it is for those on the Main Market.

Why then do the AIM Rules not require adherence to a particular set of corporate governance rules?

Given the nature and range of smaller, growing companies that predominantly make up AIM's constituent members, the Exchange has believed for some time that a blanket requirement to comply or explain against a particular code, in a 'one size fits all' style, is not appropriate; such a step may simply be seen as 'more regulation' rather than as a beneficial set of practices to improve the running of a company and the interaction between board and shareholders.

More importantly, AIM also has the benefit of the nomad system. Nomads are in an excellent position to work with their AIM company clients, both up to admission and on an ongoing basis, to consider and set out the corporate governance standards with which the company is going to comply, by reference to size, stage of development, business sector, jurisdiction etc.

So, whilst full adherence to the CGC should not necessarily be the expectation for all AIM companies, we believe it continues to serve as a standard that public companies should aspire to.

The QCA's Corporate Governance Guidelines for AIM Companies have become a widely recognised benchmark for SME corporate governance. We fully support the use of these Guidelines to achieve a level of corporate governance measures appropriate for an AIM company.

We will keep the Exchange's position on corporate governance under review. We expect to see nomads continue, and extend, their involvement in this area by demonstrating an active involvement in the setting and satisfying of the corporate governance standards that their AIM company clients will follow.

As with all things AIM, we expect this to be done in a meaningful and pragmatic way. It should not simply be a "box ticking" exercise, for example by installing audit and remuneration committees with boilerplate wording in the admission document or over-reliance on the FRP review conducted by the reporting accountants.

We look for evidence of discussion and debate at admission, and on an ongoing basis, of board composition, structure, procedures and controls, using, for example, the CGC or QCA Guidelines as a base. This should enable the Exchange to maintain a flexible approach to corporate governance while continuing to improve the quality of companies on AIM and reducing the number of disciplinary actions we have to take in circumstances where board inadequacies have led to breaches of the rules.

So, corporate governance on AIM? Yes, most definitely.

NOMAD REVIEW PROGRAMME

The most recent cycle of our nomad review programme, which started in 2007 after the introduction of the AIM Rules for Nominated Advisers (Nomad Rules), has recently been completed. That programme achieved its primary objective of assessing compliance with the Nomad Rules across the nomad community. It also enabled us to obtain a greater understanding of each nomad firm, as well as allowing us to compare practices and to develop better relationships with key executives at each firm. During the three year review period, we visited each nomad firm at least once.

COMMON THEMES

We thought it would be useful to share the common themes that emerged from the programme. Whilst every firm was treated individually and specific recommendations were made in each case, common themes for recommendations included:

- Record keeping – improving the records retained to demonstrate more fully how aspects of the Nomad Rules are being complied with, in particular the duties set out in Schedule 3;

- Directors due diligence – ensuring that (i) sufficient due diligence is carried out for both an admission of a new company and a take-on of an existing AIM company, which we do not consider to be materially different in terms of requirements; and (ii) tailoring due diligence more, to take account of each individual director including their operating location, background and independent, reliable knowledge of the director;

- Directors education – reducing reliance on other advisers to educate directors about their AIM Rules responsibilities and taking a more direct, pro-active and tailored approach in educating all directors of their responsibilities (this applies not only at admission); and

- Corporate Finance Procedures Manual – including practical guidance on how each nomad firm expects its executives to comply with the Nomad Rules in key areas, such as the three areas stated above.

NEW NOMAD REVIEW PROGRAMME

In April of this year, we started a new programme of nomad reviews. The primary focus of the new programme will be a much broader risk-based review of the regulatory risks relevant to its nomad status that are facing each nomad firm. The reviews will therefore take into account a number of factors including, for example, the size and scope of the nomad firm and its client base, our day-to-day experience of dealing with the firm, its management, its risk appetite, compliance procedures and its disciplinary record. Each visit will therefore be different in terms of matters examined and method of examination. The duration of and time between visits will also be tailored according to our risk assessment.

FAQ

Q. An AIM client is seeking to cancel from AIM by scheme of arrangement. Who should I contact?

A. Nomads should contact the following departments before any announcement is made which includes a proposed cancellation date:

- Stock Situations – email the full scheme timetable;

- AIM Regulation – email the full scheme timetable clearly outlining the court, record and CREST disablement dates, any derogation requests (eg, for obtaining shareholder approval), and confirmation that the timetable has been approved by Stock Situations. AIM Regulation must confirm the cancellation date and whether any suspension is required before any announcement is made. Please note the 20 business day notification requirement in Rule 41. If a company is going to be suspended from trading ahead of cancellation, then the 20 business days notification requirement should run to the date of suspension usually.

FAQ

Q. Can a company that has become a Rule 15 investing company (e.g. a trading company that has sold all of its business/assets) avoid the 12 month deadline for being suspended by raising a minimum of £3m and therefore becoming instead an investing company that is subject to AIM Rule 8?

A. No. A Rule 15 company has 12 months (followed by a 6 month suspension period) to either implement its investing policy or carry out a reverse takeover. The Exchange considers that this is enough time to satisfy the requirements of this rule.

If a company wishes to remain a cash shell for a longer period of time after becoming a Rule 15 company, it instead must readmit to AIM as a Rule 8 investing company, following the usual admission process, including compliance with the Investing Companies Note.

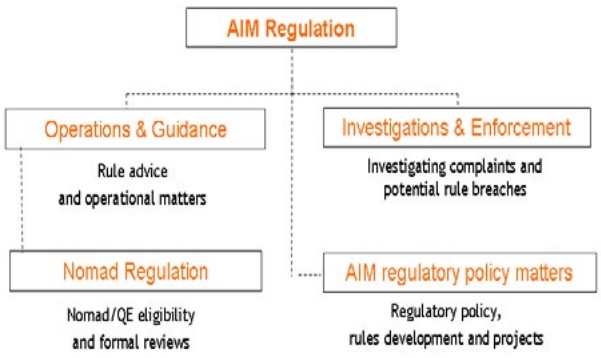
Preparing an admission document *as well as* raising a minimum of £3m from independent investors demonstrates commitment by the company to its investing policy. It also means shareholders receive full disclosure about the company's intentions and its risk factors.

Rule 15 seeks to protect the integrity of AIM by ensuring companies which are potentially no longer suitable for a public market do not remain on market over an extended period.

CONTACT WITH THE EXCHANGE

This section provides information on key Exchange departments that nomads may need to deal with regarding their AIM company clients. This follows some recent situations where not all relevant departments have been contacted.

AIM REGULATION



All day-to-day queries including in relation to real time matters and AIM Rule derogation requests are dealt with by the Operations & Guidance team. Schedule 1 documents should also be sent to this team.

The Operations & Guidance team can be contacted on +44 (0)20 7797 4154 or at: aimregulation@londonstockexchange.com

The Investigations & Enforcement team investigate and (where appropriate) take disciplinary action for breaches of the AIM Rules. This team can be contacted on +44 (0)20 7797 4154 or aiminvestigations@londonstockexchange.com

MARKET OPERATIONS

The Market Operations team (previously known as Issuer Implementation) can be contacted at admissions@londonstockexchange.com or on +44 (0)20 7797 4310. This team should be contacted for matters such as AIM application forms for new admissions and further issues ('3 day documents'), company application fees and company name changes. **Note: Schedule 1s should be sent to AIM Regulation not Market Operations.**

STOCK SITUATIONS

Stock Situations can be contacted at ssn@londonstockexchange.com or on +44 (0)20 7797 1579/1920. This team should be contacted in advance of any corporate actions which affect the rights of a company's shareholders eg, events which require an Ex action to be made, schemes of arrangement and disablement of electronic settlement (CREST). **Please ensure you regularly refer to Rules 24 and 25 of the AIM Rules (and their related guidance) for details of relevant corporate actions. Increasingly, Stock Situations are encountering issues where these rules have not been properly considered.**

SEDOL MASTERFILE

SEDOL Masterfile can be contacted at smfnewissues@londonstockexchange.com or on +44 (0)9065 543210. This team should be contacted to obtain UK ISINs and SEDOL codes for new companies admitting to AIM or AIM companies carrying out a capital reorganisation.

EQUITY PRIMARY MARKETS

Equity Primary Markets can be contacted on equityprimarymarkets@londonstockexchange.com or on +44 (0)20 7797 3429. This team should be contacted for matters such as if an AIM company wishes to change trading platform (from SEAQ to SETS, for example) or you wish to discuss a potential opening ceremony.

FAQ

Q. An AIM client is currently suspended (e.g. due to a CVA) and will be undergoing a capital reorganisation. Who should I contact?

A. You should contact:

- AIM Regulation – regarding any concerns to do with ongoing appropriateness of the company following the reorganisation and in relation to the proposed restoration to trading;
- Stock Situations – to have the corporate action timetable approved and a stock situations notice released;
- Market Operations – to ensure the stock description is amended on the trading system, and an AIM application form is lodged if appropriate; and
- SEDOL Masterfile – if a new ISIN or SEDOL code is required.

Following some recent difficulties regarding the pricing of AIM securities after complex reorganisations, we remind nomads of the need to ensure all relevant departments are contacted and the market announcements are sufficiently clear.

FAQ

Q Can we send our monthly accounts confirmation spreadsheet in after the deadline?

A. No. We ask all nomads to be mindful of the deadlines we set for submission of the accounts confirmations to AIM Regulation.

The confirmation spreadsheets must be submitted to **aimregulation@londonstockexchange.com** by **9am at the latest** on the due date.

Recently nomads have been submitting these confirmations throughout the day, which does not allow us time to deal with them, activating or avoiding suspension as appropriate.

If it is not possible to provide all the confirmations in time (for example, as a company is having difficulties meeting the deadline) nomads must still submit the confirmation by the due date and time. Simply indicate in the covering email which company has not yet released its accounts and whether any suspension may be required.

As a guide and so nomads can plan their resource accordingly, a confirmation spreadsheet will usually be sent to nomads c.2 weeks before the month end and is due to be returned at the latest by the last business day before month end.

In June and December, an interim confirmation will be sent at the start of the month and is due to be returned towards the middle of the month (a specific date will be advised in the email from AIM Regulation).

Nomads should not rely on the confirmations spreadsheets to be an exhaustive list of their clients that have not yet released their accounts. Nomads should be checking the completeness of the list themselves against their own client records.

INVESTIGATIONS & ENFORCEMENT UPDATE

Since Issue 1 of Inside AIM (December 2009), two AIM companies and two nomads have been privately censured and fined a total of £275,000 by the AIM Executive Panel.

ACTIONS RELATING TO AIM COMPANIES

The disciplinary action against one of the AIM companies involved breaches of AIM Rules 10 and 31. This included a significant failure to implement adequate formal procedures and controls to ensure appropriate accountability and oversight of a key individual responsible for managing the company's business. The company was privately censured and fined £75,000.

In the other disciplinary action, an AIM company was privately censured and fined £30,000 for breaches of AIM Rules 11 and 31. This included a delay in notifying price sensitive information and failure to liaise appropriately with its nomad.

Points of interest in these cases are:

- One of the disciplinary actions was completed after the company cancelled from AIM. An AIM company's cancellation does not prevent the Exchange taking action for breaches of the AIM Rules when it was on market, where appropriate;
- One of the companies maintained that its practices were industry standard. An applicant should have regard to the fact that the procedures, systems and controls which might otherwise be regarded as industry standard for comparable non-quoted entities may not be sufficient for a company on a public market;
- When assessing the appropriateness of an applicant for AIM, a nomad should consider whether industry practice is at odds with an applicant's overriding public market obligations, potentially rendering it inappropriate for AIM; and
- In one case, a number of matters potentially affecting the company's ability to trade were known to the company but not shared with the nomad. The board also failed to recognise that the combined effect of the various matters led to a divergence between the position as previously announced to the market and the true position. This shows the importance of keeping the nomad fully updated.

ACTIONS RELATING TO NOMADS

AIM Regulation's disciplinary action against one of the nomads included failure to properly assess a company's appropriateness for AIM, for which a private censure and £90,000 fine was imposed.

In the other nomad disciplinary action, a nomad was privately censured and fined £80,000 for a number of breaches including inadequate written procedures and record keeping and failure to keep itself updated with the company's financial performance.

Actions against nomads have highlighted that a nomad should take reasonable care to ensure that:

- While it is important that individual issues arising from due diligence are dealt with, the nomad should not lose sight of the overall objective of the due diligence process when assessing an applicant's appropriateness for AIM. In one case, a significant amount of work was undertaken by the nomad and reporting accountant prior to admission to resolve numerous issues around working capital adequacy and financial reporting procedures. However, the nomad should have stepped back and considered whether the existence of so many issues and the steps required to address them in itself cast doubts on the company's appropriateness for AIM, notwithstanding any actions taken in relation to individual issues;

- In the event that information comes to light either suggesting that a company may need to make a regulatory announcement or contradicting representations that have been made to a nomad by a company, the nomad should take urgent and additional steps to follow up on that information, to ensure that, where appropriate (i) an announcement is made and/or (ii) to verify/disprove the company's representations. Such steps may include requesting sight of management accounts or other relevant documents; and

- In circumstances where there is a conflict between the nomad's views and those of other advisers (such as lawyers or PR firms) concerning the interpretation of AIM Rules, the nomad should approach AIM Regulation directly for its view.

FAQ

Q. Can a prospective AIM company client admit to AIM via the AIM Designated Markets ("ADM") if there have been changes to its business in the past few years?

A. This depends on the extent of changes to the business during that time. We expect a company to have substantially traded in the same form for 18 months prior to seeking admission via ADM. This is so that there has been a sufficient period of disclosures to the home market about the company in the form in which it is seeking to admit to AIM, which is the principle behind the requirement to be listed on one of the AIM designated markets for 18 months.

Where a business has changed substantially, for example carried out the equivalent of a Rule 14 reverse takeover, it is possible that the entity will not be able to take advantage of the ADM admission route.

If the company has performed smaller transactions or taken other actions to substantially change its business e.g. ceasing a major business unit, we would need to discuss with the nomad whether the ADM route is available.

FAQ

Q. If an AIM client is undertaking a reverse takeover and the target is an AIM or Main Market company, can historical financial information be omitted from the admission document for both companies?

A. No. AIM Rule 28 permits historical financial information to be omitted only for the offeror. Historical financial information needs to be included for the target in line with Schedule 2.

We consider it is important to provide this information in the admission document sent to the shareholders so they can use it when voting on the transaction.

In addition, the historical financial information about the target will then be available as future reference for shareholders.

This is important as there is no other specific requirement under the AIM Rules for the target's historical accounts to be made available once the enlarged company readmits to AIM.

If an AIM company wants to make use of Rule 28, the nomad must confirm to the Exchange in writing that the offeror's financial accounts are otherwise available to the market due to the company's previous compliance with the AIM Rules (i.e. through company announcements, website disclosures and shareholder mailings).

AIM POLICY UPDATE

AIM & FISCAL INCENTIVES

Since the last issue, we remain engaged in discussions around the importance of improving SME access to finance and continue to lobby for improvements in the VCT scheme and inclusion of AIM securities in ISAs. The March Budget included statements on the intention to consult on both these issues. This was a very positive outcome and a result of our lobbying to date and work with key stakeholders, including AIM VCT managers and the QCA.

We are also delighted with the announcement of a Green Paper on Business Finance in the Emergency Budget. This demonstrates the new Government's intention to engage and legislate in this area and will take forward our previous engagement on increasing access to equity finance (as well as fixed income finance).

We are contributing to the Green Paper and are continuing our discussions on facilitating SME access to finance.

PROSPECTUS DIRECTIVE REVIEW UPDATE

Throughout the PD Review process we actively pursued and provided evidence to support specific proposed amendments that, if implemented, would help companies attract a wider set of investors and boost liquidity over the longer term.

The PD Review has now concluded in European Parliament, with the following positive amendments for smaller companies including those on AIM:

- the consideration limit of offers to which the Directive does not apply has increased from EUR 2.5 million to EUR 5 million;
- increase in the limit of natural / legal persons to which an offer can be made without the requirement to publish a prospectus has increased from 100 to 150; and
- introduction of a proportionate disclosure regime for offers by companies already admitted to regulated markets and appropriate multi-lateral trading facilities.

EUROPEAN POLICY

We continue to emphasise to the European Commission and key MEPs on the need for increased flexibility in European legislation for smaller companies, particularly those on growth markets such as AIM and AIM Italia, to help lower their cost of capital. Our efforts include contributing to discussions on the ongoing European directive reviews and participating in the EVCA working group of European exchanges and venture capitalists set up to seek ways to improve the IPO exit environment for VCs.

FAQ

Q. What are the current AIM Designated Markets?

A. The ADM markets have not changed in recent years. As a reminder the relevant exchanges are as follows (using their latest names):

- Australian Securities Exchange
- NYSE Euronext
- Deutsche Börse
- Johannesburg Stock Exchange
- NASDAQ
- NYSE
- NASDAQ OMX Stockholm
- Swiss Exchange
- Toronto Stock Exchange
- UKLA Official List

A company seeking admission via the ADM route must have been listed on the top tier/main board of the exchanges above eg, NASDAQ Global and NASDAQ Global Select, TSX main board (not Venture).

The Exchange will not currently accept admission to AIM via ADM for any market not listed above. It is always advisable to contact AIM Regulation in respect of any potential ADM admission before significant work is undertaken to ensure that route is available.

A publication about the ADM route can be found at: http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/aim-designated-markets.pdf

CONTACTS

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Emails for our Investigations & Enforcement team should be sent to: aiminvestigations@londonstockexchange.com.

Please note requests for derogations from the AIM Rules should be submitted in writing (including email) from the company's nomad.

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REGULATORY STATUS OF INSIDE AIM

The guidance provided in this newsletter should be regarded as illustrative only. It is intended to give an indication of how AIM Regulation would usually expect certain aspects of the AIM Rules to be interpreted and this guidance is not definitive or binding. AIM Regulation should be contacted by a company's nomad if clarification or derogation from the rules is required in a specific situation.

Furthermore, AIM companies should continue to seek the guidance of their nomad when considering the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.

FEEDBACK

We would welcome any feedback on this edition of Inside AIM and any suggestions for issues that you would like us to address in future editions.

Please email any comments to: aimregulation@londonstockexchange.com

INSIDE AIM

Issue 1- December 2009

WELCOME TO INSIDE AIM

Welcome to this first edition of Inside AIM, a periodic newsletter from the AIM Regulation team.

Inside AIM is designed to keep the AIM adviser community, in particular the nominated advisers ("nomads"), updated on key AIM policy and technical matters where we receive regular requests for clarification or explanation on the application of the AIM Rules. We hope that this will be helpful and we welcome views on other items that you would like to be addressed in future issues.

We expect Inside AIM to be published bi-annually, or as required.

Bob Beauchamp - Acting Head of AIM Regulation

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"Communicating with the AIM advisory community is a vital part of ensuring the continued success and growth of AIM and I hope Inside AIM helps to build further on our close working relationship.

Over £4.6bn has been raised on AIM this year, demonstrating its continuing critical role in providing finance to growing companies that are pivotal to future economic growth, and we continue to look at initiatives to promote AIM's benefits. These include supporting the wider take up of equity research, our regional investor roadshow programme, lobbying the Government to allow greater freedom for Venture Capital Trusts to invest in smaller quoted companies and working closely with the market making community to develop greater liquidity in AIM securities.

Looking to the future, the fundamentals of AIM remain strong and the market structure continues to create a compelling offering for companies seeking to raise funds and their profile via a public market. I look forward to continuing to work with you to ensure AIM retains its position as a leading global growth market."

Marcus Stuttard - Head of AIM

REGULATORY STATUS OF INSIDE AIM

The technical guidance provided in this newsletter should be regarded as illustrative only. It is intended to give an indication of how AIM Regulation expects certain aspects of the AIM Rules to be interpreted and is not definitive. AIM Regulation should be contacted by a company's nomad if clarification or a derogation from the rules is required.

As usual, AIM companies should continue to seek the guidance of their nomad when looking for assistance on the application of the AIM Rules.

Any amendments to existing AIM Rules will continue to be communicated via AIM Notices and will be subject to the usual public consultation process where appropriate. Amendments to our rules will not be introduced through Inside AIM.

TECHNICAL GUIDANCE

This section aims to provide detailed technical guidance on areas of the AIM Rules where we receive regular requests for additional clarification. Guidance on less complicated matters is included in the FAQs set out throughout this newsletter.

AIM RULE 13 - AGGREGATION OF DIRECTORS' PARTICIPATION IN A RELATED PARTY TRANSACTION

Where more than one director participates in the same transaction with an AIM company, for example in a share placing, it may be appropriate to aggregate their participation when calculating the class tests to assess whether AIM Rule 13 applies.

This treatment reflects the fact that the directors may be able, or viewed to be able, to act in concert when setting the terms of the transaction. As a result, it may be more likely that the provisions of AIM Rule 13, including the need for a 'fair and reasonable' statement, apply.

PURCHASE BY AN AIM COMPANY OF ITS OWN SECURITES

In the case of an AIM company contemplating the purchase of its own securities, AIM Rules 13, 17 and 21 may be applicable.

Tender offers

The AIM Rules do not deal specifically with tender offers, i.e. there is no requirement for one to be completed if the AIM company is purchasing more than 15% of its own securities. However, should an AIM company decide to complete a tender offer, we support the market practice of completing such an offer in accordance with the Listing Rule requirements.

A tender offer is defined as a corporate action in the London Stock Exchange's (the "Exchange") Admission and Disclosure Standards (7 September 2009). Whilst these Standards do not specifically apply to AIM companies, in practice any tender offer timetable will still require approval by the Stock Situations and Analysis team of the Exchange before any notification of the timetable is made in accordance with AIM Rule 24.

Contact details for Stock Situations are included at the end of this newsletter.

Share buy-backs

Similarly, the AIM Rules do not specifically refer to share buy-backs, with the exception that an AIM company cannot purchase its own securities during a close period (AIM Rule 21). As in the case of tender offers, we consider that in most circumstances compliance with the requirements of the Listing Rules, in particular Listing Rule 12.4.1, would represent best practice.

When a situation does arise where an AIM company wishes to complete a buy-back programme during a close period, a formal derogation request should be submitted in advance of the close period with full details of the programme. AIM Regulation will consider such derogation requests on a case-by-case basis, taking into account:

- the nature of the close period and any price sensitive information held;
- whether the dates and quantities of the securities to be purchased are fixed and announced in advance of the close period commencing; and
- whether the buy-back is being independently managed by a third party.

Other AIM Rule considerations

For tender offers and share buy-back programmes, the purchase and cancellation of an AIM company's shares will also require an announcement pursuant to AIM Rule 17.

The nomad should also consider whether AIM Rule 13 is applicable to the share purchases.

AIM RULE 14 - ENTERING INTO AN OPTION AGREEMENT TO COMPLETE A REVERSE TAKEOVER

This section applies to AIM companies that are considering entering into an option agreement that would on exercise be treated as a reverse takeover.

The guidance note to AIM Rule 14 requires suspension of trading in the AIM securities following the announcement of a proposed reverse takeover as there is a risk of insufficient information in the market for investors to accurately assess the impact of the transaction on the company's financial position.

Nomads should therefore contact us prior to the announcement of such an option to discuss whether suspension may be required. The exact terms of the option, together with the factors below, help determine this:

- Does the option agreement itself need disclosing as a substantial transaction due to the consideration being paid?
- How long is the exercise period of the option?
- Is the decision to exercise entirely at the company's discretion?
- Are there any conditions to the option agreement that need to be satisfied before exercise?

To prevent suspension, the negotiations concerning a reverse takeover should be conducted confidentially. A call option entered into by a company to purchase a target, which does not itself require disclosure as a substantial transaction, may, depending on the terms of the option and other circumstances, be viewed as a matter in the course of negotiation and not require notification until subsequent exercise. AIM Regulation should be contacted in these circumstances.

FAQ

Q. Can a Qualified Executive ("QE") applicant and an existing QE cite the same Relevant Transaction?

A. Subject to the certain conditions, yes.

We believe there is a common misunderstanding amongst the nomad community with regard to the citing of Relevant Transactions by more than one QE, particularly by new QE applicants and existing QEs.

Whilst it remains the case that only one existing QE may be regarded as lead QE on a Relevant Transaction for the purposes of ongoing eligibility, unless such a transaction has been agreed with us as being sufficiently complex, this transaction may also still be cited by a QE applicant. This recognises the importance of an applicant being able to shadow an existing QE to be able to qualify.

This is permitted where the role performed by the applicant is in a co-lead capacity with them having a material role in discharging the nomad responsibilities. In all circumstances, the existing QE should continue to have day to day involvement in the transaction and oversight of the work undertaken.

We place reliance on the nomad firm to assess the readiness of junior corporate finance executives for QE approval. We would expect this to be when an applicant is able to act as the lead adviser on a Relevant Transaction without the supervision of an existing QE.

COMPANIES ACT 2006 AND AIM RULE 19

Following the implementation of the provisions of the Companies Act 2006 ("CA 2006") we have received enquiries concerning the potential impact of the revised reporting deadlines.

In summary, the changes mean that public companies incorporated in England and Wales are now subject to a shorter deadline of six months (previously seven months) during which time they must present their accounts at their annual general meeting and file them with Companies House. These periods are calculated from the end of the relevant accounting reference period.

As a result of these changes, AIM companies incorporated in England and Wales will in practice have to send their annual accounts to shareholders before the six month deadline referred to in AIM Rule 19, to ensure that all the actions required by CA 2006 can be completed within the six month period.

We would like to confirm that there is currently no intention to make any changes to the AIM Rules as a result of the revised reporting timetable. The CA 2006 does not conflict with AIM Rule 19 and AIM companies should always be mindful of requirements contained in the relevant legal framework of their country of incorporation that may impose additional reporting requirements to those prescribed in the AIM Rules.

THE AIM NOTE FOR INVESTING COMPANIES

On 1 June 2009, a revised version of the AIM Rules and the AIM Note for Investing Companies (the "Note") were released. Full details of the rule changes were included in AIM Notices 30 and 33.

Based on queries received, we would like to clarify the following points.

Appropriate entities and security types for admission to AIM

We would normally expect an investing company to be a closed-ended entity of a similar structure to a UK plc and would expect its security structure to be straightforward, issuing primarily ordinary shares or equivalent.

The following, non-exhaustive list of security/company types generally fall outside of what is considered appropriate for admission to AIM:

- Open-ended investing companies, including unit trusts;
- Protected cell companies;
- Partly paid shares;
- Non-voting shares as a primary line of security;
- Shares redeemable on an open basis; and
- Stapled units.

AIM Regulation should be consulted at an early stage if there is any concern that the security type or company structure being proposed for admission is likely to fall in one of the above-mentioned categories.

FAQ

Q. The AIM company we represent is contemplating a disposal – do we need to apply the gross capital test?

A. No – the gross capital test is only required when the AIM company is making an acquisition.

Q. The AIM company for which we act is about to complete a significant fundraising, potentially in excess of 100% of the company's existing share capital. How should we apply AIM Rule 14, the reverse takeover rule?

A. AIM Rule 14 is only applicable if there is an acquisition; it will not be relevant when only a significant fundraising is taking place.

Implementation of an investing policy following a Rule 15 disposal

The assessment as to whether an investing company has implemented its investing policy is not necessarily the same for a company following a fundamental disposal under AIM Rule 15 as it is for a newly admitted investing company subject to the provisions of AIM Rule 8.

Under AIM Rule 8 an investing company has to substantially implement its investing policy within eighteen months of admission or otherwise continue to seek approval for its policy on an annual basis. Substantial implementation of a policy would usually be considered to mean that the company had invested at least 50% of all the funds available to it.

In order to avoid suspension of its securities from trading, AIM Rule 15 requires an investing company to make an acquisition which constitutes a reverse takeover under AIM Rule 14 or otherwise implement its investing policy to the satisfaction of the Exchange within twelve months of the disposal occurring.

The minimum fundraising requirement of £3m from independent shareholders allows for different treatment under AIM Rules 8 and 15. This fundraising requirement does not apply to investing companies resulting from the sale or discontinuation of their core trading business. As a consequence, we will not necessarily consider an AIM Rule 15 investing company to have implemented its policy if it invests 50% of the cash resources available to it.

In cases where a nomad considers an investing company to have implemented its policy for the purposes of AIM Rule 15, but where it has not completed a reverse takeover, a nomad should seek confirmation from us.

A commitment to invest funds in the future, or a commitment to make certain expenditure, is not considered equivalent to an actual investment in a target company or assets.

Inclusion of Annex XV information in an admission document

Paragraph 4.1 of the Note requires an investing company to disclose the information required by Annex XV of the Prospectus Rules in its AIM admission document. However, we retain the ability to derogate from the full requirements of Annex XV where appropriate. If a nomad considers that certain requirements of Annex XV may not need to be included in an admission document, a submission to AIM Regulation should be made setting out the reasons.

FAQ

Q. We are intending to change our accounting reference date ("ARD") – what do we need to do?

A. In accordance with the guidance to AIM Rules 18 and 19, the nomad should ensure that we are contacted before announcing an amendment to an ARD.

This is to ensure that shareholders continue to receive financial information on a timely basis and that information is also subject to regular independent audits.

As a result of a change in ARD, we may require:

- half-yearly reports and accounts to be notified/ published prior to the standard three and six month deadlines stated under AIM Rules 18 and 19;
- additional half-yearly reports to be notified;
- half-yearly reports to be subject to an accountant's report; and/or
- trading statements to be made by a specified date.

If possible, changes to ARDs should not be made in the period between the end of the financial year and the original expected results publication date.

DEPOSITARY RECEIPTS ('DRs')

Periodically we receive enquiries from AIM companies, via their nomads, that are seeking to establish a market for their shares via DRs, with the DRs being traded off-exchange, on an OTC basis.

Although the DRs will not be admitted to AIM, we may seek to restrict the percentage of AIM securities represented by the DRs to no more than 25%. This reflects the potential lack of visibility on the underlying trading.

More generally, DRs will only be considered appropriate for admission to AIM where the AIM company is incorporated in a jurisdiction which prohibits, or unduly restricts, the offering or admission of its securities outside of that country.

INVESTIGATIONS & ENFORCEMENT UPDATE

AIM Regulation has previously published details of its disciplinary actions via AIM Disciplinary Notices. This will remain the case in respect of any disciplinary actions resulting in a public censure but private disciplinary actions will be published via Inside AIM going forward.

The Exchange takes public action in the most serious cases, generally involving significant market impact. Private action is taken in other cases, which enables disciplinary action to be concluded in an effective and timely manner.

The purpose of publishing details of these private actions is to ensure that nomads understand our approach to the issues raised. We hope this provides a useful educational tool for both nomads and AIM companies.

DISCIPLINARY ACTIONS

In the twelve months to 30 October 2009, six AIM companies and two nomads have been privately censured and fined a total of £200,000 by the AIM Executive Panel. This is in addition to the public censures and/or fines imposed on Minmet plc (4/12/08), Astaire Securities plc (22/06/09), Regal Petroleum plc (17/11/09) and Environmental Recycling Technologies plc (23/11/09).

Our disciplinary actions against the six AIM companies all involved breaches of AIM Rules 10, 11 and/or 31, including delays in notifying price sensitive information and failure to liaise appropriately with the company's nomad. The fines imposed on those AIM companies ranged from £10,000 to £25,000.

AIM Regulation's disciplinary action against one of the nomads concerned a failure to implement appropriate systems, procedures and controls for the purpose of advising and guiding AIM companies, in respect of which a private censure and fine of £100,000 was imposed. In the other nomad disciplinary action, the nomad had failed to advise an AIM company appropriately in relation to its announcements and was privately censured and fined £15,000.

FAQ

Q. An AIM company has released its preliminary results via an RIS. At what stage should the AIM Rule 20 notification be released?

A. Whenever any document is sent by an AIM company to its shareholders, including the company's annual audited accounts, the AIM company is obliged to release the AIM Rule 20 announcement via an RIS at the same time. A copy of the document should also be placed on its website without delay.

This announcement can be combined with another disclosure that is also scheduled for release. However, the release of a preliminary announcement does not remove the need for an AIM Rule 20 announcement.

Given that electronic versions of annual audited accounts are available via a company's website, we no longer require electronic versions of annual audited accounts to be sent to us.

Actions against AIM companies have highlighted the following issues:

- In one recent disciplinary action, an AIM company's business was materially underperforming and its profit expectations for the year were significantly short of both the company's internal expectations and market expectations. In those circumstances, it is not permissible for a company to delay updating the market based on the possibility that the year-end figures may be affected by possible accounting or tax changes, or one-off exceptional items.

- In one case, two directors were aware of a material trading under performance in the AIM company's business, of which the rest of the board was unaware. There was a material delay in releasing this information to the market in accordance with AIM Rule 11. This case illustrates that, in appropriate circumstances, AIM Regulation will hold AIM companies responsible for the individual, as well as collective, actions of its directors.

- In another case, an AIM company announced that it had raised funds via a placing and wrongly implied that the majority of the funds would be applied for a particular purpose. AIM companies should ensure that fundraising announcements accurately convey the purpose for which the funds are raised and update the market as to any material change in their use.

- In one disciplinary action, following significant underperformance in Q1 of the financial year the AIM company breached its banking covenants. The company's management did not make an announcement on the basis that they believed the full year results would not be materially short of market expectations. However, given the circumstances of this case, the above events were considered price sensitive and the company was under an obligation to update the market and to provide it with the opportunity to assess the reasonableness of its belief in meeting full year expectations.

- During a number of disciplinary actions it has been suggested that a new development requiring notification under AIM Rule 11 would only be notifiable if it falls specifically within one or more of the four bullet points in that rule. In practice, we consider that any new development which is likely to lead to a substantial movement in the company's share will fall within one or more of the bullet points in AIM Rule 11, and therefore a narrow interpretation of the rule should be avoided.

Actions against nomads have highlighted that a nomad should take reasonable care to ensure:

- that its AIM clients appropriately update the market on or before the expiry of previously notified deadlines, especially in the context of operational deadlines regarding the company's core business. Any failure by an AIM company to update the market in these circumstances may constitute a breach of AIM Rule 11 depending on the materiality of the deadline. In any event we consider that best practice would be to update any deadlines previously announced by the AIM company to avoid uncertainty in the market.

- that an AIM company's management is appropriately challenged on the contents of announcements, especially where the nomad has information indicating that the announcement may be inaccurate or incomplete; and

- that, if acting as nomad and broker to an AIM company, the firm's nomad function is fully involved in the firm's relationship with that company and does not rely inappropriately on the broker function. In particular, the nomad should have in place sufficient internal systems and controls to ensure that any material information relating to the AIM company is provided to, and any consequent advice on the AIM Rules is given or reviewed by, an appropriately qualified person within the nomad function. The nomad should also ensure that its AIM company clients understand the different functions within the firm and who is the appropriate contact for AIM Rule issues.

AIM MARKET POLICY UPDATE

AIM VCT LOBBYING

The Exchange has been lobbying for two key recommendations to help boost SME access to finance via the VCT scheme. We are calling for a relaxation of the VCT investment criteria and for VCT participation in secondary market trading of quoted securities. Specifically:

- increasing investment criteria to qualifying companies with gross assets of £25m instead of £7m and 250 employees instead of 50 employees increases the reach of the VCT scheme; and

- allowing VCTs to buy shares on market to stimulate liquidity in qualifying AIM companies.

These changes, combined with the package of measures, such as PSQ Analytics, changes to the tariffs for market makers, and the pilot programme of regional roadshows, are all designed to help improve liquidity of AIM securities.

CURRENT CONSULTATIONS

Response to clarification of MiFID level 1 and 2

The Exchange has called for clarification that shares admitted to MTFs, including AIM, should be deemed non-complex as there is nothing inherently more complex about AIM shares than shares admitted to a regulated market.

Changes to the Prospectus Directive

Following the consultation on PD earlier this year, the EU Commission's proposals for change were released in September and are currently being discussed at the European Parliament level.

The Commission recognises the need to alleviate the burden of the PD on smalller companies. The proposals recommend that a "proportionate disclosure regime" should apply to smaller companies on regulated markets. They also recommend that the proportionate regime should apply to rights issues by all companies already admitted to trading on a regulated market.

We are actively lobbying to influence the proposals. We believe that any relaxations to the PD for smaller companies should be extended to issuers on growth markets like AIM. If you would like to provide comments or input into this process, please contact Umerah Akram at uakram@londonstockexchange.com.

Link to our response to PD consultation – March 2009: http://www.londonstockexchange.com/about-the-exchange/regulatory/review-directive.pdf

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Please note all requests for derogation from our rules must be submitted in writing (including via email).

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Feedback

We would welcome any feedback on this edition of Inside AIM and any suggestions for issues that you would like us to address in future editions.

Please email any comments to:
aimregulation@londonstockexchange.com


London
Stock Exchange
AIM Note for Investing Companies
July 2016

AIM NOTE FOR INVESTING COMPANIES

Contents

1. Introduction

This note sets out specific requirements, rule interpretation and guidance relating to certain **applicants** and **investing companies**. It forms part of the **AIM Rules for Companies** (and comes within the definition of **Note** in those rules) and **AIM Rules for Nominated Advisers**.

For the avoidance of doubt, where an **applicant** is issuing a **Prospectus**, both the **Prospectus Rules** and the **AIM Rules for Companies** must be complied with.

If a **nominated adviser** believes that provisions set out in this note are not applicable or appropriate to a particular **AIM company** they should contact the AIM Regulation team: aimregulation@lseg.com.

Emboldened terms used in this note have the same meanings as set out in the **AIM Rules for Companies**, unless otherwise defined.

2. "Investing Companies"

The **AIM Rules for Companies** contain the definition of "**investing company**". The **Exchange** should be consulted if there is any doubt concerning whether or not an **applicant** or an existing **AIM Company** should be treated as an **investing company**.

The definition of **investing company** does not include an **AIM company** which is a holding company or "topco'" for a trading business, but it does include entities such as cash shells, blank cheque companies and special purpose acquisition companies.

3. Appropriateness for AIM

3.1 Appropriateness of certain entities

Entity types

In assessing the appropriateness of an **investing company** for **AIM**, a **nominated adviser** should take into account that the company must be appropriate for **AIM's** regulatory framework. The **investing company** should usually be a closed-ended entity of a similar structure to a UK plc, not requiring a restricted investor base. It should be straightforward and not complex in terms of its structure, securities and investing policy and should issue primarily ordinary shares (or equivalent).

Controlling stakes

Where an **investing company** takes a controlling stake in an investment, there should be sufficient separation between the company and the investment to ensure that the **investing company** does not become a trading company. There should also be sufficient separation between the investment and any other investments the **investing company** has made, cross-financing or sharing of operations, for example, should be limited.

If an **investing company** is intending to undertake an acquisition that might result in it not being an investing company (for example, it will become an operating business following the acquisition), the application of rule 14 of the **AIM Rules for Companies** (reverse take-overs) should be considered.

Cross-holdings

An **investing company's** exposure to risk through any cross-holdings should be considered.

Feeder Funds

If an **investing company** principally invests its funds in another company or fund that itself invests in a portfolio of investments, the impact of this on the company's **investing policy** should be considered. This should include an assessment as to whether the **investing company's investing policy** should mirror that of the master fund.

The **admission document** should contain adequate disclosure of any features discussed in this paragraph 3.1, as applicable.

3.2 Directors and Investment Managers

A **nominated adviser** must satisfy itself that the board of **directors** and any **investment manager** are in each case appropriate and have sufficient experience for the **investing company** and its **investing policy**.

There should be appropriate agreements in place between an i**nvesting company** and any **investment manager** covering key matters.

Where there is an **investment manager**, an **investing company** should have in place sufficient safeguards and procedures to ensure that its board of **directors** retains sufficient control over its business.

3.3 Independence

The **Exchange** would usually expect the board of **directors** of the **investing company** as a whole, and its **nominated adviser**, to be independent from any **investment manager**.

The **investing company** should disclose whether or not its board of **directors**, and **nominated adviser**, are independent from the **investment manager** in its **admission document**. Any subsequent changes to this position should be appropriately **notified**.

The **Exchange** would also usually expect the **nominated adviser**, and the board of **directors** as a whole, to be independent of any **substantial shareholders** or investments (and any associated **investment manager**) comprising over 20% of the gross assets of the company. Again, this should be adequately disclosed in the **admission document** or **notified**.

When considering whether any relevant party is independent, reference should be made to the principles of rules 21 and 22 of the **AIM Rules for Nominated Advisers**.

4. Admission Document requirements[1]

4.1 Application of Annex 4 on admission

Unless the **Prospectus Rules** apply, in interpreting Schedule Two (k) of the **AIM Rules for Companies**, an **admission document** in relation to an **investing company** should disclose the information required by Annex 4 of the **Prospectus Rules** in addition to the requirements of Schedule Two of the **AIM Rules for Companies**.

Disclosure made in accordance with Annex 4 should be taken to supersede the requirements of Schedule Two (a) in relation to disclosure otherwise required under **Annex 1** of the **Prospectus Rules**; except where **Annex 1** disclosure is not required pursuant to Schedule Two (b)(i). These parts of **Annex 1** will continue to not be required.

4.2 Further Disclosures on admission

In interpreting Schedule Two (k) of the **AIM Rules for Companies** the following information should be included within the front part of an **admission document**:

- the expertise its **directors** have, as a board, in respect of the **investing policy**;
- where there is an **investment manager**:
    - the name of the investment manager;
    - the experience of the investment manager and its expertise in respect of the investing policy;
    - a description of the investment manager's regulatory status including the name of the regulatory authority by which it is regulated, if applicable;
    - a summary of the key terms of the agreement(s) with the investment manager, including fees, length of agreement and its termination provisions; and
- if applicable, the **investing company's** policy in relation to regular updates as per paragraph 5.3 below.

Adequate information should also be included about the **investing company's** taxation status and any policy or strategy the **investing company** has in relation to taxation, if applicable.

4.3 Financial Information under section 18.1 and 18.3 of Annex 1

If the **nominated adviser** considers it is appropriate, a newly incorporated **investing company** that has not traded, made any investments or taken on any liabilities does not need to comply with the requirements of section 18.1 and 18.3 of **Annex 1**. Instead the **applicant** must include a statement in its **admission document** that since the date of its incorporation the company has not yet commenced operations and that it has no material assets or liabilities, and therefore that no financial statements have been prepared as at the date of the **admission document**.

[1] Annex references updated with effect from 21 July 2019 pursuant to AIM Notice 56

5. Interpretation of the AIM Rules for Companies

References to Rules are to rules in the **AIM Rules for Companies**.

5.1 Rules 7 and 13 (lock-ins for new businesses and related party transactions)

An **investment manager** (or any company in the same group) and any of its key employees that are responsible for making investment decisions in relation to the **investing company** will be considered a **director** for the purposes of the application of **Rules 7** and **13.**

5.2 Rule 8 (Investing companies)

The **Exchange** would expect the condition of **admission** to raise a minimum of £6 million in cash via an equity fundraising on, or immediately before, **admission**, referred to in **Rule 8** to usually be satisfied by an independent fundraising and not be funds raised from **related parties**, unless the **related party** is a **substantial shareholder** only and an **authorised person**. Cash funds resulting from a fundamental disposal under **Rule 15** will usually be considered independent for these purposes.

The reference to "immediately before" would usually mean on the same day as **admission**.

5.3 Rule 11 (General disclosure of price sensitive information)

Periodic disclosures

The **nominated adviser** of an **investing company** should consider with the **investing company** whether regular periodic disclosures (such as a regular net asset value statement or details of main investments, for example) should be **notified** in order to update market participants, having due regard to market practice and the activities of the **investing company**. The approach to making regular updates should be included in the **admission document** or a relevant circular and any changes to this should be **notified**. Such periodic disclosures do not negate the need for any **notification** otherwise required by **Rule 11**.

Change of investment manager

The appointment, dismissal or resignation of any **investment manager** (or any key personnel within the **investing company**, or **investment manager**, which might impact achievement or progression of the **investing policy**) would generally be considered price sensitive information requiring **notification** without delay. Any such **notification** should include information on the consequences of the appointment, dismissal or resignation.

Cumulative effect of investment changes

When making an assessment of whether **notification** of an investment or a disposal of an investment is required, the cumulative impact of a series of investments or disposals should be considered.

Change of information previously disclosed

The company's **nominated adviser** should assess with the **investing company** whether any change to the information disclosed on **admission**, pursuant to paragraph 4.2 of this note, should be **notified**.

5.4 Rule 12 (Substantial transactions)

An investment made by an **investing company** that:

— is in accordance with its **investing policy**; and

— only breaches the profits and turnover tests contained in the **class tests**,

would be considered as being one of a 'revenue nature in the ordinary course of business' and would therefore not require disclosure as a **substantial transaction** in accordance with **Rule 12**.

For the avoidance of doubt, however, **Rule 11** may still require **notification** of such investment and the information required by Schedule Four of the **AIM Rules for Companies** should be considered a useful basis for such **notification**.

5.5 Rule 14 (Reverse take-overs)

Pursuant to **Rule 14**, an acquisition (which should be interpreted broadly and include undertaking an investment in a company or assets, for example) by an **investing company** which exceeds 100% in any of the **class tests** may be considered a reverse take-over, even if such an acquisition is made in accordance with its stated **investment policy**.

However, an acquisition made by an **investing company** that:

— is in accordance with its **investing policy**;

— only breaches the profits and turnover tests contained in the **class tests**; and

— does not result in a fundamental change in its business, board or voting control, would not be considered a reverse take-over under **Rule 14**.

In all other instances, the **nominated adviser** must approach the **Exchange** if it considers that an acquisition falling within **Rule 14** should not be treated as a reverse take-over. For the avoidance of doubt, **Rules 11** and **12** may still require **notification** of such an investment.

5.6 Rule 15 (Fundamental changes of business)

A disposal by an **investing company** which is within its **investing policy** will not be subject to the requirement under **Rule 15** to obtain **shareholder** consent on the basis of a circular. However a disclosure in accordance with Schedule Four of the **AIM Rules for Companies** should still be made.

However, where an **investing company** disposes of all, or substantially all, of its assets, within the meaning of **Rule 15**, the **investing company** will have twelve months from the date of that disposal to implement its current **investing policy** in accordance with **Rule 15**. If this is not fulfilled, the **investing company** will be suspended pursuant to **Rule 40**. Any change to its **investing policy** will be subject to **Rule 8**, but the twelve month period will continue to apply.

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AIM Note for Mining, Oil and Gas Companies

June 2009

AIM Note for Mining, Oil and Gas Companies

Contents

Introduction

This **Note** sets out specific requirements, rule interpretation and guidance relating to **resource companies**. It forms part of the **AIM Rules for Companies** (and comes within the definition of **Note** in those rules) and **AIM Rules for Nominated Advisers**.

For the avoidance of doubt, where an applicant is issuing a **Prospectus**, both the **Prospectus Rules** and the **AIM Rules for Companies** must be complied with.

If a **nominated adviser** believes that provisions set out in this **Note** are not applicable or appropriate to a particular **AIM company** e.g. if the requirements of the **AIM company's** home exchange conflict with this **Note**, they should contact the AIM Regulation team: aimregulation@lseg.com

Emboldened terms used in this **Note** shall have the meanings set out in the **AIM Rules for Companies** unless otherwise defined.

Companies to which this Note applies

This **Note** applies to **resource companies**, such as exploration, development and production companies but it does not apply to companies which purely invest in or provide consultancy, advice or other such services to **resource companies**.

Part One

Admission to AIM

Competent Person's Report (CPR)

Inclusion of a CPR

A **CPR** should be prepared on all material **assets** and **liabilities** of the **applicant** and reproduced, in full and without adjustment, in the **admission document**.

Where a **CPR** has been prepared on the **assets** and **liabilities** of the **applicant** within 12 months of the current **CPR**, an explanation as to why this was not used and its conclusions should be included in the **admission document**.

Competent Person (CP)

As a minimum, the **CP** should:

- be professionally qualified and a member in good standing of an appropriate recognised **professional association**;
- have at least five years *relevant* experience in the estimation, assessment and evaluation of the type of mineral or fluid deposit under consideration;
- be independent of the **applicant**, its **directors,** senior management and advisers;
- not be remunerated by way of a fee that is linked to the **admission** or value of the **applicant**; and
- not be a sole practitioner.

It is the **nominated adviser's** responsibility to ensure that the **CP** producing the **CPR** has the relevant and appropriate qualifications, experience and technical knowledge to professionally and independently appraise the **assets** and **liabilities** being reported upon and that the work performed by the **CP** will be subject to an internal review.

Scope of CPR

It is the **nominated adviser's** responsibility to ensure that the scope of the **CPR** is appropriate, given the **applicant's assets** and **liabilities**.

In addition and as a minimum, the **CPR** should be prepared no more than 6 months prior to the date of the **admission document**, be addressed to the **applicant** and the **nominated adviser** and should:

- include a summary table of assets set out in **Appendix 1**;
- include the disclosures set out in **Appendix 2**;
- include the relevant tables set out in **Appendix 3**;
- set out what **Standard** has been used in preparing the **CPR**;
- include an up to date no material change statement; and
- report on any existing **reserves** and **resources** statements, stating clearly what work was undertaken *or* include a derivation of any **reserve** or **resource** estimates.

Admission document disclosure

Appropriate summarisation

The 'front end' of the **admission document** (usually the section entitled 'Key Information' and/or 'Part I'), must provide a balanced view of all of the information contained within the rest of the **admission document** so as to not be misleading, e.g. due to the omission of information that is otherwise included in other sections of the **admission document**.

Extraction of information

Where information contained elsewhere in the **admission document** is extracted from the **CPR** it should be extracted directly and presented in a manner which is not misleading and provides a balanced view of the **CPR**. The location of such information in the **CPR** should also be set out next to such extraction. Where information is extracted from a third party source, a reference or attribution to such source should be set out next to such extraction.

Review by Competent Person

The **CP** should review the information contained elsewhere in the **admission document** which relates to information contained in the **CPR** and confirm in writing to the **applicant** and **nominated adviser** that the information presented is accurate, balanced and complete and not inconsistent with the **CPR**.

Material assets of the applicant

Material contracts

In relation to **resource companies**, the meaning of material contracts in paragraph 20 of **Annex 1** (of the **Prospectus Rules**) should be deemed to include all material subsisting agreements which are included within, or which relate to, the **assets** and **liabilities** of the **applicant** (notwithstanding whether such agreements are (i) within the ordinary course or (ii) were entered into outside of the two years immediately preceding the publication of the **admission document**) and a summary of these agreements should be included in the **admission document**.

Due diligence

The **Exchange** expects that the **nominated adviser** will conduct full due diligence on the **applicant** and its **assets** prior to **admission** and where an **applicant's assets** exist outside of the United Kingdom, as well as performing usual due diligence, a formal opinion letter should be obtained from an appropriate legal adviser authorised to practice in the jurisdiction in which the **assets** are located and in the law under which they are governed. Such opinion should deal with matters including (i) issues of jurisdiction such as the proper incorporation and good standing of any incorporated subsidiary or interest and (ii) the title to or validity and enforceability of any **assets** (including for the avoidance of doubt licences and agreements), as is appropriate to the **applicant**.

The **Exchange** would usually expect that details of the adviser providing such opinion should be included in the advisers section of the **admission document**.

Site visit

The **Exchange** would generally expect that the **nominated adviser** should, as far as it is practical to do so, undertake a site visit and physical inspection of the **applicant's** physical **assets**, as part of its overall assessment of the suitability of the **applicant** for **admission**.

Where inspection of material mineral or petroleum assets or tenements are likely to reveal information or data that is material to a **CPR**, the **CP** should, at their discretion and as far as it is practical to do so, inspect the site.

Payments

The **admission document** should disclose any payments aggregating over £10,000 made to any government or regulatory authority or similar body made by the **applicant** or on behalf of it, with regard to the acquisition of, or maintenance of, its **assets**.

Risk factors

Risk factors should address both the specific and general risk factors affecting the **applicant**. Risk factors that are specific to the **applicant** should be set out ahead of any general risks applicable to the **applicant** or **resource companies** within the risk factors section of the **admission document**. Notwithstanding the above, an **AIM company** must comply with **Annex 1** and **Annex 11**.[1]

Lock-ins for new businesses

Exploration and development companies who have not been independent and earning revenue for at least two years will need to ensure that all **related parties** and **applicable employees** comply with the lock-in requirements of **AIM Rule 7**.

Part Two

Ongoing obligations

Notifications

Use of a Standard

An **AIM company** should state in each **resource update** the **Standard** they have used in reporting such information.

Where it is not possible to ensure a **Standard** has been adhered to because the **AIM company** is under an obligation under **AIM Rule 11** to issue a **notification** *without delay* it must make sure that any estimate as to its **reserves** and/or **resources** that are **notified** are accurate and not false or misleading. Such estimates must then be **notified** according to a **Standard** as soon as practicable thereafter.

Each **resource update notification** must also contain a glossary of the key terms used in the **notification** and use a similar format to the **reserve** and/or **resource** disclosures made in the **admission document**.

[1] Risk Factors (and Annex references) updated with effect from 21 July 2019 pursuant to AIM Notice 56

Drilling update

For the avoidance of doubt, exploration drilling updates are required under **AIM Rule 11** and, as a minimum, should include information on:

Minerals & Ore Updates

- depth of zone tested
- drilling intervals
- average grades of mineralisation

Oil & Gas Updates

- depth of zone tested
- rock formation encountered
- any liquids/gases recovered.

Review by qualified person

A **qualified person** from the **AIM company** or an appointed adviser, which may include the **CP**, should review and sign off on each **resource** or **drilling update** and include their name, position and qualifications within the **notification** together with a statement to the effect that they have reviewed the information contained therein.

Review by nominated adviser

The **Exchange** expects that, in addition to the above, an appropriate person from the **nominated adviser** of an **AIM company** will review, prior to its release (as part of its regulatory obligations owed solely to the Exchange) all **notifications** made by its client **AIM company**.

Nominated advisers

In order to comply with the **AIM Rules for Nominated Advisers**, a **nominated adviser** acting for any **resource companies** should ensure that it has appropriate access to suitably experienced and qualified individual(s) in the sector(s) in which its **AIM companies** operate. These individuals need not necessarily be full-time employees of the **nominated adviser** and may be engaged on a consultancy basis.

Dual-listed resource companies

AIM companies and **nominated advisers** are reminded that where an **AIM company** is also admitted to trading on another exchange, the **AIM Rules for Companies** need to be complied with irrespective of the regulatory requirements of the other exchange. Any specific issues in relation to an **AIM company's** ability to comply with the **AIM Rules for Companies** or this **Note** as a result of the rules of the other exchange should be referred to the AIM regulation team.

For the avoidance of doubt **quoted applicants** taking advantage of the Designated Market Route will be required to comply with the contents of this **Note**.

Definitions used in this Guidance

AIM Rules for Companies or **AIM Rules for Nominated Advisers**	The AIM Rules for Companies or AIM Rules for Nominated Advisers' as issued by the Exchange from time to time
applicant	Shall have the meaning set out in the **AIM Rules for Companies**, however, for the avoidance of doubt, for the purposes of this **Note** it shall include all subsidiaries and interests of the **applicant** and shall also include a **quoted applicant**.
assets	All assets, licences, joint ventures or other arrangements owned by the **applicant** or **AIM company** or proposed to be exploited or utilised by it
CIM	Canadian Institute of Mining, Metallurgy and Petroleum
CP	Competent Person
CPR	Competent Person's Report
Note	This AIM Note for Mining and Oil & Gas companies as may be amended and/or updated from time to time by the **Exchange**
IMMM	Institute of Materials, Minerals and Mining
JORC	The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, as published by the Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia
liabilities	All liabilities, royalty payments, contractual agreements and minimum funding requirements relating to the **applicant** or **AIM company's** work programme and **assets**
professional association	Self-regulatory organisation of engineers and/or geoscientists
qualified person	Professionally qualified and a member in good standing of an appropriate recognised **professional association** and have at least five years *relevant* experience within the sector
reserves	Mineral and Ore – Probable and Proven reserves (or equivalent depending on the **Standard** used) Oil & Gas – Proved, Proved + Probable and Proved + Probable + Possible reserves *except* when referring to net present value calculations when reserves should only include Proved and Proved + Probable reserves

resource companies	Companies operating in the mining and oil & gas sectors which are **admitted** or are seeking **admission** to **AIM**
resource update	Any **notification** that contains a statement on **reserves** and/or **resources**
resources	Mineral and Ore – Inferred, Indicated and Measured Resources (or equivalent depending on the **Standard** used) Oil & Gas – Contingent and Prospective Resources
Russian	Gosstandart of Russia (GOST), the national Russian standard on mining and minerals as published by the National Certification Body of the Russian Federation For data to be included under this standard it must have been approved by the Russian State or Federal body
SAMREC	The South African Code for Reporting of Mineral Resources and Mineral Reserves, as published by the South African Mineral Committee under the auspices of the South African Institute of Mining and Metallurgy
SME	The Society for Mining, Metallurgy, and Exploration
SPE	The Society of Petroleum Engineers
Standard	An Internationally recognised standard that is acceptable under the following codes and/or organisations: Mineral **resources** and **reserves** – **CIM**, **IMMM**, **JORC**, **Russian**, **SAMREC** and **SME**. Oil & Gas **resources** and **reserves** – **CIM** and **SPE.** Submissions can be made to AIM Regulation to consider other codes that may be comparable with any of the above

Appendix 1
SUMMARY TABLE OF ASSETS

Minerals & Ore

Asset[1]	Holder	Interest (%)	Status[2]	Licence expiry date	Licence area	Comments
1. Asset A	Holders name	50%	Exploration	16 March 2006	km^2	Commencement of sampling in x months
2. Asset B	Holders name	100%	Development	16 March 2006	km^2	Drill hole and sample grades obtained to date
3. Asset C	Holders name	30%	Production	16 March 2006	km^2	Annual current production (tonnes per annum)

(1) Asset – Country and asset/project name
(2) Status – Exploration, Development or Production only

Oil & Gas

Asset[1]	Operator	Interest (%)	Status[2]	Licence expiry date	Licence area	Comments
1. Asset A	Operators name	50%	Exploration	16 March 2006	km^2	Commencement of exploration in x months
2. Asset B	Operators name	100%	Development	16 March 2006	km^2	Development drilling programme to commence in Y months
3. Asset C	Operators name	30%	Production	16 March 2006	km^2	Current production (barrels or cubic feet per day) and estimated peak production

(1) Asset – Country, licence and block
(2) Status – Exploration, Development or Production only

Appendix 2
CONTENT OF CPR

The **CPR** should cover (as a minimum) the following:

Executive summary

Table of contents

Introduction

- explanation of the sources of all information on which the **CPR** is based (for example any site visits (including details of who undertook such visit and when), drilling results, seismic data, reservoir or well data, sample analysis, interviews with directors, details of desktop research)

- description of **reserves** and/or **resources**, where applicable detailing characteristics, type, dimensions and grade distribution, and the methods to be employed for their exploration and extraction (including **Appendix 1** disclosure)

Overview of the region, location and assets

- description of the **applicant's assets** and **liabilities**, the rights in relation to them and a description of the economic conditions for the working of those licences, concessions or similar including any environmental, land access, planning and obligatory closure costs

- details of any interest (current or past) any director, **CP** or promoter has in any of the **assets**

- appropriate maps, some background on the country and location plans demonstrating the major properties comprising the **assets,** their workings and geographical characteristics and wells, platforms, pipelines, bore holes, sample pits, trenches and similar, to the extent they exist

Reserves & resources (separately disclosed)

- statement of **reserves** (if any), and where applicable **resources** including an estimate of volume, tonnage and grades, (in accordance with a **Standard**, which should be consistently applied and disclosed in line with the tables in **Appendix 3**), method of estimation, expected recovery and dilution factor, expected extraction and processing tonnage or volume, as appropriate, depending on whether the **reserves** and/or **resources** are of minerals or oil and/or gas. Where there are resources that have not been sufficiently appraised in order to provide the previous information, a separate statement of such resources together with any other quantified information which has been appraised in accordance with a **Standard**

- estimate of net present value (post tax) at a discount rate of 10% of **reserves** (or equivalent depending on **Standard** used) analysed separately and the principal assumptions (including cost assumptions, effective date, constant and or forecast prices, forex rates) on which valuation is based together with a sensitivities analysis. Additional valuations may be included within the CPR and should include an explanation of the basis of such a valuation and the method used

Other assets

- any other assets material to the **applicant**.

- commentary on the plant and equipment which are or will be significant to the **applicant**'s operations, bearing in mind any forecasted rates of extraction included within the **admission document**

Conclusions

Qualifications and basis of opinion

- full details and qualifications of the **CP** (company and individual(s)) and a statement of the **CP**'s independence

Appendices – Glossary and definitions of any terms used

Appendix 3

SUMMARY OF RESERVES AND RESOURCES BY STATUS

Minerals & Ore

Category	Gross			Net attributable			Operator
	Tonnes (millions)	Grade (g/t)	Contained metal	Tonnes (millions)	Grade (g/t)	Contained metal	
Ore/Mineral reserves per asset							
Proved							
Probable							
Sub-total							
Mineral resources per asset							
Measured							
Indicated							
Inferred							
Sub-total							
Total							

Source: [name of person providing the above estimates, regarded as competent]

Note: "Operator" is name of the company that operates the asset
"Gross" are 100% of the **reserves** and/or **resources** attributable to the licence whilst "Net attributable" are those attributable to the **AIM company**
Metal equivalent grades are not acceptable and should not be used in reporting

Appendix 3 continued

SUMMARY OF RESERVES AND RESOURCES BY STATUS

Oil & Gas - Reserves

(all figures in bbls or scf)	Gross			Net attributable			Operator
	Proved	**Proved & Probable**	**Proved, Probable & Possible**	**Proved**	**Proved & Probable**	**Proved, Probable & Possible**	
Oil & Liquids reserves per asset From production to planned for development							
Total for Oil & Liquids							
Gas reserves per asset From production to planned for development							
Total for Gas							

Source: [name of competent person providing the above estimates]

Note: "Operator" is name of the company that operates the asset
"Gross" are 100% of the **reserves** and/or **resources** attributable to the licence whilst "Net attributable" are those attributable to the **AIM company**

bbls – Barrels
scf – Standard Cubic Feet

Appendix 3 continued

SUMMARY OF RESERVES AND RESOURCES BY STATUS

Oil & Gas – Contingent Resources

(all figures in bbls or scf)	Gross			Net attributable			Risk Factor	Operator
	Low Estimate	Best Estimate	High Estimate	Low Estimate	Best Estimate	High Estimate		
Oil & Liquids Contingent Resources per asset From development pending to development not viable								
Total for Oil & Liquids								
Gas Contingent Resources per asset From development pending to development not viable								
Total for Gas								

Source: [name of competent person providing the above estimates]

Note: "Risk Factor" for Contingent Resources means the estimated chance, or probability, that the volumes will be commercially extracted
"Operator" is name of the company that operates the asset
"Gross" are 100% of the **reserves** and/or **resources** attributable to the licence whilst "Net attributable" are those attributable to the **AIM company**

bbls – Barrels
scf – Standard Cubic Feet

Appendix 3 continued

SUMMARY OF RESERVES AND RESOURCES BY STATUS

Oil & Gas – Prospective Resources

(all figures in bbls or scf)	Gross			Net attributable			Risk Factor	Operator
	Low Estimate	Best Estimate	High Estimate	Low Estimate	Best Estimate	High Estimate		
Oil & Liquids Prospective Resources per asset From prospect to play								
Total for Oil & Liquids								
Gas Prospective Resources per asset From prospect to play								
Total for Gas								

Source: [name of competent person providing the above estimates]

Note: "Risk Factor" for Prospective Resources, means the chance or probability of discovering hydrocarbons in sufficient quantity for them to be tested to the surface. This, then, is the chance or probability of the Prospective Resource maturing into a Contingent Resource
"Operator" is name of the company that operates the asset
"Gross" are 100% of the **reserves** and/or **resources** attributable to the licence whilst "Net attributable" are those attributable to the **AIM company**

bbls – Barrels
scf – Standard Cubic Feet

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Cross- reference list- Annex 1

Registration Document for Equity Securities

This document is provided for illustrative purposes only. Schedule 2 of the AIM Rules for Companies should be referred to in all cases.

KEY:

Carved out
Carved out (qualified)
If not highlighted, mandatory

1	**PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL**
1.1	Identify all persons responsible for the information or any parts of it, given in the registration document with, in the latter case, an indication of such parts. In the case of natural persons, including members of the issuer's administrative, management or supervisory bodies, indicate the name and function of the person; in the case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that to the best of their knowledge, the information contained in the registration document is in accordance with the facts and that the registration document makes no omission likely to affect its import. Where applicable, a declaration by those responsible for certain parts of the registration document that, to the best of their knowledge, the information contained in those parts of the registration document for which they are responsible is in accordance with the facts and that those parts of the registration document make no omission likely to affect their import.
1.3	Where a statement or report attributed to a person as an expert, is included in the registration document, provide the following details for that person: a) name b) business address; c) qualifications; d) material interest if any in the issuer. If the statement or report has been produced at the issuer's request, state that such statement or report has been included in the registration document with the consent of the person who has authorised the contents of that part of the registration document for the purpose of the prospectus.
1.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
1.5	A statement that: a) the [registration document / prospectus] has been approved by the [name of the competent authority], as competent authority under Regulation (EU) 2017/1129; b) the [name of competent authority] only approves this [registration document / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; c) such approval should not be considered as an endorsement of the issuer that is the subject of this [registration document/ prospectus].
2	**STATUTORY AUDITORS**
2.1	Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
2.2	If auditors have resigned, been removed or have not been re-appointed during the period covered by the historical financial information, indicate details if material.

3	**RISK FACTORS**
3.1	A description of the material risks that are specific to the issuer, in a limited number of categories, in a section headed 'Risk Factors'. In each category, the most material risks, in the assessment undertaken by the issuer, offeror or person asking for admission to trading on a regulated market, taking into account the negative impact on the issuer and the probability of their occurrence shall be set out first. The risks shall be corroborated by the content of the registration document.
4	**INFORMATION ABOUT THE ISSUER**
4.1	The legal and commercial name of the issuer.
4.2	The place of registration of the issuer, its registration number and legal entity identifier ('LEI').
4.3	The date of incorporation and the length of life of the issuer, except where the period is indefinite.
4.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, the address, telephone number of its registered office (or principal place of business if different from its registered office) and website of the issuer, if any, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus.
5	**BUSINESS OVERVIEW**
5.1	Principal activities
5.1.1	A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information;
5.1.2	An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of their development.
5.2	Principal markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by operating segment and geographic market for each financial year for the period covered by the historical financial information.
5.3	The important events in the development of the issuer's business.
5.4	Strategy and objectives A description of the issuer's business strategy and objectives, both financial and non-financial (if any). This description shall take into account the issuer's future challenges and prospects.
5.5	If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.
5.6	The basis for any statements made by the issuer regarding its competitive position.
5.7	Investments
5.7.1	A description, (including the amount) of the issuer's material investments for each financial year for the period covered by the historical financial information up to the date of the registration document.
5.7.2	A description of any material investments of the issuer that are in progress or for which firm commitments have already been made, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).
5.7.3	Information relating to the joint ventures and undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.
5.7.4	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.
6	**ORGANISATIONAL STRUCTURE**
6.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.
6.2	A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, the proportion of ownership interest held and, if different, the proportion of voting power held.

7	**OPERATING AND FINANCIAL REVIEW**
7.1	Financial condition
7.1.1	To the extent not covered elsewhere in the registration document and to the extent necessary for an understanding of the issuer's business as a whole, a fair review of the development and performance of the issuer's business and of its position for each year and interim period for which historical financial information is required, including the causes of material changes. The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business. To the extent necessary for an understanding of the issuer's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial Key Performance Indicators relevant to the particular business. The analysis shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.
7.1.2	To the extent not covered elsewhere in the registration document and to the extent necessary for an understanding of the issuer's business as a whole, the review shall also give an indication of: a) the issuer's likely future development; b) activities in the field of research and development. The requirements set out in item 7.1 may be satisfied by the inclusion of the directors' report required by section 415 of the Companies Act 2006.
7.2	Operating results
7.2.1	Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations and indicate the extent to which income was so affected.
7.2.2	Where the historical financial information discloses material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
8	**CAPITAL RESOURCES**
8.1	Information concerning the issuer's capital resources (both short term and long term).
8.2	An explanation of the sources and amounts of and a narrative description of the issuer's cash flows.
8.3	Information on the borrowing requirements and funding structure of the issuer.
8.4	Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
8.5	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in item 5.7.2
9	**REGULATORY ENVIRONMENT**
9.1	A description of the regulatory environment that the issuer operates in and that may materially affect its business, together with information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10	**TREND INFORMATION**
10.1	A description of: a) the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document; b) any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document, or provide an appropriate negative statement.
10.2	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.

11	**PROFIT FORECASTS OR ESTIMATES**
11.1	Where an issuer has published a profit forecast or a profit estimate (which is still outstanding and valid) that forecast or estimate shall be included in the registration document. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such forecast or estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items 11.2 and 11.3.
11.2	Where an issuer chooses to include a new profit forecast or a new profit estimate, or a previously published profit forecast or a previously published profit estimate pursuant to item 11.1, the profit forecast or estimate shall be clear and unambiguous and contain a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. The forecast or estimate shall comply with the following principles: a) there must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; b) the assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; c) in the case of a forecast, the assumptions shall draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast.
11.3	The prospectus shall include a statement that the profit forecast or estimate has been compiled and prepared on a basis which is both: a) comparable with the historical financial information; b) consistent with the issuer's accounting policies.
12	**ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES AND SENIOR MANAGEMENT**
12.1	Names, business addresses and functions within the issuer of the following persons and an indication of the principal activities performed by them outside of that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies; b) partners with unlimited liability, in the case of a limited partnership with a share capital; c) founders, if the issuer has been established for fewer than five years; d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. Details of the nature of any family relationship between any of the persons referred to in points (a) to (d). In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person referred to in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information: (a) the names of all companies and partnerships where those persons have been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; (b) details of any convictions in relation to fraudulent offences for at least the previous five years; (c) details of any bankruptcies, receiverships, liquidations or companies put into administration in respect of those persons described in points (a) and (d) of the first subparagraph who acted in one or more of those capacities for at least the previous five years; (d) details of any official public incrimination and/or sanctions involving such persons by statutory or regulatory authorities (including designated professional bodies) and whether they have ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information required to be disclosed, a statement to that effect is to be made.

12.2	Administrative, management and supervisory bodies and senior management conflicts of interests Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 12.1, and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 12.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management. Details of any restrictions agreed by the persons referred to in item 12.1 on the disposal within a certain period of time of their holdings in the issuer's securities.
13	**REMUNERATION AND BENEFITS**
	In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 12.1:
13.1	The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.
13.2	The total amounts set aside or accrued by the issuer or its subsidiaries to provide for pension, retirement or similar benefits.
14	**BOARD PRACTICES**
	In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of item 12.1.
14.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
14.2	Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate statement to the effect that no such benefits exist.
14.3	Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
14.4	A statement as to whether or not the issuer complies with the corporate governance regime(s) applicable to the issuer. In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.
14.5	Potential material impacts on the corporate governance, including future changes in the board and committees composition (in so far as this has been already decided by the board and/or shareholders meeting).
15	**EMPLOYEES**
15.1	Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.
15.2	Shareholdings and stock options With respect to each person referred to in points (a) and (d) of the first subparagraph of item 12.1 provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date. ***[this exclusion applies only to persons other than directors]***
15.3	Description of any arrangements for involving the employees in the capital of the issuer.

16	**MAJOR SHAREHOLDERS**
16.1	In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest, as at the date of the registration document or, if there are no such persons, an appropriate statement to that that effect that no such person exists.
16.2	Whether the issuer's major shareholders have different voting rights, or an appropriate statement to that effect that no such voting rights exist.
16.3	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
16.4	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
17	**RELATED PARTY TRANSACTIONS**
17.1	Details of related party transactions (which for these purposes are those set out in UK-adopted international accounting standards), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with UK-adopted international accounting standards if applicable. If such standards do not apply to the issuer the following information must be disclosed: (a) the nature and extent of any transactions which are, as a single transaction or in their entirety, material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding; (b) the amount or the percentage to which related party transactions form part of the turnover of the issuer.
18	**FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES**
18.1	Historical financial information
18.1.1	Audited historical financial information covering the latest three financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year.
18.1.2	Change of accounting reference date If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is shorter.
18.1.3	Accounting standards The financial information must be prepared in accordance with Article 23a.[1]
18.1.4	Change of accounting framework The last audited historical financial information, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements. Changes within the accounting framework applicable to an issuer do not require the audited financial statements to be restated solely for the purposes of the prospectus. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements (as defined by IAS 1 Presentation of Financial Statements as set out in UK-adopted international accounting standards), including comparatives, must be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.

[1] Article 23a of the UK version of Regulation number 2019/980 of the European Commission, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018

18.1.5	Where the audited financial information is prepared according to national accounting standards, it must include at least the following: a) the balance sheet; b) the income statement; c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; d) the cash flow statement; e) the accounting policies and explanatory notes.
18.1.6	Consolidated financial statements If the issuer prepares both stand-alone and consolidated financial statements, include at least the consolidated financial statements in the registration document.
18.1.7	Age of financial information The balance sheet date of the last year of audited financial information may not be older than one of the following: a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; b) 16 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.
18.2	Interim and other financial information
18.2.1	If the issuer has published quarterly or half-yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half-yearly financial information has been audited or reviewed, the audit or review report must also be included. If the quarterly or half-yearly financial information is not audited or has not been reviewed, state that fact. If the registration document is dated more than nine months after the date of the last audited financial statements, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. Interim financial information prepared in accordance with the requirements of section 403 of the Companies Act 2006. For issuers not subject to section 403 of the Companies Act 2006, the interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year's end balance sheet in accordance with the applicable financial reporting framework.
18.3	Auditing of historical annual financial information
18.3.1	The historical annual financial information must be independently audited. The audit report shall be prepared in accordance with the UK law which implemented Directive 2006/43/EC of the European Parliament and of the Council[2] and Regulation (EU) No 537/2014 of the European Parliament and of the Council.[3] Where the UK law which implemented Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply, the historical annual financial information must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in the United Kingdom or an equivalent standard.
18.3.1a	Where audit reports on the historical financial information have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, the reason must be given, and such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full.
18.3.2	Indication of other information in the registration document which has been audited by the auditors.
18.3.3	Where financial information in the registration document is not extracted from the issuer's audited financial statements state the source of the information and state that the information is not audited.

[2] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

[3] Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

18.4	Pro forma financial information
18.4.1	In the case of a significant gross change, a description of how the transaction might have affected the assets, liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information. This pro forma financial information is to be presented as set out in Annex 20 and must include the information indicated therein. Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.
18.5	Dividend policy
18.5.1	A description of the issuer's policy on dividend distributions and any restrictions thereon. If the issuer has no such policy, include an appropriate negative statement.
18.5.2	The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.
18.6	Legal and arbitration proceedings
18.6.1	Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
18.7	Significant change in the issuer's financial position
18.7.1	A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.
19	**ADDITIONAL INFORMATION**
19.1	Share capital The information in items 19.1.1 to 19.1.7 in the historical financial information as of the date of the most recent balance sheet:
19.1.1	The amount of issued capital, and for each class of share capital: (a) the total of the issuer's authorised share capital; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10 % of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.
19.1.2	If there are shares not representing capital, state the number and main characteristics of such shares.
19.1.3	The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
19.1.4	The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
19.1.5	Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
19.1.6	Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.
19.1.7	A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.
19.2	Memorandum and Articles of Association
19.2.1	The register and the entry number therein, if applicable, and a brief description of the issuer's objects and purposes and where they can be found in the up to date memorandum and articles of association.

19.2.2	Where there is more than one class of existing shares, a description of the rights, preferences and restrictions attaching to each class.
19.2.3	A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.
20	**MATERIAL CONTRACTS**
20.1	A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.
21	**DOCUMENTS AVAILABLE**
21.1	A statement that for the term of the registration document the following documents, where applicable, can be inspected: (a) the up to date memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. An indication of the website on which the documents may be inspected.

Cross- reference list- Annex 11

Securities note for equity securities or units issued by collective investment undertakings of the closed-end type

1	**PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL**
1.1	Identify all persons responsible for the information or any parts of it, given in the securities note with, in the latter case, an indication of such parts. In the case of natural persons, including members of the issuer's administrative, management or supervisory bodies, indicate the name and function of the person; in the case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the securities note that to the best of their knowledge, the information contained in the securities note is in accordance with the facts and that the securities note makes no omission likely to affect its import. Where applicable, a declaration by those responsible for certain parts of the securities note that, to the best of their knowledge, the information contained in those parts of the securities note for which they are responsible is in accordance with the facts and that those parts of the securities note make no omission likely to affect their import.
1.3	Where a statement or report attributed to a person as an expert, is included in the securities note, provide the following in relation to that person: a) name; b) business address; c) qualifications; d) material interest, if any, in the issuer. If the statement or report has been produced at the issuer's request, state that such statement or report has been included in the securities note with the consent of the person who has authorised the contents of that part of the securities note for the purpose of the prospectus.
1.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
1.5	A statement that: (a) this [securities note / prospectus] has been approved by the name of competent authority], as competent authority under Regulation (EU) 2017/1129; (b) the [name of competent authority] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; (c) such approval should not be considered as an endorsement of [the quality of the securities that are the subject of this [securities note / prospectus]; (d) investors should make their own assessment as to the suitability of investing in the securities.
2	**RISK FACTORS**
2.1	A description of the material risks that are specific to the securities being offered and/or admitted to trading in a limited number of categories, in a section headed 'Risk Factors'. In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account the negative impact on the issuer and the securities and the probability of their occurrence, shall be set out first. The risks shall be corroborated by the content of the securities note.
3	**ESSENTIAL INFORMATION**
3.1	Working capital statement Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.

3.2	Capitalisation and indebtedness A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, debt, collateralised and non-collateralised loans) as of a date no earlier than 90 days prior to the date of the document. The term 'indebtedness' also includes indirect and contingent indebtedness. In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period, additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.
3.3	Interest of natural and legal persons involved in the issue/offer A description of any interest, including a conflict of interest that is material to the issue/offer, detailing the persons involved and the nature of the interest.
3.4	Reasons for the offer and use of proceeds Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented in order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, then state the amount and sources of other funds needed. Details must be also given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.
4	**INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING**
4.1	A description of the type and the class of the securities being offered and/or admitted to trading, including the international security identification number ('ISIN').
4.2	Legislation under which the securities have been created.
4.3	An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
4.4	Currency of the securities issue.
4.5	A description of the rights attached to the securities, including any limitations of those rights and procedure for the exercise of those rights: (a) dividend rights: i. fixed date(s) on which entitlement arises; ii. time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; iii. dividend restrictions and procedures for non-resident holders; iv. rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments; (b) voting rights; (c) pre-emption rights in offers for subscription of securities of the same class; (d) right to share in the issuer's profits; (e) rights to share in any surplus in the event of liquidation; (f) redemption provisions; (g) conversion provisions.
4.6	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
4.7	In the case of new issues, the expected issue date of the securities.
4.8	A description of any restrictions on the transferability of the securities.
4.9	Statement on the existence of any national legislation on takeovers applicable to the issuer which may frustrate such takeovers if any. A brief description of the shareholders' rights and obligations in case of mandatory takeover bids and/or squeeze-out or sell-out rules in relation to the securities.
4.10.	An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.

4.11	A warning that the tax legislation of the investor's home country and of the issuer's country of incorporation may have an impact on the income received from the securities. Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.
4.12	Where applicable, the potential impact on the investment in the event of resolution under the UK law which implemented Directive 2014/59/EU of the European Parliament and of the Council.
4.13	If different from the issuer, the identity and contact details of the offeror of the securities and/or the person asking for admission to trading, including the legal entity identifier ('LEI') where the offeror has legal personality.
5	**TERMS AND CONDITIONS OF THE OFFER OF SECURITIES TO THE PUBLIC**
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer.
5.1.1	Conditions to which the offer is subject.
5.1.2	Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, an indication of the maximum amount of securities to be offered (if available) and a description of the arrangements and the time period for announcing to the public the definitive amount of the offer. Where the maximum amount of securities cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.
5.1.3	The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4	An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.
5.1.5	A description of any possibility to reduce subscriptions and the manner for refunding amounts paid in excess by applicants.
5.1.6	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).
5.1.7	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.
5.1.8	Method and time limits for paying up the securities and for delivery of the securities.
5.1.9	A full description of the manner and date in which results of the offer are to be made public.
5.1.10.	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
5.2	Plan of distribution and allotment.
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
5.2.2	To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.

5.2.3	Pre-allotment Disclosure: (a) the division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches; (b) the conditions under which the claw-back may be used, the maximum size of such claw-back and any applicable minimum percentages for individual tranches; (c) the allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches; (d) a description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups; (e) whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by; (f) a target minimum individual allotment if any within the retail tranche; (g) the conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; (h) whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.
5.2.4	Process for notifying applicants of the amount allotted and an indication whether dealing may begin before notification is made.
5.3	Pricing
5.3.1	An indication of the price at which the securities will be offered and the amount of any expenses and taxes charged to the subscriber or purchaser. If the price is not known, then pursuant to Article 17 of Regulation (EU) 2017/1129 indicate either: (a) the maximum price as far as it is available; (b) the valuation methods and criteria, and/or conditions, in accordance with which the final offer price has been or will be determined and an explanation of any valuation methods used. Where neither point (a) nor (b) can be provided in the securities note, the securities note shall specify that acceptances of the purchase or subscription of securities may be withdrawn up to two working days after the final offer price of securities to be offered to the public has been filed.
5.3.2	Process for the disclosure of the offer price.
5.3.3	If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, an indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.
5.3.4	Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.
5.4	Placing and underwriting
5.4.1	Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.
5.4.2	Name and address of any paying agents and depository agents in each country.
5.4.3	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under best 'efforts' arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.
5.4.4	When the underwriting agreement has been or will be reached.

6	**ADMISSION TO TRADING AND DEALING ARRANGEMENTS**
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or third country market, SME Growth Market or MTF with an indication of the markets in question. This circumstance must be set out, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.
6.2	All the regulated markets, third country markets, SME Growth Market or MTFs on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3	If simultaneously or almost simultaneously with the application for the admission of the securities to a regulated market, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number, characteristics and price of the securities to which they relate.
6.4	In case of an admission to trading on a regulated market, details of the entities which have given a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and a description of the main terms of their commitment.
6.5	Details of any stabilisation in line with items 6.5.1 to 6.6 in case of an admission to trading on a regulated market, third country market, SME Growth Market or MTF, where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilising activities may be entered into in connection with an offer:
6.5.1	The fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
6.5.1.1	The fact that stabilisation transactions aim at supporting the market price of the securities during the stabilisation period;
6.5.2	The beginning and the end of the period during which stabilisation may occur;
6.5.3	The identity of the stabilisation manager for each relevant jurisdiction unless this is not known at the time of publication;
6.5.4	The fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail;
6.5.5	The place where the stabilisation may be undertaken including, where relevant, the name of the trading venue(s).
6.6	Over-allotment and 'green shoe': In case of an admission to trading on a regulated market, SME Growth Market or an MTF: (a) the existence and size of any over-allotment facility and/or 'green shoe'; (b) the existence period of the over-allotment facility and/or 'green shoe'; (c) any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.
7	**SELLING SECURITIES HOLDERS**
7.1	Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.
7.2	The number and class of securities being offered by each of the selling security holders.
7.3	Where a major shareholder is selling the securities, the size of its shareholding both before and immediately after the issuance.
7.4	In relation to lock-up agreements, provide details of the following: (a) the parties involved; (b) the content and exceptions of the agreement; (c) indicate the period of the lock up.
8	**EXPENSE OF THE ISSUE/OFFER**
8.1	The total net proceeds and an estimate of the total expenses of the issue/offer.

9	**DILUTION**
9.1	A comparison of: (a) participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares; (b) the net asset value per share as of the date of the latest balance sheet before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer.
9.2	Where existing shareholders will be diluted regardless of whether they subscribe for their entitlement, because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders), an indication of the dilution existing shareholders will experience shall also be presented on the basis that they do take up their entitlement (in addition to the situation in item 9.1 where they do not).
10	**ADDITIONAL INFORMATION**
10.1	If advisors connected with an issue are referred to in the Securities Note, a statement of the capacity in which the advisors have acted.
10.2	An indication of other information in the securities note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.

Cross- reference list- Annex 20

Pro forma information

1	**CONTENTS OF PRO FORMA FINANCIAL INFORMATION**
1.1	The pro forma financial information shall consist of: a) an introduction setting out: i. the purpose for which the pro forma financial information has been prepared, including a description of the transaction or significant commitment and the businesses or entities involved; ii. the period or date covered by the pro forma financial information; iii. the fact that the pro forma financial information has been prepared for illustrative purposes only; iv. an explanation that: i. the pro forma financial information illustrates the impact of the transaction as if the transaction had been undertaken at an earlier date; ii. the hypothetical financial position or results included in the pro forma financial information may differ from the entity's actual financial position or results; b) a profit and loss account, a balance sheet or both, depending on the circumstances presented in a columnar format composed of: i. historical unadjusted information; ii. accounting policy adjustments, where necessary; iii. pro forma adjustments; iv. the results of the pro forma financial information in the final column; c) (c) accompanying notes explaining: i. the sources from which the unadjusted financial information has been extracted and whether or not an audit or review report on the source has been published; ii. the basis upon which the pro forma financial information is prepared; iii. source and explanation for each adjustment; iv. whether each adjustment in respect of a pro forma profit and loss statement is expected to have a continuing impact on the issuer or not; d) where applicable, the financial information and interim financial information of the (or to be) acquired businesses or entities used in the preparation of the pro forma financial information must be included in the prospectus.
2	**PRINCIPLES IN PREPARING AND PRESENTING PRO FORMA FINANCIAL INFORMATION**
2.1	The pro forma financial information shall be identified as such in order to distinguish it from historical financial information. The pro forma financial information must be prepared in a manner consistent with the accounting policies adopted by the issuer in its last or next financial statements.
2.2	Pro forma information may only be published in respect of: a) the last completed financial period; and/or b) the most recent interim period for which relevant unadjusted information has been published or are included in the registration document/prospectus.
2.3	Pro forma adjustments must comply with the following: a) be clearly shown and explained; b) present all significant effects directly attributable to the transaction; c) be factually supportable.
3	**REQUIREMENTS FOR AN ACCOUNTANT / AUDIT REPORT** The prospectus shall include a report prepared by the independent accountants or auditors stating that in their opinion: a) the pro forma financial information has been properly compiled on the basis stated; b) that the basis referred to in (a) is consistent with the accounting policies of the issuer.

Annex 4 – Registration document for units of closed-end collective investment undertakings

	In addition to the information required in this Annex, a collective investment undertaking must provide the information as required in sections/items 1, 2, 3, 4, 6, 7.1, 7.2.1, 8.4, 9 (although the description of the regulatory environment that the issuer operates in, need only relate to the regulatory environment relevant to issuer's investments), 11, 12, 13, 14, 15.2, 16, 17, 18 (except for pro forma financial information), 19, 20, 21 of Annex 1, or, if the collective investment undertaking meets the requirements of Article 14(1) of Regulation (EU) 2017/1129, the following information as required under paragraphs and sections/items 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14 in Annex 3. Where units are issued by a collective investment undertaking which is constituted as a common fund managed by a fund manager, the information referred to in sections/items 6, 12, 13, 14, 15.2, 16 and 20 of Annex 1 shall be disclosed in relation to the fund manager, while the information referred to in items 2, 4 and 18 of Annex 1 shall be disclosed in relation to both the fund and the fund manager.
SECTION 1	**INVESTMENT OBJECTIVE AND POLICY**
Item 1.1	(a) description of the investment policy, strategy and objectives of the collective investment undertaking; (b) information on where the underlying collective investment undertaking(s) is/are established if the collective investment undertaking is a fund comprising of funds; (c) a description of the types of assets in which the collective investment undertaking may invest; (d) the techniques it may employ and all associated risks together with the circumstances in which the collective investment undertaking may use leverage; (e) the types and sources of leverage permitted and the associated risks; (f) any restrictions on the use of leverage and any collateral and asset reuse arrangements; (g) the maximum level of leverage which may be employed on behalf of the collective investment undertaking.
Item 1.2	A description of the procedures by which the collective investment undertaking may change its investment strategy or investment policy, or both.
Item 1.3	The leverage limits of the collective investment undertaking. If there are no such limits, include a statement to that effect.
Item 1.4	The regulatory status of the collective investment undertaking together with the name of any regulator in its country of incorporation.
Item 1.5	The profile of a typical investor for whom the collective investment undertaking is designed.
Item 1.6	A statement confirming the following: (a) the [registration document/prospectus] has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129; (b) the [name of competent authority] only approves this [registration document/prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; (c) such approval should not be considered as an endorsement of the issuer that is the subject of this [registration document/prospectus].

SECTION 2	INVESTMENT RESTRICTIONS
Item 2.1	A statement of the investment restrictions which apply to the collective investment undertaking, if any, and an indication of how the holders of securities will be informed of the actions that the investment manager will take in the event of a breach.
Item 2.2	Certain information is required to be disclosed, where more than 20 % of the gross assets of any collective investment undertaking (except where the registration document is being prepared for an entity as a result of the application of item 2.3 or 2.5) may be either: (a) invested in, either directly or indirectly, or loaned to any single underlying issuer (including the underlying issuer's subsidiaries or affiliates); (b) invested in one or more collective investment undertakings which may invest in excess of 20 % of its gross assets in other collective investment undertakings (open-end and/or closed-end type); (c) exposed to the creditworthiness or solvency of any one counterparty (including its subsidiaries or affiliates); The information, referred to in the introductory sentence, shall comprise the following in either of the following circumstances: (i) where the underlying securities are not admitted to trading on a regulated or equivalent third country market or an SME Growth Market, information relating to each underlying issuer/collective investment undertaking/counterparty as if it were an issuer for the purposes of the minimum disclosure requirements for the registration document for equity securities (in the case of point (a)) or minimum disclosure requirements for the registration document for units issued by closed-end collective investment undertakings (in the case of point (b)) or the minimum disclosure requirements for the registration document for wholesale non-equity securities (in the case of point (c)); (ii) if the securities issued by the underlying issuer/collective investment undertaking/counterparty have already been admitted to trading on a regulated or equivalent third country market or an SME Growth Market, or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market or an SME Growth Market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted. The disclosure requirement referred to in points (i) and (ii) shall not apply where the 20 % threshold is exceeded due to appreciations or depreciations, changes in exchange rates, or by reason of the receipt of rights, bonuses, benefits in the nature of capital or by reason of any other action affecting every holder of that investment, provided the investment manager has regard to the threshold when considering changes in the investment portfolio. Where the collective investment undertaking can reasonably demonstrate to the competent authority that it is unable to access some or all of the information required under point (i), the collective investment undertaking must disclose all of the information that it is able to access, that it is aware of, and/or that it is able to ascertain from information published by the underlying issuer/collective investment undertaking/counterparty in order to satisfy as far as is practicable the requirements laid down in point (i). In this case, the prospectus must include a prominent warning that the collective investment undertaking has been unable to access specified items of information that would otherwise be required to be included in the prospectus and therefore a reduced level of disclosure has been provided in relation to a specified underlying issuer, collective investment undertaking or counterparty.
Item 2.3	Where a collective investment undertaking invests in investments in excess of 20 % of its gross assets in other collective investment undertakings (open ended and/or closed ended), a description of the investment and how the risk is spread in relation to those investments shall be disclosed. In addition, item 2.2 shall apply, in addition to all underlying investments of the collective investment undertaking as if those investments had been made directly.
Item 2.4	With reference to point (c) of item 2.2, if collateral is advanced to cover that portion of the exposure to any one counterparty in excess of 20 % of the gross assets of the collective investment undertaking, set out the details of such collateral arrangements.

Item 2.5	Where a collective investment undertaking invests in investments in excess of 40 % of its gross assets in another collective investment undertaking, then one of the following must be disclosed: (a) information relating to each underlying collective investment undertaking as if it were an issuer under minimum disclosure requirements as set out in this Annex; (b) if securities issued by an underlying collective investment undertaking have already been admitted to trading on a regulated or equivalent third country market or an SME Growth Market, or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market or an SME Growth Market, then the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted. Where the collective investment undertaking can reasonably demonstrate to the competent authority that it is unable to access some or all of the information required under point (i), the collective investment undertaking must disclose all of the information that it is able to access, that it is aware of, and/or that it is able to ascertain from information published by the underlying issuer/collective investment undertaking/counterparty in order to satisfy as far as is practicable the requirements laid down in point (a). In this case, the prospectus must include a prominent warning that the collective investment undertaking has been unable to access specified items of information that would otherwise be required to be included in the prospectus and therefore a reduced level of disclosure has been provided in relation to a specified underlying issuer, collective investment undertaking or counterparty.
Item 2.6	*Physical commodities* Where a collective investment undertaking invests directly in physical commodities a disclosure of that fact and the percentage of the gross assets that will be so invested.
Item 2.7	*Property collective investment undertakings* Where a collective investment undertaking holds property as part of its investment objective, the percentage of the portfolio that is to be invested in property, the description of the property and any material costs relating to the acquisition and holding of such property shall be disclosed. In addition, a valuation report relating to the properties must be included. The disclosure requirements set out in item 4.1 shall apply to: (a) the entity producing the valuation report; (b) any other entity responsible for the administration of the property.
Item 2.8	*Derivatives financial instruments/money market instruments/currencies* Where a collective investment undertaking invests in derivatives, financial instruments, money market instruments or currencies other than for the purposes of efficient portfolio management namely solely for the purpose of reducing, transferring or eliminating investment risk in the underlying investments of a collective investment undertaking, including any technique or instrument used to provide protection against exchange and credit risks, a statement of whether those investments are used for hedging or for investment purposes, and a description of where and how risk is spread in relation to those investments.
Item 2.9	Item 2.2 does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any Member State, its regional or local authorities, or of any OECD Member State.
Item 2.10	Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, a broadly based and recognised published index. A statement setting out details of where information about the index can be obtained shall be included.
SECTION 3	**THE APPLICANT'S SERVICE PROVIDERS**
Item 3.1	The actual or estimated maximum amount of all material fees payable directly or indirectly by the collective investment undertaking for any services provided under arrangements entered into on or prior to the date of the registration document and a description of how these fees are calculated.
Item 3.2	A description of any fee payable directly or indirectly by the collective investment undertaking which cannot be quantified under item 3.1 and which is or which may be material.
Item 3.3	If any service provider to the collective investment undertaking is in receipt of any benefits from third parties (other than the collective investment undertaking) by virtue of providing any services to the collective investment undertaking, and those benefits may not accrue to the collective investment undertaking, a statement of that fact, the name of that third party, if available, and a description of the nature of the benefits shall be disclosed.
Item 3.4	The identity of the service providers and a description of their duties and the investor's rights.

Item 3.5	A description of any material potential conflicts of interest which any of the service providers to the collective investment undertaking may have as between their duty to the collective investment undertaking and duties owed by them to third parties and their other interests. A description of any arrangements which are in place to address such potential conflicts.
SECTION 4	INVESTMENT MANAGER/ADVISERS
Item 4.1	In respect of any Investment Manager the information required to be disclosed under items 4.1 to 4.4 and, if material, under item 5.3 of Annex 1 together with a description of its regulatory status and experience.
Item 4.2	In respect of any entity providing investment advice in relation to the assets of the collective investment undertaking, the name and a brief description of the entity.
SECTION 5	CUSTODY
Item 5.1	A full description of how the assets of the collective investment undertaking will be held and by whom and any fiduciary or similar relationship between the collective investment undertaking and any third party in relation to custody: Where a depositary, trustee, or other fiduciary is appointed, the following shall be provided: (a) such information as is required to be disclosed under items 4.1 to 4.4 and, if material, under item 5.3 of Annex 1; (b) a description of the obligations of each party under the custody or similar agreement; (c) any delegated custody arrangements; (d) the regulatory status of each party and their delegates.
Item 5.2	Where any entity other than those entities referred to in item 5.1, holds any assets of the collective investment undertaking, a description of how these assets are held together with a description of any additional risks.
SECTION 6	VALUATION
Item 6.1	A description of the valuation procedure and of the pricing methodology for valuing assets.
Item 6.2	Details of all circumstances in which valuations may be suspended and a statement of how such suspension will be communicated or made available to investors.
SECTION 7	CROSS LIABILITIES
Item 7.1	In the case of an umbrella collective investment undertaking, a statement of any cross liability that may occur between classes of investments in other collective investment undertakings and any action taken to limit such liability.
SECTION 8	FINANCIAL INFORMATION
Item 8.1	Where a collective investment undertaking has not commenced operations and no financial statements have been made up as at the date of the registration document, since the date of incorporation or establishment, a statement to that effect. Where a collective investment undertaking has commenced operations, the provisions of section 18 of Annex 1 or section 11 of Annex 3 shall apply as appropriate.
Item 8.2	A comprehensive and meaningful analysis of the collective investment undertaking's portfolio. Where the portfolio is not audited, this must be clearly marked as such.
Item 8.3	An indication of the latest net asset value of the collective investment undertaking or the latest market price of the unit or share of the collective investment undertaking. Where the net asset value or the latest market price of the unit or share is not audited, this must be clearly marked as such.

GOWLING WLG

UK Market Abuse Regulation

1 REGULATION (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Retained EU Legislation)

2 CORRIGENDUM to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16th April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Text with EEA relevance) (Retained EU Legislation)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

Whereas:

(1) A genuine internal market for financial services is crucial for economic growth and job creation in the Union.

(2) An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

(3) Directive 2003/6/EC of the European Parliament and of the Council[4] completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since the entry into force of that Directive, which have resulted in considerable changes to the financial landscape, that Directive should now be replaced. A new legislative instrument is also needed to ensure that there are uniform rules and clarity of key concepts and a single rule book in line with the conclusions of the report of 25 February 2009 by the High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière Group').

(4) There is a need to establish a more uniform and stronger framework in order to preserve market integrity, to avoid potential regulatory arbitrage, to ensure accountability in the event of attempted manipulation, and to provide more legal certainty and less regulatory complexity for market participants. This Regulation aims at contributing in a determining manner to the proper functioning of the internal market and should therefore be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted consistently in the case-law of the Court of Justice of the European Union.

(5) In order to remove the remaining obstacles to trade and the significant distortions of competition resulting from divergences between national laws and to prevent any further obstacles to trade and significant distortions of competition from arising, it is necessary to adopt a Regulation establishing a more uniform interpretation of the Union market abuse framework, which more clearly defines rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation will ensure that those requirements are directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation will require that all persons follow the same rules in all the Union. It will also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and it will contribute to eliminating distortions of competition.

(6) The Commission Communication of 25 June 2008 on 'A 'Small Business Act' for Europe' calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium-sized enterprises (SMEs) and to facilitate access to finance for those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular on those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.

(7) Market abuse is a concept that encompasses unlawful behaviour in the financial markets and, for the purposes of this Regulation, it should be understood to consist of insider dealing, unlawful disclosure of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.

(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made. However, in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are traded only on other types of organised trading facilities (OTFs) or only over the counter (OTC). The scope of this Regulation should therefore include any financial instrument traded on a regulated market, an MTF or an OTF, and any other conduct or action which can have an effect on such a financial instrument irrespective of whether it takes place on a trading venue. In the case of certain types of MTFs which, like regulated markets, help companies to raise equity finance, the prohibition against market abuse also applies where a request for admission to trading on such a market has been made. The scope of this Regulation should therefore include financial instruments for which an application for admission to trading on an MTF has been made. This should improve investor protection, preserve the integrity of markets and ensure that market abuse of such instruments is clearly prohibited.

(9) For the purposes of transparency, operators of a regulated market, an MTF or an OTF should notify, without delay, their competent authority of details of the financial instruments which they have admitted to trading, for which there has been a request for admission to trading or that have been traded on their trading venue. A second notification should be made when the instrument ceases to be admitted to trading. Such obligations should also apply to financial instruments for which there has been a request for admission to trading on their trading venue and financial instruments that have been admitted to trading prior to the entry into force of this Regulation. The notifications should be submitted to the European Securities and Markets Authority (ESMA) by the competent authorities and ESMA should publish a list of all of the financial instruments notified. This Regulation applies to financial instruments whether or not they are included in the list published by ESMA.

(10) It is possible that certain financial instruments which are not traded on a trading venue are used for market abuse. This includes financial instruments the price or value of which depends or has an effect on financial instruments traded on a trading venue, or the trading of which has an effect on the price or value of other financial instruments traded on a trading venue. Examples of where such instruments can be used for market abuse include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index the value of which depends on that share or bond. Where a financial instrument is used as a reference price, an OTC-traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a trading venue. A further example is the planned issue of a new tranche of securities that do not otherwise fall within the scope of this Regulation, but where trading in those securities could affect the price or value of existing listed securities that fall within the scope of this Regulation. This Regulation also covers the situation where the price or value of an instrument traded on a trading venue depends on an OTC-traded instrument. The same principle should apply to spot commodity contracts the prices of which are based on that of a derivative and to the buying of spot commodity contracts to which financial instruments are referenced.

(11) Trading in securities or associated instruments for the stabilisation of securities or trading in own shares in buy-back programmes can be legitimate for economic reasons and should, therefore, in certain circumstances, be exempt from the prohibitions against market abuse provided that the actions are carried out under the necessary transparency, where relevant information regarding the stabilisation or buy-back programme is disclosed.

(12) Trading in own shares in buy-back programmes and Stabilising a financial instrument which would not benefit from the exemptions under this Regulation should not of itself be deemed to constitute market abuse.

(13) Member States, members of the European System of Central Banks (ESCB), ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of those policies. Neither should transactions or orders carried out, or behaviour by, the Union, a special purpose vehicle of one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States, be restricted in mobilising funding and providing financial assistance to the benefit of its members. Such an exemption from the scope of this Regulation may, in accordance with this Regulation, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries. At the same time, the exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those bodies engage in transactions, orders or behaviour other than in pursuit of those policies or where persons working for those bodies engage in transactions, orders or behaviour on their own account.

(14) Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be

likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

(15) Ex post information can be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from *ex ante* information available to them.

(16) Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.

(17) Information which relates to an event or set of circumstances which is an intermediate step in a protracted process may relate, for example, to the state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, provisional terms for the placement of financial instruments, or the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such an index.

(18) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, information required to be disclosed in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council[5] should, in particular, be considered as inside information.

(19) This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.

(20) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders which can lead to significant systemic risks. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Inside information in relation to a derivative of a commodity should be defined as information which both meets the general definition of inside information in relation to financial markets and which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant commodity derivative or spot market. Notable examples of such rules include Regulation (EU) No 1227/2011 for the energy market and the Joint Organisations Database Initiative (JODI) database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and should therefore constitute inside information required to be made public, where it is likely to have a significant effect on the prices of such derivatives or related spot commodity contracts.

Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these inter-linkages. However, it is not appropriate or practicable to extend the scope of this Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of Regulation (EU) No 1227/2011 when they apply the definitions of inside information, insider dealing and market manipulation under this Regulation to financial instruments related to wholesale energy products.

(21) Pursuant to Directive 2003/87/EC of the European Parliament and of the Council[6], the Commission, Member States and other officially designated bodies are, inter alia, responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies can, inter alia, have access to price-sensitive, non-public information and, pursuant to Directive 2003/87/EC, may need to perform certain market operations in relation to emission allowances. As a consequence of the classification of emission allowances as financial instruments as

part of the review of Directive 2004/39/EC of the European Parliament and of the Council[7], those instruments will also fall within the scope of this Regulation.

In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and implement the Union's climate policy, the activities of those public bodies, insofar as they are undertaken in the public interest and explicitly in pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of, and access to, any new decisions, developments and data that have a price-sensitive nature. Furthermore, safeguards of fair and non-discriminatory disclosure of specific price-sensitive information held by public authorities exist under Directive 2003/87/EC and the implementing measures adopted pursuant thereto. At the same time, the exemption for public bodies acting in pursuit of the Union's climate policy should not extend to cases in which those public bodies engage in conduct or in transactions which are not in the pursuit of the Union's climate policy or when persons working for those bodies engage in conduct or in transactions on their own account.

(22) Pursuant to Article 43 TFEU and to the implementation of international agreements concluded under the TFEU, the Commission, Member States and other officially designated bodies are, inter alia, responsible for pursuing the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP). In the exercise of those duties, those public bodies undertake activities and take measures aiming to manage the agricultural markets and fisheries, including those of public intervention, imposing additional, or suspending, import duties. In the light of the scope of this Regulation, certain provisions thereof that apply to spot commodity contracts which have or which are likely to have an effect on financial instruments and financial instruments the value of which depends on the value of spot commodity contracts and which have or which are likely to have an effect on spot commodity contracts, it is necessary to ensure that the activity of the Commission, Member States and other bodies officially designated to pursue the CAP and the CFP, is not restricted. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and pursue the CAP and the CFP, their activities, insofar as they are undertaken in the public interest and solely in pursuance of those policies, should be exempted from the application of this Regulation. Such exemption should not have a negative impact on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of, and access to, any new decisions, developments and data that have a price-sensitive nature. At the same time, the exemption for public bodies acting in pursuance of the CAP and the CFP should not extend to cases where those public bodies engage in conduct or in transactions which are not in pursuance of the CAP and the CFP or where persons working for those bodies engage in conduct or in transactions on their own account.

(23) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information by acquiring or disposing of, by attempting to acquire or dispose of, by cancelling or amending, or by attempting to cancel or amend, an order to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Commission Regulation (EU) No 1031/2010[8].

(24) Where a legal or natural person in possession of inside information acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates, it should be implied that that person has used that information. That presumption is without prejudice to the rights of the defence. The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.

(25) Orders placed before a person possesses inside information should not be deemed to be insider dealing. However, where a person comes into possession of inside information, there should be a presumption that any subsequent change relating that information to orders placed before possession of such information, including the cancellation or amendment of an order, or an attempt to cancel or amend an order, constitutes insider dealing. That presumption could, however, be rebutted if the person establishes that he or she did not use the inside information when carrying out the transaction.

(26) Use of inside information can consist of the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, of the cancellation or amendment of an order, or the attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information constitutes inside information. In this respect, the competent authorities should consider what a normal and reasonable person

knows or should have known in the circumstances.

(27) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) where the company is subject to a public take-over bid or any other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council[9].

(28) Research and estimates based on publicly available data, should not per se be regarded as inside information and the mere fact that a transaction is carried out on the basis of research or estimates should not therefore be deemed to constitute use of inside information. However, for example, where the publication or distribution of information is routinely expected by the market and where such publication or distribution contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments, the information may constitute inside information. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments traded in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information.

(29) In order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse, it is necessary to recognise certain legitimate behaviour. This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity.

(30) The mere fact that market makers or persons authorised to act as counterparties confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out, cancelling or amending an order dutifully, should not be deemed to constitute use of such inside information. However, the protection, laid down in this Regulation, of market makers, bodies authorised to act as counterparties or persons authorised to execute orders on behalf of third parties with inside information, does not extend to activities clearly prohibited under this Regulation including, for example, the practice commonly known as ‘front-running’. Where legal persons have taken all reasonable measures to prevent market abuse from occurring but nevertheless natural persons within their employment commit market abuse on behalf of the legal person, this should not be deemed to constitute market abuse by the legal person. Another example that should not be deemed to constitute use of inside information is transactions conducted in the discharge of a prior obligation that has become due. The mere fact of having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed to constitute insider dealing.

(31) Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of those operations, the mere fact of making such an acquisition or disposal should not be deemed to constitute use of inside information. Acting on the basis of one’s own plans and strategies for trading should not be considered as using inside information. However, none of those legal or natural persons should be protected by virtue of their professional function; they should only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of this Regulation namely market integrity and investor protection. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind those transactions or orders or that behaviour, or that the person used inside information.

(32) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings could involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of financial markets and market soundings should not in themselves be regarded as market abuse.

(33) Examples of market soundings include situations in which the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in those securities from other potential investors.

(34) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the potential investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or has been traded on an MTF or an OTF. Before engaging in a market sounding, the disclosing market participant should assess whether that market sounding will involve the disclosure of inside information.

(35) Inside information should be deemed as being disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duties. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the normal course of his employment, profession or duties where, at the time of making the disclosure, he informs and receives the consent of the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding. The disclosing market participant should also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed. There should be no presumption that market participants that do not comply with this Regulation when conducting a market sounding have unlawfully disclosed inside information but they should not be able to take advantage of the exemption given to those who have complied with such provisions. The question whether they have infringed the prohibition against the unlawful disclosure of inside information should be analysed in light of all the relevant provisions of this Regulation, and all disclosing market participants should be under an obligation to record in writing their assessment, before engaging in a market sounding, whether that market sounding will involve the disclosure of inside information.

(36) Potential investors who are the subject of a market sounding should, in turn, consider if the information disclosed to them amounts to inside information which would prohibit them from dealing on the basis of it or further disclosing that information. Potential investors remain subject to the rules on insider dealing and unlawful disclosure of inside information, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene this Regulation, ESMA should issue guidelines.

(37) Regulation (EU) No 1031/2010 provides for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rule book of market abuse measures applicable to the entirety of the primary and secondary markets in emission allowances. This Regulation should also apply to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Regulation (EU) No 1031/2010.

(38) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading in financial instruments is increasingly automated, it is desirable that the definition of market manipulation provide examples of specific abusive strategies that may be carried out by any available means of trading including algorithmic and high-frequency trading. The examples provided are neither intended to be exhaustive nor intended to suggest that the same strategies carried out by other means would not also be abusive.

(39) The prohibitions against market abuse should also cover those persons who act in collaboration to commit market abuse. Examples could include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information unlawfully or persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.

(40) To ensure that liability is conferred on both the legal person and any natural person who participates in the decision-making of the legal person, it is necessary to give recognition of the different national legal mechanisms in Member States. Such mechanisms should relate directly to the methods of attribution of liability in national law.

(41) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation. An attempt to engage in market manipulation should be distinguished from behaviour which is likely to result in market manipulation as both activities are prohibited under this Regulation. Such an attempt may include situations where the activity is started but is not completed, for example as a result of failed technology or an instruction to trade which is not acted upon. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to impose sanctions for such attempts.

(42) Without prejudice to the aim of this Regulation and its directly applicable provisions, a person who enters into

transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the competent authority responsible for the market abuse supervision of the market concerned. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind these transactions or orders to trade.

(43) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or OTC.

(44) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, including interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. Those provisions should cover all published benchmarks including those accessible through the internet whether free of charge or not such as CDS benchmarks and indices of indices. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and the transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, where that calculation is broadly defined to include the receipt and evaluation of all data which relates to the calculation of that benchmark and include in particular trimmed data, and including the benchmark's methodology, whether algorithmic or judgement-based in whole or in part. Those rules are in addition to Regulation (EU) No 1227/2011 which prohibits the deliberate provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports.

(45) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, any person who operates regulated markets, MTFs and OTFs should be required to establish and to maintain effective arrangements, systems and procedures aimed at preventing and detecting market manipulation and abusive practices.

(46) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Furthermore, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Persons professionally arranging or executing transactions should be required to establish and to maintain effective arrangements, systems and procedures in place to detect and report suspicious transactions. They should also report suspicious orders and suspicious transactions that take place outside a trading venue.

(47) The manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. That form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being an infringement of this Regulation. It is therefore appropriate not to allow those active in the financial markets to freely express information contrary to their own opinion or better judgement, which they know or should know to be false or misleading, to the detriment of investors and issuers.

(48) Given the rise in the use of websites, blogs and social media, it is important to clarify that disseminating false or misleading information via the internet, including through social media sites or unattributable blogs, should be considered, for the purposes of this Regulation, to be equivalent to doing so via more traditional communication channels.

(49) The public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. However that obligation may, under special circumstances, prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should be permitted provided that the delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. The issuer is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading.

(50) For the purposes of applying the requirements relating to public disclosure of inside information and delaying such public disclosure, as provided for in this Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances: (a) ongoing negotiations, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer; (b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between those bodies, provided that public disclosure of the information before such approval, together with the simultaneous announcement that the approval remains pending, would jeopardise the correct assessment of the information by the public.

(51) Moreover, the requirement to disclose inside information needs to be addressed to the participants in the emission allowance market. In order to avoid exposing the market to reporting that is not useful and to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that requirement to only those EU ETS operators which, by virtue of their size and activity, can reasonably be expected to be able to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments relating thereto and for bidding in the auctions pursuant to Regulation (EU) No 1031/2010. The Commission should adopt measures establishing a minimum threshold for the purposes of application of that exemption by means of a delegated act. The information to be disclosed should concern the physical operations of the disclosing party and not own plans or strategies for trading emission allowances, auctioned products based thereon, or derivative financial instruments relating thereto. Where emission allowance market participants already comply with equivalent inside information disclosure requirements, notably pursuant to Regulation (EU) No 1227/2011, the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content. In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set, since the information about their physical operations is deemed to be non-material for the purposes of disclosure, it should also be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of the derivative financial instruments relating thereto. Such participants in the emission allowance market should nevertheless be covered by the prohibition of insider dealing in relation to any other information they have access to and which is inside information.

(52) In order to protect the public interest, to preserve the stability of the financial system and, for example, to avoid liquidity crises in financial institutions from turning into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for credit institutions or financial institutions. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweighs the interest of the market in receiving the information which is subject to delay.

(53) In respect of financial institutions, in particular where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting, as appropriate, the national central bank, the macro-prudential authority or any other relevant national authority.

(54) The use or attempted use of inside information to trade on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010 by persons who know, or who ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered to be inside information, although information regarding a third party's plans and strategies for trading may amount to inside information.

(55) The requirement to disclose inside information can be burdensome for small and medium-sized enterprises, as defined in Directive 2014/65/EU of the European Parliament and of the Council[10], whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, ESMA should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.

(56) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in

regard to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. It is important that persons included on insider lists are informed of that fact and of its implications under this Regulation and Directive 2014/57/EU of the European Parliament and of the Council[11]. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers on SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers, they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation. However, such issuers should provide an insider list to the competent authorities upon request.

(57) The establishment, by issuers or any person acting on their behalf or account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. Such lists may serve issuers or such persons to control the flow of inside information and thereby help manage their confidentiality duties. Moreover, such lists may also constitute a useful tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to the prohibitions laid down in this Regulation.

(58) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse, particularly insider dealing. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments, as the pledging of shares can result in a material and potentially destabilising impact on the company in the event of a sudden, unforeseen disposal. Without disclosure, the market would not know that there was the increased possibility of, for example, a significant future change in share ownership, an increase in the supply of shares to the marketplace or a loss of voting rights in that company. For that reason, notification under this Regulation is required where the pledge of the securities is made as part of a wider transaction in which the manager pledges the securities as collateral to gain credit from a third party. Additionally, full and proper market transparency is a prerequisite for the confidence of market actors and, in particular, the confidence of a company's shareholders. It is also necessary to clarify that the obligation to publish those managers' transactions includes transactions by another person exercising discretion for the manager. In order to ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public, thresholds should be introduced in this Regulation below which transactions need not be notified.

(59) The notification of transactions conducted by persons discharging managerial responsibilities on their own account, or by a person closely associated with them, is not only valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation to notify transactions is without prejudice to the prohibitions laid down in this Regulation.

(60) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council[12].

(61) Persons discharging managerial responsibilities should be prohibited from trading before the announcement of an interim financial report or a year-end report which the relevant issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or according to national law, unless specific and restricted circumstances exist which would justify a permission by the issuer allowing a person discharging managerial responsibilities to trade. However, any such permission by the issuer is without prejudice to the prohibitions laid down in this Regulation.

(62) A set of effective tools and powers and resources for the competent authority of each Member State guarantees supervisory effectiveness. Accordingly, this Regulation, in particular, provides for a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with under national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation competent authorities should act objectively and impartially and should remain autonomous in their decision making.

(63) Market undertakings and all economic actors should also contribute to market integrity. In that sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation. Where persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy in one or more financial instruments also deal on own account in such instruments, the competent authorities should, inter alia, be able to require or demand from such persons any information necessary to determine whether the recommendations produced or disseminated by that person are compliant with this Regulation.

(64) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have, in accordance with national law, the ability to access the premises of natural and legal persons in order to seize documents. Access to such premises is necessary where there is a reasonable suspicion that documents and other data relating to the subject matter of an investigation exist and may be relevant to prove a case of insider dealing or market abuse. Additionally access to such premises is necessary where the person of whom a demand for information has already been made fails, wholly or in part, to comply with it or where there are reasonable grounds for believing that if a demand were to be made it would not be complied with or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, access to premises should take place after having obtained that prior judicial authorisation.

(65) Existing recordings of telephone conversations and data traffic records from investment firms, credit institutions and financial institutions executing and documenting the execution of transactions, as well as existing telephone and data traffic records from telecommunications operators, constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information or that persons have been in contact at a certain time, and that a relationship exists between two or more people. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm, a credit institution or a financial institution in accordance with Directive 2014/65/EU. Access to data and telephone records is necessary to provide evidence and investigate leads on possible insider dealing or market manipulation, and therefore for detecting and imposing sanctions for market abuse. In order to introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunications operator or the existing recordings of telephone conversations and data traffic held by an investment firm, a credit institution or a financial institution, competent authorities should, in accordance with national law, be able to require existing telephone and existing data traffic records held by a telecommunications operator, insofar as permitted under national law and existing recordings of telephone conversations as well as data traffic held by an investment firm, in cases where a reasonable suspicion exists that such records related to the subject matter of the inspection or investigation may be relevant to prove insider dealing or market manipulation infringing this Regulation. Access to telephone and data traffic records held by a telecommunications operator does not encompass access to the content of voice communications by telephone.

(66) While this Regulation specifies a minimum set of powers competent authorities should have, those powers are to be exercised within a complete system of national law which guarantees the respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect for private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, for instance, where appropriate a requirement to obtain prior authorisation from the judicial authorities of a Member State concerned. Member States should allow the possibility for competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.

(67) Since market abuse can take place across borders and markets, in all but exceptional circumstances competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affects financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA should be able to coordinate the investigation if requested to do so by one of the competent authorities concerned.

(68) It is necessary for competent authorities to have the necessary tools for effective cross-market order book surveillance. Pursuant to Directive 2014/65/EU, competent authorities are able to request and receive data from other competent authorities relating to the order book to assist in monitoring and detecting market manipulation on a cross-border basis.

(69) In order to ensure exchanges of information and cooperation with third-country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements should comply with Directive 95/46/EC and with Regulation (EC) No 45/2001 of the European Parliament and of the Council[13].

(70) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigation and sanction regimes. To that end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanction regimes against all financial misconduct, and sanctions should be enforced effectively. However, the de Larosière Group considered that none of those elements is currently in place. A review of existing powers to impose sanctions and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on

Reinforcing sanctioning regimes in the financial sector.

(71) Therefore, a set of administrative sanctions and other administrative measures should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. The possibility of a ban from exercising management functions within investment firms should be available to the competent authority. Sanctions imposed in specific cases should be determined taking into account where appropriate factors such as the disgorgement of any identified financial benefit, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious infringements, while fines significantly lower than the maximum level may be applied to minor infringements or in case of settlement. This Regulation does not limit Member States' ability to provide for higher administrative sanctions or other administrative measures.

(72) Even though nothing prevents Member States from laying down rules for administrative as well as criminal sanctions for the same infringements, they should not be required to lay down rules for administrative sanctions for infringements of this Regulation which are already subject to national criminal law by 3 July 2016. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law so permits. However, maintenance of criminal sanctions rather than administrative sanctions for infringements of this Regulation or of Directive 2014/57/EU should not reduce or otherwise affect the ability of competent authorities to cooperate and access and exchange information in a timely manner with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(73) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authorities to inform market participants of what behaviour is considered to be an infringement of this Regulation and to promote good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved or jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the administrative sanctions and other administrative measures on an anonymous basis in accordance with national law or delay the publication. Competent authorities should have the option of not publishing sanctions and other administrative measures where anonymous or delayed publication is considered to be insufficient to ensure that the stability of the financial markets will not be jeopardised. Competent authorities should also not be required to publish measures which are deemed to be of a minor nature and the publication of which would be disproportionate.

(74) Whistleblowers may bring new information to the attention of competent authorities which assists them in detecting and imposing sanctions in cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. Reporting of infringements of this Regulation is necessary to ensure that a competent authority may detect and impose sanctions for market abuse. Measures regarding whistleblowing are necessary to facilitate detection of market abuse and to ensure the protection and the respect of the rights of the whistleblower and the accused person. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to possible infringements of this Regulation and to protect them from retaliation. Member States should be allowed to provide for financial incentives for those persons who offer relevant information about potential infringements of this Regulation. However, whistleblowers should only be entitled to such financial incentives where they bring to light new information which they are not already legally obliged to notify and where that information results in a sanction for an infringement of this Regulation. Member States should also ensure that whistleblowing schemes that they implement include mechanisms that provide appropriate protection of an accused person, particularly with regard to the right to the protection of his personal data and procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him.

(75) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since the delegated acts, regulatory technical standards and implementing technical standards provided for in this Regulation should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.

(76) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003[14] for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable provided that they are notified to ESMA within a prescribed time period, until the competent authority has made a decision regarding the continuation of those practices in accordance with this Regulation.

(77) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (Charter). Accordingly, this Regulation should be interpreted and applied in accordance with

those rights and principles. In particular, when this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist profession, account should be taken of those freedoms as guaranteed in the Union and in the Member States and as recognised pursuant to Article 11 of the Charter and to other relevant provisions.

(78) In order to increase transparency and to better inform the operation of the sanction regimes, competent authorities should provide anonymised and aggregated data to ESMA on an annual basis. That data should comprise the number of investigations that have been opened, the number that are ongoing and the number that have been closed during the relevant period.

(79) Directive 95/46/EC and Regulation (EC) No 45/2001 govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

(80) This Regulation, as well as the delegated acts, implementing acts, regulatory technical standards, implementing technical standards and guidelines adopted in accordance therewith, are without prejudice to the application of Union rules on competition.

(81) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the exemption from the scope of this Regulation of certain public bodies and central banks of third countries and of certain designated public bodies of third countries that have a linking agreement with the Union within the meaning of Article 25 of Directive 2003/87/EC; the indicators for manipulative behaviour listed in Annex I to this Regulation; the thresholds for determining the application of the public disclosure obligation to emission allowance market participants; the circumstances under which trading during a closed period is permitted; and the types of certain transactions conducted by persons discharging managerial responsibilities or persons closely associated with them that would trigger a requirement to notify. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(82) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of infringements of this Regulation, implementing powers should be conferred on the Commission to specify those procedures, including the arrangements for following up of the reports and measures for the protection of persons working under a contract of employment and measures for the protection of personal data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[15].

(83) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards and draft implementing technical standards which do not involve policy choices, for submission to the Commission.

(84) The Commission should be empowered to adopt the draft regulatory technical standards developed by ESMA to specify the content of notifications that will have to be made by the operators of regulated markets, MTFs and OTFs concerning the financial instruments that are admitted to trading, traded, or for which a request for admission to trading on their trading venue has been made; the manner and conditions of compilation, publication and maintenance of the list of those instruments by ESMA; the conditions that buy-back programmes and stabilisation measures must meet including conditions for trading, time and volume restrictions, disclosure and reporting obligations and price conditions for the stabilisation; in relation to procedures and arrangements, systems for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions; appropriate arrangements, procedures and record-keeping requirements in the process of market soundings; and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[16]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(85) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure

of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.

(86) Since the objective of this Regulation, namely to prevent market abuse in the form of insider dealing, the unlawful disclosure of inside information and market manipulation, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(87) The provisions of Directive 2003/6/EC being no longer relevant or sufficient, that Directive should be repealed from 3 July 2016. The requirements and prohibitions of this Regulation are strictly related to those in Directive 2014/65/EU and should therefore enter into force on the date of entry into force of that Directive.

(88) For the correct application of this Regulation, it is necessary that Member States take all necessary measures in order to ensure that their national law comply by 3 July 2016 with the provisions of this Regulation concerning competent authorities and their powers, administrative sanctions and other administrative measures, the reporting of infringements and the publication of decisions.

(89) The European Data Protection Supervisor delivered an opinion on 10 February 2012[17],

HAVE ADOPTED THIS REGULATION:

Notes

1 OJ C 161, 7.6.2012, p. 3.

2 OJ C 181, 21.6.2012, p. 64.

3 Position of the European Parliament of 10 September 2013 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

4 Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16).

5 Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and Transparency (OJ L 326, 8.12.2011, p. 1).

6 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

7 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

8 Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

9 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).

10 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/67/EU (see page 349 of this Official Journal).

11 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (see page 179 of this Official Journal).

Notes

12 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regard to the processing of personal data and on the movement of such data (OJ L 281, 23.11.1995, p. 31).

13 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

14 Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33).

15 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

16 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

17 OJ C 177, 20.6.2012, p. 1.

CHAPTER 1

GENERAL PROVISIONS

Article 1 Subject matter

This Regulation establishes a [...][1] regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the [United Kingdom][2] and to enhance investor protection and confidence in those markets.

Notes

1 Word repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.9(1)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.9(1)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 2 Scope

1.

This Regulation applies to the following:

(a) financial instruments admitted to trading on a [UK regulated market, Gibraltar regulated market or an EU regulated market][1] or for which a request for admission to trading on a [UK regulated market, Gibraltar regulated market or an EU regulated market][1] has been made;

(b) financial instruments traded on [a UK MTF, Gibraltar MTF or an EU MTF][1] , admitted to trading on [a UK MTF, Gibraltar MTF or an EU MTF][1] or for which a request for admission to trading on [a UK MTF, Gibraltar MTF or an EU MTF][1] has been made;

(c) financial instruments traded on [a UK OTF, Gibraltar OTF or an EU OTF][1] ;

(d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

This Regulation also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform [in relation to which a recognition order is in force under the Recognised Auction Platforms Regulations 2011[3]][2] of emission allowances or other auctioned products based thereon [...][4] pursuant to [the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021][5] . Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.

2.

Articles 12 and 15 also apply to:

(a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on the price or value of a financial instrument referred to in paragraph 1;

(b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments; and

(c) behaviour in relation to benchmarks.

3.

This Regulation applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 1 and 2, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

4.

The prohibitions and requirements in this Regulation shall apply to actions and omissions, [wherever those actions and omissions take place, whether in the United Kingdom or another country or territory][1] , concerning the instruments referred to in paragraphs 1 and 2.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.9 (December 31, 2020: commenced by an amendment)

2 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(2)(a) (April 22, 2021)

3 2011/2699

4 Words repealed by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(2)(b) (April 22, 2021)

5 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(2)(c) (April 22, 2021)

Article 3 Definitions

1.

For the purposes of this Regulation, the following definitions apply:

[

(1) *'financial instrument'* means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, read with Part 2 of that Schedule;

][1]

(2) *'investment firm'* means an investment firm as defined in [Article 2(1A) of the Markets in Financial Instruments Regulation][2] ;

(3) *'credit institution'* means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[3];

(4) *'financial institution'* means a financial institution as defined in [—

(a) Regulation (EU) No 575/2013 as that Regulation forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; or

(b) Regulation (EU) No 575/2013 as that Regulation applies in the European Union;

]4
(5) *'market operator'* means a market operator as defined in [Article 2(1)(10) of the Markets in Financial Instruments Regulation]5 ;
[
(6) *'regulated market'* has the meaning given in Article 2(1)(13) of the Markets in Financial Instruments Regulation;
(6A) *'UK regulated market'* has the meaning given in Article 2(1)(13A) of the Markets in Financial Instruments Regulation;
(6B) *'EU regulated market'* has the meaning given in Article 2(1)(13B) of the Markets in Financial Instruments Regulation;
[
(6C) *'Gibraltar regulated market'* means a regulated market which is authorised and functions regularly and in accordance with Part 3 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar8;
]7
(7) *'multilateral trading facility'* or *'MTF'* has the meaning given in Article 2(1)(14) of the Markets in Financial Instruments Regulation;
(7A) *'UK multilateral trading facility'* or *'UK MTF'* has the meaning given in Article 2(1)(14A) of the Markets in Financial Instruments Regulation;
(7B) *'EU multilateral trading facility'* or *'EU MTF'* has the meaning given in Article 2(1)(14B) of the Markets in Financial Instruments Regulation;
[
(7C) *'Gibraltar multilateral trading facility'* or *'Gibraltar MTF'* means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract in accordance with Part 2 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar;
]7
(8) *'organised trading facility'* or *'OTF'* has the meaning given in Article 2(1)(15) of the Markets in Financial Instruments Regulation;
(8A) *'UK organised trading facility'* or *'UK OTF'* has the meaning given in Article 2(1)(15A) of the Markets in Financial Instruments Regulation;
(8B) *'EU organised trading facility'* or *'EU OTF'* has the meaning given in Article 2(1)(15B) of the Markets in Financial Instruments Regulation;
]6[
(8C) *'Gibraltar organised trading facility'* or *'Gibraltar OTF'* means a multilateral system—
(a) which is not a regulated market or an MTF;
(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, in accordance with Part 2 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar;
]7
(9) *'accepted market practice'* means a specific market practice that is accepted by [the FCA]9 in accordance with Article 13;
[
(10) *'trading venue'* means a regulated market, an MTF or an OTF;
(10A) *'UK trading venue'* means a UK regulated market, a UK MTF or a UK OTF;
(10B) *'EU trading venue'* means an EU regulated market, an EU MTF or an EU OTF;
(10C) *'Gibraltar trading venue'* means a Gibraltar regulated market, a Gibraltar MTF or a Gibraltar OTF;
]10
(11) *'SME growth market'* means SME growth market as defined in [regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 201712]11 ;
[
(12) *'competent authority'* means—
(a) in relation to an EEA state, the authority which has been designated by that Member State as its competent authority for the purposes of Article 22 of this Regulation as it was in force before [IP completion day]10 ; and
(b) in relation to a third country which is not an EEA state, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in Member States in accordance with this Regulation as it was in force before [IP completion day]10 ;
]13
(13) *'person'* means a natural or legal person;
(14) *'commodity'* means a commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/200614;
(15) *'spot commodity contract'* means a contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled, and a contract for the supply of a commodity that is not a financial instrument, including a physically settled forward contract;
(16) *'spot market'* means a commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled, and other non-financial markets, such as forward markets for commodities;
(17) *'buy-back programme'* means trading in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council15[or the law of the United Kingdom [or Gibraltar]7 which was relied on by the

United Kingdom [or Gibraltar respectively][7] immediately before [IP completion day][10] to implement those Articles][16];
(18) *'algorithmic trading'* means algorithmic trading as defined in [regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017][17] ;
(19) *'emission allowance'* means emission allowance as described in [paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001][18] ;
[
(19a) *'UK emission allowance'* means an allowance created under the Greenhouse Gas Emissions Trading Scheme Order 2020;
(19b) *'EU emission allowance'* means an emission allowance recognised for compliance with the requirements of Directive 2003/87/EC;
(19c) *'UK installation'*, *'UK aviation activities'*, *'EU installation'* and *'EU aviation activities'* have the meanings given in Article 7(4);
][19][
(20) *'emission allowance market participant'* means -
(a) a UK emission allowance market participant, and
(b) any person who would be treated as an emission allowance market participant under Article 3(20) of Regulation (EU) 596/2014[21] as it applies in the European Union;
][20][
(20A) *'UK emission allowance market participant'* means any person who—
(a) enters directly or indirectly into transactions, including the placing of orders to trade, in UK emission allowances, auctioned products based thereon, or derivatives thereof and
(b) does not benefit from an exemption based on the second subparagraph of Article 17(2) of this Regulation.
][22]
(21) *'issuer'* means a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the issuer being, in case of depository receipts representing financial instruments, the issuer of the financial instrument represented;
(22) *'wholesale energy product'* means wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011;
(23) *'national regulatory authority'* means national regulatory authority as defined in point (10) of Article 2 of Regulation (EU) No 1227/2011;
(24) *'commodity derivatives'* means commodity derivatives as defined in point (30) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council[23];
(25) *'person discharging managerial responsibilities'* means a person within an issuer, [a UK emission][24] allowance market participant or another entity referred to in Article 19(10), who is:
(a) a member of the administrative, management or supervisory body of that entity; or
(b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity;
(26) *'person closely associated'* means:
(a) a spouse, or a partner considered to be equivalent to a spouse in accordance with national law;
(b) a dependent child, in accordance with national law;
(c) a relative who has shared the same household for at least one year on the date of the transaction concerned; or
(d) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), or which is directly or indirectly controlled by such a person, or which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person;
[
(27) *'data traffic records'* records of any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;
][20]
(28) *'person professionally arranging or executing transactions'* means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments;
(29) *'benchmark'* means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined;
(30) *'market maker'* means a market maker as defined in [Article 2(1)(6) of the Markets in Financial Instruments Regulation][26];
(31) *'stake-building'* means an acquisition of securities in a company which does not trigger a legal or regulatory obligation to make an announcement of a takeover bid in relation to that company;
(32) *'disclosing market participant'* means a person who falls into any of the categories set out in points (a) to (d) of Article 11(1) or of Article 11(2), and discloses information in the course of a market sounding;

(33) *'high-frequency trading'* means high-frequency algorithmic trading technique as defined in [regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017][27] ;
(34) *'information recommending or suggesting an investment strategy'* means information:
(i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or
(ii) produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument;
(35) *'investment recommendations'* means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public [;][28]
[
(36) *'FCA'* means the Financial Conduct Authority;
(36A) *'GFSC'* means the Financial Services Commission of Gibraltar;
(37) *'the Markets in Financial Instruments Regulation'* means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as it forms part of domestic law by virtue of section 3 of the EU (Withdrawal) Act 2018, and as it is modified by domestic law from time to time;
(38) *'the EU Market Abuse Regulation'* means Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in [the European Union][1029] ;
(39) references to a *'third country'* (including in expressions including the words 'third country') are to be read as references to a country other than the United Kingdom.
][28]
2.

For the purposes of Article 5, the following definitions apply:

(a) *'securities'* means:
(i) shares and other securities equivalent to shares;
(ii) bonds and other forms of securitised debt; or
(iii) securitised debt convertible or exchangeable into shares or into other securities equivalent to shares.

(b) *'associated instruments'* means the following financial instruments, including those which are not admitted to trading or traded on a [UK trading venue, Gibraltar trading venue or an EU trading venue][10] , or for which a request for admission to trading on a [UK trading venue, Gibraltar trading venue or an EU trading venue][10] has not been made:
(i) contracts or rights to subscribe for, acquire or dispose of securities;
(ii) financial derivatives of securities;
(iii) where the securities are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
(iv) instruments which are issued or guaranteed by the issuer or guarantor of the securities and whose market price is likely to materially influence the price of the securities, or vice versa;
(v) where the securities are securities equivalent to shares, the shares represented by those securities and any other securities equivalent to those shares;

(c) *'significant distribution'* means an initial or secondary offer of securities that is distinct from ordinary trading both in terms of the amount in value of the securities to be offered and the selling method to be employed;
(d) *'stabilisation'* means a purchase or offer to purchase securities, or a transaction in associated instruments equivalent thereto, which is undertaken by a credit institution or an investment firm in the context of a significant distribution of such securities exclusively for supporting the market price of those securities for a predetermined period of time, due to a selling pressure in such securities.

Notes

1 Definition substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Definition substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

3 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Definitions substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

8 Act. No. 2006/32 of Gibraltar, as last amended by L.N. 2017/135.

9 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(f) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

11 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(h) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

12 S.I. 2017/701, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

13 Definition substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

14 Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

15 Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).

16 Words inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(j) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

17 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(k) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

18 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(l) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

19 Definitions inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(3)(a) (April 22, 2021)

20 Definition substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(3)(b) (April 22, 2021)

21 O.J. L173, 12.6.2014, p.1.

Notes

22 Definition inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(3)(c) (April 22, 2021)

23 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014. on markets in financial instruments and amending Regulation (EU) No 648/2012 (see page 84 of this Official Journal).

24 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(3)(d) (April 22, 2021)

25 Definition substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(n) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

26 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(o) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

27 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(2)(p) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

28 Definitions inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

29 OJ L173, 12.6.2014, p.1,

Article 4 Notifications and list of financial instruments

1.

Market operators of [UK][1] regulated markets and investment firms and market operators operating [a UK MTF or a UK OTF][2] shall, without delay, notify the [FCA][3] of any financial instrument for which a request for admission to trading on their trading venue is made, which is admitted to trading, or which is traded for the first time.

They shall also notify the [FCA][4] when a financial instrument ceases to be traded or to be admitted to trading, unless the date on which the financial instrument ceases to be traded or to be admitted to trading is known and was referred to in the notification made in accordance with the first subparagraph.

Notifications referred to in this paragraph shall include, as appropriate, the names and identifiers of the financial instruments concerned, and the date and time of the request for admission to trading, admission to trading, and the date and time of the first trade.
[...][5]

[2.

The FCA shall publish notifications received under paragraph 1 on its website in the form of a list without delay. The FCA shall update that list without delay following receipt of a notification received under paragraph 1. The list shall not limit the scope of this Regulation.

][6]3.

The list shall contain the following information:

(a) the names and identifiers of financial instruments which are the subject of a request for admission to trading, admitted to trading or traded for the first time, on [UK regulated markets, UK MTFs and UK OTFs][7] ;

(b) the dates and times of the requests for admission to trading, of the admissions to trading, or of the first trades;

(c) details of the [UK trading venues][8] on which the financial instruments are the subject of a request for admission to trading, admitted to trading or traded for the first time; and

(d) the date and time at which the financial instruments cease to be traded or to be admitted to trading.

[4.—

The FCA may make technical standards specifying—

(a) the content of the notifications referred to in paragraph 1;

(b) the manner and conditions of the compilation, publication and maintenance of the list referred to in paragraph 2.

5.

The FCA may make technical standards specifying the timing, format and template of the submission of notifications under paragraph 1.
]9

Notes

1 Word inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(a)(i)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(a)(i)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(a)(i)(cc) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(a)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

9 Art.4(4) substituted for art.4(4) and (5) by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(4)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 5 Exemption for buy-back programmes and stabilisation

1.

The prohibitions in Articles 14 and 15 of this Regulation do not apply to trading in own shares in buy-back programmes where:

(a) the full details of the programme are disclosed prior to the start of trading;

(b) trades are reported as being part of the buy-back programme to the [FCA, GFSC or European competent authority][1] in accordance with paragraph 3 and subsequently disclosed to the public;

(c) adequate limits with regard to price and volume are complied with; and

(d) it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the [...][2] technical standards referred to in paragraph 6.

2.

In order to benefit from the exemption provided for in paragraph 1, a buy-back programme shall have as its sole purpose:

(a) to reduce the capital of an issuer;

(b) to meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or

(c) to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of an associate company.

[3.—

In order to benefit from the exemption in paragraph 1—

(a) where shares have been admitted to trading or are traded on a UK trading venue, the issuer must report to the FCA each transaction relating to the buy-back programme including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of the Markets in Financial Instruments Regulation (and for these purposes, Article 26 of that Regulation applies as if the obligation in paragraph (2)(a) only applied to financial instruments which are admitted to trading or traded on a UK trading venue);

(b) where shares have been admitted to trading or are traded on an EU trading venue, the issuer must make the reports to the competent authority of the trading venue on which the shares have been admitted to trading or are traded which are required in accordance with Article 5(3) of the EU Market Abuse Regulation;

(c) where shares have been admitted to trading or are traded on a Gibraltar trading venue, the issuer must report to the GFSC each transaction relating to the buy-back programme, including the information referred to in Article 5(3) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (as it applies in Gibraltar after [IP completion day][1]).

][3]4.

The prohibitions in Articles 14 and 15 of this Regulation do not apply to trading in securities or associated instruments for the stabilisation of securities where:

(a) stabilisation is carried out for a limited period;

[

(b) relevant information about the stabilisation is disclosed and notified—

(i) where the securities or associated instruments are traded on a UK trading venue, to the FCA in accordance with paragraph 5;

(ii) where the securities or associated instruments are traded on an EU trading venue, to the European competent authority of the trading venue in accordance with Article 5(5) of the EU Market Abuse Regulation;

(iii) where the securities or associated instruments are traded on a Gibraltar trading venue, to the GFSC in accordance with Article 5(5) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (as it applies in Gibraltar after [IP completion day][1]);

][4]

(c) adequate limits with regard to price are complied with; and

(d) such trading complies with the conditions for stabilisation laid down in the [...][5] technical standards referred to in paragraph 6.

5.

[The][6] details of all stabilisation transactions shall be notified by issuers, offerors, or entities undertaking the stabilisation, whether or not they act on behalf of such persons, to the [FCA (where the securities or associated instruments are traded on a UK trading venue)][7] no later than the end of the seventh daily market session following the date of execution of such transactions.

[6.—

The technical standards referred to [in this Article][1] are—

(a) Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures—

(i) as that Regulation forms part of domestic law, where the trading takes place on a UK trading venue;

(ii) as that Regulation applies in the European Union, where the trading takes place on an EU trading venue; or

(iii) as that Regulation forms part of the law of Gibraltar, where the trading takes place on a Gibraltar trading venue;

(b) any technical standards made by the FCA under paragraph 7, where the trading takes place on a UK trading venue;

(c) any other regulatory technical standards adopted by the Commission under Article 5(6) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in the European Union, where the trading takes place on an EU trading venue [;][9]

[

(d) any equivalent provisions made by the GFSC which specify the conditions which buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations and price conditions, where the trading takes place on a Gibraltar trading venue.

][9]7.

The FCA may make technical standards to specify the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

8.

In this Article, *'European competent authority'* means the authority which has been designated by a Member State as its competent authority for the purposes of Article 22 of this Regulation as it had effect before [IP completion day][1].

][8]

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

2 Word repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(5)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by amendment)

4 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

5 Word repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(5)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(5)(d)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(5)(d)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Art.5(6)-(8) substituted for art.5(6) by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

9 Added by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

Article 6 Exemption for monetary and public debt management activities and climate policy activities

1.

This Regulation does not apply to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by:

(a) [the United Kingdom (including any government department of the United Kingdom)][1] ;

(b) the [Bank of England][2] ;

[

(ba) the Treasury or a person acting on its behalf;

(c) a ministry, any other agency or a special purpose vehicle of—

(i) the United Kingdom; or

(ii) the United Kingdom and one or more Member States;

(ca) a person acting on behalf of a ministry, agency or special purpose vehicle referred to in point (c);

(cb) a subsidiary or special purpose vehicle of the Bank of England;

][3][

(d) the Scottish Government, the Welsh Government, or the Northern Ireland Executive;

(e) the Government of Gibraltar;

(f) any special purpose vehicle of the Government of Gibraltar;

(g) any special purpose vehicle created by the Government of Gibraltar and the United Kingdom or one or more Member States.

][4]2. [...][5]

This Regulation does not apply to [transactions, orders or behaviour carried out in pursuit of public debt management policy][6] by:

[...][7]

(f) an international financial institution established by [the United Kingdom and one or more Member States][8] which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems.

[2A.

This Regulation does not apply to the activities of the Secretary of State, the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of agricultural policy, or of fisheries and aquaculture policy, in accordance with retained EU law or with any international agreement to which the United Kingdom is a party.

][9][2B.

This Regulation does not apply to the activities of the Secretary of State, the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or any other officially designated body, or of any person acting on their behalf, which concern UK emission allowances and are undertaken in pursuit of the climate policies of the United Kingdom or of any part of the United Kingdom or in accordance with any international agreement to which the United Kingdom is a party.

][10]3.

[The Treasury may by regulations make provision for this Regulation not to apply to the activity][11] of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in pursuit of the Union's climate policy in accordance with Directive 2003/87/EC.

4.

[The Treasury may by regulations make provision for this Regulation not to apply to the activities][12] of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of the Union's Common Agricultural Policy or of the Union's Common Fisheries Policy in accordance with acts adopted or with

international agreements concluded under the TFEU.

[5.—

The Treasury may by regulations extend the exemption referred to in paragraph 1 to transactions, orders or behaviour which are carried out by—

(a) a Member State;

(b) members of the ESCB;

(c) a ministry, agency or special purpose vehicle of one or more Member States, or a person acting on their behalf;

(d) in the case of a Member State that is a federal state, a member making up the federation;

(e) certain public bodies and central banks of third countries.

][13][5A.—

The Treasury may by regulations extend the exemption referred to in paragraph 2 to transactions, orders or behaviour which are carried out by—

(a) the Commission or any other officially designated body, or any person acting on their behalf;

(b) the Union;

(c) a special purpose vehicle of one or more Member States;

(d) the European Investment Bank;

(e) the European Financial Stability Facility;

(f) the European Stability Mechanism;

(g) an international financial institution established by two or more Member States which has the purpose of mobilising funding and providing financial assistance for the benefit of its members that are experiencing or threatened by severe financial problems.

][14][...][15]7.

This Article shall not apply to persons working under a contract of employment or otherwise for the entities referred to in this Article where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Art.6(1)(ba)-(cb) substituted for art.6(1)(c) by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(a)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Art.6(1)(d)-(g) substituted for art.6(1)(d) by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10 (December 31, 2020: commenced by an amendment)

5 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

6 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(b)(iii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(b)(iii)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

9 Added by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Added by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(4) (April 22, 2021)

11 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

12 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

13 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(f) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

14 Added by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(g) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

15 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.10(6)(h) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

CHAPTER 2

INSIDE INFORMATION, INSIDER DEALING, UNLAWFUL DISCLOSURE OF INSIDE INFORMATION AND MARKET MANIPULATION

Article 7 Inside information

1.

For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

(b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions [applicable in the United Kingdom, Gibraltar, the European Union or a Member State][1] , market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;

(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial

instruments;

(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2.

For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3.

An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4.

For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

In the case of participants in the [market for UK emission allowances][2] with aggregate emissions or rated thermal input at or below the threshold set in accordance with the [second or fourth subparagraphs][3] of Article 17(2), information about their physical operations [relating to UK installations or UK aviation activities][4] shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

[

In the case of participants in the market for EU emission allowances with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2) of Regulation (EU) 596/2014 as that Regulation applies in the European Union, information about their physical operations relating to an EU installation or EU aviation activities shall be deemed not to have a significant effect on the price of emission allowances, or auctioned products based thereon, or of derivative financial instruments.

][5][...][6][4A.

For the purposes of this Article—
(a) an installation is a "UK installation" if activities at that installation resulting in the emission of carbon dioxide, perfluorocarbons or nitrous oxide ("greenhouse gases") are regulated under the Greenhouse Gas Emissions Trading Scheme Order 2020;
(b) an installation is an "EU installation" if activities at that installation resulting in emissions of greenhouse gases are regulated under the national law of an EEA State which implements Directive 2003/87/EC;
(c) aviation activities are "UK aviation activities" if emissions of greenhouse gases resulting from those activities must be monitored under the Greenhouse Gas Emissions Trading Scheme Order 2020;
(d) aviation activities are "EU aviation activities" if the emissions of greenhouse gases resulting from those activities must be monitored under the national law of an EEA State implementing Directive 2003/87/EC.
][7]

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: commenced by an amendment)

2 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(5)(a)(i) (April 22, 2021)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(1)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(5)(a)(ii) (April 22, 2021)

5 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(5)(b) (April 22, 2021)

6 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(1)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Added by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(5)(c) (April 22, 2021)

Article 8 Insider dealing

1.

For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to [the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021][1] , the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

2.

For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

3.

The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4.

This Article applies to any person who possesses inside information as a result of:

(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

(b) having a holding in the capital of the issuer or emission allowance market participant;

(c) having access to the information through the exercise of an employment, profession or duties; or

(d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5.

Where the person is a legal person, this Article shall also apply [...][2] to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Notes

1 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(6) (April 22, 2021)

2 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 9 Legitimate behaviour

1.

For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a legal person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where that legal person:

(a) has established, implemented and maintained adequate and effective internal arrangements and procedures that effectively ensure that neither the natural person who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor another natural person who may have had an influence on that decision, was in possession of the inside information; and

(b) has not encouraged, made a recommendation to, induced or otherwise influenced the natural person who, on behalf of the legal person, acquired or disposed of financial instruments to which the information relates.

2.

For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person:

(a) for the financial instrument to which that information relates, is a market maker or a person authorised to act as a counterparty, and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of its function as a market maker or as a counterparty for that financial instrument; or

(b) is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates, is made to carry out such an order legitimately in the normal course of the exercise of that person's employment, profession or duties.

3.

For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person conducts a transaction to acquire or dispose of financial instruments and that transaction is carried out in the discharge of an obligation that has become due in good faith and not to circumvent the prohibition against insider dealing and:

(a) that obligation results from an order placed or an agreement concluded before the person concerned possessed inside information; or

(b) that transaction is carried out to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

4.

For the purposes of Article 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing, where such person has obtained that inside information in the conduct of a public takeover or merger with a company and uses that inside information solely for the purpose of proceeding with that merger or public takeover, provided that at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to constitute inside information.

This paragraph shall not apply to stake-building.

5.

For the purposes of Articles 8 and 14, the mere fact that a person uses its own knowledge that it has decided to acquire or dispose of financial instruments in the acquisition or disposal of those financial instruments shall not of itself constitute use of inside information.

6.

Notwithstanding paragraphs 1 to 5 of this Article, an infringement of the prohibition of insider dealing set out in Article 14 may still be deemed to have occurred if the [FCA][1] establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 10 Unlawful disclosure of inside information

1.

For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2.

For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 11 Market soundings

1.

A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:

(a) an issuer;

(b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary

trading and involves a selling method based on the prior assessment of potential interest from potential investors;

(c) an emission allowance market participant; or

(d) a third party acting on behalf or on the account of a person referred to in point (a), (b) or (c).

2.

Without prejudice to Article 23(3), disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:

(a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities: and

(b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.

3.

A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the [FCA][1] upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.

4.

For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.

5.

For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:

(a) obtain the consent of the person receiving the market sounding to receive inside information;

(b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;

(c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and

(d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the [FCA][1] upon request.

6.

Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the [FCA][1] upon request.

7.

Notwithstanding the provisions of this Article, the person receiving the market sounding shall assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information.

8.

The disclosing market participant shall keep the records referred to in this Article for a period of at least five years.

[9.

The FCA may make technical standards to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in paragraphs 4, 5, 6 and 8.

10.

The FCA may make technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 4, 5, 6 and 8, particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding.

]2[...]3

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(4)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(4)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(4)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 12 Market manipulation

1.

For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or

(ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot

commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;

(d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

2.

The following behaviour shall, inter alia, be considered as market manipulation:

(a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;

(c) the placing of orders to a [UK trading venue, Gibraltar trading venue or an EU trading venue][1] , including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:

(i) disrupting or delaying the functioning of the trading system of the [UK trading venue, Gibraltar trading venue or the EU trading venue (as applicable)][2] or being likely to do so;

(ii) making it more difficult for other persons to identify genuine orders on the trading system of the [UK trading venue, Gibraltar trading venue or the EU trading venue (as applicable)][2] or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;

(d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;

(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction [of such emission allowances or related derivatives][3] with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

3.

For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 2, Annex I defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

4.

Where the person referred to in this Article is a legal person, this Article shall also apply [...][4] to the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.

5.

The [Treasury may by regulations specify][5] the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: commenced by an amendment)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: cmomenced by an amendment)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(5)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(5)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(5)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 13 Accepted market practices

1.

The prohibition in Article 15 shall not apply to the activities referred to in Article 12(1)(a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established [—][1]
[

(a) in relation to a UK market in accordance with this Article;

(b) in relation to a market in an EEA state, in accordance with Article 13 of the EU Market Abuse Regulation; or

(c) in relation to a market in Gibraltar, in accordance with Article 13 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it applies in Gibraltar after [IP completion day][2] .

][1]2.

[The FCA][3] may establish an accepted market practice, taking into account the following criteria:

(a) whether the market practice provides for a substantial level of transparency [to the UK market][4] ;

(b) whether the market practice ensures a high degree of safeguards to the operation of market forces [operating in UK markets][5] and the proper interplay of the forces of supply and demand;

(c) whether the market practice has a positive impact on [UK][6] market liquidity and efficiency;

(d) whether the market practice takes into account the trading mechanism of the [relevant UK market][7] and enables market participants to react properly and in a timely manner to the new market situation created by that practice;

(e) whether the market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the [United Kingdom][8] ;

(f) the outcome of any investigation of the relevant market practice by [the FCA][9] , in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse, or codes of conduct, irrespective of whether it [concerns the relevant UK market][10] or directly or indirectly related markets within the [United Kingdom][11] ; and

(g) the structural characteristics of the [relevant UK market][12] , inter alia, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail-investor participation in the [relevant UK market][12] .
[...][13][...][14][7.

The FCA may make technical standards specifying the criteria, the procedure and the requirements for establishing an

accepted market practice under paragraph 2 and the requirements for maintaining it, terminating it, or modifying the conditions for its acceptance.

][15]8.

[The FCA][16] shall review regularly, and at least every two years, the accepted market practices that [it has][17] established, in particular by taking into account significant changes to the [relevant UK market][18] environment, such as changes to trading rules or to market infrastructures, with a view to deciding whether to maintain it, to terminate it, or to modify the conditions for its acceptance.

9.

[The FCA][19] shall publish on its website a list of accepted market practices [...][20] .
[...][21]

Notes

1 Art.13(1)(a)-(c) substituted for words by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: commenced by an amendment)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: commenced by an amendment)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Word inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(iv) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(v) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(vi) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

9 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(vii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(vii)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

11 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(vii)(cc) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

12 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(viii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

13 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(b)(ix) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

14 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

15 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

16 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(e)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

17 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(e)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

18 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(e)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

19 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(f)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

20 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(f)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

21 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(6)(g) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 14 Prohibition of insider dealing and of unlawful disclosure of inside information

A person shall not:

(a) engage or attempt to engage in insider dealing;

(b) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or

(c) unlawfully disclose inside information.

Article 15 Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

Article 16 Prevention and detection of market abuse

1.

Market operators and investment firms that operate a [UK][1] trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation, in accordance with [the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before [IP completion day][3] to implement Articles 31 and 54 of Directive 2014/65/EU and those Articles' implementing measures—][2]

[

(a) as they have effect on [IP completion day][3] , in the case of rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000, and

(b) as amended from time to time, in all other cases.

][2]

A person referred to in the first subparagraph shall report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the [FCA][4] without delay.

2.

Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a [UK][5] trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the [FCA][6] without delay.

3.

[Persons][7] professionally arranging or executing transactions shall be subject to the rules of notification [of the United Kingdom where they are registered or have their head office in the United Kingdom or, in the case of a branch, where the branch is situated in the United Kingdom. The notification shall be addressed to the FCA.][8]

[...][9][5.—

The FCA may make technical standards to determine:

(a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraphs 1 and 2;

(b) the notification templates to be used by persons to comply with the requirements established in paragraphs 1 and 2.

][10]

Notes

1 Word inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words and art.16(1)(a) and (b) substituted for words by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11 (December 31, 2020: commenced by an amendment)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(a)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Word inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

9 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.11(7)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

CHAPTER 3

DISCLOSURE REQUIREMENTS

Article 17 Public disclosure of inside information

1.

An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in [a mechanism referred to in section 89W of the Financial Services and Markets Act 2000[2]][1]. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

[

This Article shall apply to—

(a) issuers who have requested or approved admission of their financial instruments to trading on a UK regulated market;

(b) in the case of instruments only traded on a UK MTF or on a UK OTF, issuers who have approved trading of their financial instruments on a UK MTF or a UK OTF or have requested admission to trading of their financial instruments on a UK MTF; and

[

(c) UK emission allowance market participants.

][4]][3][1A.

A UK emission allowance market participant is only required to disclose inside information concerning EU emission allowances if that participant enters into transactions, including the placing of orders to trade, directly or indirectly, in EU emission allowances, or in auctioned products based thereon, or derivatives based thereof.

][5]2. [

A UK emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including –

(a) aviation activities as specified in Annex I to Directive 2003/87/EC or in paragraph 1 of Schedule 1 to the Greenhouse Gas Emissions Trading Scheme Order 2020 (”the Order”), or

(b) installations within the meaning of Article 3(e) of that Directive or paragraph 2 of Schedule 2 to the Order,

which the participant concerned, or its parent undertaking or related undertaking, owns or controls, or for the operational matters for which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part.

With regard to installations, such disclosure shall include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

][6]

The first subparagraph shall not apply to a participant in the emission allowance market where [the UK installations or UK

aviation activities][7] that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

[

For the purposes of the second sub-paragraph—

(a) during the period beginning on the date on which the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 come into force and ending with 30th April 2022 ("the initial period"), the *"preceding year"* means the year ending with 31st December 2020;

(b) after the initial period, during any period beginning with 1st May and ending with 30th April, *"the preceding year"* means the year ending with the 31st December which falls before the 1st of May in the period in question.

][8]

[The Treasury may make regulations][9] establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of the application of the exemption provided for in the second subparagraph of this paragraph.
[

For the purposes of the second subparagraph, *"minimum threshold"* means—

(a) the thresholds set out in regulations made by the Treasury under this paragraph, or

(b) if the Treasury have not made such regulations, the thresholds set out in Article 5 of Commission Delegated Regulation (EU) 2016/522 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.

][10][...][11]4.

An [issuer or a UK emission] [12] allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the [issuer or UK emission][13] allowance market participant;

(b) delay of disclosure is not likely to mislead the public;

(c) the [issuer or UK emission] [13] allowance market participant is able to ensure the confidentiality of that information.

In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an [issuer or a UK emission] [12] allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, subject to points (a), (b) and (c) of the first subparagraph.
[

Where an [issuer or UK emission] [13] allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the FCA that disclosure of the information was delayed, immediately after the information is disclosed to the public. Upon the request of the FCA, the [issuer or UK emission] [13] allowance market participant shall provide a written explanation of how the conditions set out in this paragraph were met.
][14]5.

In order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:

(a) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;

(b) it is in the public interest to delay the disclosure;

(c) the confidentiality of that information can be ensured; and

(d) the [FCA][15] has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.

6.

For the purposes of points (a) to (d) of paragraph 5, an issuer shall notify the [FCA][16] of its intention to delay the disclosure of the inside information and provide evidence that the conditions set out in points (a), (b) and (c) of paragraph 5 are met. The [FCA][16] shall consult, as appropriate, [the Bank of England][17] , or, alternatively, the following authorities:

(a) where the issuer is a credit institution or an investment firm [which is a "PRA-authorised person" within the meaning of section 2B(5) of the Financial Services and Markets Act 200019, the Prudential Regulation Authority][18];

(b) in cases other than those referred to in point (a), any other [authority in the United Kingdom][20] responsible for the supervision of the issuer.

The [FCA][16] shall ensure that disclosure of the inside information is delayed only for a period as is necessary in the public interest. The [FCA][16] shall evaluate at least on a weekly basis whether the conditions set out in points (a), (b) and (c) of paragraph 5 are still met.

If the [FCA][16] does not consent to the delay of disclosure of the inside information, the issuer shall disclose the inside information immediately.

This paragraph shall apply to cases where the issuer does not decide to delay the disclosure of inside information in accordance with paragraph 4.

[...][21]7.

Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5 and the confidentiality of that inside information is no longer ensured, the issuer or [the UK emission allowance][22] market participant shall disclose that inside information to the public as soon as possible.

This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

8.

Where an [issuer or a UK emission] [23] allowance market participant, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.

9.

Inside information relating to issuers whose financial instruments are admitted to trading on an SME growth market, may be posted on [the UK trading venue's][24] website instead of on the website of the issuer where [the UK trading venue][25] chooses to provide this facility for issuers on that market.

[10.

The FCA may make technical standards to determine:

(a) the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and

(b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.

][26][...][27]

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Section 89W was inserted by S.I. 2015/1755.

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(a) (April 22, 2021)

5 Added by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(b) (April 22, 2021)

6 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(c) (April 22, 2021)

7 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(d) (April 22, 2021)

8 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(e) (April 22, 2021)

9 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Words inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

11 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

12 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(f)(i) (April 22, 2021)

13 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(f)(ii) (April 22, 2021)

14 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

15 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

16 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(f)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

17 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(f)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

18 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(f)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

19 Section 2B was substituted, with the rest of Part 1A of the Financial Services and Markets Act 2000, by section 6(1) of the Financial Services Act 2012 (c.21).

20 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(f)(iv) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

21 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(f)(v) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

22 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(g) (April 22, 2021)

23 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(7)(h) (April 22, 2021)

24 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(g)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

25 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(g)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

26 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(h) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

27 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(1)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 18 Insider lists

1.

Issuers [, and any person][1] acting on their behalf or on their account, shall [each][2]:

(a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);

(b) promptly update the insider list in accordance with paragraph 4; and

(c) provide the insider list to the [FCA][3] as soon as possible upon its request.

2.

Issuers [, and any person][4] acting on their behalf or on their account, shall [each][5] take all reasonable steps to ensure that any person on [their insider list][6] acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

[

Where another person is requested by the issuer to draw up and update the issuer's insider list, the issuer shall remain fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list that the other person is drawing up.

][7]3.

The insider list shall include at least:

(a) the identity of any person having access to inside information;

(b) the reason for including that person in the insider list;

(c) the date and time at which that person obtained access to inside information; and

(d) the date on which the insider list was drawn up.

4.

Issuers [, and any person][8] acting on their behalf or on their account [, shall each update their][9] insider list promptly, including the date of the update, in the following circumstances:

(a) where there is a change in the reason for including a person already on the insider list;

(b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and

(c) where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5.

Issuers [, and any person][10] acting on their behalf or on their account [, shall each retain their][11] insider list for a period of at least five years after it is drawn up or updated.

6.

Issuers whose financial instruments are admitted to trading on an SME growth market shall be exempt from drawing up an insider list, provided that the following conditions are met:

(a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and

(b) the issuer is able to provide the [FCA][12] , upon request, with an insider list.

7.

This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a [UK regulated market][13] or, in the case of an instrument only traded on [a UK MTF or a UK OTF][14] , have approved trading of their financial instruments on [a UK MTF or a UK OTF][14] or have requested admission to trading of their financial instruments on [a UK MTF][15] .

8.

Paragraphs 1 to 5 of this Article shall also apply to:

(a) [UK][16] emission allowance market participants […][17] in relation to inside information concerning emission allowances that arises in relation to the physical operations of [that UK emission][18] allowance market participant;

[

(b) any auction platform and auctioneer in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

][19][8A.

A UK emission allowance market participant ("P") is only required to draw up a list of persons who have access to inside information relating to EU emission allowances if—
(a) P enters into transactions, including the placing of orders to trade, directly or indirectly, in EU emission allowances, auctioned products based thereon or derivatives thereof, and

(b) the emissions from P's EU installations and EU aviation activities exceed the minimum threshold referred to in the second sub-paragraph of Article 17(2) of Regulation (EU) 596/2014 as that Regulation applies in the European Union.

]20[9.

The FCA may make technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.

]21

Notes

1 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(a)(i) (June 29, 2021)

2 Word inserted by Financial Services Act 2021 c. 22 s.30(2)(a)(ii) (June 29, 2021)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(b)(i) (June 29, 2021)

5 Word inserted by Financial Services Act 2021 c. 22 s.30(2)(b)(ii) (June 29, 2021)

6 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(b)(iii) (June 29, 2021)

7 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(c) (June 29, 2021)

8 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(d)(i) (June 29, 2021)

9 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(d)(ii) (June 29, 2021)

10 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(e)(i) (June 29, 2021)

11 Words substituted by Financial Services Act 2021 c. 22 s.30(2)(e)(ii) (June 29, 2021)

12 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

13 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

14 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

15 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(c)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

16 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(8)(a)(i) (April 22, 2021)

17 Words repealed by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(8)(a)(ii) (April 22, 2021

18 Words substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(8)(a)(iii) (April 22, 2021)

19 Substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(8)(b) (April 22, 2021)

20 Added by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(8)(c) (April 22, 2021)

21 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(2)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 19 Managers' transactions

1.

Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer or the [UK] [1] emission allowance market participant and the [FCA][2] :

(a) in respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;

[

(b) in respect of UK emission allowance market participants ("P"), of every transaction conducted on their own account relating to –

(i) UK emission allowances, auction products based thereon or derivatives relating thereto, and

(ii) if the conditions referred to in Article 18(8A) are satisfied by P, EU emission allowances, auction products based thereon or derivatives relating thereto.

][3]

Such notifications shall be made promptly and no later than three [working days][4] after the date of the transaction.

The first subparagraph applies once the total amount of transactions has reached the threshold set out in paragraph 8 or 9, as applicable, within a calendar year.

1a.

The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

(a) the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;

(b) the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;

(c) the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.

[2.

For the purposes of paragraph 1, and without prejudice to notification obligations in the law of the United Kingdom other than those referred to in this Article, all transactions conducted on the own account of the persons referred to in paragraph 1 shall be notified by those persons to the FCA.

Notifications shall be made to the FCA within three working days of the transaction date.

]5 3.

[The issuer or emission allowance market participant must make public the information contained in a notification referred to in paragraph 1 within two working days of receipt of such a notification]6 in a manner which enables fast access to this information on a non-discriminatory basis in accordance with [—]7

[

(a) Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) 596/2014 of the European Parliament and of the Council; and

(b) technical standards made by the FCA under Article 17(10)(a).

]7

The issuer or [UK] 8 emission allowance market participant shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the [United Kingdom]9 , and, where applicable, it shall use [a mechanism referred to in section 89W of the Financial Services and Markets Act 200011]10 .

[...]12[4.

This Article applies to—

(a) issuers who—

(i) have requested or approved admission of their financial instruments to trading on a UK regulated market; or

(ii) in the case of an instrument only traded on a UK MTF or a UK OTF, have approved trading of their financial instruments on a UK MTF or a UK OTF or have requested admission to trading of their financial instruments on a UK MTF;

(b) [UK] 14 emission allowance market participants. […]15

]13 5.

Issuers and [UK] 16 emission allowance market participants shall notify the person discharging managerial responsibilities of their obligations under this Article in writing. Issuers and [UK] 16 emission allowance market participants shall draw up a list of all persons discharging managerial responsibilities and persons closely associated with them.

Persons discharging managerial responsibilities shall notify the persons closely associated with them of their obligations under this Article in writing and shall keep a copy of this notification.

6.

A notification of transactions referred to in paragraph 1 shall contain the following information:

(a) the name of the person;

(b) the reason for the notification;

(c) the name of the relevant issuer or [UK] 17 emission allowance market participant;

(d) a description and the identifier of the financial instrument;

(e) the nature of the transaction(s) (e.g. acquisition or disposal), indicating whether it is linked to the exercise of share option programmes or to the specific examples set out in paragraph 7;

(f) the date and place of the transaction(s); and

(g) the price and volume of the transaction(s). In the case of a pledge whose terms provide for its value to change, this should be disclosed together with its value at the date of the pledge.

7.

For the purposes of paragraph 1, transactions that must be notified shall also include:

(a) the pledging or lending of financial instruments by or on behalf of a person discharging managerial responsibilities or a person closely associated with such a person, as referred to in paragraph 1;

(b) transactions undertaken by persons professionally arranging or executing transactions or by another person on behalf of a person discharging managerial responsibilities or a person closely associated with such a person, as referred to in paragraph 1, including where discretion is exercised;

(c) transactions made under a life insurance policy, [referred to in Article 2(3)(a) of Directive 2009/138/EC of the European Parliament and of the Council][18][19], where:

(i) the policyholder is a person discharging managerial responsibilities or a person closely associated with such a person, as referred to in paragraph 1,

(ii) the investment risk is borne by the policyholder, and

(iii) the policyholder has the power or discretion to make investment decisions regarding specific instruments in that life insurance policy or to execute transactions regarding specific instruments for that life insurance policy.

For the purposes of point (a), a pledge, or a similar security interest, of financial instruments in connection with the depositing of the financial instruments in a custody account does not need to be notified, unless and until such time that such pledge or other security interest is designated to secure a specific credit facility.

For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.

Insofar as a policyholder of an insurance contract is required to notify transactions according to this paragraph, an obligation to notify is not incumbent on the insurance company.

8.

Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 5000 has been reached within a calendar year. The threshold of EUR 5000 shall be calculated by adding without netting all transactions referred to in paragraph 1.

[9.

The FCA may increase the threshold set out in paragraph 8 to EUR 20 000 and must inform the Treasury of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold.

9A.

The FCA must publish the thresholds which apply in accordance with this Article and the justification for any decision taken underparagraph 9 on its website.

][20]10.

This Article also applies to persons discharging managerial responsibilities within any auction platform or auctioneer

involved in the auctions held under the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 and to persons closely associated with such persons in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.

Those persons must notify their transactions to the auction platforms and auctioneer, as applicable, and to the FCA.

The information that is so notified must be made public by the auction platforms and auctioneer in accordance with paragraph 3.

]2111.

Without prejudice to Articles 14 and 15, a person discharging managerial responsibilities within an issuer shall not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public according to:

(a) the rules of the trading venue where the issuer's shares are admitted to trading; or

(b) [the law of the United Kingdom][22] .

12.

Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade on its own account or for the account of a third party during a closed period as referred to in paragraph 11 either:

(a) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or

(b) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, qualification or entitlement of shares, or transactions where the beneficial interest in the relevant security does not change.

13.

The [Treasury may by regulations specify][23] the circumstances under which trading during a closed period may be permitted by the issuer, as referred to in paragraph 12, including the circumstances that would be considered as exceptional and the types of transaction that would justify the permission for trading.

14.

The [Treasury may by regulations specify][24] types of transactions that would trigger the requirement referred to in paragraph 1.

15.

[The FCA may make][25] technical standards concerning the format and template in which the information referred to in paragraph 1 is to be notified and made public.

[...][26][16.

In this Article, *"working day"* means a day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday, or

(c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

[...][27]

Notes

1 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(a)(i) (April 22, 2021)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(a)(ii) (April 22, 2021)

4 Words substituted by Financial Services Act 2021 c. 22 s.30(3)(a) (June 29, 2021)

5 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Words substituted by Financial Services Act 2021 c. 22 s.30(3)(b) (June 29, 2021)

7 Art.19(3)(a) and (b) substituted for words by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(b) (April 22, 2021)

9 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(c)(ii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(c)(ii)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

11 Section 89W was inserted by S.I. 2015/1755.

12 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(c)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

13 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(d) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

14 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(c)(i) (April 22, 2021)

15 Words repealed by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(c)(ii) (April 22, 2021)

16 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(d) (April 22, 2021)

17 Word inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(e) (April 22, 2021)

18 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(e) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

19 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

20 Art19(9) and (9A) substituted for art.19(9) by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12 (December 31, 2020: commenced by an amendment)

Notes

21 Substituted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(9)(f) (April 22, 2021)

22 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(g) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

23 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(h) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

24 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

25 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(j)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

26 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12(3)(j)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

27 Added by Financial Services Act 2021 c. 22 s.30(3)(c) (June 29, 2021)

Article 20 Investment recommendations and statistics

1.

Persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

2.

Public institutions disseminating statistics or forecasts liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.

[3.

(1) The FCA may make technical standards to determine the technical arrangements for the categories of person referred to in paragraph 1, for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

(2) The technical arrangements laid down in—

(a) Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest; and

(b) technical standards made by the FCA under the first sub-paragraph,

shall not apply to journalists who are subject to equivalent appropriate regulation in the United Kingdom, in Gibraltar or in the European Union, including equivalent appropriate self-regulation, provided that such regulation achieves similar effects as those technical arrangements.

]1

Notes

1 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.12 (December 31, 2020: commenced by an amendment)

Article 21 Disclosure or dissemination of information in the media

For the purposes of Article 10, Article 12(1)(c) and Article 20, where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism or other form of expression in the media, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:

(a) the persons concerned, or persons closely associated with them, derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or

(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

CHAPTER 4

CO-OPERATION, PROFESSIONAL SECRECY AND DATA PROTECTION

Article 22 [Functions of the FCA][1]

[...][2] The [FCA][3] shall ensure that the provisions of this Regulation are applied [in the United Kingdom][4] , regarding all actions carried out [in the United Kingdom][4] , and actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, auctioned on an auction platform or which are traded on an MTF or an OTF or for which a request for admission to trading has been made on an MTF operating within [the United Kingdom][5] .

Notes

1 Heading substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(2)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(2)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(2)(c)(iv) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 23 [Interaction with other provisions][1]

[...][2]3. [...][3]

This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the [Panel on Takeovers and Mergers that impose requirements in addition to the requirements of this Regulation.][4]

4.

A person making information available to [the FCA, the GFSC or][5] the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

Notes

1 Heading substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(3)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(3)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words inserted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13 (December 31, 2020: commenced by an amendment)

Article 24 [...][1]

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 25 Obligation to cooperate

[...][1]8.

[The FCA may][2] cooperate and exchange information with relevant national and third-country regulatory authorities [(including authorities in Gibraltar)][3] responsible for the related spot markets where [it has][4] reasonable grounds to suspect that acts, which constitute insider dealing, unlawful disclosure of information or market manipulation infringing this Regulation, are being, or have been, carried out. Such cooperation shall ensure a consolidated overview of the financial and spot markets, and shall detect and impose sanctions for cross-market and cross-border market abuses.

In relation to emission allowances, the cooperation and exchange of information provided for under the first subparagraph [may also take place][5] with:

[…][6]

(b) competent authorities, registry administrators [in the EU or the UK][7] , including the Central Administrator [in the EU][8] , and other public bodies [in the EU or the UK][9] charged with the supervision of compliance under Directive 2003/87/EC [or under the Greenhouse Gas Emissions Trading Scheme Order 2020 or the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021][10] .

[...][11][...][12]

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(b)(i)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

3 Added by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13 (December 31, 2020: commenced by an amendment)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(b)(i)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(b)(ii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Repealed by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(10)(a) (April 22, 2021)

7 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(10)(b)(i) (April 22, 2021)

8 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(10)(b)(ii) (April 22, 2021)

9 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(10)(b)(iii) (April 22, 2021)

10 Words inserted by Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021/494 reg.9(10)(b)(iv) (April 22, 2021)

11 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(b)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

12 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(5)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 26 Cooperation with third countries

1.

The [FCA][1][may][2] conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the [FCA to carry out its][3] duties under this Regulation.

[...][4][...][5]3.

The [FCA may][6] conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 27. Such exchange of information must be intended for the performance of the tasks of [the FCA][7] .

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019/681 Pt 2(3) reg.11(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(a)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Notes

5 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(6)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 27 Professional secrecy

1.

Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.

2.

All the information [exchanged between the FCA and competent authorities][1] under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the [authority from whom the information is received][2] states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.

3.

The obligation of professional secrecy applies to all persons who work or who have worked for the [FCA][3] or for any authority or market undertaking to whom the [FCA][3] has delegated its powers, including auditors and experts contracted by the [FCA][3] . Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by [the law of the United Kingdom, or any part of the United Kingdom][4] .

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(7)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(7)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(7)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(7)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 28 Data protection

Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or of the Data Protection Act 2018.

[…][2]

][1]

Notes

1 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(8) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words repealed by Financial Services Act 2021 c. 22 s.39 (July 1, 2021)

Article 29 Disclosure of personal data to third countries

1.

[The FCA may transfer personal data to a third country where the transfer does not contravene Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or the Data Protection Act 2018; but such transfer may only be made on a case-by-case basis.][1] The [FCA][2] shall ensure that the transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the [FCA][2][...][3] .

[...][4]3.

Where a cooperation agreement provides for the exchange of personal data, it shall comply with [Regulation (EU) 2016/679 and the Data Protection Act 2018][5] .

Notes

1 Word substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(9)(a)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(9)(a)(ii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(9)(a)(ii)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(9)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.13(9)(c) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

CHAPTER 5

ADMINISTRATIVE MEASURES AND SANCTIONS

Article 30 [...][1]

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(1) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 31 Exercise of supervisory powers and imposition of sanctions

1.

[When][1] determining the type and level of administrative sanctions, [the FCA must][2] take into account all relevant circumstances, including, where appropriate:

(a) the gravity and duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the infringement with the [FCA][3] , without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous infringements by the person responsible for the infringement; and

(g) measures taken by the person responsible for the infringement to prevent its repetition.

[...][4]

Notes

1 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(2)(a)(i)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(2)(a)(i)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(2)(a)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 32 Reporting of infringements

1.

The Treasury may by regulations specify procedures to enable reporting of actual or potential infringements of this Regulation to the FCA, including—

(a) the arrangements for reporting and for following-up reports;

(b) measures for the protection of persons working under a contract of employment; and

(c) measures for the protection of personal data.

2.

Regulations made under paragraph 1 may amend the Financial Services and Markets Act 2000 (Markets Abuse) Regulations 2016.

]1

Notes

1 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 33 [...]1

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 34 Publication of decisions

1.

Subject to the third subparagraph, [the FCA]1 shall publish any decision imposing an administrative sanction or other administrative measure in relation to an infringement of this Regulation on [its website]2 immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the infringement and the identity of the person subject to the decision.

The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

Where [the FCA]3 considers that the publication of the identity of the legal person subject to the decision, or of the personal data of a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets, it shall do any of the following:

(a) defer publication of the decision until the reasons for that deferral cease to exist;

(b) publish the decision on an anonymous basis in accordance with [the law of the United Kingdom]4 where such publication ensures the effective protection of the personal data concerned;

(c) not publish the decision in the event that the [FCA]5 is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where [the FCA]6 takes a decision to publish a decision on an anonymous basis as referred to in point (b) of the third subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period.

2.

Where the decision is subject to an appeal before a national judicial, administrative or other authority, [the FCA]7 shall also publish immediately on [its website]8 such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published.

3.

[The FCA][9] shall ensure that any decision that is published in accordance with this Article shall remain accessible on [its website][10] for a period of at least five years after its publication. Personal data contained in such publications shall be kept on the website of the [FCA][11] for the period which is necessary in accordance with the applicable data protection rules.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(i)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

2 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(i)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

3 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(ii)(aa) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

4 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(ii)(bb) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

5 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(ii)(cc) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

6 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(a)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

7 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

8 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

9 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(c)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

10 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(c)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

11 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.14(5)(c)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

CHAPTER 6

REGULATIONS

Article 35 Regulations made by the Treasury

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may—

   (a) contain incidental, supplemental, consequential and transitional provision; and

   (b) make different provision for different purposes.

3. No regulations may be made under Article 19 or 38 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

4. A statutory instrument containing regulations made under any other provision of this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

]1

Notes

1 Substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.15(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

Article 36 [...]1

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.15(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

CHAPTER 7

FINAL PROVISIONS

Article 37 Repeal of Directive 2003/6/EC and its implementing measures

Directive 2003/6/EC and Commission Directives 2004/72/EC, 2003/125/EC[1] and 2003/124/EC[2] and Commission Regulation (EC) No 2273/2003[3] shall be repealed with effect from 3 July 2016. References to Directive 2003/6/EC shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II to this Regulation.

Notes

1 Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ L 339, 24.12.2003, p. 73).

2 Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ L 339, 24.12.2003, p. 70).

3 Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33).

Article 38 [...]1

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.16 (December 31, 2020: commenced by an amendment)

Article 39 Entry into force and application

1.

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union* .

2.

It shall apply from 3 July 2016 except for:

(a) Article 4(2) and (3), which shall apply from 3 January 2018; and

(b) Article 4(4) and (5), Article 5(6), Article 6(5) and (6), Article 7(5), Article 11(9), (10) and (11), Article 12(5), Article 13(7) and (11), Article 16(5), the third subparagraph of Article 17(2), Article 17(3), (10) and (11), Article 18(9), Article 19(13), (14) and (15), Article 20(3), Article 24(3), Article 25(9), the second, third and fourth subparagraphs of Article 26(2), Article 32(5) and Article 33(5), which shall apply from 2 July 2014.

[...][1]

Notes

1 Repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.16(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

[...][1]
Done at Strasbourg, 16 April 2014.
For the European Parliament
The President
M. SCHULZ
For the Council
The President
D. KOURKOULAS

Notes

1 Words repealed by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.16(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

ANNEX I

A. **Indicators of manipulative behaviour relating to false or misleading signals and to price securing**

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and [the FCA][1] :

(a)

the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when those activities lead to a significant change in their prices;

(b)

the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;

(c)

whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;

(d)

the extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;

(e)

the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

(f)

the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed; and

(g)

the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.17 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

B. **Indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance**

For the purposes of applying point (b) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article thereof, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account where transactions or orders to trade are examined by market participants and [the FCA][1] :

(a)

whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them; and

(b)

whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest.

Notes

1 Words substituted by Market Abuse (Amendment) (EU Exit) Regulations 2019/310 Pt 6 reg.17 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1)

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Chapter 5

Vote Holder and Issuer Notification Rules

5.1 Notification of the acquisition or disposal of major shareholdings

5

5.1.1 R In this chapter:

(1) references to an "*issuer*", in relation to *shares* admitted to trading on a *regulated market*, are to an *issuer* whose *shares* are admitted to trading on a *regulated market*;

(2) references to a "non-*UK issuer*" are to an *issuer* whose *shares* are admitted to trading on a *regulated market* other than:

(a) a public company within the meaning of section 4(2)of the Companies Act 2006; and

(b) a company which is otherwise incorporated in, and whose principal place of business is in, the *UK*;

(3) references to "*shares*" are to *shares* which are:

(a) already issued and carry rights to vote which are exercisable in all circumstances at general meetings of the *issuer* including *shares* (such as preference *shares*) which, following the exercise of an option for their conversion, event of default or otherwise, have become fully enfranchised for voting purposes; and

(b) admitted to trading on a *regulated* or *prescribed market*;

(4) an acquisition or disposal of *shares* is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction; and

(5) [deleted]

(6) for the purposes of calculating whether any percentage threshold is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held shall if necessary be rounded down to the next whole number.

5.1.2 R A *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within DTR 5.3.1R (1) (or a combination of such holdings) if the percentage of those voting rights:

(1) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK *issuer* on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of *shares* or financial instruments falling within DTR 5.3.1 R; or

(2) reaches, exceeds or falls below an applicable threshold in (1) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with DTR 5.6.1 Rand DTR 5.6.1A R;

and in the case of an issuer which is not incorporated in the *United Kingdom* a notification under (2) must be made on the basis of equivalent events and disclosed information.

[**Note:** articles 9(1), 9(2), 13(1) and 13a(1) of the *TD*]

Certain voting rights to be disregarded

5.1.3 R Voting rights attaching to the following *shares* are to be disregarded for the purposes of determining whether a person has a notification obligation in accordance with the thresholds in DTR 5.1.2 R:

(1) *(a)* *shares* acquired; or

(b) *shares* underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are acquired;

for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period beginning with the transaction and ending at the close of the third *trading day* following the day of the execution of the transaction (irrespective of whether the transaction is conducted on-exchange);

(2) *(a)* *shares* held; or

(b) *shares* underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held;

by a custodian (or nominee) in its custodian (or nominee) capacity (whether operating from an establishment in the UK or elsewhere) provided such a *person* can only exercise the voting rights attached to such *shares* under instructions given in writing or by *electronic means*;

(3) *(a)* *shares* held; or

(b) *shares* underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held;

by a *market maker* acting in that capacity subject to the percentage of such *shares* not being equal to or in excess of 10% and subject to the *market maker* satisfying the criteria and complying with the conditions and operating requirements set out in DTR 5.1.4 R;

(4) *(a)* *shares* held; or

(b) *shares* underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held;

by a *credit institution* or *investment firm* provided that:

(i) the *shares*, or financial instruments , are held within the *trading book* of the *credit institution* or *investment firm*;

(ii) the voting rights attached to such *shares* do not exceed 5%; and

(iii) the voting rights attached to *shares* in, or related to financial instruments in, the *trading book* are not exercised or otherwise used to intervene in the management of the *issuer*.

(5) *shares* held by a collateral taker under a collateral transaction which involves the outright transfer of *securities* provided the collateral taker does not declare any intention of exercising (and does not exercise) the voting rights attaching to such *shares*.

(6) [deleted]

(7) *shares* acquired for stabilisation purposes in accordance with the *Buy-back and Stabilisation Regulation*, if the voting rights attached to those *shares* are not exercised or otherwise used to intervene in the management of the *issuer*.

[**Note:** articles 9(4), 9(5), 9(6), 9(6a), 10(c) and 13(4) of the *TD*]

5.1.4 R

(1) References to a *market maker* are to a *market maker* which:

(a) (subject to (3) below) is authorised by the *FCA* or the *PRA* under the *United Kingdom* provisions which implemented *MiFID*;

(b) does not intervene in the management of the *issuer* concerned; and

(c) does not exert any influence on the *issuer* to buy such *shares* or back the *share* price.

[Note: articles 9(5) and 9(6) of the *TD*]

(2) A *market maker* relying upon the exemption for *shares* or financial instruments within DTR 5.3.1R(1) held by it in that capacity must notify the *FCA*, at the latest within the time limit provided for by DTR 5.8.3 R, that it conducts or intends to conduct market making activities on a particular *issuer* (and shall equally make such a notification if it ceases such activity).

[Note: article 6(1) of the *TD implementing Directive*]

(3) References to a *market maker* also include a *third country investment firm* and a *credit institution* when acting as a *market maker* and which, in relation to that activity, is subject to regulatory supervision under the laws of the *United Kingdom*.

Aggregation of holdings

5.1.4A UK The *TD Major Holdings Regulation* provides that:

Recital 2

The thresholds for the market making and trading book exemptions should be calculated by aggregating voting rights relating to shares with voting rights related to financial instruments (that is entitlements to acquire shares and financial instruments considered to be economically equivalent to shares) in order to ensure consistent application of the principle of aggregation of all holdings of financial instruments subject to notification requirements and to prevent a misleading representation of how many financial instruments related to an issuer are held by an entity benefiting from those exemptions.

Article 2

Aggregation of holdings

For the purpose of calculation of the thresholds referred to in [■ DTR 5.1.3R(3) and (4)], holdings under United Kingdom law corresponding to Articles 9, 10 and 13 of Directive 2004/109/EC shall be aggregated.

Aggregation of holdings in the case of a group

5.1.4B UK The *TD Major Holdings Regulation* provides that:

Recital 3

In order to provide an adequate level of transparency in the case of a group of companies, and to take into account the fact that, where a parent undertaking has control over its subsidiaries, it may influence their management, the thresholds should be calculated at group level. Therefore all holdings owned by a parent undertaking of a credit institution or investment firm and subsidiary companies should be disclosed when the total sum of the holdings reaches the notification threshold.

Article 3

Aggregation of holdings in the case of a group

For the purpose of calculation of the thresholds referred to in [■ DTR 5.1.3R(3) and (4)]in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in [■ DTR 5.2.1R(e)].

Certain voting rights to be disregarded (except at 5% 10% and higher thresholds)

5.1.5 R (1) The following are to be disregarded for the purposes of determining whether a *person* has a notification obligation in accordance with the thresholds in ■ DTR 5.1.2 R except at the thresholds of 5% and 10% and above:

(a) voting rights attaching to *shares* forming part of property belonging to another which that *person* lawfully manages under an agreement in, or evidenced in, writing;

(b) voting rights attaching to *shares* which may be exercisable by a *person* in his capacity as the operator of:

(i) an *authorised unit trust scheme*;

(ia) an *authorised contractual scheme*;

(ii) a *recognised scheme*; or

(iii) a *UCITS scheme*;

(c) voting rights attaching to *shares* which may be exercisable by an *ICVC*.

(d) [deleted]

(2) For the purposes of DTR 5.1.5 R (1)(a), a *person* ("A") may lawfully manage *investments* belonging to another if:

(a) A can manage those *investments* in accordance with a *Part 4A permission*;

(b) [deleted]

(c) A can, in accordance with section 327 of the *Act*, manage those *investments* without contravening the prohibition contained in section 19 of the *Act*;

(d) [deleted]

(e) A can lawfully manage those *investments* in a *third country* and would, if he were to manage those *investments* in the *UK*, require a *Part 4A permission*.

5.2 Acquisition or disposal of major proportions of voting rights

5.2.1 R A *person* is an indirect holder of *shares* for the purpose of the applicable definition of *shareholder* to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

Case	
(a)	voting rights held by a third party with whom that *person* has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the *issuer* in question;
(b)	voting rights held by a third party under an agreement concluded with that *person* providing for the temporary transfer for consideration of the voting rights in question;
(c)	voting rights attaching to *shares* which are lodged as collateral with that *person* provided that *person* controls the voting rights and declares its intention of exercising them;
(d)	voting rights attaching to *shares* in which that *person* has the life interest;
(e)	voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a *person* undertaking investment management, or by a *management company*, by an undertaking controlled by that *person*;
(f)	voting rights attaching to *shares* deposited with that *person* which the person can exercise at its discretion in the absence of specific instructions from the *shareholders*;
(g)	voting rights held by a third party in his own name on behalf of that *person*;

Case	
(h)	voting rights which that *person* may exercise as a proxy where that *person* can exercise the voting rights at his discretion in the absence of specific instructions from the *shareholders*.

[Note: article 10 of the *TD*]

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5.2.2 G Cases (a) to (h) in ■ DTR 5.2.1 R identify situations where a *person* may be able to control the manner in which voting rights are exercised and where, (taking account of any aggregation with other holdings) a notification to the *issuer* may need to be made. In the *FCA's* view:

(1) Case (e) produces the result that it is always necessary for the *parent undertaking* of a *controlled undertaking* to aggregate its holding with any holding of the *controlled undertaking* (subject to the exemptions implicit in Case (e) and others in ■ DTR 5.4);

(2) Case (f) includes a *person* carrying on investment management and which is also the custodian of *shares* to which voting rights are attached;

(3) Case (g) does not result in a Unitholder in a *collective investment scheme* or other investment entity being treated as the holder of voting rights in the scheme property (provided always such persons do not have any entitlement to exercise, or control the exercise of, such voting rights); neither are such persons to be regarded as holding *shares* "indirectly";

(4) Case (h), although referring to proxies, also describes and applies to a *person* undertaking investment management, and to a *management company*, and which is able effectively to determine the manner in which voting rights attached to *shares* under its control are exercised (for example through instructions given directly or indirectly to a nominee or independent custodian). Case (e) provides for the voting rights which are under the control of such a *person* to be aggregated with those of its *parent undertaking*.

5.2.3 G A *person* falling within Cases (a) to (h) is an indirect holder of *shares* for the purpose of the definition of *shareholder*. These indirect holdings have to be aggregated, but also separately identified in a notification to the *issuer*. Apart from those identified in the Cases (a) to (h), the *FCA* does not expect any other significant category "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a *person* is an indirect holder of financial instruments within ■ DTR 5.3.1R(1)(a) which result in an entitlement to acquire *shares*.

5.2.4 R ■ DTR 5.1.2 R and case (c) of ■ DTR 5.2.1 R do not apply in respect of voting rights attaching to *shares* provided to or by the Bank of England in carrying out its functions as a monetary authority, including *shares* provided to or by the Bank of England under a pledge or repurchase of similar agreement for liquidity granted for monetary policy purposes or within a payments system provided:

(1) this shall apply only for a short period following the provision of the *shares*; and

(2) the voting rights attached to the shares during this period are not exercised.

[Note: article 11 of the *TD*.]

5.2.5 R

(1) A *person* who is required to make a notification may, without affecting their responsibility, appoint another *person* to make the notification on his behalf.

(2) Where two or more *persons* are required to make a notification such *persons* may, without affecting their responsibility, arrange for a single notification to be made.

[Note: article 8(3) of the *TD implementing Directive*.]

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5.3 Notification of voting rights arising from the holding of certain financial instruments

5.3.1 R

(1) A *person* must make a notification in accordance with the applicable thresholds in DTR 5.1.2R in respect of any financial instruments which they hold, directly or indirectly, which:

(a) on maturity give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the holder's right to acquire, *shares* to which voting rights are attached, already issued, of an *issuer*; or

(b) are not included in (a) but which are referenced to *shares* referred to in (a) and with economic effect similar to that of the financial instruments referred to in (a), whether or not they confer a right to a physical settlement.

[**Note:** article 13(1) of the *TD*]

(2) [deleted]

(2A) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

5.3.1A G [deleted]

5.3.2 R For the purposes of DTR 5.3.1 R (1)(a):

(1) [deleted]

(2) [deleted]

(3) a "formal agreement" means an agreement which is binding under applicable law.

[**Note:** article 2(1)(q) of the *TD*]

5.3.2A G The FCA maintains a published indicative list of financial instruments that are subject to notification requirements according to ■ DTR 5.3.1R.

[**Note:** article 13(1b) of the *TD*]

5.3.2B UK The *TD Major Holdings Regulation* provides that:

Recital 8

To decrease the number of meaningless notifications to the market, the trading book exemption should apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis or hedging positions arising out of such dealings.

Article 6

Client-serving transactions

The exemption referred to in [■ DTR 5.1.3R(4)] shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

5.3.2C G [deleted]

[**Note:** article 13(4) of the *TD*]

5.3.3 G (1) For the purposes of ■ DTR 5.3.1R (1)(a), financial instruments within ■ DTR 5.3.1R(1)(a) should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, financial instruments financial instruments within ■ DTR 5.3.1R(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

[Note: Recital 13 of the *TD implementing Directive*]

(2) [deleted]

5.3.3A R The number of voting rights must be calculated by reference to the full notional amount of *shares* underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights must be calculated on a "delta-adjusted" basis, by multiplying the notional amount of underlying *shares* by the delta of the financial instrument. For this purpose, the holder must aggregate and notify all financial instruments relating to the same underlying *issuer*. Only long positions are to be taken into account for the calculation of voting rights. Long positions are not to be netted with short positions relating to the same underlying *issuer*.

[**Note:** article 13(1a) of the *TD*]

5.3.3B UK The *TD Major Holdings Regulation* provides that:

Recital 4

The disclosure regime for financial instruments that have a similar economic effect to shares should be clear. Requirements to provide exhaustive details of the structure of corporate ownership should be proportionate to the need for adequate transparency in major holdings, the administrative burdens those requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. Therefore, financial instruments referenced to a basket of shares or an index should only be aggregated with other holdings in the same issuer when the holding of voting rights through such instruments is significant or the financial instrument is not being used primarily for investment diversification purposes.

Recital 5

It would not be cost-efficient for an investor to build a position in an issuer through holding a financial instrument referenced to different baskets or indices. Therefore, holdings of voting rights through a financial instrument referenced to a series of baskets of shares or indices which are individually under the established thresholds should not be accumulated.

Article 4

Financial instruments referenced to a basket of shares or an index

1.Voting rights referred to in [■ DTR 5.3.3AR] in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

(a)the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1% or more of voting rights attached to shares of that issuer;

(b)the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2.Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.

5.3.3C UK The *TD Major Holdings Regulation* provides that:

Recital 6

Financial instruments which provide exclusively for a cash settlement should be accounted for on a delta–adjusted basis, with cash position having delta 1 in the case of financial instruments having a linear, symmetric pay-off profile in line with the underlying share and using a generally accepted standard pricing model in the case of financial instruments which do not have a linear, symmetric pay-off profile in line with the underlying share.

Recital 7

In order to ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

Article 5

Financial instruments providing exclusively for a cash settlement

1.The number of voting rights referred to in [■ DTR 5.3.3AR] relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.

2.The number of voting rights relating to an exclusively cash-settled financial instrument without a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis, using a generally accepted standard pricing model.

3.A generally accepted standard pricing model shall be a model that is generally used in the finance industry for that financial instrument and that is sufficiently robust to take into account the elements that are relevant to the valuation of the instrument. The elements that are relevant to the valuation shall include at least all of the following:

(a)interest rate;

(b)dividend payments;

(c)time to maturity;

(d)volatility;

(e)price of underlying share.

4.When determining delta the holder of the financial instrument shall ensure all of the following:

(a)that the model used covers the complexity and risk of each financial instrument;

(b)that the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument.

5.Information technology systems used to carry out the calculation of delta shall ensure consistent, accurate and timely reporting of voting rights.

6.The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the applicable thresholds provided for in [■ DTR 5.1.2R].

5.3.4 R The holder of financial instruments within ■ DTR 5.3.1R(1)(a), and, to the extent relevant, financial instruments within ■ DTR 5.3.1R(1)(b), is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying *issuer*.

[**Note:** article 13(1) of the *TD*]

5.3.5 R A *person* making a notification in accordance with ■ DTR 5.1.2R must, if their holding includes financial instruments within ■ DTR 5.3.1R(1):

(1) include a breakdown by type of financial instruments held in accordance with ■ DTR 5.3.1R(1)(a) and financial instruments held in accordance with ■ DTR 5.3.1R(1)(b); and

(2) distinguish between the financial instruments which confer a right to:

(a) physical settlement; and

(b) cash settlement.

[**Note:** article 13(1) of the *TD*]

5.4 Aggregation of managed holdings

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5.4.1 R

(1) The *parent undertaking* of a *management company* shall not be required to aggregate its holdings with the holdings managed by the *management company* in accordance with the *United Kingdom* provisions which implemented the *UCITS Directive*, provided such *management company* exercises its voting rights independently from the *parent undertaking*.

(2) But the requirements for the aggregation of holdings applies if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *management company* and the *management company* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the *parent* or another *controlled undertaking* of the *parent undertaking*.

[Note: articles 12(4) of the *TD*]

5.4.2 R

(1) The *parent undertaking* of an *investment firm* authorised by the *FCA* or the *PRA* under the *United Kingdom* provisions which implemented *MiFID* shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of Article 2(7) of the *MiFID Org Regulation*, provided that:

(a) the *investment firm* is authorised to provide such portfolio management;

(b) it may only exercise the voting rights attached to such *shares* under instructions given in writing or by *electronic means* or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under the *UCITS Directive* by putting into place appropriate mechanisms; and

(c) the *investment firm* exercises its voting rights independently from the *parent undertaking*.

(2) But the requirements for the aggregation of holdings applies if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *investment firm* and the *investment firm* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting

rights under direct or indirect instructions from the parent or another *controlled undertaking* of the *parent undertaking*.

[Note: article 12(5) of the *TD*]

5.4.3 R For the purposes of the exemption to the aggregation of holdings provided in ■ DTR 5.4.1 R or ■ DTR 5.4.2 R, a *parent undertaking* of a *management company* or of an *investment firm* shall comply with the following conditions:

(1) it must not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by the *management company* or *investment firm*; and

(2) that *management company* or *investment firm* must be free to exercise, independently of the *parent undertaking*, the voting rights attached to the assets it manages.

[Note: article 10(1) of the *TD implementing Directive*]

5.4.4 R A *parent undertaking* which wishes to make use of the exemption in relation to *issuers* subject to this chapter whose *shares* are admitted to trading on a *regulated market* must without delay, notify the following to the *FCA*:

(1) a list of the names of those *management companies*, *investment firms* or other entities, indicating the *competent authorities* that supervise them, but with no reference to the *issuers* concerned; and

(2) a statement that, in the case of each such *management company* or *investment firm*, the *parent undertaking* complies with the conditions laid down in ■ DTR 5.4.3 R.

The *parent undertaking* shall update the list referred to in paragraph (1) on an ongoing basis.

[Note: article 10(2) of the *TD implementing Directive*]

5.4.5 R Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in ■ DTR 5.3.1R, it must notify to the *FCA* only the list referred to in paragraph (1) of ■ DTR 5.4.4 R.

[Note: article 10(3) of the *TD implementing Directive* and article 13 of the *TD*]

5.4.6 R A *parent undertaking* of a *management company* or of an *investment firm* must in relation to *issuers* subject to this chapter whose *shares* are admitted to trading on a *regulated market* be able to demonstrate to the *FCA* on request that:

(1) the organisational structures of the *parent undertaking* and the *management company* or *investment firm* are such that the voting rights are exercised independently of the *parent undertaking*;

(2) the persons who decide how the voting rights are exercised act independently;

(3) if the *parent undertaking* is a client of its *management company* or *investment firm* or has a holding in the assets managed by the *management company* or *investment firm*, there is a clear written mandate for an arms-length customer relationship between the *parent undertaking* and the *management company* or *investment firm*.

The requirement in (1) shall imply as a minimum that the *parent undertaking* and the *management company* or *investment firm* must have established written policies and procedures reasonably designed to prevent the distribution of information between the *parent undertaking* and the *management company* or *investment firm* in relation to the exercise of voting rights.

[Note: article 10(4) of the *TD implementing Directive***]**

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5.4.7 R For the purposes of paragraph (1) of ■ DTR 5.4.3 R direct instruction means any instruction given by the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, specifying how the voting rights are to exercised by the *management company* or *investment firm* in particular cases.

5.4.8 R Indirect instruction means any general or particular instruction, regardless of the form, given by the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, that limits the discretion of the *management company* or *investment firm* in relation to the exercise of voting rights in order to serve specific business interests of the *parent undertaking* or another *controlled undertaking* of the *parent undertaking*.

[Note: article 10(5) of the *TD implementing Directive***]**

5.4.9 R Undertakings whose registered office is in a *third country* which would have required a *Part 4A permission* to carry on the *regulated activity* specified under article 51ZA of the *Regulated Activities Order* or with regard to portfolio management authorisation under paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* if it had its registered office or, only in the case of an *investment firm*, its head office within the United Kingdom, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this *rule* provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.

[Article 23(6) *TD***]**

5.4.10 R A *third country* shall be deemed to set conditions of independence equivalent to those set out in this *rule* where under the law of that country , a *management company* or *investment firm* is required to meet the following conditions:

(1) the *management company* or *investment firm* must be free in all situations to exercise, independently of its *parent undertaking*, the voting rights attached to the assets it manages;

(2) the *management company* or *investment firm* must disregard the interests of the *parent undertaking* or of any other *controlled*

undertaking of the *parent undertaking* whenever conflicts of interest arise.

5.4.11 R A *parent undertaking* of a *third country* undertaking must comply with the notification requirements in DTR 5.4.4 R (1) and DTR 5.4.5 R and in addition:

(1) must make a statement that in respect of each *management company* or *investment firm* concerned, the *parent undertaking* complies with the conditions of independence set down in DTR 5.4.10 R; and

(2) must be able to demonstrate to the *FCA* on request that the requirements of DTR 5.4.6 R are respected.

[Note: article 23 of the *TD implementing Directive***]**

5.5 Acquisition or disposal by issuer of shares

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5.5.1 R An *issuer* of *shares* must, if it acquires or disposes of its own *shares*, either itself or through a *person* acting in his own name but on the *issuer's* behalf, make public the percentage of voting rights attributable to those *shares* it holds as a result of the transaction as a whole, as soon as possible, but not later than four *trading days* following such acquisition or disposal where that percentage reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights.

5.5.1A R ■ DTR 5.5.1R does not apply to a third-country *issuer* that falls within ■ DTR 5.11.4R.

5.5.2 R The percentage shall be calculated on the basis of the total number of *shares* to which voting rights are attached.

[Note: article 14 of the *TD*].

5.5.3 G Additional requirements in relation to a *listed company* which purchases its own *equity shares* are contained in ■ UKLR 9.6.6R.

5.6 Disclosures by issuers

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5.6.1 R An *issuer* must, at the end of each calendar month during which an increase or decrease has occurred, disclose to the public:

(1) the total number of voting rights and capital in respect of each class of *share* which it issues.

[Note: article 15 of the *TD*]; and

(2) the total number of voting rights attaching to *shares* of the *issuer* which are held by it in treasury.

5.6.1A R (1) Notwithstanding ■ DTR 5.6.1 R, if a relevant increase or decrease in the total number of voting rights of the kind described in (2) occurs, an *issuer* must disclose to the public the information in ■ DTR 5.6.1R (1) and (2) as soon as possible and in any event no later than the end of the *business day* following the *day* on which the increase or decrease occurs.

(2) For the purpose of (1), a relevant increase or decrease is any increase or decrease in the total number of voting rights produced when an *issuer* completes a transaction unless its effect on the total number of voting rights is immaterial when compared with the position before completion.

5.6.1B G In relation to the obligation in ■ DTR 5.6.1A R, it is for an *issuer* to assess whether the effect on the total number of voting rights is immaterial. In the *FCA's* view an increase or decrease of 1% or more is likely to be material, both to the *issuer* and to the public.

5.6.1C R ■ DTR 5.6.1R does not apply to a third-country *issuer* that falls within ■ DTR 5.11.4R.

5.6.2 G The disclosure of the total number of voting rights should be in respect of each class of *share* which is admitted to trading on a *regulated* or *prescribed market*.

5.6.3 R Responsibility for all information drawn up and made public in accordance with ■ DTR 5.6.1 R and ■ DTR 5.6.1AR lies with the *issuer*.

5.7 Notification of combined holdings

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5.7.1 R A *person* making a notification in accordance with DTR 5.1.2 R must do so by reference to each of the following:

(1) the aggregate of all voting rights which the *person* holds as *shareholder* and as the direct or indirect holder of financial instruments falling within DTR 5.3.1R(1);

(2) the aggregate of all voting rights held as direct or indirect *shareholder* (disregarding for this purpose holdings of financial instruments); and

(3) the aggregate of all voting rights held as a result of direct and indirect holdings of financial instruments falling within DTR 5.3.1R(1).

[**Note:** article 13a(1) of the *TD*]

(4) [deleted]

5.7.1A R Voting rights relating to financial instruments within DTR 5.3.1R(1) that have already been notified in accordance with DTR 5.1.2R must be notified again when the *person* has acquired the underlying *shares* and such acquisition results in the total number of voting rights attached to *shares* issued by the same *issuer* reaching or exceeding the thresholds laid down by DTR 5.1.2R.

[**Note:** article 13a(2) of the *TD*]

5.7.2 G The effect of DTR 5.7.1 R is that a *person* may have to make a notification if the overall percentage level of his voting rights remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held.

5.8 Procedures for the notification and disclosure of major holdings

5.8.1 R A notification given in accordance with DTR 5.1.2 R shall include the following information:

(1) the resulting situation in terms of voting rights;

(2) the chain of *controlled undertakings* through which voting rights are effectively held, if applicable;

(3) the date on which the threshold was reached or crossed; and

(4) the identity of the *shareholder*, even if that *shareholder* is not entitled to exercise voting rights under the conditions laid down in DTR 5.2.1 R and of the *person* entitled to exercise voting rights on behalf of that *shareholder*.

5.8.2 R (1) A notification required of voting rights arising from the holding of financial instruments must include the following information:

(a) the resulting situation in terms of voting rights;

(b) if applicable, the chain of *controlled undertakings* through which financial instruments are effectively held;

(c) the date on which the threshold was reached or crossed;

(d) for instruments with an exercise period, an indication of the date or time period where *shares* will or can be acquired, if applicable

(e) date of maturity or expiration of the instrument;

(f) identity of the holder; and

(g) name of the underlying *issuer*.

(2) The notification must be made to the *issuer* of each of the underlying *shares* to which the financial instrument relates and, in the case of *shares* admitted to trading on a *regulated market*, to the *FCA*.

(3) If a financial instrument relates to more than one underlying *share*, a separate notification shall be made to each *issuer* of the underlying *shares*.

(4) [deleted]

[Note: articles 11(3), (4) and (5) of the *TD implementing Directive*]

5.8.3 R The notification to the *issuer* shall be effected as soon as possible, but not later than four *trading days* in the case of a non-*UK issuer* and two *trading days* in all other cases, after the date on which the relevant *person*:

(1) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

(2) is informed about the event mentioned in DTR 5.1.2 R (2).

And for the purposes of (1) above a *person* shall, in relation to a transaction to which he is a party or which he has instructed, be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction in question and where a transaction is conditional upon the approval by public authorities of the transaction or on a future uncertain event the occurrence of which is outside the control of the parties to the agreement, the parties are deemed to have knowledge of the acquisition, disposal or possibility of exercising voting rights only when the relevant approvals are obtained or when the event happens.

[Note: articles 12(1), and 12(2) of the TD and article 9 of the *TD implementing Directive*]

5.8.4 R (1) The notification obligation following transactions of a kind mentioned in DTR 5.2.1 R are individual obligations incumbent upon each direct *shareholder* or indirect *shareholder* mentioned in DTR 5.2.1 R or both if the proportion of voting rights held by each party reaches, exceeds or falls below an applicable threshold.

(2) In the circumstances in DTR 5.2.1 R Case (h) if a *shareholder* gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights discretion.

(3) If in the circumstances in DTR 5.2.1 R Case (h) the proxy holder receives one or several proxies in relation to one *shareholder* meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms if voting rights will be when the proxy may no longer exercise the voting rights at its discretion.

(4) When the duty to make notification lies with more than one *person*, notification may be made by means of a single common notification but this does not release any of those persons from their responsibilities in relation to the notification.

[Note: article 8 of the *TD implementing Directive*]

5.8.5 G It may be necessary for both the relevant *shareholder* and proxy holder to make a notification. For example, if a direct holder of shares has a notifiable holding of voting rights and gives a proxy in respect of those rights (such

that the recipient has discretion as to how the votes are cast) then for the purposes of DTR 5.1.2 R this is a disposal of such rights giving rise to a notification obligation. The proxy holder may also have such an obligation by virtue of his holding under DTR 5.2.1 R. Separate notifications will not however be necessary provided a single notification (whether made by the direct holder of the *shares* or by the proxy holder) makes clear what the situation will be when the proxy has expired. Where a proxy holder receives several proxies then one notification may be made in respect of the aggregated voting rights held by the proxy holder on or as soon as is reasonably practicable following the proxy deadline. Unless it discloses what the position will be in respect of each proxy after the proxies have expired, such a notification will not relieve any direct holder of the *shares* of its notification obligation (if there is a notifiable disposal). A proxy which confers only minor and residual discretions (such as to vote on an adjournment) will not result in the proxy holder (or *shareholder*) having a notification obligation.

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5.8.6 R An undertaking is not required to make a notification if instead it is made by its *parent undertaking* or, where the *parent undertaking* is itself a *controlled undertaking*, by its own *parent undertaking*.

[Note: article 12(3) of the *TD*]

5.8.7 R Voting rights must be calculated on the basis of all the *shares* to which voting rights are attached even if the exercise of such rights is suspended and shall be given in respect of all *shares* to which voting rights are attached.

[Note: article 9(1) of the *TD*]

5.8.8 R The number of voting rights to be considered when calculating whether a threshold is reached, exceeded or fallen below is the number of voting rights in existence according to the *issuer's* most recent disclosure made in accordance with DTR 5.6.1 R and DTR 5.6.1A R but disregarding voting rights attached to any treasury *shares* held by the *issuer* (in accordance with the *issuer's* most recent disclosure of such holdings).

[**[Note: article 9(2) of the *TD* and article 11(3) of the *TD implementing Directive*]**

5.8.9 G [deleted]

5.8.10 R A notification in relation to *shares* admitted to trading on a *regulated market*, must be made using the form TR1 available in electronic format at the *FCA's* website at http://www.fca.org.uk.

5.8.11 R In determining whether a notification is required a *person's* net (direct or indirect) holding in a *share* (and of relevant financial instruments) may be assessed by reference to that *person's* holdings at a point in time up to midnight of the day for which the determination is made (taking account of acquisitions and disposals executed during that day).

5.8.12 R

(1) An *issuer* not falling within (2) must, in relation to *shares* admitted to trading on a *regulated market*, on receipt of a notification as soon as possible and in any event by not later than the end of the *trading day* following receipt of the notification make public all of the information contained in the notification.

(2) A non-UK issuer and any other *issuers* whose *shares* are admitted to trading on a *prescribed* (but not a *regulated*) *market* must, on receipt of a notification, as soon as possible and in any event by not later than the end of the third *trading day* following receipt of the notification, make public all of the information contained in the notification.

(3) DTR 5.8.12R(2) does not apply to a third country *issuer* that falls within DTR 5.11.4R.

[Note: article 12(6) of the *TD*]

5.9 Filing of information with competent authority

5.9.1 R (1) A *person* making a notification to an *issuer* to which this chapter applies must, if the notification relates to *shares* admitted to trading on a *regulated market*, at the same time file a copy of such notification with the *FCA*.

(2) The information to be filed with the *FCA* must include a contact address of the *person* making the notification (but such details must be in a separate annex and not included on the form which is sent to the *issuer*).

[Note: article 19(3) of the *TD*]

5.10 Use of electronic means for notifications and filing

5.10.1 R Information filed with the *FCA* for the purposes of the chapter must be filed using *electronic means*.

5.11 Third country issuers

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5.11.1 R An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements to those set out in DTR 5.8.12 R (2) (*issuer* to make public notifications of major shareholdings by close of third day following receipt) provided that the period of time within which the notification of the major holdings is to be effected to the *issuer* and is to be made public by the *issuer* is in total equal to or shorter than seven *trading days*.

[Note: article 19 of the *TD implementing Directive***]**

5.11.2 R An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements in respect of treasury *shares* to those set out in DTR 5.5.1 R provided that:

(1) if the *issuer* is only allowed to hold up a maximum of 5% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third country* whenever this the maximum threshold of 5% of the voting rights is reached or crossed;

(2) if the *issuer* is allowed to hold up to maximum of between 5% and 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third country* whenever this maximum threshold and or the 5% threshold of the voting rights are reached or crossed;

(3) if the *issuer* is allowed to hold more than 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third country* whenever the 5% or 10% thresholds of the voting rights are reached or crossed. Notification above the 10% threshold is not required for this purpose.

[Note: article 20 of the *TD implementing Directive***]**

5.11.3 R An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements to those set out in DTR 5.6.1 R (Disclosure by *issuers* of total voting rights) provided that the *issuer* is required under the law of the *third country* to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

[Note: article 21 of the *TD implementing Directive***]**

5.11.4 R An *issuer* whose registered office is in a *third country* is exempted from ■ DTR 5.5.1R, ■ DTR 5.6.1R and ■ DTR 5.8.12R(2) if:

(1) the law of the *third country* in question lays down equivalent requirements; or

(2) the *issuer* complies with requirements of the law of a *third country* that the *FCA* considers as equivalent.

[**Note:** article 23(1) of the *TD*]

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5.11.5 G The *FCA* maintains a published list of *third country*, for the purpose of ■ DTR 5.11.4R, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that *third country* are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of ■ DTR 6:

(1) the filing of information with the *FCA*;

(2) the language provisions; and

(3) the dissemination of information provisions.

5.11.6 R [deleted]

DIVIDEND PROCEDURE TIMETABLE 2025

In accordance with Schedule 3 of the Admission and Disclosure Standards (available Main Market Raise finance - resources | London Stock Exchange) and AIM Rules 24 and 25 (available AIM Raise finance - resources | London Stock Exchange) a dividend timetable, which follows the guidelines set out in by the Dividend Procedure Timetable, need not be notified to the Exchange in advance, provided the announcement of the dividend includes:

- dividends are stated as gross (unless stated otherwise)
- record and payment dates; and
- availability of any Scrip dividend, DRIP or dividend currency option, together with the election date.

Dividend information must be disseminated via a Primary Information Provider ("PIP") under a correct headline category (please refer to the PIP Service Criteria & Regulatory Headline Categories standards set out by the Financial Conduct Authority). Dividends can be announced as part of an Interim or Final Results announcement or under the Headline Category 'Dividend Declaration'. Dividends should not be announced under other headlines as this can lead to dividend details not being noticed.

Dividend details must be in the body of the announcement and not just referred to as being available on a web page link or included in a separate circular. In such cases, an issuer may be asked to change and re-announce dividend dates.

The announcement must include:

- dividend amount and currency (dividends are stated as gross, unless stated otherwise)
- dividend type (Interim / Final etc.)
- record date
- payment date
- ISIN(s) of the securities the dividend is being declared on
- Tradable Instrument Display Mnemonics code (TIDM) of the securities the dividend is being declared on
- whether the dividend is wholly or partially a Property Income Distribution (PID) or has been designated as an Interest Distribution
- availability of any Scrip, Dividend Reinvestment Plan or Scheme (DRIP/DRIS), Currency Election or other alternative. If available, the last day and time to elect for any alternative should be included.

Any deviation from the Dividend Procedure Timetable must be notified to, and agreed with, the Exchange's Corporate Actions team in advance of the announcement of the dividend as set out below.

Any discussions on corporate action timetables must be undertaken with the Exchange's Corporate Actions Team whose details are set out below. Contact with another part of the Exchange does not satisfy the issuer's obligations under the Admission and Disclosure Standards or the AIM Rules for Companies. Any information provided to the Corporate Actions Team must be complete, accurate and not misleading.

Discussions with the Exchange's Corporate Actions Team may be undertaken through the issuer's adviser. In such circumstances, the Exchange will be entitled to assume that the issuer has ensured that any such adviser is sufficiently knowledgeable to discuss corporate action timetables and has access to corporate action news feeds such as Corporate Events Diary.

LONDON STOCK EXCHANGE

The basic principle:

The record date should normally be a Friday, therefore with standard settlement of T+2, the associated ex date falls one business day earlier. If a dividend is to be made ex, the dividend must be declared via a PIP and notified to the Exchange at least six business days before the proposed record date, otherwise the ex-dividend date may be deferred until the following week.

Any changes to a previously notified Dividend timetable, including deferral or cancellation of payment, must be notified to the Corporate Actions Team and changes agreed prior to announcement.

If an announcement is released that does not meet the guidelines in the Dividend Procedure Timetable, and has not been agreed by the Exchange, the issuer will need to make a further correcting announcement without delay.

A template is available that issuers may wish to download and use when submitting Dividend announcements. Any queries in regard to use of the template, e-mail corporate.actions@lseg.com

Link to the Dividend Timetable Template - Announcement of Dividend Template

Dividends that fall outside these guidelines must be discussed and agreed in advance with the Corporate Actions Team on +44 (0)20 7797 4754 and/ or e-mail corporate.actions@lseg.com.

Dividend with Options

Dividends with Options (Scrip Dividends, Dividend Reinvestment Plans (DRIPs), Currency Options, Dividend Income Access Plans) that follow the guidelines of the Dividend Procedure timetable need not be notified to the Exchange in advance of the announcement, provided that the dividend announcement includes the dividend amount (unless stated otherwise, dividends are stated as gross), the record date, the pay date, the availability of any Scrip, DRIP or Currency Elections and the relevant Election date.

Advance notice should be given of any election date, which should fall at least ten business days after the record date. Timetables for Dividends with Options which are outside the guidelines, should be agreed in advance with the Corporate Actions Team.

CREST Elections

An alternative 'Electronic Election Entitlement' ('EEE') process is available in CREST for dividends with options elections. Issuers wishing to use the EEE process (subject to agreement with their paying agent) must ensure that the Dividend timetable follows the Dividend Procedure Timetable outlined above. In addition, the Issuer, or their paying agent, must apply for the ISIN number(s) required for the EEE. The announcement of the Dividend Option will need to confirm that the EEE process is being utilised. For details on obtaining an ISIN number please follow this link ISIN Services | LSEG

Payment dates

Companies should aim to pay straightforward cash dividends within 30 business days of the record date and Dividends with Options within 20 business days of the election date.

The Exchange believes that these timescales are achievable for all companies and produce advantages for issuers and the market as a whole. In most cases companies with relatively small shareholder registers should target paying a straightforward cash dividend within 20 business days of the record date.

Payment dates that fall outside these guidelines must be discussed and agreed in advance with the Corporate Actions Team on +44 (0)20 7797 4754 and/ or e-mail corporate.actions@lseg.com.

Dividends outside timetable guidelines

A special dividend subject to an offer becoming unconditional in all respects (UIAR), will be marked ex-dividend one business day following announcement of the offer becoming UIAR, (if the announcement is made before 8.00am), or two business days following, (if announced after 8.00am). The date the offer is announced as UIAR will normally be the record date.

A dividend which is conditional upon a Scheme of Arrangement becoming effective and which uses the same record date, would not normally be marked ex-dividend.

A special dividend alongside a consolidation, will be deemed ex-entitlement to the dividend on the effective date, when dealings in the consolidated shares begin. The record date for the dividend and consolidation should be the same date and be the business day prior to the effective date.

These events or any other dividends which fall outside these guidelines must be discussed and agreed in advance with the Corporate Actions Team on +44 (0)20 7797 4754 and/ or e-mail corporate.actions@lseg.com.

Exceptions to normal timetable

The Dividend Procedure Timetable applies to overseas issuers. If an issuer wishes for a timetable to fall outside the Dividend Procedure Timetable this should be agreed in advance with the Corporate Actions Team prior to publication. Where an issuer has its most significant or main listing (sometimes referred to as its "primary listing") on an overseas exchange, unless otherwise agreed in advance with the Corporate Actions Team prior to publication, the Exchange would normally treat the issuer's securities as being ex a benefit from the time they are marked ex that benefit on the relevant overseas exchange.

Exchange Traded Funds (ETFs)

Dividends for ETFs, must be declared via a PIP and notified to the Exchange at least six business days prior to the record date so as to be marked ex-dividend in the normal way, (one business day prior to the record date), otherwise the ex-dividend date may be deferred until the following week.

The announcement must include:

- dividend amount and currency (dividends are stated as gross, unless stated otherwise)
- dividend type (Interim / Final etc.)
- record date
- payment date
- ISIN(s) of the securities the dividend is being declared on
- Tradable Instrument Display Mnemonics code (TIDM) of the securities the dividend is being declared on

Dividends which fall outside these guidelines must be discussed and agreed in advance with the Corporate Actions team on +44 (0)20 7797 4754 and/ or e-mail corporate.actions@lseg.com

Depository Receipts

Dividends for Depository Receipts trading on the Exchange (including the International Order Book) should be notified to the Corporate Actions Team at least three business days prior to the record date to allow the Depository Receipts to be marked ex-dividend in the normal way, (one business day prior to the record date). In the event of late notification of the dividend for the underlying security to the Depositary Bank, the Depositary Bank will be required to set a separate record date for the Depository Receipt in line with the above. In this case the Depositary Bank should contact the Corporate Actions Team as soon as possible to agree the record and ex dates for the Depository Receipt.

Fixed Interest Securities & Debt Securities

Any payment for fixed interest and debt securities must be notified to the Exchange no later than six business days prior to the record date. Where fixed payment details are available the issuer or their agent may use one timetable to inform the Exchange of all future payments. Notification should normally be made by email to corporate.actions@lseg.com.

Further information

For further details on Corporate Actions and how to access data on Corporate action events, please refer to the Corporate Actions page on the London Stock Exchange website https://www.londonstockexchange.com/raise-finance/corporate-actions

How to use the Dividend Procedure Timetable

If the ex-dividend or record date is the key date driving the timetable, declare the dividend on or before the announcement date on the same line. If the announcement date is the key date driving a timetable, choose the ex-dividend and record date on the same line or on any subsequent line. Ex-dividend dates normally fall on Thursdays, with the associated record date falling one business day later usually on a Friday.

Dividend Procedure Timetable 2025

Ex-Dividend Date	Associated Record Date	Latest Announcement Date
All dates are a Thursday unless otherwise shown	All dates are a Friday unless otherwise shown	All dates are a Thursday unless otherwise shown
24/12/2024 (Tues)	27/12/2024	17/12/2024 (Tues)
02/01/2025	03/01/2025	23/12/2024 (Mon)
09/01/2025	10/01/2025	02/01/2025
16/01/2025	17/01/2025	09/01/2025
23/01/2025	24/01/2025	16/01/2025
30/01/2025	31/01/2025	23/01/2025
06/02/2025	07/02/2025	30/01/2025
13/02/2025	14/02/2025	06/02/2025
20/02/2025	21/02/2025	13/02/2025
27/02/2025	28/02/2025	20/02/2025
06/03/2025	07/03/2025	27/02/2025
13/03/2025	14/03/2025	06/03/2025
20/03/2025	21/03/2025	13/03/2025
27/03/2025	28/03/2025	20/03/2025
03/04/2025	04/04/2025	27/03/2025
10/04/2025	11/04/2025	03/04/2025
17/04/2025	22/04/2025 (Tues)	10/04/2025
24/04/2025	25/04/2025	15/04/2025 (Tues)
01/05/2025	02/05/2025	24/04/2025
08/05/2025	09/05/2025	30/04/2024 (Wed)
15/05/2025	16/05/2025	08/05/2025
22/05/2025	23/05/2025	15/05/2025
29/05/2025	30/05/2025	21/05/2025 (Wed)
05/06/2025	06/06/2025	29/05/2025
12/06/2025	13/06/2025	05/06/2025
19/06/2025	20/06/2025	12/06/2025
26/06/2025	27/06/2025	19/06/2025
03/07/2025	04/07/2025	26/06/2025

Ex-Dividend Date	Associated Record Date	Latest Announcement Date
10/07/2025	11/07/2025	03/07/2025
17/07/2025	18/07/2025	10/07/2025
24/07/2025	25/07/2025	17/07/2025
31/07/2025	01/08/2025	24/07/2025
07/08/2025	08/08/2025	31/07/2025
14/08/2025	15/08/2025	07/08/2025
21/08/2025	22/08/2025	14/08/2025
28/08/2025	29/08/2025	20/08/2025 (Wed)
04/09/2025	05/09/2025	28/08/2025
11/09/2025	12/09/2025	04/09/2025
18/09/2025	19/09/2025	11/09/2025
25/09/2025	26/09/2025	18/09/2025
02/10/2025	03/10/2025	25/09/2025
09/10/2025	10/10/2025	02/10/2025
16/10/2025	17/10/2025	09/10/2025
23/10/2025	24/10/2025	16/10/2025
30/10/2025	31/10/2025	23/10/2025
06/11/2025	07/11/2025	30/10/2025
13/11/2025	14/11/2025	06/11/2025
20/11/2025	21/11/2025	13/11/2025
27/11/2025	28/11/2025	20/11/2025
04/12/2025	05/12/2025	27/11/2025
11/12/2025	12/12/2025	04/12/2025
18/12/2025	19/12/2025	11/12/2025
29/12/2025 (Mon)	30/12/2025 (Tues)	18/12/2025 (Thurs)
02/01/2026 (Fri)	05/01/2026 (Mon)	23/12/2025 (Tues)
08/01/2026 (Thurs)	09/01/2026	31/12/2025 (Wed)

If considered necessary for the purpose of maintaining orderly markets, the Exchange may request amendments or make alterations to the Dividend Procedure Timetable at any time.

LONDON STOCK EXCHANGE


London
Stock Exchange
AIM Rules for Nominated Advisers
1 January 2021

AIM Rules for Nominated Advisers

Introduction

Pursuant to the **AIM Rules for Companies**, a **nominated adviser** is responsible to the **Exchange** for assessing the appropriateness of an **applicant** for **AIM,** or an existing **AIM company** when appointed its **nominated adviser**, and for advising and guiding an **AIM company** on its responsibilities under the **AIM Rules for Companies**.

The **AIM Rules for Companies** state that a **nominated adviser** must be approved by the **Exchange** and included on the current **register** maintained by the **Exchange**. A copy of this **register** is available for public inspection on the **Exchange's** website: **www.londonstockexchange.com/aim**, although the definitive list is kept by the **Exchange**.

These **AIM Rules for Nominated Advisers** ("these rules") set out the eligibility, ongoing obligations and certain disciplinary matters in relation to **nominated advisers**.

These rules should be read in conjunction with the **AIM Rules for Companies** and the **Disciplinary Procedures and Appeals Handbook**.

The obligations and responsibilities of a **nominated adviser** under these rules and the **AIM Rules for Companies** are owed solely to the **Exchange**.

Terms in bold in these rules have the meanings set out in the **AIM Rules for Companies**, or as otherwise set out in the Glossary at the end of these rules.

Part One

Nominated adviser eligibility criteria and approval process

Criteria for being a nominated adviser

1 General

The **eligibility criteria** are the requirements that an applicant must satisfy before the **Exchange** will consider approving it as a **nominated adviser**. The **eligibility criteria** are in addition to any legal or regulatory authorisation required by an applicant in any jurisdiction in which it operates. The **Exchange** is able to exercise discretion as to the application and interpretation of the **eligibility criteria**, as it thinks fit.

An applicant will not necessarily be approved even if it satisfies the **eligibility criteria** and there is no right to be granted, or retain, the status of a **nominated adviser**. When deciding whether or not an applicant should be approved as a **nominated adviser,** the **Exchange's** overriding consideration will be the preservation of the reputation and/or integrity of **AIM** (including the regulatory obligations of the **Exchange** as a Recognised Investment Exchange under the **FSMA Recognition Requirements**). Accordingly, the **Exchange** reserves the right to decline an application or impose conditions on approval as the **Exchange** thinks fit in its discretion, notwithstanding that an applicant otherwise satisfies the **eligibility criteria**.

2 Criteria

An entity seeking approval as a **nominated adviser** must:

- be a firm or company (individuals are not eligible);
- have practised corporate finance for at least the last two years;
- have acted on at least three **Relevant Transactions** during that two-year period;
- employ at least four **Qualified Executives** and in this regard the Exchange will take in to account the overall experience of the **Qualified Executives** on an individual basis and as a team; and
- evidence to the satisfaction of the **Exchange** that the applicant:
    - is capable of being effectively supervised by the **Exchange**;
    - has appropriate financial and non-financial resources; and
    - is able to comply with rules 23 to 25.

The **Exchange** may, at its sole discretion, waive the requirement for the applicant firm to have a two-year track record and/or three **Relevant Transactions** where it determines that the applicant has highly experienced **Qualified Executives** and pursuant to rule 27(b) the **Exchange** may impose restrictions or limitations on the services a firm can provide at the time of granting a **nominated adviser's** approval or subsequently**.**

The requirement to practise corporate finance means that the entity (or in some cases a separate division of it) should have practised as its principal business the provision of corporate finance advice, such as advising on public market fundraisings. This should be distinguished from the provision of legal advice or accounting services in relation to corporate finance transactions, which would not qualify for the purposes of this rule.

3 Overriding principle of the preservation of the reputation and/or integrity of AIM

The **Exchange** will consider all of the circumstances, including whether the approval of an applicant or a **Qualified Executive** might be detrimental to the reputation and/or integrity of **AIM**.

In considering whether an applicant might be detrimental to the reputation and/or integrity of **AIM**, the **Exchange** will examine matters including:

— whether the applicant is appropriately authorised and regulated and the applicant's standing with its regulators;
— the applicant's general reputation and financial standing;
— whether the applicant or its executives are, and/or have in the past been, the subject of any investigation, disciplinary action, criminal proceedings, conviction or finding of breaches of regulatory duties (including the subject-matter and seriousness of such matters); and
— insofar as is relevant, the commercial and regulatory performance of its clients to whom it has given corporate finance advice.

Even if an applicant otherwise meets the other **eligibility criteria**, if the **Exchange** considers that an applicant, any shareholder of an applicant, or any officer of the applicant might be detrimental to the reputation and/or integrity of **AIM**, this is likely to be treated as a basis for declining the application.

4 Qualified Executives

A **Qualified Executive** is an employee of an applicant (or **nominated adviser** in relation to continuing eligibility), who can demonstrate a sound understanding of the UK corporate finance market and **AIM** in particular, and who satisfies one of the following:

— in respect of a person applying to be approved as a **Qualified Executive** has acted in a corporate finance advisory role, for at least the last three years and who has acted in a lead corporate finance role on at least three **Relevant Transactions** in that three-year period; or
— in respect of an existing **Qualified Executive** who was approved as a **Qualified Executive** within the last five years, and has been a **Qualified Executive** on a continuous basis within that period, has acted in a lead corporate finance role on at least three **Relevant Transactions** within the last five years; or
— in respect of an existing **Qualified Executive** 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 involved in an active capacity in the provision of corporate finance advisory work, and in relation to **AIM** in particular.

An individual will not be considered for approval as a **Qualified Executive** by the **Exchange** (or be eligible to be a **Qualified Executive** on a continuing basis) where that person has been subject to disciplinary action or similar by a regulator or law enforcement agency in the context of financial services, corporate finance or similar or has any unspent convictions in relation to indictable offences.

As part of the **Qualified Executive** approval process, the **Exchange** reserves the right to conduct interviews in order to assess the competence and suitability of the individual. If, as a result of any interview which it conducts, the **Exchange** considers that the individual has an inadequate understanding of corporate finance, market practice, the legal or regulatory framework for corporate finance or these rules and the **AIM Rules for Companies,** it will not approve the individual as a **Qualified Executive**. Accordingly, the **Exchange** reserves the right to decline an application for **Qualified Executive** status notwithstanding that an individual otherwise meets the requirements set out in this rule.

Qualified Executive status is a designation which is granted to a **nominated adviser** firm denoting those individuals within the firm who are authorised by the **Exchange** to lead **AIM Rules for Companies** advice for that **nominated adviser**. Accordingly, **Qualified Executive** status is not an individual status or qualification. An application by a **nominated adviser** to denote an employee with **Qualified Executive** status will be considered in the wider context of the firm's obligations under rules 23 and 24. A **nominated adviser** is responsible for the conduct of a **Qualified Executive** in the respect of its obligations and responsibilities as a **nominated adviser**.

5 Relevant Transactions

A **Relevant Transaction** is:

— a transaction requiring a **Prospectus** or equivalent in any **EEA** country; or
— a transaction involving acting for the offeror on the take-over of a public company within the **UK** or an **EEA** country which requires the publication of an offer document (or similar document where it is being effected by a scheme of arrangement);

in each above case in respect of shares quoted on a **UK** regulated market or an equivalent regulated market in the **EEA** (as defined in the **FCA Handbook** as amended from time to time); or

— in the case of a proposed or current **Qualified Executive**, or in relation to the continuing eligibility a **nominated adviser**, a transaction requiring the publication of an **admission document** where he or she has been employed by the acting **nominated adviser**.

The **Exchange** will at its discretion consider similar initial public offerings or other major corporate transactions for publicly quoted companies on major stock exchanges (including mergers and acquisitions requiring the publication of a public document) whether within the **UK** or elsewhere in the world.

The **Exchange** will generally not consider a transaction as a **Relevant Transaction** unless the applicant or employee (or **nominated adviser** in relation to continuing eligibility) acted as a lead corporate financial adviser and was (in the case of an applicant or **nominated adviser**) named prominently and unequivocally as such in the public documentation pertaining to that transaction.

Copies of this public documentation must be included with the application to become a **nominated adviser**.

Where an applicant has acted as lead financial adviser on one of the above transactions but was not, for example, the **UK** Official List sponsor or **nominated adviser**, the Exchange will take into account whether the activities conducted by the applicant in relation to such transaction(s) are similar to those set out in Schedule Three to these rules.

Both a proposed **Qualified Executive** and an existing **Qualified Executive** may cite the same **Relevant Transaction** if they have each been involved to an appropriate extent.

6 Fees

At the same time that any application form is submitted, the applicant must submit the requisite fee to the **Exchange** in order for its application to be processed.

This fee is non-refundable whether or not the applicant is subsequently approved as a **nominated adviser** except in the circumstances in which an application is withdrawn prior to gazetting (see rule 9 below) where half the application fee will be refunded.

The application fee is in addition to the annual fee which is payable upon approval as a **nominated adviser**, and subsequently, at the rates set out in and in accordance with the 'AIM Fees for Companies and Nominated Advisers' as published by the **Exchange** from time to time.

In order to remain eligible, a **nominated adviser** must pay the annual fees as soon as such payment becomes due.

Process for becoming a nominated adviser

7 Application forms and documentation

An applicant seeking approval as a **nominated adviser** must complete and submit to the **Exchange** the following (all of which are available at www.londonstockexchange.com/aim):

— Form NA1;
— Form NA2 in respect of each proposed **Qualified Executive** (a minimum of 4 will therefore be required);
— all supporting documentation requested within the above Forms (and in particular at the beginning of Form NA1); and
— a cheque made payable to London Stock Exchange plc in respect of the application fee payable (the current fee is set out in the publication entitled 'AIM Fees for Companies and Nominated Advisers' as published by the **Exchange** from time to time).

The **Exchange** reserves the right to request any other information, documentation or confirmations from the applicant or other **persons** as it might require in order to consider or progress an application.

Upon receipt of the above information the **Exchange** will indicate to the applicant the likely time period required to process and consider the application.

8 Interview

The **Exchange** may conduct interviews of some or all of the proposed **Qualified Executives** put forward by an applicant to ensure that they have sufficient understanding of corporate finance, market practice and the legal or regulatory framework for corporate finance (including these rules and the **AIM Rules for Companies**). Such interviews will be conducted either at the **Exchange** or at the applicant's premises. Costs incurred by the **Exchange** (for example accommodation and travel) in visiting the applicant's premises will be reimbursed by the applicant.

9 Gazetting

At least fourteen days before the **Exchange** determines whether to approve an applicant, it will **notify** the applicant's name and its proposed **Qualified Executives** together with any other information the **Exchange** thinks necessary in order to give public notice of the application and to invite comment from market participants.

In addition, where an applicant operates mainly outside the United Kingdom, at least fourteen days before it makes its decision, the **Exchange** may issue a newspaper advertisement in a leading domestic financial newspaper(s) in the jurisdiction in which the applicant is registered or in which it operates stating the same information and inviting any objections.

The **Exchange** will take into account any comments which it receives as a result of the above gazetting process when considering whether to approve the application.

Where an application does not proceed to the gazetting stage, the **Exchange** will refund half of the application fee.

10 Appeals

An applicant will be informed privately, in writing (including by email), of the decision of the **Exchange** concerning whether to approve the applicant or not as a **nominated adviser**.

If an applicant is approved, the **Exchange** will include with its written decision a list of the **nominated adviser's** employees which it has accepted as **Qualified Executives**.

Any such decision of the **Exchange** may be appealed by an applicant (but not an individual) as a non-disciplinary appeal in accordance with the **Disciplinary Procedures and Appeals Handbook**.

Continuing eligibility for nominated advisers and notification requirements

11 Continuing eligibility

A **nominated adviser** and each **Qualified Executive** of a **nominated adviser**, once approved, must satisfy the **eligibility criteria** on a continuing basis at all times as if it/he/she were a new applicant.

A **nominated adviser** must regularly consider whether it and its **Qualified Executives** continue to meet the **eligibility criteria.** If at any time a **nominated adviser** believes it or a **Qualified Executive(s)** might not satisfy these requirements, it must inform **AIM Regulation** forthwith.

The **Exchange** may at any time request any information from a **nominated adviser** and/or a **Qualified Executive** it requires, including submission of all or any of the forms and documentation set out at rule 7, in order for it to consider and determine whether a **nominated adviser** is still eligible.

The **Exchange** may at any time conduct interviews and/or tests of the **nominated adviser** and its **Qualified Executives** in order to ensure that it has maintained an understanding of corporate finance and these rules and the **AIM Rules for Companies**. The provisions of rule 8 in relation to interviews will apply as appropriate.

If the **Exchange** finds that a **nominated adviser** has fallen below the **eligibility criteria** or a **Qualified Executive** no longer fulfils the requirements of rule 4, the **Exchange** may remove **nominated adviser** or **Qualified Executive** status or impose conditions on the **nominated adviser's** ability to act as a **nominated adviser** (including those set out in rule 27 and/or the imposition of a moratorium pursuant to rule 31). Any such decision of the **Exchange** may be appealed by such **nominated adviser** (but not an individual) as a non-disciplinary appeal in accordance with the **Disciplinary Procedures and Appeals Handbook**.

12 Changes at a nominated adviser

A **nominated adviser** must inform **AIM Regulation** as soon as possible (by telephone and by email) of any matters that may affect its operation, role or performance as a **nominated adviser**. Such notifications include (but are not limited to):

— any proposed changes to its name, its address or places of business;
— the commencement of an investigation by any other regulatory body or law enforcement authority in any jurisdiction which relates to the conduct of the **nominated adviser**;
— the commencement of any disciplinary action or criminal proceedings which relate to the conduct of the **nominated adviser** and/or any of its employees relevant to the work undertaken by the **nominated adviser**;
— the receipt of any conviction or finding of breach of duties to which the **nominated adviser** and any of its employees was subject, or any formal warning or disciplinary communication from any other regulatory body or law enforcement authority;
— any material adverse change in its financial or operating position that may affect its ability to act as a **nominated adviser**;
— as soon as any decision is made to consult, engage or appoint an administrator(s) or similar practitioners;
— any potential changes to the structuring or organisation of the directors, partners or employees which impacts the **nominated adviser** services provided by the firm. Such changes include (without limitation) the notice of resignation of a **Qualified Executive**, Head of Corporate Finance or relevant compliance officer; or
— any proposed change of control of the **nominated adviser** which is reasonably likely.

Should the **Exchange** deem a change of control to have occurred**,** a new application for **nominated adviser** status will be required, including the payment of the associated application fee. For the avoidance of doubt, the Exchange will consider the new controller when determining eligibility of the **nominated adviser**, in particular the ability of the new controller to satisfy the **eligibility criteria** in its own right.

13 Departing or new Qualified Executives

If a **Qualified Executive** leaves the employ or ceases to work in the corporate finance team of a **nominated adviser** for whom he/she was a **Qualified Executive**, the **nominated adviser** must inform the **Exchange** by submission of a Form NA3.

On leaving the employ or ceasing to work in the corporate finance team of a **nominated adviser**, a person who was a **Qualified Executive** will no longer be a **Qualified Executive** under these rules. However, if he/she joins another **nominated adviser**, that firm can submit a Form NA2 to apply for approval of that person as a **Qualified Executive** of that **nominated adviser**. The **Exchange** may, at its discretion, waive the requirement to submit a Form NA2 on submission by a person who was (until very recently) previously approved as a **Qualified Executive**.

A **nominated adviser** can submit at any time a Form NA2 in respect of any employee who it proposes be approved as a **Qualified Executive**.

Part Two

Continuing Obligations of a Nominated Adviser

General Obligations

14 Appropriateness of an AIM company

The **nominated adviser** to an **AIM company** is responsible to the **Exchange** for assessing the appropriateness of an applicant for **AIM**, or an existing **AIM company** when appointed as its **nominated adviser**.

Where a **nominated adviser** believes that an **AIM company** for which it acts as **nominated adviser** is no longer appropriate for **AIM** it must contact **AIM Regulation**.

15 Compliance with the rules

A **nominated adviser** shall be bound by and observe:

— these rules and the **AIM Rules for Companies**, including any guidance notes issued by the **Exchange**;
— any rules and procedures set out in any supplementary documentation issued by the **Exchange** under these rules;
— the provisions of any notices issued by the **Exchange**; and
— any requirement, decision or direction of the **Exchange**.

Each **nominated adviser** should nominate a person within its firm to act as the **Exchange's** principal contact on compliance matters. That person should be a senior person within the firm's compliance function or its corporate finance team.

16 Due skill and care

A **nominated adviser** must act with due skill and care at all times.

Nominated adviser responsibilities

17 Advising and guiding an AIM company

The **nominated adviser** is responsible to the **Exchange** for advising and guiding an **AIM company** on its responsibilities under the **AIM Rules for Companies** both in respect of its **admission** and its continuing obligations on an ongoing basis. A **nominated adviser** must be available to advise and guide **AIM companies** for which it acts at all times.

A **nominated adviser** should allocate at least two appropriately qualified staff to be responsible for each **AIM company** for which the **nominated adviser** acts in that capacity, including at least one **Qualified Executive**, in order to ensure an appropriate corporate finance contact with knowledge of the **AIM company** is available at all times.

18 Nominated adviser responsibilities

In deciding whether a **nominated adviser** has complied with these rules and the undertakings it has provided to the **Exchange** in its **nominated adviser's declaration**, the **Exchange** will have

regard to the matters set out in Schedule Three, which should be exercised with due skill and care and after due and careful enquiry.

Information obligations

19 Liaison with the Exchange

A **nominated adviser** must provide the **Exchange** with any information, in such form and within such time limits as the **Exchange** may reasonably require. A **nominated adviser** should reasonably satisfy itself that all such information provided by it is correct, complete and not misleading and, if it comes to the subsequent attention of the **nominated adviser** that the information provided does not meet this requirement, the **nominated adviser** should advise the **Exchange** as soon as practicable.

A **nominated adviser** must liaise (and be available to liaise) with the **Exchange** when requested to do so by the **Exchange** or an **AIM company** for which it acts and should be contactable at all times, in particular during the **Exchange's** market hours.

A **nominated adviser** must, at the earliest opportunity, seek the advice of the **Exchange** (via **AIM Regulation**) in any situation where it is unsure as to the application or interpretation of these rules or the **AIM Rules for Companies** or it has a concern about the reputation and/or integrity of **AIM**. It should be noted that on detailed or specific regulatory matters the **Exchange** will not liaise with **nominated advisers** (or **AIM companies** or other advisers) on a 'no-names' basis.

A **nominated adviser** should advise the **Exchange** as soon as practicable if it believes that it or an **AIM company** has breached the **AIM Rules for Companies** or these rules.

All communications between the **Exchange** and a **nominated adviser** are confidential to the **Exchange** and should not be disclosed, except as required by any other regulatory or statutory body. Such communications can be disclosed to appropriate advisers to the **nominated adviser** or to the relevant **AIM company**, unless the **Exchange** states otherwise.

20 Becoming or ceasing to be nominated adviser to an AIM company

A **nominated adviser** must submit to the **Exchange** a completed **nominated adviser's declaration** in relation to any **applicant** seeking **admission** (in accordance with the **AIM Rules for Companies**) or where that **nominated adviser** becomes **nominated adviser** to an existing **AIM company**.

Where a **nominated adviser** ceases to act for an **AIM company**, it must inform **AIM Regulation** as soon as possible (by email) and must include with that notification the reason why it has ceased to act.

Independence and conflicts

21 Independence on a continuing basis

A **nominated adviser** must be able to demonstrate to the **Exchange** that both it and its executives are independent from the **AIM companies** for which it acts such that there is no reasonable basis for impugning the **nominated adviser's** independence.

Where the **Exchange** requires a **nominated adviser** to demonstrate clearly that neither its independence nor that of any of its executives has or will be compromised by any potential conflict of interest, the burden of proof will be upon the **nominated adviser**.

In cases of doubt about its independence a **nominated adviser** should consult the **Exchange** in advance of entering into any arrangements.

Schedule One sets out further rules in relation to the independence of a **nominated adviser**.

22 Conflicts of interest

A **nominated adviser** must not have, and must take care to avoid, the semblance of a conflict between the interests of the **AIM companies** for which it acts and those of any other party.

In particular, a **nominated adviser** must not act for any other party to a transaction or take-over other than its **AIM company** client.

Procedures, staff and records

23 Proper procedures

A **nominated adviser** must ensure that it maintains procedures, systems and controls which are sufficient for it to discharge its ongoing obligations under these rules. The **nominated adviser** should ensure that its compliance and procedures manual (or similar) reflects and takes account of the requirements of these rules, as appropriate.

In particular, it must ensure that any members of staff who are not approved as **Qualified Executives** are properly supervised by a **Qualified Executive** at all appropriate times in relation to matters relating to **AIM companies**.

24 Adequacy of Staff

A **nominated adviser** must ensure that it has sufficient **Qualified Executives** (and other corporate finance staff) to discharge its obligations as a **nominated adviser** under these rules at all times. In assessing whether a **nominated adviser** has sufficient staff under these rules, the **Exchange** will have regard to the number and type of **AIM companies** for which the firm acts, and the experience in relevant corporate finance matters of the corporate finance team as a whole.

25 Maintenance of appropriate records

A **nominated adviser** must retain sufficient records to maintain an audit trail of the key discussions it holds with, advice which it has given to, and the key decisions it has made in respect of, the **AIM companies** for which it acts as **nominated adviser**. A **nominated adviser** should ensure that it is able (including by keeping appropriate records) to demonstrate the basis for advice given and key decisions taken, such as internal considerations and any actions taken prior to the advice being given. Such records must be retained whilst a firm is **nominated adviser** to a company and for at least three years after it ceases to be **nominated adviser**.

When performing a review of a **nominated adviser**, the **Exchange** will look for clear evidence that at least those matters set out in Schedule Three have been considered and that appropriate actions have been taken in order to ensure compliance with these rules and the **AIM Rules for Companies**.

Part Three

Review and Discipline of a Nominated Adviser

26 Review of nominated advisers

A **nominated adviser** may be subject to a formal review by the **Exchange** to ensure that it has fully discharged its responsibilities under these rules and the **AIM Rules for Companies**. A **nominated adviser** must ensure that its **Qualified Executives** co-operate fully with the **Exchange** and that the **Qualified Executive** who was responsible for a transaction is available to answer any questions by the **Exchange** about any relevant matter.

A **nominated adviser** must allow **Exchange** officers access to its records (hard and electronic copies) and business premises when so requested by the **Exchange**.

27 Other supervisory powers

The **Exchange** may take any of the following actions in respect of a **nominated adviser's** performance:

a) require remedial action to be undertaken within the **nominated adviser**, including directing (pursuant to rule 15) that the **nominated adviser** take specific steps, such as the employment of additional staff.

b) impose restrictions or limitations on the services a **nominated adviser** can provide taking into account:
   (i) the **nominated adviser's** experience and expertise of providing certain types of **nominated adviser** responsibilities to certain types of companies; and/or
   (ii) the **nominated adviser's** procedures, systems and controls in place taking into account the nature of the services it is undertaking or proposing to undertake.

c) should the **Exchange** become concerned about the conduct, competency and/or suitability of a **Qualified Executive** it may review the ongoing eligibility of such **Qualified Executive**, including as part of a review of a **nominated adviser** under rule 26 and may require certain actions or restrictions in relation to that **Qualified Executive** and/or suspend a **Qualified Executive's** approval, for such a time that it considers appropriate.

In relation to (b) above the **Exchange** may make public these actions by way of an AIM notice published by **RNS** and/or mark the **register** accordingly.

The **Exchange** may take an action(s) under rules 28, 29 and/or 31 regardless of whether or not it has previously undertaken any steps under rules 26 or 27.

28 Removal of Qualified Executives

The **Exchange** may remove the **Qualified Executive** status of an employee of a **nominated adviser** where that employee is subject to bankruptcy, disciplinary action by another regulator, mentally incapacitated or has been shown by a formal review by the **Exchange** of the **nominated adviser** or otherwise to have failed to act with due skill and care or in accordance with these rules or the AIM Rules for Companies in relation to his/her employer's role as a **nominated adviser**.

29 Sanctions against a nominated adviser

If the **Exchange** considers that a **nominated adviser** is either in breach of its responsibilities under these rules or the **AIM Rules for Companies** or that the reputation and/or integrity of **AIM** has been or may be impaired as a result of its conduct or judgment, the **Exchange** may in relation to such **nominated adviser** take one or more of the following actions:

— issue a **warning notice**;
— levy a fine;
— issue a censure; or
— remove the **nominated adviser** from the **register**; and
— publish the action the **Exchange** has taken and the reasons for that action.

The **Exchange** will take any proposed disciplinary action against a **nominated adviser** in accordance with the **Disciplinary Procedures and Appeals Handbook**.

30 Jurisdiction

When a **nominated adviser** is removed from the **register**, the **Exchange** retains jurisdiction over the **nominated adviser** for the purposes of conducting an investigation or taking disciplinary action in relation to breaches or suspected breaches of these rules whilst it was approved as a **nominated adviser**.

31 Moratorium on acting for further AIM companies

The **Exchange** may prevent a **nominated adviser** from acting as a **nominated adviser** to any additional **AIM companies** where, in the opinion of the **Exchange,** a **nominated adviser**:

- no longer meets the **eligibility criteria** or it is not meeting its responsibilities under these rules;
- the **Exchange** has reasonable concerns that a **nominated adviser's** procedures, systems and controls are not appropriate to support the **nominated adviser** services;
- it has insufficient staffing levels pursuant to rule 24 of these rules;
- there is an unplanned, temporary or permanent loss of appropriately experienced member(s) of staff;
- it is the subject of disciplinary action by the **Exchange**;
- if there is a reasonable likelihood of a change of control or there has been a change in its financial position or operating position that may affect its ability to act as a **nominated adviser.**

A moratorium on acting for additional **AIM companies** will remain until that situation is resolved to the **Exchange's** satisfaction.

The **Exchange** may make the imposition of any moratorium public by way of an AIM notice published by **RNS** and/or marking the **register** accordingly.

32 Appeals by nominated advisers

Where the **Exchange** takes any steps against a **nominated adviser** or a **Qualified Executive** pursuant to these rules, any decision of the **Exchange** in relation to these rules or the **AIM Rules**

for Companies in respect of a **nominated adviser** may be appealed by that **nominated adviser** in accordance with the procedures set out in the **Disciplinary Procedures and Appeals Handbook**.

33 Publication of the removal of nominated adviser status

Where the **Exchange** removes **nominated adviser** status (for example, due to action pursuant to rule 29 of these rules or it failing to continue to meet the **eligibility criteria** set out in Part One of these rules) or where a **nominated adviser** requests to have that status removed, the **Exchange** will notify such removal by way of an AIM notice published on **RNS** and/or mark the **register** accordingly.

Glossary

The following terms have the following meanings when used in these rules unless the context otherwise requires.

Term	Meaning
AIM Regulation	The AIM Regulation team at the **Exchange** contactable at aimregulation@lseg.com and 020 7797 4154.
eligibility criteria	The criteria set out in rules 1 to 6 inclusive of these rules.
FSMA Recognition Requirements	Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 and the **FCA** Handbook implementing these regulations.
nominated adviser's declaration	The declaration to be given by the **nominated adviser** to an **AIM company** as required in the **AIM Rules for Companies** which should be in the form set out in Schedule Two of these rules.
Qualified Executive	As defined in rule 4 of these rules.
Relevant Transaction	As defined in rule 5 of these rules.

Schedules

Schedule One - Independence in relation to rule 21

For the avoidance of doubt:

- A **nominated adviser** may not act as both reporting accountant and/or auditor on the one hand and **nominated adviser** to an **AIM company** on the other unless it has satisfied the **Exchange** that appropriate safeguards are in place;

- No partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may hold the position of a director of an **AIM company** for which the firm acts as **nominated adviser**;

- No **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee either individually or collectively may be a **substantial shareholder** (i.e. 10% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an **AIM company** for which the firm acts as **nominated adviser**;

- A **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may be a **significant shareholder** (i.e. 3% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an **AIM company** for which the firm acts as **nominated adviser** provided adequate safeguards are in place to prevent any conflict of interest;

- No **nominated adviser** or partner, director, employee of a **nominated adviser** or associate of any such partner, director or employee may deal in the securities of an **AIM company** or any related financial product for which the firm acts as **nominated adviser** during any **MAR** closed period of that company;

- When calculating an interest in a client company a nominated adviser is permitted to disregard any interest in shares pursuant to rules 5.1.3 to 5.1.5 inclusive of the **DTR**; and

- If a **nominated adviser** breaches any of the above limits as a result of its underwriting activities it must make best endeavours to sell down its holding to within the guidelines as soon as reasonably practicable.

Note: As guidance, bullet points 3 - 5 inclusive above will only apply to the corporate finance function of a **nominated adviser** firm and not to other areas adequately separated by ethical walls or similar safeguards. In such situations the burden of proof required of the **nominated adviser** under rule 21 remains.

Schedule Two – Nominated adviser's declaration

This **nominated adviser** confirms that:

SECTION A:

to the best of its knowledge and belief having made due and careful enquiry and considered all relevant matters under the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** in relation to this application for **admission**, all applicable requirements of the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** have been complied with and, in particular, (i) the **admission document** complies with Schedule Two of the current **AIM Rules for Companies**, or (ii) (in the case of a **quoted applicant** only) the requirements of Schedule One and its supplement have been complied with; and

SECTION B:

(a) it is satisfied that the **applicant** and its securities are appropriate to be admitted to **AIM**, having made due and careful enquiry and considered all relevant matters set out in the **AIM Rules for Companies** and the **AIM Rules for Nominated Advisers** and;

(b) the directors of the **applicant** have received advice and guidance (from this **nominated adviser** and other appropriate professional advisers) as to the **applicant's** responsibilities and obligations under the **AIM Rules for Companies** in order to facilitate due compliance by the **applicant** on an ongoing basis; and

(c) it will comply with the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers** as applicable to it in its role as **nominated adviser** to this **applicant**.

NOTE:

Sections A and B must be completed where securities are being admitted to **AIM** pursuant to an **admission**.

Only Section B must be completed where this form is being completed pursuant to a change of **nominated adviser** and Section A will not be applicable. In such cases, the term **applicant** should be deemed to read **AIM company**.

Terms used in this **nominated adviser's declaration** are as defined in the **AIM Rules for Companies.**

Schedule Three – Nominated adviser responsibilities

The responsibilities set out in this Schedule Three consist of numbered principles in bold followed by a list of actions. The numbered principles must be satisfied in all cases. The actions which follow each principle represent a non-exhaustive list of tasks that the Exchange would usually expect a nominated adviser to fulfil in satisfying that principle.

Other actions can therefore be substituted in order to satisfy each overriding principle or the nominated adviser may decide that a particular action set out below is not appropriate. The reasons for this should be noted as part of the record keeping duties under rule 25 in order to evidence to the Exchange that a nominated adviser has acted with due skill and care.

Admission Responsibilities

These apply to a **nominated adviser** that is acting for an **applicant** (including in relation to a reverse takeover coming within rule 14 of the **AIM Rules for Companies** and also including, as applicable, a **quoted applicant**) in respect of its **admission** to **AIM**.

THE APPLICANT AND ITS SECURITIES

AR1 - In assessing the appropriateness of an applicant and its securities for AIM, a nominated adviser should achieve a sound understanding of the applicant and its business

In meeting this, the **nominated adviser** should usually:

- ensure it has, or has access to, appropriate knowledge of the **applicant's** area of business (taking into account its country of incorporation and operation), using in-house specialists or external experts where necessary to achieve this
- consider the **applicant's** sector, proposition, business plan or similar, historical financial information and other corporate information, including the due diligence performed further to AR3
- consider any issues relating to the **applicant's** country of incorporation and operation and any other issues that might affect its appropriateness
- undertake a visit to the **applicant's** material site(s) of operation and meet the **directors** and key managers. The necessity of meeting any other relevant material stakeholders (e.g. key **shareholders**) should also be considered
- consider appointing its own legal advisers who are independent from the **applicant** to assist in the **nominated adviser's** understanding of the **applicant** and to provide advice to the **nominated adviser** that is independent of the **applicant**

DIRECTORS AND BOARD

AR2 – In assessing the appropriateness of an applicant and its securities for AIM, a nominated adviser should (i) investigate and consider the suitability of each director and proposed director of the applicant; and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company will be admitted to trading on a UK public market

In meeting this, the **nominated adviser** should usually:

- issue and review **directors'** questionnaires and review **directors'** CVs
- test the information revealed by the above questionnaires and CVs, for example by conducting press searches, Companies House checks, taking-up references and, where appropriate, obtaining third party checks. For **directors** who are not **UK**-based, appropriate investigations should be undertaken
- extend these investigations and considerations as appropriate to key managers and consultants who are discussed in the **admission document**

- consider undertaking such investigations in relation to **substantial shareholders** at **admission** as appropriate, especially where there is uncertainty as to their identity or where they are not established institutions, in particular to enquire about the existence of **persons** exerting control over the **applicant**
- analyse any issues arising from these investigations, in particular as to how they could affect the **applicant's** appropriateness to be admitted to **AIM** and be publicly traded
- consider each **director's** suitability and experience in relation to their (proposed) company role and consider whether each (proposed) **director** is suitable to be a **director** of a **UK** public company
- consider the board of **directors** as a whole in relation to the **applicant's** needs, for example given its type, size, expected profile and the fact that the **applicant** will be admitted to a **UK**-based, English-language public market
- consider, with the **directors** of an **applicant**, the adoption of appropriate corporate governance measures

DUE DILIGENCE

AR3 – The nominated adviser should oversee the due diligence process, satisfying itself that it is appropriate to the applicant and transaction and that any material issues arising from it are dealt with or otherwise do not affect the appropriateness of the applicant for AIM

In meeting this, the **nominated adviser** should usually:

- be satisfied that appropriate financial and legal due diligence is undertaken by an appropriate professional firm(s)
- be satisfied that appropriate working capital and financial reporting systems and controls reviews are undertaken (usually including reports or letters from accountants to the **applicant**)
- consider whether commercial, specialist (e.g. intellectual property) and/or technical due diligence is required and be satisfied that it is undertaken where required
- agree the scope of all such due diligence and reports (including, in relation to the working capital report, assumptions and sensitivities)
- review and assess the above due diligence, reports and adviser comfort letters, considering any material issues, recommended actions or adverse analysis raised and be satisfied that appropriate actions have been undertaken to resolve such matters or otherwise be satisfied that such matters do not affect the appropriateness of the **applicant** for **AIM**

ADMISSION DOCUMENT

AR4 – The nominated adviser should oversee and be actively involved in the preparation of the admission document, satisfying itself (in order to be able to give the nominated adviser's declaration) that it has been prepared in compliance with the AIM Rules for Companies with due verification having been undertaken

In meeting this, the **nominated adviser** should usually:

- oversee and be actively involved in the drafting of the sections of the **admission document** that relate to the business of the **applicant** (usually the Key Information and Part 1 sections) and the risk factors, being satisfied that they take into account matters raised by due diligence
- be satisfied that the financial and additional information sections have been appropriately prepared
- consider whether any specialist third party reports are required (e.g. for companies in particular sectors such as property or biotechnology)
- be satisfied that appropriate verification of the **admission document** and any related **notifications** has taken place
- be satisfied (in the terms of the **nominated adviser's declaration**) that the **admission document** (or any appendix prepared by a **quoted applicant** in relation to paragraph (k) of the supplement to Schedule One of the **AIM Rules for Companies**) complies with the **AIM Rules**

for Companies, liaising with **AIM Regulation** to the extent that rule derogations or interpretations may be required

Quoted applicants: Quoted applicants are not required to produce an **admission document** and therefore some of the provisions of AR4 will not be applicable. However, paragraph (k) of the supplement to Schedule One of the **AIM Rules for Companies** will necessitate a full consideration of the requirements of Schedule Two of the **AIM Rules for Companies**. In addition, the statements required to be given pursuant to the Supplement to Schedule One of the **AIM Rules for Companies** should be given after due and careful enquiry.

AIM RULE COMPLIANCE

AR5 – The nominated adviser should satisfy itself that the applicant has in place sufficient systems, procedures and controls in order to comply with the AIM Rules for Companies and should satisfy itself that the applicant understands its obligations under the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- be satisfied that procedures within the company have been established to facilitate compliance with the **AIM Rules for Companies**, e.g. release of unpublished price sensitive information, Rule 17 **notifications**, rule 21 dealing policy.
- be satisfied that the **directors** have been advised of their and the company's continuing responsibilities and obligations under the **AIM Rules for Companies** and that the **directors** are aware of when they should be consulting with or seeking the advice of the **nominated adviser**. The **nominated adviser** should be involved in the provision of this advice to the **directors** so that they are aware of the practical consequences of the requirements of the **AIM Rules for Companies**.

Ongoing Responsibilities

These apply on a continuing basis in respect of any **nominated adviser** who acts for an **AIM company.**

REGULAR CONTACT BETWEEN COMPANY AND NOMINATED ADVISER

OR1 – The nominated adviser should maintain regular contact with an AIM company for which it acts, in particular so that it can assess whether (i) the nominated adviser is being kept up-to-date with developments at the AIM company and (ii) the AIM company continues to understand its obligations under the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- maintain regular contact with the **AIM company**, in particular to be satisfied that the **nominated adviser** is kept up-to-date in order that it can advise the company on its obligations under the **AIM Rules for Companies** (especially the requirements of Rule 11 and to identify breaches of the **AIM Rules for Companies** (e.g. in relation to Rule 17 disclosures))
- assess whether the **AIM company** continues to understand its obligations under the **AIM Rules for Companies**, for example by having discussions with the **directors** where appropriate and be satisfied that any procedures required pursuant to AR5 continue to be effective

REVIEW OF NOTIFICATIONS

OR2 – The nominated adviser should undertake a prior review of relevant notifications made by an AIM company with a view to ensuring compliance with the AIM Rules for Companies

In meeting this, the **nominated adviser** should usually:

- review in advance (although without prejudice to the requirement of Rule 10 to release information without delay) all **notifications** to be made by an **AIM company** for which it acts to

ensure as far as reasonably possible that they comply with the **AIM Rules for Companies**. Where the **nominated adviser** reasonably believes a company's **directors** have appropriate knowledge and experience of the **AIM Rules for Companies**, review of routine announcements (e.g. pursuant to rule 17) may not be necessary

- include the **nominated adviser's** name and a contact name on all such announcements that a **nominated adviser** reviews, other than routine announcements

MONITOR TRADING

OR3 – The nominated adviser should monitor (or have in place procedures with third parties for monitoring) the trading activity in securities of an AIM company for which it acts, especially when there is unpublished price sensitive information in relation to the AIM company

In meeting this, the **nominated adviser** should usually:

- use suitable alerts or other triggers to alert the **nominated adviser** to substantial price or trading movements. This can be satisfied via the **broker**
- contact an **AIM company** where appropriate if there is a substantial movement to ascertain whether an announcement or other action is required, liaising with the **Exchange** where appropriate
- consider the necessity for arranging relevant press monitoring, particularly when there is material unpublished price sensitive information in existence

ADVISE THE AIM COMPANY ON ANY CHANGES TO THE BOARD OF DIRECTORS

OR4 – The nominated adviser should advise the AIM company on any changes to the board of directors the AIM company proposes to make, including (i) investigating and considering the suitability of proposed new directors and (ii) considering the effect any changes have on the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to trading on a UK public market

In satisfying this, the **Exchange** would expect the **nominated adviser** to usually:

- be satisfied that the **AIM company** knows to liaise with the **nominated adviser** at the earliest opportunity about proposed changes to the board, in order to allow the **nominated adviser** appropriate time to comply with OR4
- in relation to new **directors**, consider the requirements of AR2 (and where relevant the guidance to admission responsibilities) and take the appropriate actions including issuing and reviewing **director's** questionnaires, reviewing the **director's** CV and testing such information
- consider whether such proposed **directors** are suitable to be a **director** of a **UK** public company and consider the effect of the appointment on the efficacy of the board as a whole for the company's needs
- in relation to the removal of **directors**, consider how this affects the efficacy of the board as a whole for the company's needs, make any recommendations it thinks fit to the **AIM company** and considering whether this in turn affects the **AIM company's** appropriateness for **AIM**

Engagement Responsibilities

These apply when a **nominated adviser** is being engaged as a **nominated adviser** to an existing **AIM company**.

In satisfying these responsibilities, a **nominated adviser** should in addition refer to AR1 (in relation to ER1 below), AR2 (in relation to ER2) and AR5 (in relation to ER3) and where relevant the guidance to admission responsibilities and consider what actions may be appropriate. The actions to be taken will depend on, for example, the circumstances surrounding the change of **nominated adviser** or the changes that have taken place in the company since **admission**. For example, it is unlikely that the

due diligence reports usually obtained in preparation for **admission** as mentioned in part of AR1 would be required on engagement pursuant to ER1 or ER3 below.

THE AIM COMPANY AND ITS SECURITIES

ER1 - In assessing the appropriateness of an AIM company and its securities for AIM when taking on an existing AIM company, a nominated adviser should achieve a sound understanding of the AIM company and its business

In satisfying this, the **nominated adviser** should usually:

- gain a knowledge of any major developments relating to the company since **admission** and consider their effect on the appropriateness of the **AIM company**
- consider contacting the outgoing **nominated adviser** to discuss their experiences with the **AIM company**. An outgoing **nominated adviser** should be constructive and open (to the extent possible) with a new **nominated adviser** who contacts them for such discussion.

DIRECTORS AND BOARD

ER2 – In assessing the appropriateness of an existing AIM company and its securities for AIM, a nominated adviser should (i) investigate and consider the suitability of each director and proposed director of the AIM company and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to a trading on a UK public market

AIM RULE COMPLIANCE

ER3 – The nominated adviser should satisfy itself that the AIM company has in place sufficient systems, procedures and controls in order to comply with the AIM Rules for Companies and should satisfy itself that the AIM company and its directors understand their obligations under the AIM Rules for Companies

General

In this Schedule Three:

- Where a **nominated adviser** is expected to consider or satisfy itself of a particular matter, this is expected to be after due and careful enquiry and exercising due skill and care. The **nominated adviser** should keep an appropriate record to evidence this.
- A **nominated adviser** should seek advice and assistance from other professional advisers where appropriate in fulfilling these responsibilities but should retain overall management and responsibility (i) for any **admission** process in relation to **AIM companies** for which it acts and (ii) in relation to advising **AIM companies** on their ongoing compliance with the **AIM Rules for Companies**.

Guidance to Admission Responsibilities

Before a Schedule One form is submitted in respect of a new **applicant**, a **nominated adviser** is required to submit an early notification form under rule 2 of the **AIM Rules for Companies**. Irrespective of the requirement for early notification, it is important for a **nominated adviser** to have early discussions with the **Exchange** where the circumstances of the **applicant** and its **AIM securities** could affect its appropriateness for **AIM**. The **Exchange** will generally consider the following non-exhaustive examples as matters that could affect appropriateness:

- questions as to the good character, skills, experience or previous history of a **director**, key manager, senior executive, consultant or major shareholder
- the rationale for seeking **admission** to **AIM** is not clear

- formal criticism of the **applicant** and/or any of its **directors** by other regulators, governments, courts, law enforcement or exchange bodies
- the **applicant** has been denied admission to trading on another trading platform or exchange
- the **applicant** has a vague or ill-defined business model or its business operations
- corporate structure and business models which may give rise to concerns regarding appropriateness for a public market, for example where there are issues regarding the legality of the **applicant's** business operations in the **UK** and any jurisdiction where they are materially carried on; or the **applicant** has not yet secured the key licences, government approvals, intellectual property rights or other property rights it will need to operate its business
- the **applicant** holds a derivative or economic interest in a material part of its assets or business operations via a risky contractual arrangement (for example contractual arrangements that are potentially unenforceable or may not be enforced or may be difficult to enforce in practice) with the owner of the assets or operations rather than by owning them itself or through a subsidiary

These factors can be of such importance that each in their own right may mean that an **applicant** is not appropriate for **AIM**. Further, there may be circumstances where an individual factor which may not on its own prevent an **admission** but when presented in combination with other factors may make an **applicant** not appropriate for **admission**.

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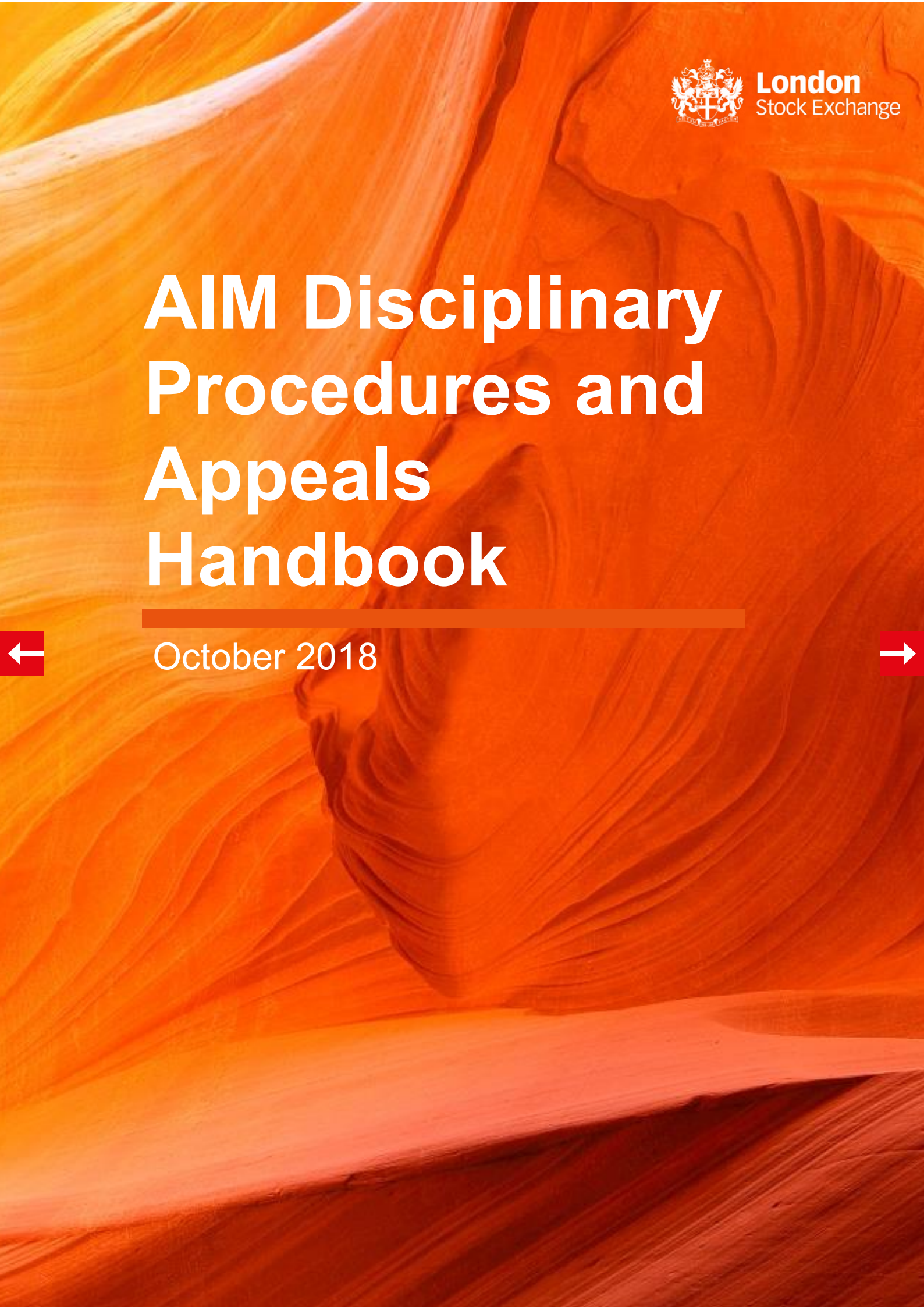
London
Stock Exchange
AIM Disciplinary Procedures and Appeals Handbook
October 2018

Contents

Introduction

A1. This **Handbook**, which forms part of the **AIM Rules** and governs all proceedings and appeals commenced after 1 October 2018, sets out the procedures to be followed when: (i) the **Exchange** wishes to commence **disciplinary proceedings** against an **AIM company** or **nominated adviser** for a breach of the **AIM Rules**; (ii) an **AIM company**, a **nominated adviser**, or any entity applying to become an **AIM company** or **nominated adviser** wishes to lodge an appeal against either a **non disciplinary decision** of the **Exchange** or a **warning notice**.

A2. Defined terms used in this **Handbook** shall have the meanings set out in the Glossary to the **AIM Rules** and in the Glossary to this **Handbook**.

A3. For the purposes of this **Handbook**, the terms:

A3.1 "**AIM Rules**" shall mean the "AIM Rules for Companies" and the "AIM Rules for Nominated Advisers", as applicable;

A3.2 "**AIM company**" shall include a company that ceases to have a class of securities admitted to trading on **AIM**, over which the **Exchange** retains jurisdiction for the purposes of investigating and taking disciplinary action pursuant to the **AIM Rules**; and

A3.3 "**nominated adviser**" shall include a nominated adviser which has been removed from the **register**, over which the **Exchange** retains jurisdiction for the purposes of investigating and taking disciplinary action pursuant to the **AIM Rules**.

Our approach

A4. The **Exchange's** approach to regulation is aimed at maintaining the integrity, orderliness, transparency and good reputation of its markets and changing behaviour in those markets where necessary. Accordingly, where appropriate, the **Exchange** will bring to account breaches of the **AIM Rules** through disciplinary action, but it may also undertake other work to improve standards and to promote future compliance.

A5. Following enquiries the **Exchange** may seek to address any identified concerns through one or more of the following: (i) instructing the **AIM company** or **nominated adviser** to take remedial action; (ii) providing education to mitigate the risk of future non compliance; and/or (iii) recording an incidence of non compliance on the **AIM company's** or **nominated adviser's** formal compliance record, held by the **Exchange**, for the purposes of monitoring conduct and for further consideration in the event of future non compliance. None of these steps constitute disciplinary action pursuant to the **AIM Rules**.

Disciplinary action and proceedings

A6. The **Exchange** will investigate the facts of each case, seeking to understand whether a rule breach occurred and the circumstances. Upon conclusion of its investigation the **Exchange** will decide whether disciplinary action is necessary in each instance.

A7. The **Exchange** may take formal disciplinary action in the form of a **warning notice**, private censure or public censure, all of which may also include a fine. The range of actions available to the **Exchange** enables it to take appropriate disciplinary action, taking into account the facts and circumstances of each case. Such disciplinary action against an **AIM company** or **nominated adviser** will form part of the disciplinary record held by the **Exchange** of that **AIM company** or **nominated adviser**.

A8. There are a number of criteria which the **Exchange** takes into account when considering what form of disciplinary action to take in relation to a rule breach. These include, but are not limited to:

A8.1 the nature and seriousness of the rule breach and the duration and frequency of the misconduct;
A8.2 how the rule breach came to light;
A8.3 the actual or potential market impact of the rule breach and any other repercussions;
A8.4 the extent to which the rule breach was deliberate, reckless or careless;
A8.5 the general compliance and disciplinary history of the **AIM company** or **nominated adviser** and the specific history regarding the rule breach in question;
A8.6 consistent and fair application of the rules (any precedents of previous similar rule breaches);
A8.7 the responsiveness, conduct and co-operation of the **AIM company** or **nominated adviser** in relation to the investigation;
A8.8 whether there has been contravention of any prior direction, ruling, instruction or guidance of the **Exchange**.

A9. The above is a non exhaustive list of indicative criteria considered by the **Exchange** in determining what form of disciplinary action that might be taken. The criteria above does not constitute the basis upon which the **Exchange** may or may not determine to bring disciplinary action. The decision to bring disciplinary action is at the sole discretion of the **Exchange**.

A10. The expectation is that, having agreed to abide by the **AIM Rules**, including the provisions of this **Handbook**, **AIM companies** and **nominated advisers** will act responsibly and reasonably during an investigation and any subsequent disciplinary process. Where the **AIM company** or **nominated adviser** does not agree with the findings in any formal disciplinary action, it will have the opportunity to be heard pursuant to the process of appeals and disciplinary hearings set out in this **Handbook**.

Non disciplinary decisions and appeals

A11. The procedures and timeframes in this **Handbook** for the determination of appeals relating to **non disciplinary decisions** reflect the fact that such **non disciplinary decisions** are important to the day-to-day operation of **AIM** on a real time basis.

Panels & Committees

A12. A number of internal panels and external committees support the operation of the **Exchange's** regulatory framework through the independent determination of appeals and **disciplinary proceedings** in accordance with the procedures and provisions of this **Handbook**.

A13. Appeals of **non disciplinary decisions** and of **warning notices** are conducted before the **AIM Executive Panel** ("**AEP**") and **AIM Executive Appeals Panel** ("**AEAP**"), whose members are comprised of appropriately experienced senior members of the **Exchange's** staff. Members of the **AEP** and **AEAP** shall not be staff members of **AIM Regulation** and shall have had no prior involvement with the subject matter under appeal.

A14. **Disciplinary proceedings** and any related appeals are conducted before the **AIM Disciplinary Committee** ("**ADC**") and **AIM Disciplinary Appeals Committee** ("**ADAC**"). The members of the **ADC** and **ADAC** are drawn from an external pool of individuals, who are independent of the **Exchange** and who have relevant expertise in the standards required to meet the obligations and responsibilities set out in the **AIM Rules** and/or in the conduct of proceedings.

A15. For the purposes of this **Handbook** all references to:

A15.1 a "**Panel**" are to the **AEP** and the **AEAP**; and
A15.2 a "**Committee**" are to the **ADC** and the **ADAC**.

General provisions

Application and variation of these rules

B1. The rules set out in these **general provisions** shall apply to all proceedings conducted in accordance with the **Handbook**, as the context so requires.

B2. A **Panel**, **Committee** or **Chairman** may not vary or dispense with any rule (including as to timing for compliance) in these **general provisions**.

B3. A **Panel**, **Committee** or **Chairman** may only vary a rule contained in Part One and Part Two of this **Handbook** if: (i) such variation is expressly provided for in that rule; or (ii) in the case of variation of a timescale in that rule, such variation is pursuant to rule B5. The rules in Part Three of this **Handbook** may not be varied.

B4. Timescales for compliance, as set out in any rule contained in this **Handbook**, should be strictly observed.

B5. Timescales for compliance with rules F5 and F26 may never be varied. Other timescales contained in Part One and Part Two of this **Handbook** may only be varied in exceptional circumstances, at the discretion of the **Panel**, **Committee** or **Chairman**.

Overriding objective

B6. When exercising any power pursuant to this **Handbook**, a **Panel**, **Committee** or **Chairman** must have regard to the overriding objective: to ensure the just, efficient and expeditious presentation and determination of the matters in issue, at a proportionate cost, and to act fairly between the **parties** at all times.

Secretary and legal advisers to Panels and Committees

B7. All **Panels** and **Committees** shall have a **Secretary** appointed by the **Exchange**. The **Secretary** may be a member of the **Exchange's** staff, provided that person: (i) is not a staff member of **AIM Regulation**; and (ii) has had no prior involvement with the subject matter to be determined before the relevant **Panel** or **Committee**. The **Secretary** may also perform the role of a legal adviser in accordance with the provisions of rule B8.

B8. A legal adviser may be appointed to advise a **Panel**, **Committee** or its **Chairman**. It is not expected that a legal adviser will be appointed to a **Committee** when it has an appointed **Chairman** who is a qualified lawyer. Any legal adviser, who is to be appointed, will not be treated as a member of the **Panel** or **Committee**. The legal adviser shall be selected and appointed by the office of General Counsel of London Stock Exchange Group plc and may be a legally qualified member of the **Exchange's** staff, provided that person: (i) is not a staff member of **AIM Regulation**; and (ii) has had no prior involvement with the subject matter to be determined before the relevant **Panel**, **Committee** or its **Chairman**. The legal adviser may also perform the role of a **Secretary** in accordance with the provisions of rule B7.

Conflicts of interest

B9. A **party** may object to the appointment of an individual member of a **Panel** or **Committee** on the grounds of alleged conflict of interest. The procedures for raising and determining such objection shall be as follows:

B9.1 if a **party** considers that any member of a **Panel** or **Committee** has a conflict of interest, that **party** shall promptly, and in any event: (i) within 5 **business days** of being notified of the appointment of that member to a **Panel**; or (ii) within 20 **business days** of being notified of the appointment of that member to a **Committee**, raise a written objection with the **Secretary**, copied to the other **party**. Such written objection shall set out:

B9.1.1 the relevant facts or circumstances upon which the objection is based; and

B9.1.2 the nature of the alleged conflict of interest and the reason why the alleged conflict of interest is such that the member objected to should be replaced.

B9.2 If no written objection is raised by a **party** in accordance with rule B9.1, that **party** shall be deemed to have waived the right to raise any alleged conflict of interest. An objection may be raised at a later stage if: (i) the alleged conflict of interest arises from facts or circumstances of which the objecting **party** could not reasonably have been aware at the time of being notified of the appointment of the relevant member of the **Panel** or **Committee**; and (ii) such objection is raised with the **Secretary** within 5 business days of the **party** becoming aware of the relevant facts or circumstances. The written objection shall include the same information as that required pursuant to rules B9.1.1 and B9.1.2 and be copied to the other **party**.

B9.3 In the event that an objection is received by the **Secretary** pursuant to the provisions of rule B9.1 or rule B9.2, the **Secretary** shall proceed to provide details of the **party's** objection to the **Chairman** of the relevant **Panel** or **Committee** (including if that objection is to the **Chairman's** appointment).

B9.4 Upon receipt of such objection, the **Chairman** shall do one of the following:

B9.4.1 if the **Chairman** is satisfied that the matters identified pursuant to rules B9.1.1 and B9.1.2 are such that a fair-minded and informed observer would conclude that there is a real possibility that the relevant **Panel** or **Committee** member is biased, then the **Chairman** will uphold the **party's** objection. The **Secretary** shall then take steps to arrange for the replacement of the relevant **Panel** or **Committee** member; or

B9.4.2 dismiss the **party's** objection.

B9.5 Any determination of the **Chairman** pursuant to rule B9.4 shall be final with no right of appeal.

Hearings

B10. References to a "hearing" in this **Handbook** include: (i) the final hearing of any substantive matter; or (ii) any hearing to determine a preliminary, procedural or case management issue, as the context so requires. Such hearings may be in person, or conducted via telephone or video conferencing facilities.

B11. All hearings shall be conducted in private.

Quorum and powers of the Chairman

B12. Subject to rule B13, all **Panels** and **Committees** shall have a quorum of 3 members, including a **Chairman**. The maximum number of members of a **Panel** or **Committee** shall be 7.

B13. Save for those determinations, directions and orders which are expressly reserved under these rules to a full **Panel** or **Committee**:

B13.1 determinations, directions or orders may be made by either a **Chairman** alone or by a full **Panel** or **Committee**; and

B13.2 determinations, directions or orders which are made by a **Chairman** alone shall be construed, treated and read as if made by the full **Panel** or **Committee**.

Burden of proof

B14. The burden of proof in appeals to the **AEP**, **AEAP** or **ADAC** shall be on the **Appellant**. For **disciplinary proceedings** before the **ADC**, the burden of proof shall be on the **Exchange**.

Rules of evidence

B15. A **Panel**, **Committee** or its **Chairman** may admit any evidence as it sees fit, whether or not such evidence would be admissible in a court of law, and may attach such weight to the evidence and to the submissions of the **parties** as it considers appropriate.

New evidence

B16. In considering the exercise of powers pursuant to rules C16, C51, D21 and D50, a **Panel**, **Committee** or its **Chairman** may, in exceptional circumstances only, permit new evidence to be adduced if it is satisfied as to all of the below:

B16.1 that it is relevant to the issues to be determined;

B16.2 that it could not have been reasonably identified and adduced by the **party** seeking to rely on it at an earlier date; and

B16.3 that the relevance and probative value of the evidence is such that the prejudice caused by the refusal of permission outweighs the prejudice caused by the late granting of it.

Proceeding in absence

B17. In the event that a **party** fails to attend any scheduled hearing, at the discretion of the **Panel** or **Committee** (or, if sitting alone, a **Chairman**), the hearing may be conducted in that **party's** absence.

Presence during hearings

B18. A **Panel**, **Committee** or its **Chairman** may impose such conditions or restrictions on the presence of a **party**, or a witness, at a hearing as are considered appropriate including:

B18.1 restricting the maximum number of individuals present throughout the hearing for the purposes of presenting a **party's** case or providing instructions; and

B18.2 excluding a specific individual or individuals from being present during the hearing or any part of the hearing, as the circumstances may require, for example to: (i) prevent the disruption of the orderly running of the hearing; or (ii) protect the privacy and confidentiality of the hearing.

Adjournments

B19. A **Panel**, **Committee** or its **Chairman** may adjourn any hearing of its own motion or upon the application of a **party** where considered appropriate, having regard to all the circumstances, including any prejudice caused to the **parties** by the grant or refusal of the adjournment. Wherever possible prior to making a determination, a **Panel**, **Committee** or **Chairman** will request representations from all **parties**.

Determinations and deliberations

B20. Determinations and directions which are reserved to a full **Panel** or **Committee** may be reached on a majority basis. Where a majority determination is reached, this will not be disclosed. A **Panel** or **Committee** may deliberate at any time during the course of a hearing and in the absence of the **parties**.

Record of hearings

B21. A record will be made of any hearing. A **party** may request a record or, where available, a transcript from the **Secretary**. Any such request shall be considered by the **Chairman** of the relevant hearing, who may impose such conditions as to the confidentiality, distribution, and use of that record or transcript as the **Chairman** considers appropriate having regard to: (i) the purpose of the request; and (ii) the provisions of rule B30. Any costs of preparing the record or transcript shall be borne by the requesting **party**.

Costs and fines

B22. A **Panel**, **Committee** or its **Chairman** shall comply with the relevant rules contained in Part Three of this **Handbook** when considering any order for costs and/or a fine.

B23. Prior to any order for costs and/or a fine, the **parties** shall be afforded the opportunity to make submissions on: (i) liability for, and the quantum of, costs; and (ii) the quantum of any fine.

Payment of costs and fines

B24. Subject to rule B25, any order for costs and/or a fine shall be paid by the relevant **party** within 30 **business days** of the date of such order.

B25. In the event that a **party** commences an appeal to the **AEAP** or **ADAC**, any order for costs and/or a fine made in the proceedings to which the appeal relates shall be stayed until the appeal is determined or otherwise dispensed with.

Service

B26. References to **service** or **serve** in these rules shall be to **service** by first class post or by hand. A **party** shall also send to the receiving **party** a copy by email of any communications and documents required to be **served** (save where the **Exchange** does not hold a current email address of the other **party**). Such provision by email shall not constitute **service**.

B27. Communications or documents which are not expressly required by these rules to be **served** may be provided by first class post, by hand or by email.

B28. The address for **service** or delivery of communications or documents shall be as follows:

By first class post or by hand

B28.1 **AIM company** or **applicant**: to the registered office of the **AIM company** or **applicant** or, if a **nominated adviser** is retained by that **AIM company** or **applicant**, to the registered office address of that **nominated adviser**, or to such other address as an **AIM company** or **applicant** may nominate in writing;

B28.2 **nominated adviser**: to the registered office of the **nominated adviser** or such other address as the **nominated adviser** may nominate in writing;

B28.3 **Exchange**: to the registered office of the **Exchange** marked for the attention of **AIM Regulation**.

By email

B28.4 **AIM company** or **applicant**: to such email address of the **AIM company** or **applicant** held in the **Exchange's** records or, if a **nominated adviser** is retained by that **AIM company** or **applicant**, to the email address of the **nominated adviser** held in the **Exchange's** records or such other email address as an **AIM company** or **applicant** may nominate in writing;

B28.5 **nominated adviser**: to such email address of the **nominated adviser** held in the **Exchange's** records or such other address the **nominated adviser** may nominate in writing;

B28.6 **Exchange**: to aimregulation@lseg.com;

B28.7 **Secretary**: to CaseSecretary@lseg.com.

Time of Service

B29. **Service** by first class post shall be deemed to be effected two **business days** after posting. **Service** by hand shall be deemed to be on the **business day** of delivery, or if delivery is after 18:00 (UK time), on the next **business day**.

Confidentiality

B30. Other than as provided for in this **Handbook**, each **party** (which shall include any professional adviser, employee or agent of the **party**) shall keep confidential any matters relating to any proceedings, save where:

B30.1 disclosure is required by law;

B30.2 such disclosure is pursuant to: (i) rule 22 and related guidance notes or rule 23 of the **AIM Rules for Companies**; or (ii) rule 19 of the **AIM Rules for Nominated Advisers**; or

B30.3 disclosure is reasonably required for the conduct of a **party's** case. Any such disclosure by the disclosing **party** shall only be made by that **party** subject to enforceable obligations of confidentiality.

B31. Any non compliance by an **AIM company** or **nominated adviser** (including any breach of confidentiality by any person to whom disclosure is made pursuant to rule B30.3) shall be taken

into account by a **Panel** or **Committee** when determining any order for costs. Without prejudice to the aforementioned, an **AIM company** or **nominated adviser** may also be subject to additional disciplinary action for non compliance with rule B30.

Publication of disciplinary actions and market guidance

B32. Further and additional to any publication pursuant to the provisions of Part Two of this **Handbook**, the **Exchange** reserves the right to publish, in part, in summary or in full:

B32.1 the findings of any **Committee**;
B32.2 details of any private or public censure; or
B32.3 details of a **warning notice** issued by the **Exchange**,

save that any details published with respect to a private censure or **warning notice** shall be published without disclosing the identity of any **party** concerned.

Part One - Disciplinary actions, proceedings and related appeals

Appeals of a warning notice

Introduction

C1. These rules and procedures, together with the rules in the **general provisions**, apply to an appeal of a **warning notice** before an **AEP** and any related appeal to an **AEAP** of that **AEP's** final determination. Unless otherwise directed: (i) appeals before the **AEP** will be considered and determined at a hearing; and (ii) appeals before the **AEAP** will be considered and determined on the papers.

Mode of referral to the AIM Executive Panel

Permissible grounds of appeal

C2. Appeals to the **AEP** of a **warning notice** may only be made on one or more of the following grounds:

C2.1 that the findings of fact or of breach of the **AIM Rules** set out in the **warning notice** were unsupported by the information or evidence upon which such findings were based; and/or

C2.2 the findings of breach in the **warning notice** involved a misinterpretation or erroneous application of the **AIM Rules** by the **Exchange**.

Commencement of appeals

C3. An **Appellant** seeking to appeal a **warning notice** shall **serve** notice to the **Exchange** in writing, copied to the **Secretary**, in the form prescribed in **Appendix 1**, together with copies of any relevant documents upon which the **Appellant** relies.

C4. The information and documents **served** pursuant to rule C3 shall together comprise the **Appellant's Notice**.

C5. The **Appellant's Notice** must be **served** within 15 **business days** of the **warning notice** being communicated to the **Appellant** by the **Exchange**.

Status of warning notice

C6. The **warning notice** under appeal shall remain in full force and effect pending determination of the appeal by the **AEP** and, where applicable, any subsequent appeal to the **AEAP**.

Convening the AIM Executive Panel

C7. The **Secretary** shall take steps to convene an **AEP** and communicate to the **parties** the membership of the convened **AEP** and name of the person appointed as **Chairman**.

C8. The **Secretary** shall ensure that the **Chairman** is provided with a copy of the **Appellant's Notice**.

Preliminary issues

C9. The **Chairman** shall decline to hear an appeal in the event that:

C9.1 the **Appellant's Notice** does not disclose any permissible grounds of appeal; and/or

C9.2 the **Appellant's Notice** has not been validly **served**: (i) within the specified 15 **business day** timeframe for **service** pursuant to rule C5 or any extended timeframe ordered pursuant to rule B3; and/or (ii) in accordance with the **general provisions** of **service**; and/or

C9.3 the appeal has no real prospect of success.

C10. The **Chairman** may decline to hear an appeal in the event that the **Appellant's Notice** and supporting submissions do not adequately particularise the reasons and material facts upon which the **Appellant** relies as the basis for any pleaded ground of appeal.

C11. The **Chairman** shall determine any preliminary issues on the papers.

C12. The **Chairman's** determination pursuant to rule C11 shall be final with no right of appeal.

Procedural rules of the AIM Executive Panel

Exchange's Response

C13. Provided the **Chairman** has not declined to hear the appeal, the **Chairman** shall direct the date by which the **Exchange** may submit any written response to the **Appellant's Notice**. The date for submission shall not be sooner than 15 **business days** from the date of the **Chairman's** direction.

C14. Any written response by the **Exchange** shall be provided to the **Appellant**, copied to the **Secretary**, and shall:

C14.1 particularise the reasons upon which the grounds of appeal in the **Appellant's Notice** are opposed and set out the material facts upon which the **Exchange** relies; and

C14.2 append a copy of any additional relevant documents upon which the **Exchange** relies.

C15. The information and documents provided pursuant to rule C14 shall comprise the **Exchange's Response**.

Case management and procedural directions

C16. Unless otherwise directed by the **AEP** or its **Chairman**, or by agreement between the **parties**, no **party** may adduce evidence in any appeal to the **AEP** which was not previously appended to that **party's Appellant's Notice** or to the **Exchange's Response** (as applicable).

C17. There shall be no witness evidence for the purpose of proceedings before the **AEP** unless the **AEP** or its **Chairman** is satisfied that there are exceptional circumstances to permit such witness evidence.

C18. For appeals to be determined at a hearing the **Chairman** shall:

C18.1 direct the **Secretary** to request the **parties** to provide a list of the dates to avoid for the purposes of scheduling any hearing of the appeal. In the event that a **party** does not provide dates to the **Secretary** within the timescale requested, a hearing date may be finalised without further reference to that **party's** availability; and

C18.2 direct the date, time, format and venue for any hearing of the appeal by the **AEP**.

C19. In the event that the **Chairman** directs that the appeal is to be determined on the papers, the **Chairman** shall give directions for the provision of the appeal bundle and the **parties'** written submissions.

C20. The date of the **AEP's** consideration of the appeal, whether at a hearing or on the papers shall, in either case, not be sooner than 15 **business days** after the date directed for provision of the **Exchange's Response**.

C21. The **AEP** or its **Chairman** may make such other case management or procedural directions considered appropriate.

Appeal bundle

C22. The **Exchange** shall prepare and provide the **Secretary** with copies of the appeal bundle that, unless otherwise directed by the **AEP** or its **Chairman**, shall contain:

C22.1 the **Appellant's Notice** and any documents appended to it;
C22.2 the **Exchange's Response** and any documents appended to it;
C22.3 any new evidence adduced for which permission has been granted pursuant to rule C16; and
C22.4 copies of any previous directions of the **AEP** or its **Chairman** and relevant communications between the **parties** and the **Secretary**.

C23. Unless otherwise directed by the **Chairman**, not later than 7 **business days** in advance of the appeal hearing or the date of any determination on the papers, the **Secretary** shall provide:

C23.1 two copies of the appeal bundle to the **Appellant**; and
C23.2 a copy for each member of the **AEP**.

Written submissions

C24. Unless otherwise directed by the **Chairman**, each **party** shall provide to the **Secretary** any written submissions by 16:00 (UK time) 5 **business days** prior to the scheduled date when the **AEP** proposes to determine the appeal at a hearing or on the papers. All written submissions shall contain cross-references to the appeal bundle, where relevant.

C25. The **Secretary** will simultaneously provide the **parties** and the **AEP** with a copy of each **party's** written submissions.

Information requests by the AIM Executive Panel

C26. The **AEP** may direct a question to, or request further information from, any **party** at any time. The **AEP** may, in its discretion, draw an adverse inference in respect of a **party's** failure to respond to any questions or further information requests directed of it.

Conduct of AIM Executive Panel hearings

C27. The **AEP** or its **Chairman** may make such directions with regard to the conduct of and procedures at the hearing as the **AEP** considers appropriate.

C28. Unless otherwise directed by the **AEP** or its **Chairman**, any oral submissions of the **parties** shall be limited to supplementing or clarifying matters set out in the **parties'** respective notice or response and written submissions.

C29. Following conclusion of the appeal hearing, the **AEP** will then retire and proceed with its deliberations and determinations in private.

Determination of appeals by the AIM Executive Panel

C30. The **AEP** may only determine an appeal against a **warning notice** by:

C30.1 upholding the findings of fact and breaches of the **AIM Rules** set out in the **warning notice** and dismissing the appeal; or
C30.2 allowing the appeal, or part thereof, if it is satisfied that one or more of the grounds in the **Appellant's Notice** are made out on the balance of probabilities.

C31. In the event that the **AEP** dismisses an appeal pursuant to rule C30.1 the **AEP** shall uphold the **warning notice** and may in addition do one of the following:

C31.1 uphold any accompanying fine imposed when the **warning notice** was issued by the **Exchange**; or
C31.2 if not previously imposed, impose a fine; or
C31.3 increase or decrease the level of any previously imposed fine; or
C31.4 if the **AEP** is satisfied that the facts, breaches and circumstances are sufficiently serious to merit consideration by the **ADC**, remit the **warning notice** back to the

Exchange for reconsideration as to whether **disciplinary proceedings** should be commenced. The **warning notice** and any accompanying fine shall continue to be in full force and effect at all times thereafter unless, following such reconsideration, the **Exchange** commences **disciplinary proceedings**, in which case, the **warning notice** shall be treated as having been rescinded.

C32. In the event that the **AEP** allows the appeal, or part thereof, pursuant to rule C30.2, it shall then determine whether to:

C32.1 uphold the **warning notice**, or part thereof, and/or any accompanying fine imposed, for such other reasons as it may determine in its discretion; or
C32.2 vary the **warning notice**, or part thereof, and/or any accompanying fine imposed; or
C32.3 quash the **warning notice**, or part thereof, and/or any accompanying fine imposed.

Communication of the AIM Executive Panel's determinations

C33. The **AEP's** final determination pursuant to rules C30 - C32 shall be communicated to the **parties** as soon as reasonably practicable. The **AEP** shall proceed to provide necessary directions for the determination of any costs order.

C34. Any order of the **AEP** with regards to costs shall be communicated to the **parties** as soon as reasonably practicable.

Appeals to the AIM Executive Appeals Panel

C35. Final determinations by the **AEP** pursuant to rule C33 may be appealed by a **party** to the **AEAP**. Such appeal to the **AEAP** shall not be a rehearing, but a review by the **AEAP** of the **AEP's** determination.

C36. There is no right of appeal to an **AEAP** of any case management or other procedural directions of an **AEP** or its **Chairman**.

C37. There is no right of appeal to an **AEAP** solely on liability for costs and/or quantum of any costs order of the **AEP**. The **AEAP** shall determine any consequential matters relating to a costs order of the **AEP** when determining the question of the costs of the proceedings before the **AEAP**.

Mode of referral to the AIM Executive Appeals Panel

Permissible grounds of appeal

C38. Appeals to the **AEAP** may only be made on one or more of the following grounds:

C38.1 the **AEP's** determination was one which no **AEP**, acting reasonably, could have made on the information or evidence before it; and/or
C38.2 the **AEP's** determination was based on a misapplication or misinterpretation of the **AIM Rules**.

Commencement

C39. An **Appellant** seeking to appeal a final determination of the **AEP** pursuant to rule C35 shall **serve** notice in writing to the **Secretary**, in the form prescribed in **Appendix 2**, copied to the **Respondent**.

C40. The information and any documents **served** pursuant to rule C39 shall together comprise the **Appellant's Notice**.

C41. The **Appellant's Notice** must be **served** within 15 **business days** of the final determination of the **AEP** being communicated to the **Appellant** pursuant to rule C33.

Convening the AIM Executive Appeals Panel

C42. The **Secretary** shall proceed to take steps to convene an **AEAP** and communicate to the **parties** the membership of the convened **AEAP** and name of the person appointed as **Chairman**.

C43. The **Secretary** shall ensure that the **Chairman** is provided with a copy of the **Appellant's Notice**.

Preliminary issues

C44. The **Chairman** shall decline to hear an appeal in the event that:

C44.1 the **Appellant's Notice** does not disclose any permissible grounds of appeal; and/or
C44.2 the **Appellant's Notice** has not been validly **served**: (i) within the specified 15 **business day** timeframe for **service** pursuant to rule C41 or any extended timeframe ordered pursuant to rule B3; and/or (ii) in accordance with the **general provisions** of **service**; and/or
C44.3 the appeal has no real prospect of success.

C45. The **Chairman** may decline to hear an appeal in the event that the **Appellant's Notice** and supporting submissions do not adequately particularise the reasons and material facts upon which the **Appellant** relies as the basis for any pleaded ground of appeal.

C46. The **Chairman** shall determine the preliminary issues on the papers.

C47. The **Chairman's** determination pursuant to rule C46 shall be final with no right of appeal.

Procedural rules of the AIM Executive Appeals Panel

Respondent's Notice

C48. Provided the **Chairman** has not declined to hear the appeal, the **Chairman** shall direct the date by which the other **party** may submit any written response to the **Appellant's Notice**. The date for submission shall not be sooner than 15 **business days** from the date of the **Chairman's** direction.

C49. Any written response by the **Respondent** shall be provided to the **Appellant**, copied to the **Secretary**, and shall:

C49.1 particularise the reasons upon which the grounds of appeal in the **Appellant's Notice** are opposed and set out the material facts upon which the **Respondent** relies; and
C49.2 list and identify (by reference to the **AEP** appeal bundle) any documents relied on; and
C49.3 append any new evidence for which permission to adduce is sought pursuant to rule C51.

C50. The information and documents provided pursuant to rule C49 shall comprise the **Respondent's Notice**.

Case management and procedural directions

C51. Unless otherwise directed by the **AEAP** or its **Chairman**, or by agreement between the **parties**, no **party** may adduce evidence in any appeal to the **AEAP** which was not previously before the **AEP**.

C52. There shall be no witness evidence for the purpose of proceedings before the **AEAP** unless the **AEAP** or its **Chairman** is satisfied that there are exceptional circumstances to permit such witness evidence.

C53. For appeals to be determined on the papers, the **Chairman** shall give directions for provision of the appeal bundle and the **parties'** written submissions.

C54. In the event that the **Chairman** directs that there shall be an appeal hearing, the **Chairman** shall:

C54.1 direct the **Secretary** to request the **parties** provide a list of those dates to avoid for the purposes of scheduling a hearing of the appeal. In the event that a **party** does not provide dates to the **Secretary** within the timescale requested, a hearing date may be finalised without further reference to that **party's** availability; and
C54.2 direct the date, time, format and venue for the hearing of the appeal.

C55. The date of the **AEAP's** consideration of the appeal, whether on the papers or at hearing, shall in either case, not be sooner than 15 **business days** after the date directed for provision of the **Respondent's Notice**.

C56. The **AEAP** or its **Chairman** may make such other case management or procedural directions considered appropriate.

Appeal bundle

C57. The **Exchange** shall prepare and provide the **Secretary** with copies of an appeal bundle that, unless otherwise directed, shall contain:

C57.1 the appeal bundle that was before the **AEP**;
C57.2 the **Appellant's Notice**, the **Respondent's Notice** and any documents appended thereto (excluding any new evidence for which permission has not been granted pursuant to rule C51); and
C57.3 copies of any previous directions of the **AEAP** or its **Chairman** and relevant communications between the **parties** and the **Secretary**.

C58. Unless otherwise directed by the **Chairman**, not later than 7 **business days** in advance of the scheduled date when the **AEAP** proposes to determine the appeal on the papers or hold an appeal hearing, the **Secretary** shall provide:

C58.1 two copies of the appeal bundle to the **Appellant**, or if the **Exchange** is the **Appellant**, to the **Respondent**; and
C58.2 a copy for each member of the **AEAP**.

Written submissions

C59. Unless otherwise directed by the **Chairman**, each **party** shall provide to the **Secretary** any written submissions by 16:00 (UK time) 5 **business days** prior to the scheduled date when the **AEAP** proposes to determine the appeal on the papers or hold an appeal hearing. All written submissions shall contain cross-references to the appeal bundle, where relevant.

C60. The **Secretary** will simultaneously provide the **parties** and the **AEAP** with a copy of each **party's** written submissions.

Information requests by the AIM Executive Appeals Panel

C61. The **AEAP** may direct a question to, or request further information from, any **party** at anytime. The **AEAP** may in its discretion draw an adverse inference in respect of a **party's** failure to respond to any questions or further information requests directed of it.

Conduct of AIM Executive Appeals Panel hearings

C62. The **AEAP** may make such directions with regard to the conduct of and procedures at the hearing as the **AEAP** considers appropriate.

C63. Unless otherwise directed by the **AEAP** or its **Chairman**, any oral submissions of the **parties** shall be limited to supplementing or clarifying matters set out in the **parties'** respective notices and written submissions.

C64. Following conclusion of the hearing, the **AEAP** will then retire and proceed with its deliberations and determinations in private.

Determination of appeals by the AIM Executive Appeals Panel

C65. The **AEAP** may only determine an appeal of a final determination of the **AEP** by:

C65.1 dismissing the appeal and upholding the final determination of the **AEP**; or
C65.2 allowing the appeal, or part thereof, if it is satisfied that one or more of the grounds of appeal in the **Appellant's Notice** are made out on the balance of probabilities.

C66. In the event that the **AEAP** allows the appeal pursuant to rule C65.2 it shall then determine whether to:

C66.1 uphold the **AEP's** determination, or part thereof, for such other reasons as the **AEAP** may determine in its discretion; or
C66.2 vary the **AEP's** determination, or part thereof; or
C66.3 quash the **AEP's** determination, or part thereof.

Communication of the AIM Executive Appeals Panel's determinations

C67. The **AEAP's** determination pursuant to rules C65 – C66 shall be communicated to the **parties** as soon as reasonably practicable. The **AEAP** shall proceed to provide necessary directions for the determination of any costs order.

C68. Any order of the **AEAP** with regards to costs shall be communicated to the **parties** as soon as reasonably practicable.

C69. The **AEAP's** determinations and orders pursuant to rules C67 – C68 shall be final with no right of appeal.

Intervening events

C70. If during the intervening period between the commencement and the determination of an appeal of a **warning notice** to an **AEP** or subsequent appeal to an **AEAP**, the **warning notice** is varied, rescinded or otherwise rendered redundant such that the hearing of any appeal would serve no practical purpose, a **party** may submit an application to the **Chairman**, via the **Secretary** and copied to the other **party**, requesting a direction that the appeal be discontinued.

C71. The **Chairman** shall determine any application pursuant to rule C70 on the papers and, in the event of discontinuance being directed, proceed to provide necessary directions for the **AEP** or **AEAP** (as applicable) to determine any costs order.

C72. The **Chairman's** determination pursuant to rule C71 shall be final with no right of appeal.

Disciplinary proceedings before the AIM Disciplinary Committee and appeals to the AIM Disciplinary Appeals Committee

Introduction

D1. These rules and procedures, together with the rules in the **general provisions**, apply to **disciplinary proceedings** before an **ADC** and any related appeals to an **ADAC** of an **ADC Disciplinary Determination**. Any proceedings before the **ADC** and **ADAC** shall be considered and determined at a hearing.

Mode of referral to the AIM Disciplinary Committee

Commencement and notification of disciplinary proceedings

D2. **Disciplinary proceedings** shall be commenced by **service** of a **Statement of Case** by the **Exchange** on a **Respondent**, copied to the **Secretary**.

D3. The **Statement of Case** shall: (i) set out the relevant facts upon which the **Exchange** relies; and (ii) particularise the alleged breaches of the **AIM Rules** by the **Respondent**.

D4. The **Statement of Case** shall have appended to it copies of relevant core supporting documents, cross referenced in the **Statement of Case**.

D5. An **AIM Disciplinary Commencement Notice** shall be published by the **Exchange** as soon as reasonably practicable after **service** of the **Statement of Case**.

Joinder

D6. The **Exchange** may, in its discretion, refer **disciplinary proceedings** involving more than one **AIM company** or **nominated adviser** for determination simultaneously by the same **ADC**.

Convening an ADC

D7. As soon as reasonably practicable, the **Secretary** shall proceed to take steps to convene an **ADC** and communicate to the **parties** the membership of the convened **ADC** and name of the person appointed as **Chairman**.

Procedural rules of the AIM Disciplinary Committee

Statement of Defence

D8. Within 30 **business days** of **service** of the **Statement of Case**, the **Respondent** may **serve** upon the **Exchange**, a **Statement of Defence**, copied to the **Secretary**.

D9. Any **Statement of Defence** shall particularise:

D9.1 Whether the **Respondent** admits, denies, or neither admits nor denies: (i) the relevant facts relied upon by the **Exchange**; and (ii) the alleged breaches of the **AIM Rules** particularised in the **Statement of Case**, by reference to the relevant sections and paragraphs of the **Statement of Case**.

D9.2 If the **Respondent**: (i) denies or does not admit any of the relevant facts relied upon by the **Exchange** in the **Statement of Case**; and/or (ii) denies or does not admit any alleged breach of the **AIM Rules** set out in the **Statement of Case**, it shall set out the reason for such denial or non-admission, together with any additional facts upon which the **Respondent** intends to rely.

D10. The **Statement of Defence** shall have appended to it copies of all relevant supporting documents (excluding any documents that have already been appended to and **served** with the **Statement of Case**), cross referenced in the **Statement of Defence**.

D11. Within 20 **business days** of receipt of the **Statement of Defence** the **Exchange** may submit any additional documents upon which it intends to rely. Such additional documents shall be provided by the **Exchange** to the **Respondent**, copied to the **Secretary**.

Failure to submit a Statement of Defence

D12. If a **Respondent** fails to submit a **Statement of Defence** the **Respondent** shall be deemed to have: (i) admitted all of the relevant facts relied upon by the **Exchange**; but (ii) shall be deemed to have made no admission of the alleged breaches of the **AIM Rules** set out in the **Statement of Case**. In such circumstances, the **Chairman** shall proceed to make necessary directions for the **ADC** to deliberate and make determinations on whether the alleged breaches of the **AIM Rules** set out in the **Statement of Case** are made out on the basis of the facts which are deemed to be admitted pursuant to this rule. Unless otherwise directed, the **ADC** shall proceed with such deliberations and make such determinations on the papers.

Scheduling of a Case Management Conference

D13. Where a **Statement of Defence** has been served pursuant to rule D8, a **CMC** shall take place in accordance with the provisions of rules D14 - D17.

D14. The date of the **CMC** shall be not earlier than 60 **business days** following the date of **service** of the **Statement of Defence**. The **Secretary** will request that the **parties** provide a list of those dates to avoid for the purposes of scheduling a date for the **CMC**. In the event a **party** does not provide dates to the **Secretary** within the timescale requested, the date for the **CMC** may be finalised without further reference to that **party's** availability.

D15. The **Chairman** shall direct the date, time, format and venue for the **CMC**.

Case Management Memorandum

D16. Not later than 20 **business days** prior to the scheduled date of the **CMC** each **party** shall submit to the **Secretary** a completed **CMM** in the form set out in **Appendix 3**, which the **Secretary** will simultaneously provide to each other **party** and to the **Chairman**.

D17. In the event that a **party** fails to submit a **CMM**, in accordance with rule D16, the **Chairman** may in his or her discretion decline to hear any representations at the **CMC** from that **party** as to any directions.

Case management and procedural directions

D18. At the **CMC**, or as soon as reasonably practicable thereafter, the **Chairman** or the **ADC** shall: (i) determine and give directions about steps which are to be taken to secure the progress of the **disciplinary proceedings**, having regard to any submitted **CMM** provided pursuant to rule D16 and the indicative directions and timetable at **Appendix 4**; and (ii) shall direct the date for the substantive hearing of the **disciplinary proceedings** by the **ADC**.

D19. Variations of, or additions to, case management and procedural directions shall only be ordered if the variation or addition is required due to new circumstances arising since the original case management or procedural direction was made.

Compliance with case management and procedural directions

D20. The **parties** must comply with any direction of the **Chairman** or the **ADC** (including as to timing of such compliance). If in the opinion of the **ADC**, a **party** has failed to comply with directions without good reason, the **ADC** may in its discretion:

D20.1 take such non compliance into account when determining any order for costs; and/or

D20.2 deny that **party** the opportunity to adduce evidence or rely on written submissions at the substantive hearing which have not been submitted in accordance with any previous directions or directed timescales.

New evidence

D21. Unless otherwise directed by the **ADC** or its **Chairman**, or by agreement between the **parties**, no **party** may adduce evidence not provided with their **Statement of Case** (or pursuant to rule D11) or **Statement of Defence** or exhibited in witness evidence.

Expert Evidence

D22. The **Chairman** or the **ADC** may give permission for expert evidence, but it will not usually be required. When determining whether to permit a **party** to adduce expert evidence the **Chairman** or the **ADC** shall have regard to:

D22.1 the subject matter of the **disciplinary proceedings**;
D22.2 the likely issues to be determined by the **ADC** at the hearing of the **disciplinary proceedings** and whether expert evidence is necessary to resolve them;
D22.3 the expertise and knowledge of the members of the **ADC** itself; and
D22.4 whether the cost of such expert evidence is proportionate to the issues in dispute.

Non attendance of a witness

D23. Where any person upon whose evidence a **party** intends to rely fails to attend any hearing for the purposes of giving oral evidence, any witness statement of that person shall not be taken into account unless the **ADC** determines to admit the witness statement into evidence. If admitted into evidence, the **ADC** shall attach such weight to the witness statement as it considers appropriate. In doing so it shall take into account: (i) the lack of opportunity afforded to the other **party** to cross-examine the witness; (ii) the lack of opportunity afforded to the **ADC** to ask questions of the witness; and (iii) any other relevant matters.

Information requests by the AIM Disciplinary Committee

D24. The **ADC** may direct a question to, or request further information from, any **party** at any time. The **ADC** may in its discretion draw an adverse inference in respect of a **party's** failure to respond to any questions or further information requests directed of it.

Discontinuance of disciplinary proceedings

D25. The **Exchange** may, in its discretion, discontinue any **disciplinary proceedings** at any time following commencement by way of written notification to the **Secretary**, copied to the **Respondent**. In such circumstances, the **Chairman** shall proceed to provide necessary directions for the **ADC** to determine any costs order.

D26. Following discontinuance and the determination of any order for costs, the **Exchange** shall publish a notice confirming discontinuance of the **disciplinary proceedings** and may in its discretion provide reasons for doing do so.

Conduct of AIM Disciplinary Committee hearings

D27. The **ADC** may make such directions with regard to the conduct of and procedures at the hearings as the **ADC** considers appropriate.

Deliberations and determinations by the AIM Disciplinary Committee

D28. Following the presentation of each **party's** evidence and any submissions, the **ADC** will retire to deliberate and reach its determination regarding the alleged breaches of the **AIM Rules** set out in the **Statement of Case**. The **ADC** shall not find an allegation of breach proven unless it is satisfied on the balance of probabilities.

D29. The **ADC's** determination pursuant to rule D28, or where applicable rule D12, will be communicated to the **parties** as soon as practicable. The **ADC** shall proceed to provide necessary directions for the determination of any costs and fines orders.

The ADC Disciplinary Determination

D30. The **ADC's** final determination together with any fine and costs order shall form the **ADC Disciplinary Determination**. The **ADC Disciplinary Determination** shall take effect from the date on which it is communicated to the **parties**.

D31. As soon as reasonably practicable after the **ADC Disciplinary Determination** has come into effect pursuant to rule D30, the **Exchange** shall publish an **AIM Disciplinary Outcome Notice**. The **AIM Disciplinary Outcome Notice** shall be published irrespective of the commencement by a **party** of any subsequent appeal of the **ADC Disciplinary Determination** to the **ADAC**.

Appeals to the AIM Disciplinary Appeals Committee

D32. Either **party** to **disciplinary proceedings** may appeal an **ADC Disciplinary Determination** to the **ADAC**. Such appeal to the **ADAC** shall not be a rehearing, but a review by the **ADAC** of the **ADC Disciplinary Determination**.

D33. There is no right of appeal to an **ADAC** of any case management or other procedural directions of an **ADC** or its **Chairman**.

D34. There is no right of appeal to an **ADAC** solely on liability for and/or quantum of a costs order of the **ADC**. The **ADAC** shall determine any consequential matters relating to a costs order of the **ADC** when determining the question of the costs of the proceedings before the **ADAC**.

Mode of referral to the AIM Disciplinary Appeals Committee

Permissible grounds of appeal

D35. Appeals of an **ADC Disciplinary Determination**, or part thereof, to the **ADAC** may only be made on one or more of the following grounds:

D35.1 the determination was one which no **ADC**, acting reasonably, could have made on the facts and information before it; and/or

D35.2 the determination was based on a misapplication or misinterpretation of the **AIM Rules**.

Commencement

D36. An **Appellant** seeking to appeal an **ADC Disciplinary Determination**, or part thereof, shall **serve** notice in writing to the **Secretary**, in the form prescribed in **Appendix 5**, copied to the **Respondent**.

D37. The information and any documents **served** pursuant to rule D36 shall together comprise the **Appellant's Notice**.

D38. The **Appellant's Notice** must be **served** within 15 **business days** of the effective date of the **ADC Disciplinary Determination** pursuant to rule D30.

Status of an ADC Disciplinary Determination

D39. The **ADC Disciplinary Decision** under appeal shall remain in full force and effect pending determination of the appeal, save for any stay of an order for costs and fine pursuant to the provisions of rule B25.

Convening the AIM Disciplinary Appeals Committee

D40. The **Secretary** shall proceed to take steps to convene an **ADAC** and communicate to the **parties** the membership of the convened **ADAC** and name of the person appointed as **Chairman**.

D41. The **Secretary** shall ensure that the **Chairman** is provided with a copy of the **Appellant's Notice**.

D42. The **Secretary** will request that the **parties** provide a list of those dates to avoid for the purposes of scheduling a hearing of the appeal. In the event that a **party** does not provide dates to the **Secretary** within the timescale requested, a hearing date may be finalised without further reference to that **party's** availability.

Preliminary issues

D43. The **Chairman** shall decline to hear an appeal in the event that:

D43.1 the **Appellant's Notice** does not disclose any permissible grounds of appeal; and/or
D43.2 the **Appellant's Notice** has not been validly **served**: (i) within the specified 15 **business day** timeframe for **service** pursuant to rule D38 or any extended timeframe directed pursuant to rule B3; and/or (ii) in accordance with the **general provisions** of **service**; and/or
D43.3 the appeal has no real prospect of success.

D44. The **Chairman** may decline to hear an appeal in the event that the **Appellant's Notice** and supporting submissions do not adequately particularise the reasons and material facts upon which the **Appellant** relies as the basis for any pleaded ground of appeal.

D45. The **Chairman** shall determine the preliminary issues on the papers.

D46. The **Chairman's** determination pursuant to rule D45 shall be final with no right of appeal.

Procedural rules of the AIM Disciplinary Appeals Committee

Respondent's Notice

D47. Provided the **Chairman** has not declined to hear the appeal, the **Chairman** shall direct the date by which the **Respondent** may submit any written response to the **Appellant's Notice**. The date for submission shall not be sooner than 15 **business days** from the date of the **Chairman's** direction.

D48. Any written response submitted by the **Respondent** shall be provided to the **Appellant**, copied to the **Secretary**, and shall:

D48.1 particularise the reasons upon which the grounds of appeal in the **Appellant's Notice** are opposed and set out the material matters upon which the **Respondent** relies; and
D48.2 list and identify (by reference to the **ADC** hearing bundle) any documents relied on; and
D48.3 append any new evidence for which permission to adduce is sought pursuant to rule D50.

D49. The information and documents provided pursuant to rule D48 shall comprise the **Respondent's Notice**.

Case management and procedural directions

D50. Unless otherwise directed by the **ADAC** or its **Chairman**, or by agreement between the **parties**, no **party** may adduce evidence in any appeal to the **ADAC** which was not previously before the **ADC**.

D51. There shall be no witness evidence for the purpose of proceedings before the **ADAC** unless the **ADAC** or its **Chairman** is satisfied that there are exceptional circumstances to permit such witness evidence.

D52. The **Chairman** shall direct the date, time, format and venue for the hearing of the appeal by the **ADAC**, which shall be not sooner than 15 **business days** after the date directed for provision of the **Respondent's Notice**.

D53. The **ADAC** or its **Chairman** may make such other case management or procedural directions considered appropriate.

Appeal bundle

D54. **The Exchange** shall prepare and provide the **Secretary** with copies of the appeal bundle that, unless otherwise directed, shall contain:

D54.1 a copy of the **ADC Disciplinary Determination** under appeal;
D54.2 a copy of the **Statement of Case**, **Statement of Defence** and any relevant evidence that was before the **ADC** and upon which either **party** relies for the purposes of the appeal;
D54.3 the **Appellant's Notice**, the **Respondent's Notice** and any documents appended thereto (excluding any new evidence for which permission has not been granted pursuant to rule D50); and
D54.4 copies of any previous directions of the **ADAC** or its **Chairman** and relevant communications between the **parties** and the **Secretary**.

D55. Unless otherwise directed by the **Chairman**, not later than 12 **business days** in advance of the hearing, the **Secretary** shall provide:

D55.1 two copies of the hearing bundle to the **Appellant** or, if the **Exchange** is the **Appellant**, two copies to the **Respondent**; and
D55.2 a copy for each member of the **ADAC**.

Written submissions

D56. Unless otherwise directed by the **ADAC** or its **Chairman**, each **party** shall provide to the **Secretary** its written submissions by 16:00 (UK time) 10 **business days** prior to the scheduled date of the hearing. All written submissions shall contain cross-references to the appeal bundle, where relevant.

D57. The **Secretary** will simultaneously provide the **parties** and the **ADAC** with a copy of each **party's** written submissions.

Information requests by the AIM Disciplinary Appeals Committee

D58. The **ADAC** may direct a question to, or request further information from, any **party** at any time. The **ADAC** may in its discretion draw an adverse inference in respect of a **party's** failure to respond to any questions or further information requests directed of it.

Conduct of AIM Disciplinary Appeals Committee hearings

D59. The **ADAC** may make such other directions with regard to the conduct of and procedures at the hearing as the **ADAC** considers appropriate.

D60. Unless otherwise directed by the **ADAC** or its **Chairman**, any oral submissions of the **parties** shall be limited to supplementing or clarifying matters set out in the **parties'** respective notices and written submissions.

D61. Following conclusion of the hearing, the **ADAC** will then retire and proceed with its deliberations and determinations in private.

Determination of appeals by the AIM Disciplinary Appeals Committee

D62. The **ADAC** may only determine an appeal against an **ADC Disciplinary Determination** by:

D62.1 dismissing the appeal and upholding the **ADC Disciplinary Determination**, or the part thereof being appealed; or
D62.2 allowing the appeal, or part thereof, if it is satisfied that one or more of the grounds in the **Appellant's Notice** are made out on the balance of probabilities.

D63. In the event that the **ADAC** allows the appeal, or part thereof, it shall then determine whether to:

D63.1 uphold the **ADC Disciplinary Determination**, or part thereof, for such other reasons as it may determine in its discretion; or
D63.2 vary the **ADC Disciplinary Determination**, or part thereof; or
D63.3 quash the **ADC Disciplinary Determination**, or part thereof.

D64. The **ADAC's** determination pursuant to rules D62 - D63 shall be communicated to the **parties** as soon as reasonably practicable. The **ADAC** shall proceed to provide necessary directions for the determination of any costs and fines orders.

The ADAC Appeal Determination

D65. The **ADAC's** final determination together with any fine and costs order shall form the **ADAC Appeal Determination**. The **ADAC Appeal Determination** shall take effect from the date on which it is communicated to the **parties** and shall be final with no right of appeal.

D66. As soon as reasonably practicable after the **ADAC Appeal Determination** has come into effect pursuant to rule D65, the **Exchange** shall publish an **AIM Disciplinary Appeal Notice**.

Settlement

Prior to commencement of disciplinary proceedings

E1. Prior to the commencement of any **disciplinary proceedings**, the **Exchange** shall offer an **AIM company** or **nominated adviser** terms of settlement of potential **disciplinary proceedings** relating to alleged breaches of the **AIM Rules**. Any agreed settlement may, at the **Exchange's** discretion, extend to:

E1.1 a private censure with or without a fine; or
E1.2 a public censure with or without a fine; and
E1.3 in both instances payment of the **Exchange's** costs (or a proportion thereof to be agreed).

E2. If within 20 **business days** of the date of any settlement terms being offered by the **Exchange** pursuant to rule E1, settlement terms are agreed between the **Exchange** and the **AIM company** or **nominated adviser** by way of a signed consent order, that **AIM company** or **nominated adviser** shall be entitled to a 30% discount on any proposed fine by the **Exchange**.

E3. Any such terms of settlement at this stage pursuant to rules E1 – E2 do not require the approval of the **ADC**. The consent order shall be final and binding on the **parties** and come into immediate effect from the date it is signed by both **parties**.

Post commencement of disciplinary proceedings

E4. Where no settlement is agreed pursuant to the provisions of rules E1 - E3 then if, no later than 10 **business days** prior to the scheduled date of the **CMC**, an **AIM company** or **nominated adviser** notifies the **Exchange** in writing, copied to the **Secretary**, that it admits all of the alleged breaches of the **AIM Rules** set out in the **Statement of Case**, that **AIM company** or **nominated adviser** shall be entitled to a 15% discount of any fine subsequently ordered by the **ADC**.

E5. Following an admission pursuant to rule E4, the **Chairman** shall then proceed to make necessary directions for the **ADC's** determination of costs and the quantum of fine only.

Part Two - Non disciplinary appeals

Appeals of non disciplinary decisions

Introduction

F1. These rules and procedures, together with the rules in the **general provisions**, apply to appeals of a **non disciplinary decision** before the **AEP** and any related appeals to an **AEAP** of an **AEP's** final determination. Unless otherwise directed: (i) appeals before the **AEP** will be considered and determined at a hearing; and (ii) appeals before the **AEAP** will be considered and determined on the papers.

Mode of referral to the AIM Executive Panel

Permissible grounds of appeal

F2. Appeals to the **AEP** of a **non disciplinary decision** may only be made on one or more of the following grounds:

F2.1 the **non disciplinary decision** was one which could not have been reached by the **Exchange**, acting reasonably, on the information or evidence before it; and/or

F2.2 the **non disciplinary decision** involved a misinterpretation or erroneous application of the **AIM Rules** by the **Exchange**.

Commencement of appeals

F3. An **Appellant** seeking to appeal a **non disciplinary decision** shall **serve** notice to the **Exchange** in writing, copied to the **Secretary**, in the form prescribed in **Appendix 6**, together with copies of any relevant documents upon which the **Appellant** relies.

F4. The information and documents **served** pursuant to rule F3 shall together comprise the **Appellant's Notice**.

F5. The **Appellant's Notice** must be served within 15 **business days** of the **non disciplinary decision** being communicated to the **Appellant** by the **Exchange**. The power of variation pursuant to rule B3 shall not apply to this rule.

Status of a non disciplinary decision

F6. The **non disciplinary decision** which is under appeal shall remain in full force and effect pending determination of the appeal by the **AEP** and, where applicable, any subsequent appeal to the **AEAP**.

Convening the AIM Executive Panel

F7. The **Secretary** shall take steps to convene an **AEP** and communicate to the **parties** the membership of the convened **AEP** and name of the person appointed as **Chairman**.

F8. The **Secretary** shall ensure that the **Chairman** is provided with a copy of the **Appellant's Notice**.

Preliminary issues

F9. The Chairman shall decline to hear an appeal in the event that:

F9.1 the **Appellant's Notice** does not disclose any permissible grounds of appeal; and/or

F9.2 the **Appellant's Notice** has not been validly **served**: (i) within the specified 15 **business day** timeframe for **service** at rule F5; and/or (ii) in accordance with the **general provisions** of **service**; and/or

F9.3 the appeal has no real prospects of success.

F10. The **Chairman** may decline to hear an appeal in the event that the **Appellant's Notice** and supporting submissions do not adequately particularise the reasons and material facts upon which the **Appellant** relies as the basis for any pleaded ground of appeal.

F11. The **Chairman** shall determine any preliminary issues on the papers.

F12. The **Chairman's** determinations pursuant to rule F11 shall be final with no right of appeal.

Procedural rules of the AIM Executive Panel

F13. The procedural rules at C13 - C26 shall apply to all appeals of a **non disciplinary decision** to the **AEP**.

Conduct of AIM Executive Panel hearings

F14. The conduct rules of the **AEP** set out in rules C27 – C29 shall apply to all appeals of a **non disciplinary decision** to the **AEP**.

Determination of appeals by the AIM Executive Panel

F15. The **AEP** may only determine an appeal against a **non disciplinary decision** by:

F15.1 dismissing the appeal and upholding the **non disciplinary decision** of the **Exchange**; or
F15.2 allowing the appeal, or part thereof, if it is satisfied that one or more of the grounds in the **Appellant's Notice** are made out on the balance of probabilities and remitting the **non disciplinary decision** for reconsideration by the **Exchange**.

F16. In the event that the **AEP** determines to remit the **non disciplinary decision** for reconsideration, pursuant to rule F15.2 then, unless an appeal to the **AEAP** is commenced pursuant to rule F20, the **Exchange** shall undertake any reconsideration and communicate the outcome of that reconsideration not later than 20 **business days**, after the **AEP's** determination has been communicated to the **parties**.

F17. In the intervening period between the **AEP's** determination to remit the **non disciplinary decision** and any reconsideration by the **Exchange** in accordance with rule F16, the **non disciplinary decision** shall remain in full force and effect.

Communication of AIM Executive Panel's determination

F18. The **AEP's** final determination pursuant to rule F15 shall be communicated to the **parties** as soon as reasonably practicable. The **AEP** shall proceed to provide directions for the determination of any costs order.

F19. Any order of the **AEP** with regards to costs shall be communicated to the **parties** as soon as reasonably practicable.

Appeals to the AIM Executive Appeals Panel

F20. Final determinations of the **AEP** pursuant to rule F18 may be appealed by a **party** to the **AEAP**. Such appeal to the **AEAP** shall not be a rehearing, but a review by the **AEAP** of the **AEP's** determination.

F21. There is no right of appeal to the **AEAP** of any case management or other procedural directions of an **AEP** or its **Chairman**.

F22. There is no right of appeal to the **AEAP** solely on liability for costs and/or quantum of any costs order of the **AEP**. The **AEAP** shall determine any consequential matters relating to a costs order of the **AEP** when determining the question of the costs of the proceedings before the **AEAP**.

Mode of referral to the AIM Executive Appeals Panel

Permissible grounds of appeal

F23. Appeals to the **AEAP** may only be made on one or more of the following grounds:

F23.1 the **AEP's** final determination was one which no **AEP**, acting reasonably, could have made on the information or evidence before it; and/or

F23.2 the **AEP's** final determination was based on a misapplication or misinterpretation of the **AIM Rules**.

Commencement

F24. An **Appellant** seeking to appeal a final determination of the **AEP** pursuant to rule F20 shall **serve** notice in writing to the **Secretary**, in the form prescribed in **Appendix 2**, copied to the **Respondent**.

F25. The information and any documents **served** pursuant to rule F24 shall together comprise the **Appellant's Notice**.

F26. The **Appellant's Notice** must be **served** within 15 **business days** of the final determination of the **AEP** being communicated to the **Appellant** pursuant to rule F18. The power of variation pursuant to rule B3 shall not apply to this rule.

Convening the AIM Executive Appeal Panel

F27. The **Secretary** shall proceed to take steps to convene an **AEAP** and communicate to the **parties** the membership of the convened **AEAP** and name of the person appointed as **Chairman**.

F28. The **Secretary** shall ensure that the **Chairman** is provided with a copy of the **Appellant's Notice**.

Preliminary issues

F29. The **Chairman** shall decline to hear an appeal in the event that:

F29.1 the **Appellant's Notice** does not disclose any permissible grounds of appeal; and/or

F29.2 the **Appellant's Notice** has not been validly **served**: (i) within the specified 15 **business day** timeframe for **service** at rule F26; and/or (ii) in accordance with the **general provisions** of **service**; and/or

F29.3 the appeal has no real prospects of success.

F30. The **Chairman** may decline to hear an appeal in the event that the **Appellant's Notice** and supporting submissions do not adequately particularise the reasons and material facts upon which the **Appellant** relies as the basis for any pleaded ground of appeal.

F31. The **Chairman** shall determine any preliminary issues on the papers.

F32. The **Chairman's** determination pursuant to rule F31 shall be final with no right of appeal.

Procedural rules of the AIM Executive Appeals Panel

F33. The procedural rules of the **AEAP** set out in rules C48 – C61 shall apply to all appeals of a **non disciplinary decision** to the **AEAP**.

Conduct of AIM Executive Appeals Panel hearings

F34. The conduct rules of the **AEAP** set out in rules C62 – C64 shall apply to all appeals of a **non disciplinary decision** to the **AEAP**.

Determination of appeals by the AIM Executive Appeals Panel

F35. The **AEAP** may only determine an appeal of a final determination of the **AEP** by:

F35.1 dismissing the appeal and upholding the final determination of the **AEP**; or
F35.2 allowing the appeal, or part thereof, if it is satisfied that one or more of the grounds of appeal in the **Appellant's Notice** are made out on the balance of probabilities

F36. In the event that the **AEAP** allows the appeal, or part thereof, pursuant to rule F35.2 it shall then determine whether to:

F36.1 uphold the **non disciplinary decision** on such other grounds or reasons as the **AEAP** may determine; or
F36.2 remit the **non disciplinary decision** for reconsideration by the **Exchange**.

F37. In the event that the **AEAP** remits the **non disciplinary decision** for reconsideration, pursuant to rule F36.2, the **Exchange** shall undertake any redetermination and communicate the outcome of that redetermination not later that 20 **business days** after the **AEAP's** determination is communicated to the **parties**.

F38. In the intervening period between the **AEAP's** determination to remit the **non disciplinary decision** for reconsideration and any reconsideration by the **Exchange** in accordance with rule F37, the **non disciplinary decision** shall continue to be in full force and effect.

Communication of AEAP's determinations

F39. The **AEAP's** final determination pursuant to rules F35 – F36 shall be communicated to the **parties** as soon as reasonably practicable. The **AEAP** shall proceed to provide necessary directions for the determination of any costs order.

F40. Any order of the **AEAP** with regards to costs shall be communicated to the **parties** as soon as reasonably practicable.

F41. The **AEAP's** determinations and orders pursuant to rules F39 – F40 shall be final and binding with no right of appeal.

Intervening events

F42. If during the intervening period between the commencement and the determination of an appeal of a **non disciplinary decision** before an **AEP** or subsequent appeal before an **AEAP**, the **non disciplinary decision** is varied, rescinded or otherwise rendered redundant such that the hearing of any appeal would serve no practical purpose, a **party** may submit an application to the **Chairman**, via the **Secretary** and copied to the other **party**, requesting a direction that the appeal be discontinued.

F43. The **Chairman** shall determine any application pursuant to rule F42 on the papers and, in the event of discontinuance being directed, proceed to provide necessary directions for the **AEP** or **AEAP** (as applicable) to determine any costs order.

F44. The **Chairman's** determination pursuant to rule F43 shall be final with no right of appeal.

Part Three - Costs & Fines

G1. These rules, together with the rules in the **general provisions**, shall govern: (i) any order for costs (including disbursements) against a **party**; or (ii) any order to fine an **AIM company** or **nominated adviser**.

G2. For the purposes of these rules and references to costs in this **Handbook**, the following definitions shall apply:

G2.1 references to "costs of the Exchange" shall include, but are not limited to, the external legal or other professional fees, costs and disbursements incurred by the **Exchange** in bringing **disciplinary proceedings** or in its capacity as either the **Appellant** or the **Respondent** to any appeal;

G2.2 references to the "costs of the Secretary" shall be to any disbursements incurred by the **Secretary**, if internally appointed, but, if an external appointment, may also include the professional fees, costs and disbursements of the **Secretary**;

G2.3 references to "costs of the Panel" shall be to the external legal or other professional fees, costs fees and disbursements incurred by the **Panel** in the course of discharging it functions;

G2.4 references to "costs of the Committee" shall be to the remuneration and expenses of the **Committee** and the external legal or other professional fees, costs and disbursements incurred by the **Committee** in the course of discharging its functions.

Costs orders in appeals to the AIM Executive Panel and AIM Executive Appeals Panel

G3. If a **Panel** dismisses an appeal by an **applicant**, **AIM company** or **nominated adviser**, or such party withdraws its appeal, or part thereof, prior to a final determination, the presumption shall be that the **applicant**, **AIM company** or **nominated adviser** is liable for and shall be ordered to pay the costs of the **Exchange**, the **Secretary** and of the **Panel**. The **Panel** shall determine the quantum of such costs to be paid.

G4. If a **Panel** remits a **non disciplinary decision** back to the **Exchange** for reconsideration, or quashes or varies a **warning notice**, the **Panel** may, in its discretion, order that an **applicant**, **AIM company** or **nominated adviser** pays the costs of the **Exchange**, the **Secretary** and of the **Panel**. The **Panel** shall determine the quantum of such costs to be paid.

G5. If an appeal is discontinued pursuant to rule C71 the **Panel** may, in its discretion, order that an **applicant**, **AIM company** or **nominated adviser** pays the costs of the **Exchange**, the **Secretary** and of the **Panel**. The **Panel** shall determine the quantum of such costs to be paid.

Costs orders in disciplinary proceedings and related appeals

G6. A **Committee** may make such order as to costs as it considers appropriate taking into account all the relevant circumstances, provided always that it shall have regard to the presumptions set out in rules G7 – G9 and to rule G11.

G7. The presumption shall be that the **Respondent** is liable for and shall be ordered to pay the costs of the **Exchange**, the **Secretary** and of the **ADC** incurred in relation to the **disciplinary proceedings** where:

G7.1 an **ADC** finds that the **Respondent** has breached any of the **AIM Rules** particularised in the **Exchange's Statement of Case**; or

G7.2 following the commencement of **disciplinary proceedings** the **Respondent** admits that it has breached any of the **AIM Rules** particularised in the **Exchange's Statement of Case**.

G8. In the event of any discontinuance by the **Exchange** of **disciplinary proceedings** pursuant to rule D25, the **ADC** may, in its discretion, order that a **Respondent** pays the costs or part of the costs of the **Exchange**, the **Secretary** and the **ADC** incurred in relation to the discontinued **disciplinary proceedings**.

G9. The presumption shall be that the **AIM company** or **nominated adviser** is liable for and shall be ordered to pay the costs of the **Exchange**, the **Secretary** and **ADAC** incurred: (i) in relation to the appeal; and (ii) the **disciplinary proceedings** where:

G9.1 an **ADAC** dismisses an appeal by an **AIM company** or a **nominated adviser** of an **ADC Disciplinary Determination**, or part thereof; or

G9.2 after commencement of an appeal an **AIM company** or a **nominated adviser** withdraws its appeal of an **ADC Disciplinary Determination**, or part thereof.

G10. The relevant **Committee** shall determine the quantum of any costs to be paid pursuant to any order made in accordance with rules G6 – G9.

Other costs provisions

G11. Costs cannot be awarded against the **Exchange** unless, in the reasonable opinion of a **Panel** or **Committee**, the **Exchange** has acted in bad faith in bringing or conducting proceedings or, in the case of a **non disciplinary decision**, in the making of that decision. Such costs shall be determined by the relevant **Panel** or **Committee** and limited to the reasonable and proportionate legal costs incurred in the preparation and presentation of the other **party's** case.

Fines in disciplinary proceedings and appeals

G12. If an **ADC** finds (or a **Respondent** admits) that the **Respondent** has breached the **AIM Rules** particularised in the **Exchange's Statement of Case** it shall determine the level of any fine to be imposed. In doing so the **ADC** shall have regard to the following principles:

G12.1. That amongst other matters, the purpose of **disciplinary proceedings**, including any fine, is to maintain confidence in the **AIM** regulatory framework and uphold the integrity and reputation of **AIM** by holding to account those who fail to comply with obligations owed to the **Exchange**.

G12.2. That the level of any fine should reflect the nature, circumstances and gravity of the breaches and of the **Respondent's** conduct.

G12.3. That the level of any fine should be sufficient to act as both: (i) a deterrent to the **Respondent** from committing future breaches of its obligations pursuant to the **AIM Rules**; and (ii) a deterrent to others from committing similar beaches.

G13. Following any determination of the **ADC** as to the level of any fine to be imposed, the **ADC** may consider submissions from the **parties** for any supplemental order relating to the fine imposed.

G14. When determining the imposition of and/or quantum of a fine in an appeal, the **ADAC** or a **Panel** shall have regard to the principles contained in rule G12.

Appendix 1 - Appeal form for appeals to an AIM Executive Panel of a warning notice

The following prescribed appeal form shall be **served** on the **Exchange**, copied to the **Secretary**, by an **Appellant** seeking to commence an appeal pursuant to rule C3 of the **Handbook**.

Identify warning notice
Identify the **warning notice**, or any part thereof, which the **Appellant** seeks to appeal:
Permissible grounds of appeal
Confirm the ground(s) pursuant to rule C2 upon which the appeal is based, and provide written submissions and a summary of all material facts upon which the **Appellant** seeks to rely:
C2.1 The findings of fact or of breach of the **AIM Rules** set out in the **warning notice** were unsupported by the information or evidence upon which such findings were based:
C2.2 The findings of breach in the **warning notice** involved a misinterpretation or erroneous application of the **AIM Rules** by the **Exchange**:
Evidence
List and append copies of any relevant documents upon which the **Appellant** relies:
Attendance at hearing
Provide a list of those individuals that the **Appellant** wishes to be present during any hearing, together with details of each named individual's relationship to the **Appellant** and the capacity in which each individual is attending:
Contact details
Provide the contact details to which all further communications and documents regarding the appeal shall be sent including, if relevant, the name and contact details of any legal representative instructed to represent the **Appellant**:

Appendix 2 - Appeal form for appeals to the AIM Executive Appeals Panel of a final determination of an AIM Executive Panel

The following prescribed appeal form shall be **served** on the **Secretary**, copied to the **Respondent**, by an **Appellant** seeking to appeal a final determination of an **AEP** pursuant to rule C39 of the **Handbook**.

Identify final determination of AEP
Identify the final determination of the **AEP**, or part thereof, being appealed:
Permissible grounds of appeal
Confirm the ground(s) pursuant to rule C38 upon which the appeal is based, and provide written submissions and a summary of all material facts upon which the **Appellant** seeks to rely:
C38.1 the **AEP's** determination was one which no **AEP**, acting reasonably, could have made on the information or evidence before it
C38.2 the **AEP's** determination was based on a misapplication or misinterpretation of the **AIM Rules**:
Determination sought
Set out any alternative determination sought:
Evidence
List and identify (by page references to the **AEP** hearing bundle) documents relied upon: For any new documentary evidence sought to be relied upon, a copy shall be appended to this form, together with submissions in accordance with rule C51 for permission to adduce that documentary evidence:
Attendance at hearing
Provide a list of those individuals that the **Appellant** wishes to be present during the hearing, together with details of each named individual's relationship to the **Appellant** and the capacity in which each individual is attending:
Contact details
Provide the contact details to which all further communications and documents regarding the appeal shall be sent including, if relevant, the name and contact details of any legal representative instructed to represent the **Appellant**:

Appendix 3 - Case Management Memorandum

This Case Management Memorandum shall be submitted by the **parties** in accordance with the provisions of rule D16 of the **Handbook**.

Name and contact details of party
Name and contact details of legal representative
Request for witness of fact
Details relating to proposed witness of fact, being an explanation of why the **party** wishes to adduce such witness evidence, the identity and qualification/role of the witness and a brief description of the area/issue each proposed witness will address:
Request for expert witness evidence
Details relating to proposed expert witness evidence, being an explanation of why the **party** wishes to adduce such expert witness evidence, the identity and qualification of the expert, if known, and a brief description of the area/issue the proposed expert witness will address:
Timetable
Having regard and with reference to the indicative directions and timescales set out in **Appendix 4**, identify any requested variation of those indicative timescales, any proposed alternative timescale and provide the reasons for any requested variation.
Other case management or procedural directions sought
Provide details (together with a draft) of any further or additional directions sought and any proposed timescale relating to compliance with such additional directions, together with the grounds for that request.

Appendix 4 - Indicative standard directions and timetable for disciplinary proceedings

Date of directions	
1.	These directions were made by the **Chairman** of the **ADC** [*insert name*] / **ADC** on [*Insert date*].
Witness evidence of fact	
2.	The **Exchange** is permitted to adduce witness evidence of fact of the following individuals:
	[name and role of each witness]
3.	The **Respondent** is permitted to adduce witness evidence of fact of the following individuals:
	[name and role of each witness]
4.	By 16:00 on *[Insert date that shall usually be [60]* ***business days*** *following the date of directions]* the **Exchange/Respondent** must file with the **Secretary** copies of the signed witness statements of all witnesses for whom permission to adduce such evidence has been granted. The **Secretary** shall not without further order of the **Chairman** release one **party's** witness evidence to the other **party** until both **parties'** witness evidence has been received.
5.	Each witness statement of fact shall:
	(a) provide the full name and address of the witness; a summary of his or her present and past relationship (if any) with any of the **parties**; and a description of his or her background, qualifications, training and experience; (b) provide a full and detailed description of the facts, and the source of the witness' information as to those facts, which is sufficient to serve as that witness's evidence in chief; (c) exhibit a copy of any documents to which the witness refers or (if already provided) provide a cross reference. (d) include a contents page if the witness statement is over 25 pages; (e) include an affirmation of the truth of the witness statement and confirmation that the witness is able and willing to attend the hearing of the **disciplinary proceedings**; and (f) include the signature of the witness and the date.
6.	Witness evidence of fact shall be limited to that which is relevant to the issues in the case(s). Witnesses providing evidence which the **ADC** determines to be irrelevant to the issues will not be heard.
7.	Each statement is to stand as the relevant witness's evidence in chief at the hearing. Each **party** shall be able to cross-examine and re-examine any such witness at the hearing.
Expert evidence	
8.	The [**Exchange/Respondent/parties**] [is/are] permitted to adduce the written evidence of [one] expert[s], who must confirm their willingness to attend the hearing of the **disciplinary proceedings**.
9.	The expert[s] will be provided with a copy of the **Statement of Case**, **Statement of Defence** and documents appended thereto and each relevant witness statement and exhibits.

10.	The written evidence of the experts shall be with respect to: *Guidance Note*: *Insert scope of matters to be addressed which will be determined by the **ADC**, usually by reference to the scope of any proposed expert evidence set out by a party in its **CMM***
11.	By 16:00 on *[Insert date that shall usually be [80] **business days** following the date of directions*] the [**Exchange/Respondent/parties**] shall file with the **Secretary** signed copies of the expert report for which permission has been granted. The **Secretary** shall not without further order of the **Chairman** release one **party's** expert report to the other **party** until both **parties'** expert reports have been received.
12.	Each expert report shall:
	(a) provide the full name and address of the expert and a description of his or her background, qualifications, training and experience; (b) confirm that the expert considers him/herself to be free of conflict in acting as an expert witness in the **disciplinary proceedings**; (c) contain a summary of the instructions which are material to the opinions expressed in the report; (d) be addressed to the **ADC** and contain a statement that: *"I understand that my overriding duty is to the **AIM Disciplinary Committee** both in preparing this report and in giving oral evidence. I have complied with and will continue to comply with that duty. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."* (e) identify the documents reviewed on which the expert's opinions and conclusions are based; (f) contain his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions; (g) be signed and dated.
13.	Each expert must make it clear: (a) when a question or issue falls outside his/her expertise; and (b) when he/she is not able to reach a definite opinion, for example because he/she has insufficient information.
14.	Each expert's report is to stand as that expert's evidence in chief at the hearing of the **disciplinary proceedings**. Each **party** shall be able to cross-examine and re-examine any such expert at the hearing.
ADC hearing bundle	
15.	The **Exchange** shall prepare and provide the **Secretary** with copies of the hearing bundle. The hearing bundle shall contain: *Guidance Note: If convenient, documents can be set out in the hearing bundle in a single paginated chronological run, rather than appended to the relevant statement of case of witness statement (or in any other convenient way). In such cases marginal references to the chronological run should be added to the statements of case, and to the witness evidence, as required.*
	(a) the **Statement of Case** and any documents appended to it; (b) the **Statement of Defence** and any documents appended to it; (c) any additional documents provided pursuant to rule D11 (if not appended to the **Statement of Case**); (d) any witness statements of witnesses of fact and any exhibits;

	(e) any expert reports and supplemental expert reports and exhibits; *Guidance Note: If the exhibits to any statements or reports are duplicative of the documents already provided in a **Statement of Case** or **Statement of Defence**, the exhibit should be excluded and marginal references to the disclosure inserted in the relevant statement or report* (f) copies of any previous directions of the **ADC** or its **Chairman** and relevant communications between the **parties** and the **Secretary**.
16.	The **Secretary** shall provide the **parties** with the **ADC** hearing bundle no later than *[Insert date that shall usually not be sooner than [30] **business days** before the scheduled date for commencement of the hearing of the **disciplinary proceedings**, as directed below.*
Parties attending the hearing	
17.	Each **party** shall provide the **Secretary** with a list of those individuals that it wishes to be present during the hearing on behalf of that **party**, together with details of each named individual's relationship to the **party** and the capacity in which each individual is attending, having regard to rule B18, by *[Insert date that shall usually be 16:00 (UK time) [20] **business days** prior to hearing]*.
Opening submissions	
18.	Each **party** shall provide to the **Secretary** their written opening submissions by *[Insert date that shall usually be 16:00 (UK time) [20] **business days** following the provision of the **ADC** hearing bundle]*. The **Secretary** will simultaneously provide the **parties** and the **ADAC** with a copy of each **party's** written submissions.
19.	Opening submissions shall not exceed [30] pages in length and shall contain cross-references to the hearing bundle.
Commencement and duration of the disciplinary hearing *Guidance Note: In determining the duration of the hearing of the **disciplinary proceedings** the **Chairman** shall have regard to:* *(a) the likely estimated time required for the hearing and determination of all issues of liability; and* *(b) subject to any finding of liability, the likely estimated time for determining any fine and costs orders.* *Unless otherwise directed, the duration for a hearing to determine whether the **Respondent** has breached the **AIM Rules** shall usually be as follows:* • *Where the hearing will involve witnesses of fact or expert witnesses, the duration of the hearing shall usually be no more than [5] **business days** unless the volume of necessary evidence requires it.* • *Where the hearing will not involve witnesses of fact or expert witnesses and the evidence to be considered by the **ADC** is substantively comprised of the **Statement of Case** and **Statement of Defence** and any documents appended thereto the hearing duration shall usually be no more than [2] **business days**.*	
20.	The matter is listed for a final hearing before the **ADC** to begin at 10:00 on *[insert date which shall usually not be earlier than [10] **business days** following the last of any scheduled dates*

	in the case management timetable above], with a time estimate of [] days, with a [] day in reserve.
21.	The **parties** shall make every reasonable effort to adhere to hearing durations.
22.	The hearing shall take place at *[usually London Stock Exchange plc at 10 Paternoster Square]*
23.	The **ADC** will hear the matter *[usually from 10:00 – 13:00 and from 14:00 to 16:30 on each day that it sits]*.

Dated [day] [Month] [Year]

……..

Chairman's signature

Appendix 5 - Appeal form for appeals to the AIM Disciplinary Appeals Committee of an ADC Disciplinary Determination

The following prescribed appeal form shall be **served** on the **Secretary**, copied to the **Respondent**, by an **Appellant** seeking to appeal an **ADC Disciplinary Determination** pursuant to rule D36 of the **Handbook**.

Identify ADC Disciplinary Determination
Identify the **ADC Disciplinary Determination**, or part thereof, being appealed:
Permissible grounds of appeal
Confirm the ground(s) pursuant to rule D35 upon which the appeal is based, and provide written submissions and a summary of all material facts upon which the **Appellant** seeks to rely:
D35.1 the determination or direction was one which no **ADC**, acting reasonably, could have made on the facts and information before it
D35.2 the determination was based on a misapplication or misinterpretation of the **AIM Rules**
Determination sought
Set out any alternative determination sought:
Evidence
List and identify (by page references to the **ADC** hearing bundle) documents relied upon: For any new documentary evidence sought to be relied upon, a copy shall be appended to this form, together with submissions in accordance with rule D50 for permission to adduce that documentary evidence:
Attendance at hearing
Provide a list of those individuals that the **Appellant** wishes to be present during the hearing, together with details of each named individual's relationship to the **Appellant** and the capacity in which each individual is attending:
Contact details
Provide the contact details to which all further communications and documents regarding the appeal shall be sent including, if relevant, the name and contact details of any legal representative instructed to represent the **Appellant**:

Appendix 6 - Appeal form for appeals to the AIM Executive Panel of a non disciplinary decision

The following prescribed appeal form shall be **served** on the **Exchange**, copied to the **Secretary**, by an **Appellant** seeking to commence an appeal pursuant to rule F3 of the **Handbook**.

Identify non disciplinary decision
Identify the **non disciplinary decision**, or any part thereof, which the **Appellant** seeks to appeal:
Permissible grounds of appeal
Confirm the ground(s) pursuant to rule F2 upon which the appeal is based, and provide written submissions and a summary of all material facts upon which the **Appellant** seeks to rely:
F2.1 the **non disciplinary decision** involved a misinterpretation or erroneous application of the **AIM Rules** by the **Exchange**:
F2.2 the **non disciplinary decision** was one which could not have been reached by the **Exchange**, acting reasonably, on the information or evidence before it:
Evidence
List and append copies of any relevant documents upon which the **Appellant** relies:
Attendance at hearing
Provide a list of those individuals that the **Appellant** wishes to be present during any hearing, together with details of each named individual's relationship to the **Appellant** and the capacity in which each individual is attending:
Contact details
Provide the contact details to which all further communications and documents regarding the appeal shall be sent including, if relevant, the name and contact details of any legal representative instructed to represent the **Appellant**:

Glossary

Save for where defined below, defined terms used in this **Handbook** shall have the same meanings set out in the Glossary to the **AIM Rules for Companies** and **AIM Rules for Nominated Advisers**.

Term	Meaning
ADAC Appeal Determination	The determination of an **ADAC** pursuant to rule D65 of this **Handbook**.
ADC Disciplinary Determination	The determination of an **ADC** pursuant to rule D30 of this **Handbook**.
AIM Disciplinary Appeals Committee ("**ADAC**")	An external committee (see rule A14) convened to hear and determine appeals of an **ADC Disciplinary Determination**.
AIM Disciplinary Appeal Notice	A public notice issued by the **Exchange** pursuant to rule D66 of this **Handbook** upon the conclusion of an appeal of an **ADC Disciplinary Determination**: (a) naming the **relevant AIM company** or **nominated adviser**; (b) confirming whether the **ADAC** has upheld, quashed or varied the **ADC Disciplinary Determination**, or part thereof; and (c) confirming the **ADAC's** determination on any level of fine.
AIM Disciplinary Commencement Notice	A public notice issued by the **Exchange**, pursuant to rule D5 of this **Handbook**, in respect of **disciplinary proceedings** commenced by the **Exchange** which shall: (a) name the relevant **AIM company** or **nominated adviser**; and (b) summarise the alleged breaches of the **AIM Rules**.
AIM Disciplinary Committee ("**ADC**")	An external committee (see rule A14), convened to hear and determine **disciplinary proceedings** brought by the **Exchange** against an **AIM company** or **nominated adviser**.
AIM Disciplinary Outcome Notice	A public notice issued by the **Exchange** pursuant to rule D31 of this **Handbook**: (a) naming the relevant **AIM company** or **nominated adviser**; (b) confirming whether or not the **ADC** has found that the relevant **AIM company** or **nominated adviser** has breached the **AIM Rules** and summarising the nature of the breaches; and (c) confirming the **ADC's** determination on any level of fine.
AIM Executive Appeals Panel ("**AEAP**")	A panel (see rule A13) convened to hear and determine an appeal of a final determination of the **AEP**.
AIM Executive Panel ("**AEP**")	A panel (see rule A13) convened to hear and determine an appeal against a **non disciplinary decision** or an appeal of a **warning notice**.
Appellant	A **party** pursuing an appeal to the **AEP**, the **AEAP** or the **ADAC**, as the context so requires, in accordance with the provisions of this **Handbook**.
Appellant's Notice	The information and documents required to be **served** by an **Appellant** pursuing an appeal to the **AEP**, the **AEAP** or the **ADAC**, in accordance with the provisions of this **Handbook**.
Case Management Conference ("**CMC**")	A hearing pursuant to rules D13 - D15 of this **Handbook**.

Case Management Memorandum ("**CMM**")	A standard form memorandum to be completed and submitted by each **party** to **disciplinary proceedings** pursuant to rules D16 - D17 of this **Handbook**.
Chairman	A person appointed from time to time to carry out the functions of a chairman of a **Panel** or **Committee**.
disciplinary proceedings	Proceedings against an **AIM company** or **nominated adviser** commenced by the **Exchange** pursuant to rule D2 of this **Handbook** and to be determined before an **ADC**.
Exchange's Response	The information and documents submitted by the **Exchange** in accordance with the provisions of this **Handbook** in response to an **Appellant's Notice**.
general provisions	Rules B1 - B32 inclusive of this **Handbook**.
non disciplinary decision	A decision of the **Exchange** pursuant to the **AIM Rules**, save for a decision to take formal disciplinary action as described at rule A7 of this **Handbook**.
Party or **Parties**	As the context so requires: (a) the **Exchange**; (b) an **AIM company**; (c) a **nominated adviser**; or (d) an **applicant**.
Respondent	A **party** responding to either a **Statement of Case** or an **Appellant's Notice**, as the context so requires.
Respondent's Notice	The information and documents submitted by a **Respondent** in response to an **Appellant's Notice** in accordance with the provisions of this **Handbook**.
Secretary	A person appointed to perform the function of a secretary to any **Panel** or **Committee**.
Service or **served**	Service pursuant to rules B26 - B29 of this **Handbook**.
Statement of Case	The information and documents **served** by the **Exchange** when commencing **disciplinary proceedings** as described in Part One, Section D of this **Handbook**.
Statement of Defence	The information and documents **served** by an **AIM company** or **nominated adviser** in response to a **Statement of Case** as described in Part One, Section D of this **Handbook**.

London
Stock Exchange Group

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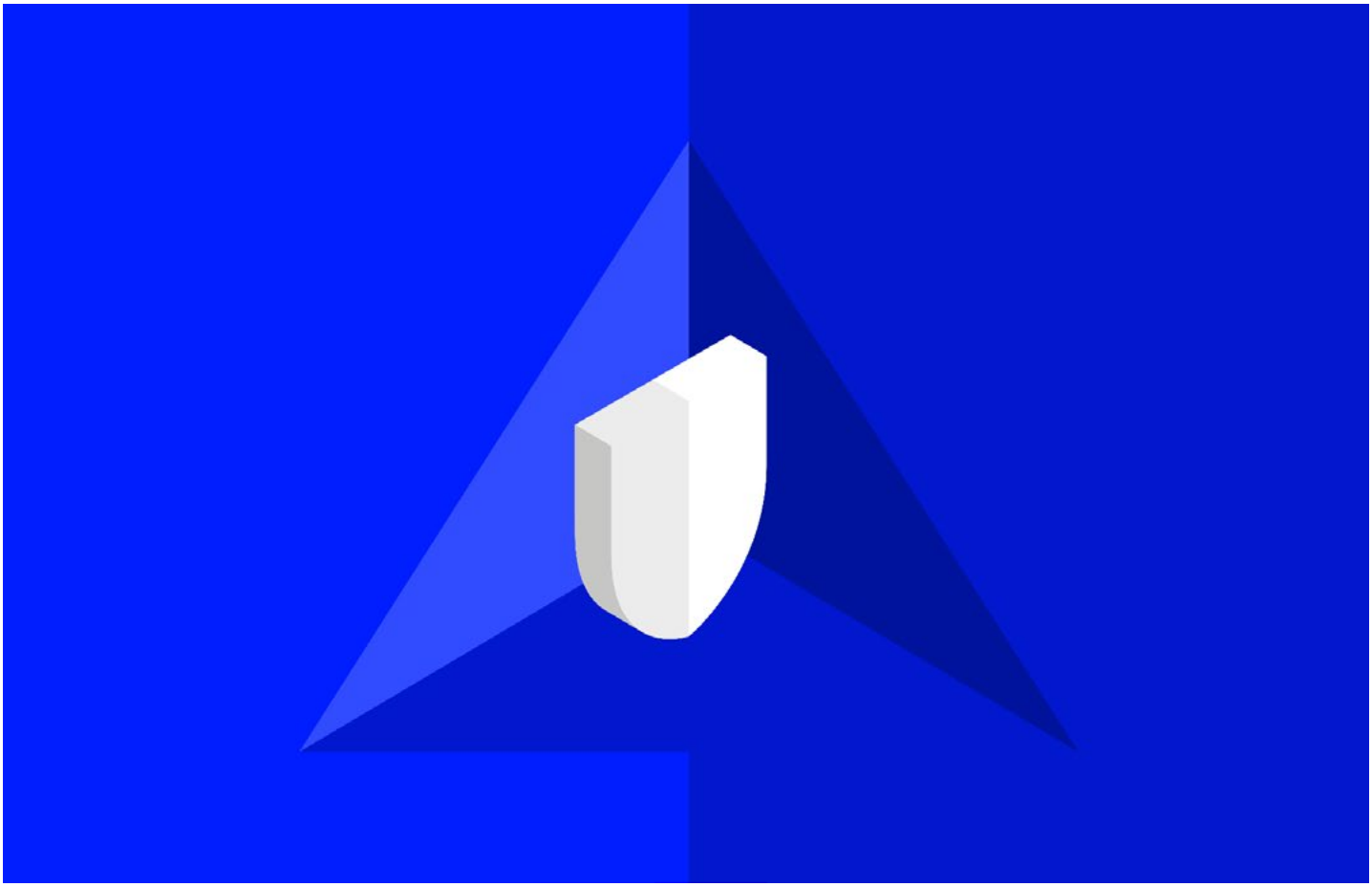
Registered in England and Wales No. 5369106

www.lsea.com

CORPORATE

FEES FOR COMPANIES AND NOMINATED ADVISERS

Effective 1 January 2025



LONDON STOCK EXCHANGE

AIM

Contents

AIM fees for companies

Admission fees

An admission fee is payable by all companies seeking admission to AIM, or where an enlarged entity seeks admission to AIM, following a reverse takeover under Rule 14 of the AIM Rules for Companies. The admission fee is based on the market capitalisation of the company on the day of admission[1]. The market capitalisation of the company is based on the total number of securities for which application(s) is being made multiplied by the opening price on the day of admission.

To determine the admission fee:

- Locate the market capitalisation band of the securities to be admitted in column (a)
- Multiply any additional amount over the 'greater than or equal to' figure by the corresponding figure in column (b)
- Add the result of this calculation to the maximum fee in the **previous** market capitalisation band in column (c)

In the event of an application being made where more than one line/class of security is being admitted, the market capitalisation of each class will be combined to give a total for the company.

Market Capitalisation (£m)		Increment per £m	Maximum fee (£)
Greater than or equal to (a)	Less than	(b)	(c)
0	5	Minimum fee	15,125
5	10	1,517	22,710
10	50	762	53,190
50	250	398	132,790
250	And above	182	155,000
		Maximum fee	155,000

VAT, currently at 20%, must be added to the fee derived for issuers where applicable.

An invoice for the admission fee will be raised at the time of admission. Payment of admission **fees must be received no later than 30 days after the date of such invoice**.

[1] The opening price is the first price at which the uncross takes place. Should the first uncross price not be available, the mid-price of the best bid-ask on the first day will be used. In instances whereby neither of the aforementioned are available, London Stock Exchange will use the last price (if available), or alternatively, the expected price provided by the adviser.

Further issues

For further issues greater than or equal to £1.50 million, a fee will apply based on the value of the securities admitted. Charges will only apply to further capital raisings. No further issue fee will apply for further issues where capital raised is below £1.50 million.

To determine the further issue fee:

- Locate the market capitalisation band of the securities to be admitted in column (a)
- Multiply any additional amount over the 'greater than or equal to' figure by the corresponding figure in column (b)
- Add the result of this calculation to the maximum fee in the previous market capitalisation band in column (c)

Market Capitalisation (£m)		Increment per £m	Maximum fee (£)
Greater than or equal to (a)	Less than	(b)	(c)
0	1.50		No charge
		Minimum fee	7,230
1.50	250	322	87,155
250	And above	Maximum fee	87,155

VAT, currently at 20%, must be added to the fee derived for issuers where applicable

An invoice for the further issue fee will be raised at the time of issuance. Payment of further issue fees **must be received no later than 30 days after the date of such an invoice**

Annual fees

Annual fees are based on the market capitalisation of the issuer at close of trading on the last business day of September in the preceding year.

To determine the annual fee:

- Round up the market capitalisation to the nearest £1 million
- Locate the market capitalisation band of the securities in column (a)
- Multiply any additional amount over the 'greater than or equal to' figure by the corresponding figure in column (b)
- Add the result of this calculation to the maximum fee in the previous market capitalisation band in column (c)

Market Capitalisation (£m)		Increment per £m	Cumulative maximum fee (£)
Greater than or equal to (a)	Less than	(b)	(c)
0	250	Minimum fee	11,000
250	And above	42.5	110,000
		Maximum fee	110,000

- Annual fees are billed in January for the 12 calendar months commencing 1 January to 31 December and **must be paid within 30 days of the invoice date**.
- A pro-rata annual fee is payable by new applicants. To obtain the fee, take the number of calendar days, including the date of admission to trading up to and including 31 December, divide this number by 365 (366 during a leap year), and multiply the quotient by the annual fee calculated.
- Where admission to trading occurs after the last business day of September of the preceding year, the market capitalisation used in the above calculation is the market capitalisation of the securities at the time of admission[2]
- No pro-rata annual fee is payable by the enlarged entity admitted to AIM following a reverse takeover under Rule 14 of the AIM Rules for Companies.
- No additional pro-rata annual fee is payable by companies transferring between London Stock Exchange markets.

[2] The opening price is the first price at which the uncross takes place. Should the first uncross price not be available, the mid-price of the best bid-ask on the first day will be used. In instances whereby neither of the aforementioned are available, London Stock Exchange will use the last price (if available).

Cancellation Fee:

A cancellation fee of £12,000 shall apply for issuers whose market capitalisation on the day when the company announces its intention to discontinue admission to trading on AIM is greater than or equal to £100 million.

Fees chargeable pursuant to the 'Cancellation Fee' section are payable before the company cancels its admission to trading on AIM.

Annual fees for nominated advisers

Application fees

An application fee of 25,000 is payable by all applicants seeking approval as nominated advisers. The fee is payable when the application is submitted.

Annual fees

The annual fee for a nominated adviser is based on the number of companies represented on the last business day of November in the preceding year.

Annual fees are billed for the 12 months commencing 1 January and must be paid within 30 days of the invoice date.

Number of companies		Fee
From	To	
1	5	£14,000
6	15	£21,000
16	39	£28,000
40	54	£42,000
55+		£55,000

An annual fee of £13,000 for the first year (pro-rated up to 31 December) is payable on approval of the application to become a nominated adviser.

Payment information

Calculating market capitalisation for admission fees

To determine the market capitalisation on which the admission fee will be charged:

1. Multiply the total number of securities for each line/class of securities for which application(s) is being made, by the mid opening share price on the day of admission. For rights issues, the market capitalisation is based on the issue price available from the prospectus.
2. Where more than one line/class of securities is to be admitted, add together the market capitalisation for all lines/classes.

Payment details

The annual fee for AIM companies and nominated advisers is for each year or part thereof and is therefore not refundable, including where securities are suspended or cancelled, or the nominated adviser is no longer on the register.

Interest may be added on overdue payments (before and after any judgement) at the Bank of England base rate (as varied from time to time) plus 3%.

AIM fee queries, including any requests for repayment of admission fees resulting from incorrect fee calculations, will only be considered where less than three months have elapsed since the date of the invoice for the relevant charge.

United Kingdom Value Added Tax (VAT), currently at 20%, must be added to the fee derived if the company is subject to United Kingdom VAT. Companies with their principle place of business in the United Kingdom will be considered subject to United Kingdom VAT. All nominated advisers are subject to United Kingdom VAT.

Note: London Stock Exchange plc reserves the right to amend any prices at its sole discretion.

All cheques should be made payable to “London Stock Exchange plc”. Alternatively, payment may be made by BACS transfer to the account of the Exchange at:

HSBC plc
Poultry
London
EC2P 2BX
United Kingdom

Account Name: Stock Exchange General Account
Sort Code: 40-05-30
Account Number: 41525727
IBAN: GB27MIDL40053041525727

Where payments are made by BACS, remittance details – including invoice numbers – must be sent to the Credit Control team either by e-mail (capitalmarketscreditcontrol@lseg.com) or by post to:

Credit Control
London Stock Exchange Plc
10 Paternoster Square,
London,
EC4M 7LS,
United Kingdom

Payment of admission fees (for companies) and application fees (for nominated advisers)

Payments should be made by BACS transfer to the account details stated above.

Payments must be made in pounds sterling only.

Alternatively, payments can be made by cheque, which should be sent to the above address.

Payment of annual fees

Annual Fees are billed for the 12 calendar months commencing 1 January to 31 December and must be paid within 30 days of the invoice date.

Payment of annual fees for existing companies and nominated advisers should be made via Direct Debit where possible. Direct Debit mandates, as well as Tax Certificates from HMRC, can be downloaded from the Issuer Services portal (for companies – please write to issuerservices@lseg.com to obtain access), or requested from the Capital Markets Credit Control team – please write to capitalmarketscreditcontrol@lseg.com.

Alternatively, BACS payments should be made to the account details stated on the previous page.

Payments must be made in pounds sterling only.

If required, please provide the Purchase Order number that should be quoted on your invoice to capitalmarketscreditcontrol@lseg.com, quoting the invoice number.

Payments can also be made by cheque, which should be sent to the address stated above.

If you have any queries relating to the AIM fees for companies, please contact our Market Operations team:

Telephone: +44 (0)20 7797 4310

Further copies of the fees brochure are available from our website
www.londonstockexchange.com/aim-fees

Updated as of 28/08/2024

LONDON STOCK EXCHANGE

AIM

Fact sheet

Stamp Duty Exemption

Stamp Duty and Stamp Duty Reserve Tax exemption on eligible AIM and High Growth Segment securities

Since 28 April 2014, Stamp Duty and the Stamp Duty Reserve Tax (SDRT) have no longer been chargeable on transactions in securities admitted to trading on a recognised growth market provided they are not also listed on a recognised stock exchange.

In the context of London Stock Exchange's markets, eligible securities on AIM and the High Growth Segment of the Main Market benefit from the exemption.

1. When did the exemption come into effect?

The measure became effective from 28 April 2014.

2. Who is affected?

Any market participant purchasing securities traded on a 'recognised growth market' is likely to be affected.

3. Which securities are eligible for exemption?

A list of exempt securities, as a result of this legislation change, is available on Euroclear UK and Ireland's website (using login as guest) at:

https://my.euroclear.com/eui/en/reference/public/growth-market-stamp-exemption.html

According to the legislation mentioned in Question 6, Stamp Duty and SDRT are not chargeable on transactions in securities admitted to trading on a recognised growth market provided they are not also listed on a recognised stock exchange.

The meaning of 'listed' is defined in Section 1005(3) to (5) Income Tax Act 2007. A list of recognised stock exchanges is maintained by HMRC and can be found in Tables 1 and 2 at: http://www.hmrc.gov.uk/fid/rse.htm

4. What is a recognised growth market?

To qualify as a 'recognised growth market', the market must meet one of the following conditions:

a) a majority of companies on the market have a market capitalisation of less than £170 million; or,
b) the admission rules require companies to demonstrate at least 20 per cent compounded annual growth (in revenue or employment) over the last three financial years of submissions.

London Stock Exchange's AIM and the High Growth Segment (HGS) have individually been granted the status of a 'recognised growth market' by HMRC. Therefore, transactions in eligible securities trading on

London Stock Exchange Group

Fact sheet

either AIM or the HGS will be exempt from the tax.

5. Where can I find a list of recognised growth markets?

HMRC will maintain a list of markets that have been granted 'recognised growth market' status (please refer to the link in question 3). The latest information on stamp duty on shares is available on:
https://www.gov.uk/topic/business-tax/stamp-duty-on-shares/latest

6. Which piece of legislation enacted this change?

The abolition of Stamp Duty and SDRT on growth markets is detailed in Section 108 and Schedule 20 of the **Finance Bill 2014**.

7. As an AIM or HGS company what do I and my Nomad need to do?

Since not all AIM or HGS companies automatically qualify for the exemption, companies are required to confirm their eligibility to Euroclear.

The form is available from:
https://my.euroclear.com/eui/en/reference/public/growth-market-stamp-exemption.html

You may also wish to discuss this with your Nomad or Key Adviser.

8. Are there any primary market rule changes for AIM companies?

No changes were made to the AIM Rules in association with the change. However, we will continue to assess whether any clarification is required over the longer term to ensure a company's stamp duty and SDRT status is clearly understood by market participants.

9. What additional procedures are in place?

An AIM or HGS company are required to provide self-certification that its securities admitted to the recognised growth market are not listed on a recognised stock exchange.

Issuers whose securities have a change in eligibility under this legislation must complete the self-certification declaration (for example, should an issuer's eligible securities be removed from the recognised growth market).

We do not envisage that this will create significant administrative burdens for issuers and their advisers.

10. What is the benefit of the tax exemption?

London Stock Exchange, together with market participants and stakeholders, called for removal of the stamp duty tax on growth markets as a measure to help reduce the cost of capital for issuers over the medium to long term.

Removal of the tax reduces transaction costs for investors and has had a significant signalling impact to the investor community, helping to widen the pool of investors and improving liquidity in these companies.

11. If the tax is incorrectly applied, how do I receive a refund?

If you purchased eligible securities and tax was charged incorrectly, you can apply to the Birmingham Stamp Office for a refund. Further guidance from HMRC on how to do this is available from:

http://www.hmrc.gov.uk/sdrt/reliefs/refunds.htm

GOWLING WLG

FCA Primary Market Technical Note (TN/619.1):

Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers

Click here to download the PDF:

https://www.fca.org.uk/publication/primary-market/tn-619-1.pdf

esma European Securities anc Markets Authority

Final Report

Guidelines on the Market Abuse Regulation - market soundings and delay of disclosure of inside information

13 July 2016 | ESMA/2016/1130

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Acronyms used

CP	Consultation Paper
DMP	Disclosing market participant
DP	Discussion Paper on policy orientations on possible implementing measures under the MAR, published on 14 November 2013
ECJ	European Court of Justice
ITS	Implementing technical standards
MAD	Directive 2003/6/EC of the European Parliament and the Council on insider dealing and market manipulation (Market Abuse Directive)
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Market Abuse Regulation)
MTF	Multilateral trading facility
MSR	Person receiving the market sounding
RTS	Regulatory technical standards

1 Executive Summary

Reasons for publication

Article 11(11) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (MAR)[1] provides that ESMA shall issue guidelines addressed to persons receiving market soundings. Article 17(11) of MAR provides that ESMA shall issue guidelines on legitimate interests of issuers to delay disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public. This final report follows the Consultation Paper[2] (CP) issued on January 2016 and the Discussion Paper (DP) issued in November 2013[3].

Contents

Section 2 relates to the guidelines for persons receiving market soundings, while Section 3 presents the guidelines on legitimate interests and omissions likely to mislead the public. Both Section 2 and Section 3 provide an introduction on the background together with an analysis of the provisions included in the text of the guidelines taking into account the feed-back received from the public consultation and the opinion of the SMSG.

Annex I sets out a summary of the questions contained in this paper, Annex II provides a description of the legislative mandate to ESMA to develop guidelines and Annex III includes a cost-benefit analysis, Annex IV and V provide the opinion of the Securities and Markets Stakeholder Group and the feedback on the CP, Annex VI includes the guidelines for persons receiving market soundings and Annex VII includes the guidelines on legitimate interests to delay disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public.

Next Steps

Within 2 months of the issuance of the guidelines, each national competent authority will have to confirm whether it complies or intends to comply with those guidelines. In the event that a national competent authority does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons. ESMA will publish the fact that a national competent authority does not comply or does not intend to comply with those guidelines.

[1] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC; (OJ L 173, 12.6.2014, p. 1)

[2] Consultation Paper on draft Guidelines on the Market Abuse Regulation (ESMA/2016/162); https://www.esma.europa.eu/sites/default/files/library/2016-162.pdf.

[3] Discussion Paper on ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation (ESMA/2013/1649); http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf

2 Guidelines for persons receiving market soundings

2.1 Background and mandate

1. Article 11(1) of MAR describes a "market sounding" as a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. Further descriptions are provided in Recitals 32 and 33 of MAR. Article 11(4) of MAR states that, when a DMP discloses inside information to a MSR in the course of a market sounding in accordance with the conditions in Article 11(3) and (5) of MAR, this should be deemed to have been made in the normal course of the exercise of a person's employment, profession or duty, and therefore not to constitute market abuse.

2. As required under Article 11(9) and Article 11(10) of MAR, ESMA has developed draft regulatory and implementing technical standards (RTS and ITS) respectively to determine appropriate arrangements, procedures and record keeping requirements and to specify the systems and notification templates to be used by DMPs when conducting market soundings. These RTS and ITS were submitted to the European Commission on 28 September 2015[4]. The RTS and the ITS were published in the Official Journal of the European Union on 17 June 2016[5].

3. Article 11(11) of MAR requires ESMA to issue guidelines addressed to MSRs, regarding:

   a) the **factors** that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;

   b) the **steps** that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR; and

   c) the **records** that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of MAR.

4. The guidelines are aimed at meeting the mandate that ESMA has been given under Article 11(11) of MAR. They take into account the feedback received from the public consultation on a DP issued in November 2013[6] and on a CP issued in January 2016[7]. The guidelines are

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[4] Final report on draft technical standards on the Market Abuse Regulation (ESMA/2015/1455; http://www.esma.europa.eu/system/files/2015-esma-1455_-_final_report_mar_ts.pdf

[5] COMMISSION DELEGATED REGULATION (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings. COMMISSION IMPLEMENTING REGULATION (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

[6] Discussion Paper on ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation (ESMA/2013/1649); http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf

[7] Consultation Paper on draft guidelines on the Market Abuse Regulation (ESMA/2016/162); https://www.esma.europa.eu/sites/default/files/library/2016-162.pdf

also taking into account the provisions contained in the draft RTS and ITS on market soundings that were submitted by ESMA on 28 September 2015 to the European Commission for adoption and published in the Official Journal of the European Union on 17 June 2016.

2.2 General remarks

5. Note that for an advisor to a transaction it is a common market practice to conduct a market sounding for a number of clients and brokers. Often, those brokers will in-turn sound their clients. However, it should be borne in mind that the protection afforded by the market sounding regime of MAR is only available to DMPs - as listed in Article 11(1)(a) to (d) of MAR. A third party must be acting on behalf of an issuer to be considered a DMP, and hence brokers who receive inside information from an advisor in the course of a market sounding, and then in turn sound their clients, would not be captured by the market sounding regime and therefore not afforded the protection against an allegation of unlawful disclosure of inside information.

6. The MAR regime is intended to regulate the way market soundings are conducted, including the transmission of inside information in the course of such soundings. However, in practical terms, not all market soundings involve the disclosure of inside information.

7. When elaborating the guidelines on the records to be kept by the MSR, ESMA has considered the record keeping requirements imposed on DMPs through the MAR and the related technical standards, in order to avoid unnecessary duplication of recording of the same information. In addition, the retention period of at least five years set out in the guidelines for the records to be kept by MSR is aligned with the period specified in Article 11(8) of MAR with reference to the DMPs' record keeping obligations.

2.3 Internal procedures and staff training

8. The guidelines address the MSR's internal procedures and staff training. Although this aspect was not included in the DP, it was consulted upon in the CP.

9. In relation to the market soundings, the guidelines require MSRs to establish, implement and maintain internal procedures that are appropriate and proportionate to the scale, size and nature of their business activity. The proportionality principle has been introduced in the guidelines further to the feedback received to the CP. In fact, ESMA recognises that the internal procedure cannot overlook the key characteristics of the MSR, potentially ranging from a physical person or a small entity to a large regulated entity.

10. The above internal procedure should ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available to the DMP. The MSR should ensure that this is appropriately publicised to the DMP, e.g. through sell side relationship management, on data vendor contacts, or on their website. As a good practice it is recommended that MSRs keep evidence of their decision to designate a specific person or a contact point to receive the market sounding and the way that information is made available to the DMPs.

11. In addition, the internal procedure should ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting channels and on a need-to-know basis. This is aimed at ensuring that the information received in the course of the market sounding is treated confidentially and does not freely spread within the MSR.

12. Moreover, the internal procedures should ensure that the MSRs clearly identify the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding, and that they are properly trained in that respect. The purpose of this requirement is to have clearly identified within the MSR who is responsible for the above mentioned assessment. Considering the potentially wide variety of persons that can receive market soundings, ESMA is of the view that MSRs should have the flexibility to determine their internal organisation, deciding whether such individual(s), function or body may coincide with other existing roles or functions (e.g. the compliance or the legal department) or be expressly set up for that purpose. Similarly, ESMA is of the view that MSRs should have the possibility to choose whether or not the above individual(s), function or body may have a broader role, encompassing also the reception of market soundings.

13. The internal procedures should also allow the MSR to manage and control the flow of inside information arising from the market sounding within the MSR and the application of the prohibitions to the MSR and its staff, under Articles 8 and 10 of MAR, arising from being in possession of inside information as a result of the market sounding.

14. ESMA is of the view that, in order to ensure the enforceability of the relevant provisions, MSRs should keep records for a period of at least five years of the above internal procedures.

15. The guidelines also set forth that all the MSR's staff that are entrusted to receive and process the information received in the course of the market sounding are properly trained on the relevant internal procedures and on the prohibitions arising from being in possession of inside information. Similar to the internal procedures, ESMA considers it necessary that a proportionality principle is introduced in the guidelines further to the feedback received to the CP.

2.4 Communicating the wish not to receive market soundings

16. Establishing a process that minimises inadvertent and unintentional disclosure of inside information includes as a necessary preliminary step the determination of the scope wherein such information can circulate. For this reason, ESMA proposed in the CP that persons receiving MSRs should notify the DMPs whether they wish not to receive market soundings.

17. In the draft guidelines proposed in the CP ESMA specified that MSRs may express their wish not to receive market soundings in relation to either all potential transactions or particular types of potential transactions and notify the DMP accordingly.

18. In the final guidelines ESMA kept the same approach, specifying that the recommendation to inform the DMP of their wish not to receive market soundings should be triggered by the MSR being addressed by the DMP.

19. ESMA maintains that, in the final guidelines, MSRs should keep records for a period of at least five years of the notification of their wish not to receive market soundings in relation to either all potential transactions or particular types of potential transactions.

2.5 MSR's assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information

20. According to Article 11(7) of MAR, the MSRs are required to conduct their own assessment on whether they are in possession of inside information as a result of the market sounding. In conducting such analysis MSRs cannot limit to assess the information they received from the DMP, but should also consider other related information they might be in possession of. Such requirement stems from Article 11(7) of MAR, which provides that the MSR «*shall assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information*». In practical terms, MSRs may be in possession of inside information as a result of being officially wall-crossed or as a result of non-inside information received from one or more other sources that, when combined with that received from the DMP, may amount to inside information.

21. Therefore, in the guidelines ESMA proposes that the factors MSRs should take into account in order to assess whether they are in possession of inside information as a result of the market sounding are the DMP's assessment and all the information available to the individual(s), function or body within the MSR entrusted to conduct that assessment, including the information obtained from other sources than the DMP. Similarly, further to the DMP's notification that the information obtained in the course of the market sounding is no longer inside information, MSRs should independently assess whether they are still in possession of inside information taking into consideration all the information available to the individual(s), function or body within the MSR entrusted to conduct that assessment, including the information obtained from other sources than the DMP.

22. In the final guidelines ESMA specifies that, in conducting those assessments, the individual(s), function or body should not be required to access information behind any information barrier established within the MSR.

23. In order to comply with Article 11(11)(c) of MAR, in the guidelines ESMA proposes that, to ensure the enforceability of the relevant provisions, MSRs should keep records of their assessment and the reasons therefor for a period of at least five years.

2.6 Discrepancies of opinion between DMP and MSR

24. In the CP, ESMA proposed that in the case of market soundings where according to the DMP no inside information is disclosed, where the MSR assesses it is in possession of inside information, if the different assessment is due to the fact that the MSR is in possession of further information than that received from the DMP, then the MSR should refrain from informing the DMP of such discrepancy of opinion. Differently, if the different assessment is

based exclusively upon the information that the MSR received from the DMP, then the MSR should inform the DMP of such a discrepancy of opinion.

25. Similarly, where the MSR receives the DMP's notification informing that the information communicated in the course of the market sounding ceased to be inside information and the MSR disagrees with the DMP's conclusion, if the different assessment is due to the fact that the MSR is in possession of further information than that received from the DMP, then the MSR should refrain from informing the DMP of such discrepancy of opinion. Differently, the MSR should inform the DMP of such discrepancy of opinion, if the opinion is based solely on the information disclosed by the DMP.

26. Further to the feedback received to the CP, ESMA has reviewed its approach with reference to the discrepancies of opinion between DMP and MSR, and in the final guidelines the relevant part has been deleted. The reasons for that are related to the fact that further dialogue between DMP and MSR could involve the risk of additional information inadvertently being disclosed and the liaison requirement was not strictly included in the mandate.

27. In all cases it should be reminded that, irrespective of the DMP's assessment, where the MSR assesses it is in possession of inside information, it should therefore comply with the prohibition arising from being in possession of inside information. Differently, where the MSR assesses it is not in possession of inside information it will be always in the position to disregard the DMP's contrary assessment and the prohibitions arising from being in possession of inside information. However, MSRs should bear in mind that, should their assessment be wrong, they may in fact be in possession of inside information and therefore be pursued by the relevant competent authority for breaching the provisions on insider dealing and unlawful disclosure of inside information.

2.7 No obligation for MSR to report to competent authorities

28. ESMA proposed in the DP that, in instances where MSR suspects improper disclosure of inside information, they should be encouraged to notify the relevant competent authority of this potential violation.

29. Taking into account the responses to the DP, in the CP ESMA expressed its view that introducing an obligation for MSRs to report to the competent authority may be counter-productive for the market sounding regime and be too burdensome, particularly with reference to non-regulated persons. For these reasons any reference to such an MSR's obligation has been deleted from the guidelines text. ESMA has kept that approach in the final guidelines.

30. Would MSRs or staff with MSRs wish to report a suspicion of improper disclosure of inside information in relation to market soundings, they can always rely on the provisions of Article 32 of MAR relating to the reporting of actual or potential infringements.

2.8 Assessment of related financial instruments

31. ESMA proposed in the DP that the MSR should demonstrate its own determination on whether securities are related securities, by maintaining a full audit trail of its analysis. The approach

was maintained in the draft guidelines included in the CP. Taking into account the feedback received in the CP and notably the SMSG opinion, in the final guidelines ESMA recommends that where the MSR has assessed it is in possession of inside information as a result of a market sounding, for the purposes of complying with Article 8 of MAR it should identify all the issuers and financial instruments to which they believe that inside information relates.

32. Taking into account the responses received to the CP and acknowledging the high number of derivatives instruments, the final guidelines now include a reference to a best effort principle, where they mention issuers and financial instruments to which they «*believe*» that inside information relates.

33. Moreover, making explicit reference to the purposes of the requirement, namely complying with the MAR provision on insider dealing (Article 8 of MAR), the guidelines clarify that the level of detail of the assessment of related financial instruments should be linked to the complexity of the MSR's trading activity.

34. The MSR should keep record of their assessment of related financial instruments for a period of at least five years.

2.9 Written minutes or notes and recording of telephone calls

35. Taking into account the responses to the DP, in the draft guidelines proposed in the CP, ESMA no longer imposed on MSRs any requirement for the recording of telephone calls, as such obligations fall on the DMPs under the RTS on market soundings. That approach has been kept in the final guidelines.

36. In the final guidelines, ESMA specifies the behaviour required from the MSR where the market sounding has taken place during unrecorded meetings or unrecorded telephone conversations. Taking into account the RTS on market soundings which in such instances require the DMP to draft written minutes or notes to record the communication of the information, the final guidelines require the MSR to sign these minutes or notes drawn up by the DMP within five working days, where the MSR agrees upon their content. Where the MSR does not agree with the DMP upon the content of the minutes or notes drawn up by the DMP, the MSR should provide the DMP with their own version of the minutes or notes duly signed within five working days. Noting the requests for clarification in the responses to the CP, ESMA further specifies in the final guidelines that the five working day period should be consider from the receipt of the minutes or notes drawn up by the DMP.

37. ESMA also notes that the guidelines will not prevent the MSR to record the telephone calls on their own initiative, notably for commercial purposes, provided that the DMP has given in advance its consent to the recording.

2.10 Record keeping

38. In the final guidelines ESMA provides that MSRs should keep records in a durable medium that ensures accessibility and readability for a period of at least five years of:

a) the internal procedures;

b) the notifications to the DMP of the whish not to receive future market soundings;

c) the assessments as to whether they are in possession of inside information as a result of the market sounding and the reasons therefor;

d) the assessment of related instruments;

e) the persons working for them under a contract of employment or otherwise performing tasks through which they have access to the information communicated in the course of the market soundings, listed in a chronological order for each market sounding.

39. With reference to the last point, in the draft guidelines proposed in the CP, ESMA already recommended that, for each market sounding, MSRs should draw up a list of the persons working for the MSR that are in possession of the information communicated in the course of the market soundings. This aspect is linked with the provisions on internal procedures.

40. The aims of this requirement are to: (i) improve the internal management of the flow of information resulting from market soundings, (ii) allow MSRs to demonstrate compliance with the inside information prohibition, and, (iii) foster the competent authorities' ability to reconstruct the information flow in the course of a possible investigation. With reference to possible overlapping between this guideline and the content of Article 18 of MAR, it should be borne in mind that the two provisions do not share the same scope. In the context of a market sounding, MSRs, as potential investors, may not be the issuer to which the market sounding relates and or persons acting on the issuer's behalf or account. Therefore, MSRs will not be subject to the insider list provisions.

41. Taking into account the feedback received to the CP, in the final guidelines the scope of this requirement has been further specified, making now reference to «*persons working for*» the MSR «*under a contract of employment or otherwise performing tasks through which they have access to the information communicated in the course of the market soundings*».

3 Guidelines on legitimate interests of issuers to delay disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public

3.1 Background and mandate

42. Article 17(1) of MAR sets forth that issuers should inform the public as soon as possible of inside information which directly concern them. Article 17(2) of MAR sets forth a similar provision with reference to emission allowance market participants. Article 17(4) of MAR specifies that issuers and emission allowance market participants may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

    a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;

    b) delay of disclosure is not likely to mislead the public;

    c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

43. It should be stressed that for an issuer or emission allowance market participant to be able to delay the disclosure of inside information, all the above conditions have to be met.

44. Article 17(11) of MAR requires ESMA to issue guidelines to establish a non-exhaustive and indicative list of:

    a) legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information; and

    b) situations in which delay of disclosure is likely to mislead the public.

45. These guidelines are aimed at meeting the mandate that ESMA has been given under Article 17(11) of MAR. They take into account the feed-back received from the public consultation of a DP issued on November 2013[8] and from a CP issued on January 2016.

[8] Discussion Paper on ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation (ESMA/2013/1649); http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf

3.2 Legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information

46. ESMA's empowerment to issue guidelines refers only to issuers, as emission allowances market participants are not mentioned in Article 17(11) of MAR.

47. In drafting these guidelines ESMA has taken into account the cases of legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information mentioned in Recital 50 of MAR and the examples provided by CESR in its second set of Guidance (CESR/06-562b).

48. The examples of legitimate interests of the issuer to delay the disclosure of inside information provided in Recital 50 of MAR which mirror Article 3(1) of Directive 2003/124/EC are:

    a) ongoing negotiations, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;

    b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between those bodies, provided that public disclosure of the information before such approval, together with the simultaneous announcement that this approval is still pending, would jeopardise the correct assessment of the information by the public.

49. The examples provided by CESR in its second set of Guidance (CESR/06-562b) are:

    a) confidentiality constraints relating to a competitive situation (e.g. where a contract was being negotiated but had not been finalized and the disclosure that negotiations were taking place would jeopardise the conclusion of the contract or threaten its loss to another party). This is subject to the provision that any confidentiality arrangement entered into by an issuer with a third party does not prevent it from meeting its disclosure obligations;

    b) product development, patents, inventions etc. where the issuer needs to protect its rights provided that significant events that impact on major product developments (for example the results of clinical trials in the case of new pharmaceutical products) should be disclosed as soon as possible;

    c) when an issuer decides to sell a major holding in another issuer and the deal will fail with premature disclosure;

d) impending developments that could be jeopardised by premature disclosure.

50. In the guidelines ESMA decided not to include «*impending developments that could be jeopardised by premature disclosure*», as it was deemed to be a too generic provision.

51. The fact that the issuer has legitimate interests that are likely to be prejudiced by immediate disclosure of the inside information is not sufficient, per se, to delay the disclosure of inside information. In fact, for an issuer to be able to delay the disclosure of inside information, all the conditions set forth in Article 17(4) of MAR must be met.

52. It should be highlighted that such a list of legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of the inside information is not meant to be exhaustive and there may be other situations where issuers have legitimate interests. However, it should be borne in mind that the possibility to delay the disclosure of inside information as per Article 17(4) of MAR represents the exception to the general rule of disclosure to be made as soon as possible according to Article 17(1) of MAR, and therefore should be narrowly interpreted.

53. The list is also indicative. It should be for the issuers to explain that they are in a case where their legitimate interests are likely to be prejudiced by immediate disclosure of inside information, and each situation, including those listed in these guidelines, should be assessed on a case by case basis.

3.2.1 Ongoing negotiations and grave and imminent danger to the financial viability of the issuer

54. These two cases, already mentioned in Recital 50 of MAR, are maintained in the guidelines and are separately listed as examples of situations where legitimate interests to delay the disclosure of inside information may exist.

55. A legitimate interest may exist where the issuer is conducting negotiations, the outcome of which would likely be jeopardised by immediate public disclosure of that information.

56. Further to the feedback received on the CP, ESMA decided to provide some examples, explicitly mentioning mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations. The list of examples provided should not be considered exhaustive.

57. Another instance that may constitute a legitimate interest under Article 17(4)(a) of MAR could be where the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders, by jeopardising the conclusion of the negotiations aimed at ensuring the financial recovery of the issuer.

58. No substantial changes are proposed with reference to this particular case. ESMA would like to highlight that, compared to the drafting in Recital 50 of MAR, no reference is made to the “long term” financial recovery of the issuer, as ESMA is of the view that also the

successful conclusion of negotiations aimed at ensuring the “short term” financial recovery of the issuer could constitute a legitimate interest to delay disclosure of inside information.

59. Note that this particular case does not refer to the possibility of delaying public disclosure of information related to the issuer’s temporary liquidity in order to preserve the stability of the financial system under Article 17(5) of MAR.

60. Finally, it should be reminded that Article 17(4) of MAR states that it should be for the issuer to explain to the national competent authority, in addition to how the other two conditions for delaying disclosure of inside information are met, how immediate public disclosure is likely to prejudice the issuer’s interests and jeopardise the conclusion of the negotiations aimed at ensuring the financial recovery of the issuer.

3.2.2 Decisions taken or contracts entered into by the management body of an issuer which need the approval of another body of the issuer in order to become effective

61. A legitimate interest of the issuer to delay disclosure of inside information, already mentioned in Recital 50 of MAR, may arise where the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer’s bylaws, the approval of another body of the issuer in order to become effective.

62. This is the case of two-tier issuer systems where certain types of decisions of the Management Board have to be approved by the Supervisory Board in order to have legal effects.

63. However, in order for that to be considered a legitimate interest to delay disclosure of inside information, in the draft guidelines proposed in the CP, ESMA stated that the following conditions had to be met:

a) an announcement explaining that the approval of another body of the issuer is still pending would jeopardise the correct assessment of the information by the public;

b) an announcement explaining that the approval of another body of the issuer is still pending would jeopardise the freedom of decision of the other body;

c) the issuer arranged for the decision of the body responsible for such approval to be made, possibly within the same day;

d) the decision of the body responsible for such approval is not expected to be in line with the decision of the management body, as for instance it would be where the two bodies are expression of the same shareholders represented in the management body or in cases where such body has consistently approved the management body’s decision on similar issues.

64. Taking into account the responses to the CP, ESMA acknowledged that the conditions proposed in the CP were too restrictive and very challenging to meet. Therefore, in the final guidelines ESMA provides only two conditions:

a) immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and

b) the issuer arranged for the definitive decision to be taken as soon as possible.

65. Compared to the drafting proposed in the CP the final guidelines no longer make reference to the requirement that "*an announcement explaining that such approval is still pending would jeopardise the freedom of decision of the other body*", nor that "*the decision of the body responsible for such approval is not expected to be in line with the decision of the management body, as for instance it would be where such body is the expression of the same shareholders represented in the management body or in cases where such body has consistently approved the management body's decisions on similar issues*".

66. An example relating to the first condition is related to the fact that, in practice, the public is aware that, most of the time, the Management Board will try to ensure that its decision will not be reverted and most decisions taken by the Supervisory Board are expected to be in line with the Management Board's decision. Therefore, where the Management Board has doubts as to whether the decision of the Supervisory Board will be in line with its decision and sees a rejection or an amendment to their decision as a possible scenario, then the public could be misled by immediate public disclosure of the information, as they may see the decision of the Supervisory Board as granted while it is not.

67. In addition, no possibility of delay should be granted where the issuer does not arrange for the definitive decision to be taken as soon as possible.

68. The above conditions are aimed at ensuring that the simple fact that issuers have two different decisional bodies does not represent, per se, a legitimate interest to delay the disclosure of inside information until the second body's definitive approval.

69. As a general rule, issuers are expected to disclose the inside information explaining that the definitive decision of the issuer's second body is still pending. Only where the above conditions are met, the issuer would have a legitimate interest to delay the disclosure of the inside information.

3.2.3 **Development of a product or an invention**

70. A legitimate interest for the issuer to delay disclosure of inside information, already mentioned in the CESR second set of Guidance, may be where the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer.

71. In this particular case it will be the issuer's interest to proceed to patent the product or the invention or otherwise protect its rights by other means as soon as possible.

72. Note the issuer should be able to explain to the national competent authority how immediate public disclosure is likely to prejudice the ability to patent the product or the invention or otherwise protect the issuer's rights.

3.2.4 The issuer is planning to buy or sell a major holding in another entity

73. A case of legitimate interest for the issuer to delay disclosure of inside information may be where the issuer is planning to buy or sell a major holding in another entity and the implementation of such plan is likely to be jeopardised with immediate disclosure of that information.

74. This particular case differentiates from the case of ongoing negotiations as it involves situations where such a plan has been already decided but the negotiations have not started yet. ESMA would like to highlight that this particular case requires evidence of the decision taken in view of realising the plan.

75. Given that the list of legitimate interests is not meant to be exhaustive, there may be other examples of actions planned before the start of any negotiations that may constitute a legitimate interest of the issuer.

76. Note the issuer should be able to explain to the national competent authorities the reasons why the conclusion of the planned deal is likely to fail with immediate disclosure of that information.

3.2.5 Deal or transaction previously announced and subject to a public authority's approval

77. A respondent to the DP suggested that the guidelines include in the list of legitimate interests the case where the issuer is discussing with a public authority (e.g. Antitrust) about possible conditions that such public authority might impose on the issuer for the transaction to be effective.

78. Taking into account the response to the DP, the guidelines proposed in the CP mentioned the legitimate interest that may exist in the situation where a deal or transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

79. Given that non respondents commented on that, this point was confirmed in the final guidelines.

80. ESMA would like to highlight that, in case of take-overs or mergers and acquisitions the legitimate interest to delay the disclosure of inside information does not relate to the disclosure of the take-over nor the merger and acquisition announcements themselves. When these decisions are announced the issuers should provide the public with proper information about the public authorities' pending approval or authorization, including the

existence of possible conditions that could be imposed by such authorities. A legitimate interest to delay relates to the actual conditions that the public authorities may impose further to the announcement, in the course of the contacts with the issuer within the authorisation process. Such conditions may be the selling of part of a business in a determined geographical area (that could be imposed by a competition authority) or an increase in the capital of the issuer (that could be imposed by the prudential authority, where the issuer is also a regulated person).

81. Note that the delay is only admissible where the issuer can justify how immediate disclosure of the above conditions will likely affect the possibility for the issuer to meet such requirements.

3.3 Situations where the delay in the disclosure is likely to mislead the public

82. In the final guidelines ESMA provides three examples of situations where the delay of disclosure of inside information is likely to mislead the public, namely where:

a) the inside information whose disclosure the issuer intends to delay is materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or

b) the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or

c) the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval.

83. ESMA decided to provide in point c) some examples of signals that the issuer may have previously sent to the market, such as interviews released by the CEO of an issuer, or the information conveyed by the management of the issuer during a road-show.

84. The final guidelines keep the reference to market expectations. However, taking into account the responses to the public consultation, in order to provide more clarity to the concept of market's expectations such reference has been linked to the signals that the issuer has previously set. In assessing the market's expectations, the issuers should take into account the market sentiment, for instance considering the consensus among financial analysts.

85. Since in order to delay the disclosure of inside information all the conditions laid down in Article 17(4) of MAR should be met, the above situations are examples where immediate and appropriate disclosure is always necessary and mandatory. Nonetheless, it should be noted that the list is not meant to be exhaustive as there may be other situations where the delay in the disclosure is likely to mislead the public.

86. ESMA also considered to include in the list of situations in which delay of disclosure of inside information is likely to mislead the public the situation where issuers are delaying disclosure of inside information according to Article 17(4) of MAR and make public information that is inconsistent with the information under delay. However, ESMA is of the view that such situation is already covered by the prohibition of market manipulation and eventually decided not to explicitly mention such case in the guidelines.

ANNEX I – Legislative mandate to draft guidelines

1. Article 11(11) of MAR provides that «*ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to persons receiving market soundings, regarding:*

   a) *the factors that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;*

   b) *the steps that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of this Regulation; and*

   c) *the records that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of this Regulation*».

2. Article 17(1) of MAR sets forth that issuers should inform the public as soon as possible of inside information which directly concern them. Article 17(4) of MAR specifies that issuers and emission allowance market participants may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

   a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;

   b) delay of disclosure is not likely to mislead the public;

   c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

3. Article 17(11) of MAR provides that «*ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to in point (a) of paragraph 4, and of situations in which delay of disclosure of inside information is likely to mislead the public as referred to in point (b) of paragraph 4*».

ANNEX II - Cost-benefit analysis

Guidelines for persons receiving market soundings

A market sounding is «*a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors*». The regulatory and implementing technical standards (RTS and ITS) on market soundings that were submitted by ESMA to the European Commission on 28 September 2015 and published on the Official Journal of the European Union on 17 June 2016 outline appropriate arrangements, systems and procedures and notification templates for DMPs when conducting market soundings.

The final guidelines for persons receiving market soundings outline: i) the factors that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information, ii) the steps that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR and iii) the records that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of MAR.

	Description
Benefits	The guidelines are aimed at providing clarity and legal certainty by defining a common set of rules for the persons receiving the market soundings across the European Union, consistent with the rules set forth by the TS with reference to DMPs. The guidelines, outlining the MSR's obligation, should reduce the risk of spreading of inside information as a result of the market sounding and consequently reduce the risk of abuses. The guidelines regulate the buy-side consistently with the provisions set forth in the TS on market soundings and are aimed at facilitating the supervisory and investigative activities of the competent authorities. Overall, the main benefit arising from the rules contained in the guidelines would be enhanced market integrity.
Compliance costs *- One-off* *- On-going*	Most of the responsibility for compliance with the market sounding regime falls on the DMPs. However, also MSRs will bear some costs arising from the requirements outlined in the guidelines. It should be noted that buy-side firms will be impacted by the requirements in a different manner. For instance, should the MSRs deem that the requirements outlined in the guidelines are too burdensome, they may choose to be sounded less frequently, in particular when inside information is disclosed in the course of the market sounding. In order to mitigate the compliance costs for smaller entities, the final guidelines explicitly provide that the internal

	procedures should be appropriate and proportionate to the scale, size and nature of the MSRs' business activity. As a result of the guidelines requirements, MSRs will need to have in place internal procedures in order to: i) ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available to the DMP; ii) ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting channels and on a need-to-know basis; iii) ensure that the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding are clearly identified and properly trained to that purpose; iv) manage and control the flow of inside information arising from the market sounding within the MSR and its staff, in order for the MSR and its staff to comply with Articles 8 and 10 of MAR. This would be a significant one-off cost for the MSRs in relation to establishing and implementing the procedures, but also an ongoing cost in relation to the resources to be assigned to the task of assessing whether the MSR is in possession of inside information as a result of the market sounding. MSRs will also have to train their staff entrusted to process the information received as a result of the market sounding. This will involve differentiated training for the staff involved in receiving the market sounding approaches and for the staff being part of the function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding. The final guidelines highlight that also the training should be appropriate and proportionate to the scale, size and nature of MSR's business activity. The internal training would be primarily a small one-off cost for the MSRs. The guidelines will also require the MSRs to list the staff that are in possession of the information communicated in the course of the market soundings and identify all the issuers and financial instruments to which that inside information relates. This would be an ongoing cost

	for the MSRs, since the requirement will have to be fulfilled for each market sounding received. The final guidelines also require the MSR to keep records of: i) the internal procedures regarding the market soundings; ii) their wish not to receive market soundings in relation to either all potential transactions or particular types of potential transactions; iii) the assessment as to whether the MSR is in possession of inside information as a result of the market sounding; iv) the assessment of all the issuers and related instruments; v) the persons working for them who have access to the information communicated in the course of the market soundings, listed in a chronological order for each market sounding. Record keeping requirements would contain one-off elements for the internal procedures and the wish to receive market soundings in relation to either all potential transactions or particular types of potential transactions, and ongoing elements for the other records that MSRs will have to keep upon reception of each new market sounding. Lastly, where the DMP has drawn up written minutes or notes of the unrecorded meetings or unrecorded telephone conversation the MSRs should, within five working days after receipt: i) sign those minutes or notes, where they agree upon their content or ii) provide the DMP with their own version of those minutes or notes, where the MSR does not agree upon their content. This should be a minor cost for MSRs, as the outlined regime envisages it in residual cases, in the absence of any recording and in case of disagreement between DMP and MSR.

Legitimate interests of the issuer for delaying public disclosure of inside information and situations in which delay of disclosure is likely to mislead the public.

Article 17(1) of Regulation (EU) No 596/2014 (MAR) sets forth that issuers should inform the public as soon as possible of inside information which directly concern them. Article 17(2) of MAR sets forth a similar provision with reference to emission allowance market participants. Article 17(4) of MAR specifies that issuers and emission allowance market participants may, on their own responsibility, delay disclosure of inside information to the public provided that: a) immediate disclosure is likely to prejudice the legitimate interests

of the issuer or emission allowance market participant; b) delay of disclosure is not likely to mislead the public; c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

Article 17(11) of MAR requires ESMA to issue guidelines to establish a non-exhaustive indicative list of: i) legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information and ii) situations in which delay of disclosure is likely to mislead the public.

	Description
Benefits	The guidelines are aimed at providing clarity and enhancing legal certainty by defining a list of legitimate interests of issuers for delaying public disclosure of inside information and situations in which delay of disclosure is likely to mislead the public. Although such lists should not be considered exhaustive and are meant to be indicative, they should assist the issuers in conducting their assessment as to whether they meet the conditions to delay inside information according to MAR. This should contribute to reduce the number of controversial cases of delay in the disclosure of inside information. Overall, the main benefit arising from the guidelines would be a clearer and more uniform application of the provisions on delay of disclosure of inside information in the European Union and therefore enhanced market integrity.
Compliance costs *- One-off* *- On-going*	It should be noted that the costs for issuers arising from the public disclosure regime arise from the level 1 and level 2 provisions. The guidelines will not burden the issuers with any additional costs, as they do not set forth any additional requirement for the issuers.

ANNEX III – Opinion of the Securities and Markets Stakeholder Group

Response to ESMA's Consultation Paper on Draft Guidelines on the Market Abuse Regulation.

I. Executive summary

The objective of this paper is provide advice to ESMA on the Consultation Paper on Draft Guidelines on the Market Abuse Regulation.

The SMSG commends ESMA for its ongoing commitment to establishing the single rulebook on market abuse (which is of particular importance given the Capital Markets Union agenda) and welcomes the consistent harmonisation of requirements applying to market soundings under the Market Abuse Regulation as this is a new element of the market abuse regime and its scope is uncertain. In this respect, the SMSGs agrees with most of the proposed guidelines and only recommends to clarify some aspects of the new regime.

The SMSG also uses the opportunity to comment on the indicative list of legitimate interests of issuers which are likely to be prejudiced by immediate disclosure of inside information.

The SMSG welcomes ESMA's understanding of the indicative list being non-exhaustive and considers various examples of possible legitimate interests, including the legitimate interests of issuers with a two-tiered board structure as provided for under draft guideline 1c.

However, the SMSG asks ESMA to review the wording of the conditions specified in guideline 1c (decisions taken or contracts entered into by an issuer with a two-tiered board structure) and points to relevant fundamental principles of company law in Member States whose issuers have a two-tiered board structure.

II. Background

1. On 2 July 2014, the EU Regulation on Market Abuse (MAR) entered into force. The MAR requires ESMA to issue guidelines addressed to persons receiving market soundings, on the legitimate interests of issuers which can justify a delay in the publication of inside information and on the situations in which the delay of disclosure is likely to mislead the public.

2. On 28 January 2016, ESMA published its Consultation Paper on draft guidelines on the Market Abuse Regulation (ESMA/2016/162 – "CP on Guidelines"). The CP is the follow-up of ESMA's Discussion Paper on ESMA's policy orientations and initial proposals for MAR implementing measures published on 14 November 2013 ("DP on MAR").

3. On 21 April 2014, the SMSG responded to ESMA's DP on the MAR (ESMA/2014/SMSG011). Furthermore, the SMSG provided advice to ESMA on 21

September 2015 regarding ESMA's future work on MAR Level 3-Measure (ESMA/2015/SMSG/025 – "PP on Level 3").

4. After having published its CPs, ESMA requested the SMSG's opinion on the proposed guidelines. The SMSG herewith gives advice to ESMA. In addition, the SMSG reiterates its opinion on the importance of having an easy access to the single rulebook on market abuse.

III. Comments

1. General comments on the importance to build a single rulebook on market abuse

5. The MAR establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation. The purpose of the MAR is to promote the integrity of financial markets in the Union and enhance investor protection and confidence in those markets, while ensuring uniform rules and clarifying key concepts. In order to ensure uniform conditions, the Commission (COM) is empowered to adopt implementing acts and ESMA is required to elaborate on the standards to be adopted by the COM. Furthermore, ESMA is required to issue guidelines regarding the interpretation of relevant aspects of the MAR. The MAR, the accompanying level 2-regualtions and level 3-measures will build a single rule book on market abuse in Europe.

6. The future single rulebook on market abuse will form a complex regime. This is mainly due to the fact that the MAR will be accompanied by a number of additional level 2-regulations. ESMA has proposed 11 RTS/ITS (which will likely be adopted by the COM as regulations) and provided technical advice to the COM regarding 5 topics (which will probably also be dealt with by separate regulations). The MAR and most of the level 2-instruments will contain a number of highly detailed provisions. Some topics, such as market soundings, disclosure of inside information and manager transactions, will be subject to different acts at level 2 and measures at level 3. It will therefore be challenging for market participants to apply the law, especially because many of them are not familiar with the process of capital market legislature in Europe.

7. The SMSG has already encouraged ESMA to establish an interactive single rulebook on its website (SMSG PP on Level 3 para. 6-8). It takes this opportunity to reiterate its recommendation that a comprehensive compendium of the level 1-text (MAR), COM's delegated acts and the corresponding RTS/ITS, as well as the related ESMA Guidelines and Q&As be provided. It would also be useful if the compendium included references to the increasingly important body of CJEU case law on the EU market abuse regime. The SMSG is convinced that such an online tool – similar in design to EBA's online 'single rulebook' - will be of great help for market participants who will be able to easily access the new level 1- and corresponding level 2-provisions and level 3-measures. As already stated in the SMSGs' Position Paper, ESMA should, however, also make clear that the single rulebook on market abuse does not encompass the powers of the NCAs and sanctions provided by administrative and criminal law which continue to be subject to national laws.

2. Market soundings

8. Market soundings are interactions between a seller of financial instruments and one or more potential investors prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring (Art. 11 (1) MAR). The MAR acknowledges that market soundings are important for the proper functioning of financial markets and should not in themselves be regarded as market abuse. Provided that a 'disclosing market participant' (DMP) complies with the requirements laid down in the MAR, disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties and so in compliance with the MAR (Art. 11 (4) MAR).

9. In order to ensure consistent harmonisation, ESMA is to develop draft RTS/ITS to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in the MAR (Art. 11 (9) MAR). The draft RTS/ITS mainly deal with the requirements applying to disclosing market participants (DMP). In addition, ESMA must issue guidelines addressed to 'persons receiving the market sounding' (MSR) regarding certain aspects of the communication with a DMP (Art. 11 (11) MAR). ESMA's proposals for guidelines take into account the rules contained in the draft RTS/ITS on market soundings.

2.1. General remarks

10. ESMA has explained in depth the new market sounding regime in its Final Report on draft RTS/ITS (ESMA/2015/1455) and clarified a number of interpretational questions which arose in the course of the consultation process. The SMSG commends and welcomes this approach and wishes to highlight the importance of providing guidance to the market in this responsive way. ESMA's CP on draft guidelines takes this approach a step further and clarifies that the protection afforded by the market sounding regime of MAR is only available to DMPs as listed in Art. 11 (1) (a)-(d) MAR. Thus, brokers who receive inside information from an advisor during the course of a market sounding (and then, in turn, 'sound' their clients) will not be captured by the market sounding regime. The SMSG agrees with ESMA's view; however, it wishes to clarify that, in those cases in which Art. 11 MAR is not applicable, the disclosure of inside information might be made in the normal exercise of an employment, a profession or duties, as laid down in Art. 10 (1) MAR, and so in compliance with the MAR. ESMA could, accordingly, reinforce this point in its guidelines. Another important issue ESMA could deal with is whether a fund manager (MSR) may disclose inside information received by a DMP in the course of a market sounding to his investor.

2.2. Specific remarks

11. The SMSG agrees with most of the proposed guidelines and only recommends that some aspects be clarified.

2.2.1 Guideline 3 (MSR's assessment as to whether they are in possession of inside information)

12. The proposed guideline 3 No. 2 states: "While taking into account the DMP's notification that the information disclosed in the course of the market sounding is no longer inside information, MSRs should independently assess whether they are still in possession of inside information taking into consideration all the information available to them …"

13. The SMSG agrees with the proposed guideline. The MSR needs to make an independent assessment whenever the DMP comes to the conclusion that the information disclosed is no longer inside information. This follows from Art. 11 (6) MAR. To make an independent assessment, it will be important for the MSR to learn from the DMP why the information ceases to be inside information according to the DMP's assessment.

2.2.2 Guideline 4 (Discrepancies of opinion between DMP and MSR)

14. The proposed guideline deals with the situation where, on one hand, the DMP takes the view that no inside information is disclosed, whereas the MSR, on the other hand, is of the opinion that the information received does constitute inside information. The SMSG asks ESMA to consider the reverse situation where the DMP reaches an assessment that the information has to be considered as inside information, whilst the MSR disagrees with this interpretation.

15. The draft guideline 4 stipulates certain obligations for a MSR, provided that the MSR receives the DMP's notification informing it that the information communicated in the course of the market sounding ceased to be inside information and the MSR disagrees with the DMP's conclusion. The SMSG wishes to clarify that this only applies if the information ceases to be inside information according to the DMP's assessment.

2.2.3 Guideline 6 (list of MSR's staff that are in possession of the information)

16. According to ESMA's draft guideline 6, MSRs should draw up a list of the persons working for them that are in possession of the information communicated in the course of the market soundings.

17. The SMSG observes there could be some ambiguity as to how "persons working for them" is to be interpreted and therefore seeks further clarification. Would only own employees, i.e. staff, and possibly directors, be covered or also advisors, consultants etc. that are contracted and thus 'working for' the MSR (and who have access to this information) and hence come within the MSR's information storage and reporting responsibility? Annex II (page 33) only mentions "staff", so some additional clarification may be needed so that whoever is in possession of such information (employed or not) and who has received it by way of working for the MSR should be covered.

2.2.4 Guideline 7 (assessment of related financial instruments)

18. Guideline 7 provides that where the MSR has assessed they are in possession of inside information as a result of a market sounding, the MSR should identify all the issuers and financial instruments to which that inside information relates.

19. The SMSG takes the view that the scope of the guideline is unclear. Should the MSR only assess instruments it is involved with?

2.2.5 Guideline 8 (written minutes or notes)

20. The SMSG asks whether the own version of the minutes may be signed electronically.

3. Disclosure of inside information

21. Article 17(4) MAR provides an exemption from the obligation to disclose inside information immediately, stating that issuers and emission allowance market participants may, on their own responsibility, delay disclosure to the public of inside information provided that certain conditions are met:

    (a) immediate disclosure of the information is likely to prejudice the legitimate interests of the issuer or the emission allowance market participant;

    (b) the delay of disclosure is not likely to mislead the public; and

    (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

    An issuer is required to satisfy all three requirements before being able to rely on the exemption contained in Article 17(4) MAR.

22. In the CP on draft guidelines, ESMA established a non-exhaustive and indicative list of legitimate interests of the issuers which are likely to be prejudiced by immediate disclosure of inside information, as well as situations in which delay of disclosure is likely to mislead the public. In doing so, ESMA has sought to meet its mandate under Article 17(11) MAR. ESMA has taken into account the comments received in the course of a public consultation conducted as part of the DP published in November 2013. Furthermore, ESMA has considered the recommendations the SMSG has submitted to ESMA in its Position Paper on the future level 3-regime.

3.1 General remarks

23. The SMSG agrees generally with ESMA's approach specifying legitimate interests of the issuer as a requirement for the delay of the disclosure of inside information. In particular, the SMSG welcomes ESMA's understanding of the indicative list of legitimate interests as being non exhaustive (CP draft guidelines para. 66 and 69). This reflects the legislature's intention (cf. recital 50: "following non-exhaustive circumstances").

24. ESMA is of the opinion that the possibility to delay the disclosure of inside information "represents the exception to the general rule" and "therefore should be narrowly interpreted (CP on draft guidelines para. 69). However, to understand the importance of the right to delay it is important to take into account the legislative history and the context in which the definition of "inside information" has been developed. The CJEU has defined the term "inside information" for the purposes of insider trading law rather than market efficiency. Particular emphasis therefore has been placed by the ECJ on the regulatory aims and purposes of the insider trading law prohibitions, rather than considerations of market efficiency. As a consequence, the CJEU has stated that an "intermediate step" in a protracted process can be considered inside information (see *Geltl* case). Article 7(3) MAR codifies the CJEU's approach and adopts a definition of "inside information" which reflects the Court's opinion in the *Geltl* case. Under this approach, the concept of "inside information" is a very broad concept, which in the view of the SMSG is justified when considered from the perspective of prohibiting insider trading law. However, applying this concept – in the same form – in the disclosure context is difficult, since the concept was not designed for the regulatory purpose of ensuring that issuers comply with their disclosure obligations. In consequence, the possibility to delay disclosure of inside information has played a key role in practice since the *Geltl* case. Moreover, a general consensus has emerged that the right to delay disclosure of inside information is no longer to be interpreted in a narrow way (which is acknowledged by the NCAs, courts and also in literature).

25. The provisions of the MAR about the disclosure of inside information reflect this understanding. According to Art. 17(4) MAR, in the case of a protracted process that occurs in stages an issuer may delay the public disclosure of inside information relating to this process (provided that the requirements for a delay are met). This new paragraph on "intermediate steps" recognises that delay is of particular importance where the inside information is still only an intermediate step in an ongoing process. It also explains why the right to delay is "no longer" seen as narrow (because it has been expanded to include situations where the inside information is only an intermediate step and not yet final).

3.2. Legitimate interests of the issuer for a delay of the disclosure

3.2.1 Guideline 1 a) (issuer is conducting negotiations)

26. According to ESMA's CP, the following circumstances could constitute a legitimate interest: "the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardized by immediate public disclosure of that information".

27. This circumstance is already mentioned in recital 50 MAR. The SMSG therefore agrees to include it in the indicative list of legitimate interests. However, we are concerned that ESMA prefers a different wording. According to recital 50 MAR, such circumstances may be "ongoing negotiations, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure." The SMSG recommends to adopt the example of a possible legitimate interest one-to-one. It is concerned that ESMA's guideline could be understood as limiting the right to delay of

the disclosure against the legislature's intention and contrary to the current approach to delay and market needs considered in section 3.1 above.

3.2.2 Guideline 1 b) (issuer is in grave and imminent danger)

28. According to ESMA's CP, the following circumstances could also constitute a legitimate interest: "the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders, jeopardising the conclusion of the negotiations aimed at ensuring the financial recovery of the issuer".

29. Again, this circumstance is already mentioned in recital 50 MAR. ESMA's drafted guidelines slightly differ from the wording in recital 50 MAR. The SMSG agrees with ESMA's proposal which may be somewhat more generic but reflects the intention of the level 1-legislator. However, given the sensitivity of this issue, it might be wiser to stick to the wording in the recital.

3.2.3 Guideline 1 c) (decisions taken or contracts entered into by an issuer with a two-tiered board structure)

30. A further example of a possible legitimate interest refers to issuers with a two-tiered board structure. ESMA describes the situation in which a delay might be justified as follows: "the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's bylaws, the approval of another body, other than the shareholders' general assembly, of the issuer in order to become effective."

31. According to ESMA's draft guidelines, a delay is permissible provided that all of the following conditions are met:

    (i) immediate public disclosure of that information before such a definitive approval would jeopardise the correct assessment of the information by the public;

    (ii) an announcement explaining that such approval is still pending would jeopardise the freedom of decision of the other body;

    (iii) the issuer arranged for the decision of the body responsible for such approval to be made, possibly, within the same day; and

    (iv) the decision of the body responsible for such approval is not expected to be in line with the decision of the management body, as for instance it would be where such body is the expression of the same shareholders represented in the management body or in cases where such body has consistently approved the management body's decisions on similar issues."

32. There are two reasons why the SMSG asks ESMA to reconsider this guideline. First, the SMSG is concerned that the proposed guideline might not reflect the legislators' intention. The requirements for a delay due to this reason are described in recital 50 as follows: "provided that public disclosure of the information before such approval, together

with the simultaneous announcement that the approval remains pending, would jeopardise the correct assessment of the information by the public." Thus, the legislators apply only one condition for delay: that an announcement made before approval has been obtained would jeopardise the correct assessment. Further conditions for a delay are not mentioned in recital 50. Thus, the SMSG takes the view that ESMA does not have the competence to limit the issuers' right to delay.

33. Second, the third and fourth condition do not reflect fundamental principles of company law in Member States whose issuers have a two-tiered board structure. The supervisory body in a two-tiered issuer is a legally independent body, which operates separately from the management board. The supervisory body reflects the interests of various shareholders and stakeholders (in particular in companies which are subject to co-determination). However, neither shareholders nor stakeholders (employees or trade unions) have the right to give instructions to the members of the supervisory body. These are obliged to act in the best interests of the company. It is not possible to draw conclusions about a supervisory body's approach based on past conduct and prior instances of approval (as currently presumed under the fourth criterion above), as the supervisory body is mandated under national company law to consider each decision (even those decisions giving rise to similar issues or circumstances) anew and in light of the wider, constituent interests –including non-shareholder interests – the supervisory body represents. We therefore believe that the fourth criterion ought to be abolished.

34. With respect to the third prerequisite, there are several difficulties with applying this prerequisite in practice. The condition, as presently worded, does not take into account the fact that disclosure obligations may arise daily in a protracted process and thus the question arises whether the issuer may delay disclosure or not. The condition is thus difficult to implement, as the supervisory board cannot be consulted on an every-day basis each time there is an "intermediate step" which constitutes inside information.

35. The SMSG agrees with ESMA that no possibility of delay should be granted where the issuer does not arrange for a decision to be adopted by the supervisory board. However, there are strong reasons not to prescribe a certain time period within which the issuer has to arrange for the decision of the supervisory body. ESMA should confine its guidelines to the first two conditions and additionally make clear that the delay be as short as possible.

3.2.4 Guideline 1 d) (issuer has developed a product/invention)

36. A further case where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests is described as follows: "the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer."

37. This example was already mentioned in the CESR second set of Guidance. The SMSG agrees with the inclusion in the indicative list of legitimate reasons. However, for the sake of consistency, the SMSG recommends to formulate the guideline in the same way as guideline 1.a) and 1.e) ("would likely be jeopardised" instead of "is likely to jeopardise").

The SMSG further suggests to include services as they are also economic commodities and the issuer may have the need to protect its rights when developing a new service.

3.3. Situations where the delay in the disclosure is likely to mislead the public

38. In its Position Paper, the SMSG recommended to interpret the requirement "not misleading the public" in accordance with former CESR guidance (Level 3 – second set of CESR guidance, CESR/06-562b) and current guidance by NCAs. ESMA has taken this into account and proposed draft guidelines which provide three situations where the delay of disclosure of inside information is likely to mislead the public.

39. The SMSG welcomes ESMA's new approach. However, further clarification might be necessary as the concept of "market expectation" is rather vague. The SMSG recommends a two-step test: ESMA's guidelines should require that (i) the issuer has made statements that go contrary to the new inside information, and (ii) this prior information from the issuer is deemed to have affected the market's expectations and impacted on price formation, i.e. has been noticed or is otherwise of a character that reasonable investors would pay attention to. Thus, not any and all 'statements/indications' from the issuer would necessarily be seen as relevant as an obstacle to delay, e.g. if they were made to a small constituency or were very vague.

The advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

ANNEX IV – Feedback on the CP

Guidelines for persons receiving market soundings

Q1: Do you agree with this proposal regarding MSR's assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information?

1. ESMA received thirty-one responses to this question. There were mixed interpretations about whether the assessment in question is an assessment by the MSR specifically of the information disclosed by the DMP, or an assessment by the MSR of whether it is possession of inside information after the sounding (i.e. combining the information received with other information available). Six respondents answered with the understanding that the assessment is focused specifically on the information communicated by the DMP whereas twelve respondents agree with the proposals; half of them caveat their agreement with a suggestion/request for clarification.

2. Six respondents are of the view that it is only beneficial for the MSR to conduct an assessment when the DMP has classified the information as not inside. They argue that accepting a DMP's assessment of "inside information" would by default result in conservative treatment of the information and therefore, there is no added benefit of conducting another assessment (and no risk of inside information not being controlled). Instead, they are of the view that there is a risk that the MSR wrongly re-classifies inside information as not inside information. On the other hand, there is clear benefit to the MSR conducting an assessment where the DMP has categorised the information as not inside, as this reflects that the MSR may have additional information that when combined equals inside information. In this case an assessment mitigates the risk that inside information may not be controlled properly.

3. Five respondents think that the DMP is in a better position than the MSR to assess the nature of information.

4. Two respondents believe it would be more proportionate for the MSR to be able to state that they agree with the DMP's assessment.

5. Four others think that an assessment should only be required when the MSR disagrees with the DMP's categorisation.

6. Five respondents requested clarification regarding the information available to the MSR:

    a) suggesting that this should reference information available to the employees tasked with receiving soundings;

    b) asking to clarify whether MSRs should be required to consider information sitting behind a "Chinese Wall";

c) asking to clarify the meaning of “available” as there may be information in the public domain which could be available but is not in the MSR’s possession.

ESMA’s response:

7. ESMA would like to stress that the obligation for the MSR to assess for itself whether or not it is in possession of inside information (or when it ceases to be in possession of inside information) as a result of the market soundings stems from Article 11(7) of MAR. Therefore, any proposed approach whereby the MSR could skip its active assessment passively relying on the DMP’s assessment should not be considered compliant with the MAR requirements.

8. With regard to the subject of the assessment, ESMA has been mandated to issue guidelines on the factors that MSRs are to take into account when information is disclosed to them as part of a market sounding, «*in order for them to assess whether the information amounts to inside information*». In the guidelines, ESMA highlighted as factors to be considered by the MSR the DMP’s assessment and all the information available to the individual(s), function or body entrusted within the MSR to conduct that assessment, including information obtained from sources other than the DMP.

9. This approach, which derives directly from Article 11 of MAR, takes into account the possibility that in the course of the sounding the MSR obtain non-inside information, and that information may amount to inside information once combined with some other pieces of non-inside information the MSR may be already in possession of.

10. Further to the responses to the CP, in the final guidelines ESMA included the recommendation that the individual(s), function or body entrusted within the MSR to conduct that assessment should consider all the information available to them, but should not be required to access information sitting behind a “Information barrier” established within the MSR’s organisation.

11. Given that one of the main purposes of the market sounding regime is to ensure that the inside information is treated as such, a thorough consideration of all the information available to the individual(s), function or body entrusted within the MSR to conduct that assessment is far more important where the information disclosed by the DMP is not inside information *per se*. On the contrary, where it is inside information *per se*, the MSR will have to consider it as such irrespective of the other possible pieces of inside information it may well be already in possession of.

Q2: Do you agree with this proposal regarding discrepancies of opinion between DMP and MSR?

12. ESMA received thirty responses to this question. Twenty disagreed with the proposal, on the following grounds:

a) the process is too complex and burdensome, with too many potential scenarios resulting in either action or inaction for the MSR.

b) each party should take responsibility for their own assessment pointing to the fact that they have independent obligations under Article 11 of MAR.

c) a notification to the DMP of a discrepancy of opinion will have no consequence in practice as there is no follow up requirement for the DMP to take it on board, while another noted that changing the assessment of the DMP is not the responsibility of the MSR. Another also noted that there would be no requirement for the DMP to inform other MSRs who had already been sounded of the change in status of the information.

d) there would be a risk of inadvertent disclosure as further discussion could result in greater information exchange. Such conversations should not be encouraged.

e) the MSR should follow the DMP's categorisation of the information. Where the DMP classifies the information as not inside information and the MSR disagrees, "*the position is probably grey as we are assuming both parties are doing their job with professionalism. Therefore, no opinion should prevail and the communication of discrepancy does not help anyone – it just creates potential legal liability and lots of practical issues*".

13. Nine respondents agree with ESMA's proposal, with one considering though that the situation is theoretical as MSRs would not risk disregarding the DMP. One agreed on the premise that it is simply a notification of disagreement and no requirement to provide further analysis or explanation. Another agreed in principle but thought a standalone requirement for the MSR to notify the DMP was onerous and that this should be incorporated in the record of the MSR's assessment.

14. The SMSG responded that the guidelines should also consider the situation where the DMP reaches an assessment that the information has to be considered as inside information whilst the MSR disagrees with this interpretation.

ESMA's response:

15. Taking into account the feedback on the CP and considering also the specific scope of the mandate under Article 17(11) of MAR, ESMA decided to no longer include in the guidelines any "liaison obligation" for the MSR in case of discrepancies of opinions with the assessment conducted by the DMP. Therefore, former point 4) in the draft guidelines proposed in the CP has been deleted.

Q3: Do you agree with this proposal regarding internal procedures and staff training? Should the guidelines be more detailed and specific about the internal procedures to prevent the circulation of inside information?

16. ESMA received twenty-nine responses to this question. One respondent agreed with no further comment whereas fourteen respondents agreed on the basis that allowing flexibility regarding the procedures is important and on the condition that no more detail is added.

17. Six respondents commented on the language "*function or body*" in relation to training as follows:

- for smaller firms it will not always be possible to identify a single function or body (as below);
- no single function or department is able to single–handedly assess the information and this would be in coordination with the relevant (commercial) department where the sounding first arrived;
- the requirement to train should apply in relation to the employees within the function or body who are responsible for assessing the information and not to the entire department;
- the language used in the guidelines implies that a dedicated unit needs to be established and therefore there will not be enough flexibility for other organisational set-ups.

18. It was also suggested combining 5)1)a) and 5)1)c) as they are very similar – both requiring the firm to control the flow of the inside information arising from the sounding.

19. One respondent put forward that for infrequent MSRs (e.g. a private equity investor) it would be very difficult to have meaningful pre-determined reporting lines. It would also be hard to identify the "function or body" as individuals involved will vary depending on the subject of the sounding (e.g. different deal teams for different markets/investments and corresponding lawyers.

20. Two respondents argued that the proposals are beyond scope of the mandate and that the requirements should only apply in relation to the receipt of inside information. One of these suggested also applying the requirements in relation to information classified as non-inside information which is pending confirmation through the MSR's assessment to be non-inside.

21. One respondent argues that training is no longer a requirement in the published RTS for DMPs and it is unbalanced and disproportionate to instead require training for MSRs

22. Two respondents noted that some MSRs will be unregulated entities who receive soundings infrequently and are of the view that the requirements would be too burdensome for such entities to comply with.

ESMA's response:

23. Taking into account the feedback on the CP, ESMA decided to introduce in the guidelines an explicit reference to a proportionality principle to both the internal procedures and the staff training. In fact, the final guidelines provide that both the internal procedures and the staff training should be appropriate and proportionate to the scale, size and nature of the MSR's business activity, therefore allowing some flexibility for smaller firms that most likely will not have the same level of organisational complexity of bigger firms.

24. Moreover, ESMA decided to add a reference to "individual(s)" entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding, no longer providing that only a "function or a body" may be entrusted with such task within the MSR. This is a consequence of the proportionality approach, and will involve that smaller firms can entrust one or more physical persons among their staff to conduct the assessment as to whether they are in possession of inside information as a result of the market sounding.

25. In the final guidelines, the reference to the recommendation to ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available to the DMP, was moved into the internal procedure and staff training section.

26. With reference to the training on the internal procedures and on the prohibitions under Articles 8 and 10 of MAR, ESMA is of the view that this is part of the mandate as included in the "steps" that MSRs are to take if inside information has been disclosed to them in order to comply with the provisions contained in the two above articles (Article 11(11)(b) of MAR). Ensuring that proper training is effectively conducted will avoid the risk of having procedures only on paper, with limited or none practical application.

27. ESMA is of the view that all the MSR's staff receiving and processing the information obtained in the course of the market sounding should be involved in the training. Said that, the proportionality principle will allow for MSRs to organise training that is appropriate and proportionate to the scale, size and nature of their business activity.

28. Finally, even if the guidelines do not get into details as to allow some flexibility in the implementation, it is likely that the training of the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding will be different from the training of staff receiving and processing the information received by the DMP.

Q4: Do you agree with this proposal regarding a list of MSR's staff that are in possession of the information communicated in the course of the market sounding?

29. Out of the fifteen respondents disagreeing with the proposal, six are of the view that the proposed guidelines are beyond ESMA's mandate and four that the requirement should apply only to staff who are in possession of inside information as a result of soundings.

30. A couple of other respondents challenged the effectiveness of such a list. They argue that because there would be no contravention of Article 8 or 10 of MAR if such a list was not completely accurate/up to date, the lists would be open to error and NCAs could therefore not rely on them.

31. Other arguments against the proposal were that the requirement is unnecessary because:

    a) paragraph 5 of the guidelines (CP versions) already requires internal procedures to control the information. By meeting the requirements contained in paragraph 5, a MSR should always be able to reconstruct the flow of information and a list may indeed form part of some firms' internal controls but should not be prescribed to all.

    b) the MSR is required to characterize the information and then, if it is inside information, not to use or unlawfully disclose it; the internal procedures on how to comply with the MAR prohibitions should be left to the MSR to decide, depending on its size, nature and organisation.

32. Another respondent is of the view that the requirement would be too burdensome/is too prescriptive for MSR's that are non-regulated entities.

33. Most of the respondents who agreed with the proposal requested clarification on:

    a) what "*in possession of*" means in practice;

    b) the meaning of "*working for*"; one respondent being of the view that this should only capture employees of the MSR rather than advisors etc;

    c) the need to draw up a list if the individuals are already recorded on an insider list pursuant to Article 18 of MAR. On this matter, a respondent agreed with the proposal on the basis that the purpose is for record keeping only and not an extension of Article 18 of MAR.

34. Finally, one respondent agreed and requested that a record of the MSR's decision to designate a specific person or contact point to receive market soundings is made available to DMPs.

ESMA's response:

35. ESMA remains of the view that a list of the persons working for the MSRs that had access to the information communicated in the course of the market soundings is essential for competent authorities to conduct investigations on possible market abuse cases. The fact that the guidelines require a list which is not limited to inside information, but covers all the information communicated in the course of the market sounding, is also related to the fact that the list will have to be drafted as soon as the MSR accepts to receive the market sounding, possibly before the MSR has conducted its own assessment under Article 11(7) of MAR.

36. Moreover, with reference to possible overlapping between this guideline and the content of Article 18 of MAR, it should be borne in mind that the two provisions do not share the same scope. In the context of a market sounding, MSRs, as potential investors, may not be the issuer to which the market sounding relates and or persons acting on the issuer's behalf or account. Therefore, MSRs will not be subject to the insider list provisions.

37. If on the one hand for small entities it may be somehow burdensome to draw up the required list, on the other hand it will allow MSRs to demonstrate compliance with the prohibitions on inside information and fostering the competent authorities' ability to reconstruct the information flow in the course of a possible investigation.

38. In the final guidelines this requirement was moved to the record keeping section.

39. Taking into account the feedback received to the CP, in the final guidelines ESMA has further specified the scope of this requirement and added that a time reference is needed.

40. The final guidelines make now reference to a record keeping obligation, for a period of at least five years of the «*persons working for*» the MSR «*under a contract of employment or otherwise performing tasks through which they have access to the information communicated in the course of the market soundings, listed in a chronological order for each market sounding*».

Q5: Do you agree with the revised approach regarding the recording of the telephone calls?

41. ESMA received thirty-three responses to this question. Most of the respondents welcome the revised approach of removing the requirement indicated in paragraph 115 of the DP ("*The buy side should ensure that any follow-up calls to the sell side following a sounding approach which didn't result in a wall-crossing should be conducted on company recorded mobile and land lines*") and, more generally, of not imposing on MSRs any requirement for the recording of telephone calls.

42. Among the reasons therefor, the fact that the DMP is already subject to recording obligations under the RTS on market soundings, and that the MSR will always have the possibility of recording the call, whenever the DMP agrees.

43. Some respondents asked to introduce further recording requirements for the DMP. It was suggested that "*any communications with the DMP should be made to a telephone line that is subject to recording by the DMP, and that the DMP should make this telephone number available to the MSR*". Another rather similar suggestion was to specify that the MSR should, however, only be able to communicate on a recorded telephone line with the DMP if he wishes to do so, and was complemented with the proposal to clarify in the technical standards on market soundings that "*the DMP, when establishing procedures for conducting market soundings by telephone (see Art. 2 para. 2 of the draft RTS), is obliged to make the number for the recorded telephone line available to each MSR"*.

44. Finally, one respondent emphasised that no call can take place if the MSR does not consent.

45. On the opposite side, just one respondent challenges the revised approach as, while recording technology is very reliable, it is not perfect. It highlights that requiring two parties to record a conversation ensures that at least one recording of the market sounding will exist. In addition, the respondent proposes to introduce requirements on the quality of the recording (it should be audible) and the requirement of transcribing conversations, even through electronic means, allowing to electronically find transcriptions by a search function.

ESMA's response:

46. ESMA acknowledges a broad support to the revised approach and therefore the final guidelines keep the approach of no longer imposing on MSRs any requirement for the recording of telephone calls, as such obligations already fall on the DMPs under the RTS on market sounding.

47. ESMA would like to highlight that the guidelines are not preventing the MSR to record the telephone calls on their own initiative, notably for commercial purposes, provided that the DMP has given in advance its consent to the recording.

48. With reference to the suggestions to impose additional obligations to the DMPs, ESMA would like to remind that it was mandated to address in these guidelines MSRs only.

49. Finally, ESMA confirms that even if not specified in the guidelines, according to what provided for in the RTS on market soundings, the DMP may record the telephone call only once the MSR has given their explicit consent.

Q6: Do you agree with the proposal regarding MSR's obligation to draw up their own version of the written minutes or notes in case of disagreement with the content of those drafted by the DMP?

50. ESMA received twenty-eight responses to this question. Eleven respondents (but only six in full) agreed with ESMA and welcomed the relevance given to the own assessment made by the MSR, as opposed to that of the DMP.

51. On the other hand, the seventeen respondents who disagreed and the five who partially agreed pointed out that ESMA's proposal lacks a rationale, is unduly burdensome, difficult to implement, not proportional, and intrinsically related to problems already shown in responding to Question 2.

52. They pointed out that DMPs and MSRs are typically prepared to solve possible disputes between themselves. Therefore, ESMA should limit its guidelines to general principles requiring that: a) an agreement between DMPs and MSRs should be reached and materialized by all means; and b) DMPs and MSRs should have in place procedures to deal with disagreement cases.

53. Some respondents warned ESMA about the lack of empowerment to impose record keeping requirements to MSRs.

54. Other respondents questioned the need of signing the minutes, especially in the event of agreement. Some respondents say that a formal signature would prove complicated and propose that (e)mail in return could be acceptable as a signature. One suggests adding in point 8 of the guidelines (CP drafting) a new point c) "passively accept the version of the meeting as recorded by the DMP by not responding to the minutes or note that they provide, within five working days".

55. A few respondents questioned the rationale of the requirement of drawing up own versions, since NCAs do not benefit from having two different versions.

56. Several respondents suggested alternative proposals according to which it should be sufficient that:

    a) the MSR keeps its own record that, in the event of investigation, could be provided for consideration;

    b) the MSR adds in the margins of the DMP's minutes, or in an annex, those parts where the MSR disagrees and the DMP signs below if it agrees on the amendments proposed by the MSR;

    c) the MSR sends as soon as possible an email to the DMP;

    d) the MSR has procedures to deal with disagreement.

57. SMSG asked whether the MSR's own version of the minutes may be signed electronically.

58. One respondent questioned the five-day deadline while another noticed that Article 6(3) of the RTS on market soundings establishes that DMP and MSR have five working days to reach an agreement but the guidelines provides no time limit by which the DMP must provide its version to the MSR. If the MSR does not receive the DMPs version until the fifth working day after the sounding, and does not agree with it, the MSR may find that it cannot comply with this obligation.

ESMA's response:

59. ESMA is of the view that, in practice, most market soundings will be conducted through recorded telephone lines. However, in the remaining cases, it is of the utmost importance for the competent authorities to have legal certainty as to the content of the information conveyed in the course of the sounding. In order to achieve that goal and in the absence of a recording, the best solution is represented by written minutes or notes signed by both the DMP and the MSR. However, where the DMP and the MSR disagree on the content of the information conveyed during the sounding, the only approach that will guarantee the competent authority the possibility to investigate a possible market abuse case will be that where the DMP has to keep record of both his own and the MSR's version on the minutes or notes.

60. In order to achieve that purpose, the RTS on market soundings focuses on the DMP's obligations, the guidelines on the MSR's.

61. ESMA is of the view that a written signature is the most effective means to legally prove agreement between two parties. However, nothing prevents the MSR from signing the DMP's minutes or notes and sending it to the DMP in an electronic format. ESMA acknowledges that also an electronic signature would serve the purpose in that respect.

62. With reference to the timing for the MSR to provide the DMP with its own version of the written minutes or notes, taking into account the feedback received ESMA amended the relevant paragraph of the final guidelines to make it workable. Where the MSR disagrees with the DMP as to the content of the written minutes or notes, the final guidelines require the MSR to provide the DMP with their own version duly signed «*within five working days after receipt of the minutes or notes drawn up by the DMP*».

63. Similarly, where the MSR agrees on the content of the minutes or notes drawn up by the DMP, it should sign those minutes or notes and return them to the DMP.

Q7: Can you provide possible elements of compliance cost with reference to the regime proposed in the guidelines for MSRs?

64. In general, many respondents stressed the difficulty of providing elements of compliance costs. Some considered that the on-going costs are far more significant than the initial implementation costs. Others spotted the following general cost drivers:

a) IT development, implementation, operation and maintenance of systems to handle soundings; ongoing monitoring and assessment;

b) establishing a new organizational function to handle soundings;

c) resources to monitor and document the sounding activity;

d) establishing internal procedures and staff training;

e) record keeping; the requirement to keep records according to point 9 of the guidelines (CP version) will trigger storage costs and costs for setting up specific internal processes;

f) recording systems for telephone calls; search engines for the recorded data.

65. A few quantitative estimates have been provided by few respondents:

- "the cost estimated for the telephone call recording is of 1,2MM€ for the first year, considering only the software for fixed telephones regarding employees who could be able to deal with market soundings and without taking into account the additional search engines that will be needed".

- many providers of telephony technology provide their services for very reasonable costs. Depending on what functions a client desires, our experience suggests that the services offered range from $50/user/month to $200/user/month".

- "if insider lists are to be maintained for all staff in relation to market soundings on an accurate and timely basis, this will require the implementation of significant new systems infrastructure which could, on a rough estimate, cost some €375,000".

66. Some qualitative comments were specifically related to point 5 (internal procedures and staff training), point 7 (assessment of related financial instruments) and point 8 (written minutes) of the guidelines proposed in the CP.

a) On point 5 of the guidelines one respondent warned on the cost of introducing a separate function or body, independent of the fund managers and analysts, responsible for assessing whether the firm might be in possession of, or in receipt of inside information, taking into consideration all the related information available to the firm.

b) On point 7 of the guidelines, another respondent highlighted the costs due to the assessment of all the financial instruments and issuers to which the inside information relates and suggests that it would result more efficient if the assessment is provided by the DMP.

c) On point 8 of the guidelines one respondent said that it would require MSRs to spend considerable time and internal staff resources as well as incur significant additional costs to engage external legal counsel in order to obtain comfort that their position is correct and thereby seek to avoid liability.

67. Finally, several respondents emphasised the risk that the market sounding regime will be abandoned by the industry due to the high compliance costs. In particular, one respondent notices that asset management firms do not directly benefit from taking part in the market sounding process.

68. SMSG did not respond to this question.

ESMA's response:

69. ESMA welcomes all the contributions to determine any possible elements of compliance cost arising from these guidelines, and took the suggestions into account in the final version of the guidelines.

70. In a view of regulating the market sounding regime limiting at the same time the compliance costs for MSRs, ESMA has introduced in the guidelines an explicit reference to a proportionality principle. In fact, ESMA recognises that the internal procedures referred to in the guidelines should be appropriate and proportionate to the scale, size and nature of their business activity, and added to the guidelines a reference in that respect

71. The compliance cost for MSRs arising from the obligation proposed in the DP to record the telephone calls with the DMPs was one of the drivers that led ESMA to drop that point in the final guidelines.

Guidelines on legitimate interests of the issuer for delaying public disclosure of inside information and situations in which delay of disclosure is likely to mislead the public.

Q8: Do you agree with the proposal regarding legitimate interests of the issuer for delaying disclosure of inside information?

72. ESMA received thirty-one responses to this question. Ten of these agree with the proposal that the guidelines should be a non-exhaustive indicative list whereby if the issuer finds itself in one of the situations in the list, this does not automatically entail there is a legitimate interest to delay disclosure.

73. Six of these respondents added that firms should justify on every occasion why the examples apply to them given that inside information always contradicts market expectations.

74. Some of these respondents said that ESMA should, as an introduction, note that Article 17(1) of MAR requires issuers of a financial instrument to publicly disclose as soon as possible inside information in a manner which enables fast access and complete, correct and timely assessment of the information by the public.

75. The guidelines need to specify even further that it is a case by case assessment of whether delayed disclosure can take place.

76. Only one respondent considers the list should be exhaustive. They are concerned with any proposal that facilitate the delay in disclosure of inside information. From their perspective, it is conceivable that delaying disclosure may endanger uncertainty and create instability.

77. Several respondents also expressed concerns that the proposal could have serious negative consequences for issuers and could, if it is narrowly interpreted, restrict the right to delay the disclosure of inside information. They disagree with the possibility that delaying disclosure represents the exception to the general rule where disclosure has to be made as soon as possible.

78. Two of these respondents indicated that recent ECJ decisions on “Geltl./.Daimler” and “Lafonta” led issuers to assume that preliminary information, including intermediate steps in a protracted process, may constitute inside information at a very early stage and could therefore trigger the need for disclosure. Therefore, it is key for issuers that they are able to rely on the legal possibility to delay the disclosure of inside information in order to ensure that their interests are not prejudiced by premature disclosure.

79. Five separate respondents said it is important that further guidance is provided for situations where inside information concerns a process which occurs in stages and that each stage of a process as well as the overall process could constitute inside information.

80. Several of these respondents considered the restrictive wording of the guidelines is not in line with the elements set out in Recital 50 of MAR, which narrows the right to delay disclosure if the proposal is taken literally.

81. Two respondents also recommended ESMA to review the wording and ensure the terms used are consistent such as “likely to be jeopardised”, “would jeopardise” and “jeopardising” which would otherwise lead to different interpretations and thus be misleading.

Conducting negotiations - Point 1(a)

82. A few respondents to this example consider mergers and acquisitions should be explicitly included. Some suggested that ongoing negotiations should also be included irrespective of the fact that the outcome of the negotiations are “jeopardised” or the conclusion is “likely to fail”. They consider that the use of the word jeopardise is too restrictive and is setting a higher standard than MAR. The wording should be drafted in light of Recital 50 of MAR where the fact that premature publication could affect the “normal pattern” of negotiations is sufficient.

Financial viability of the issuer – Point 1(b)

83. Five responses to this example support ESMA by suggesting an example of this would be the liquidity supply or short funding of the issuer is in grave and imminent danger.

84. Other respondents however consider Recital 50 of MAR provides a lower threshold than the proposed guidelines and consider ESMA is acting beyond its mandate. In their view, it is sufficient that such negotiations were negatively impacted and hence, a successful conclusion becomes more difficult whereas in the draft guidelines, the issuer would have to expect that public disclosure would result in failure of the discussions.

85. The proposed guidelines would also compel issuers to give greater weight to public disclosure than maintaining its financial viability. Taking into account the interests of the issuer itself, but also its shareholders, creditors as well as its employees and business counterparties, this is disproportionate and also damaging not only the interests of the issuer's stakeholder but potentially also the general public when the potential economic side effects of the issuer's failure becoming more likely is considered just because of the disclosure of its financial difficulties before they could be rectified.

86. One respondent suggests replacing "jeopardising" with "by adversely affecting".

Two-tier companies – Point 1(c)

87. All the respondents to this example raised concerns with the proposed drafting.

88. Meeting all the four conditions would be excessive, and respondents are concerned it would not make the delay of disclosure possible resulting in the delay becoming an exception rather than a rule. They consider the proposal undermines the two-tier corporate governance system composed of a management board and a supervisory body. The ability to postpone the immediate disclosure of inside information should be regarded as a necessary corrective designed for the boards to accomplish their tasks effectively and to protect the legitimate interests of the issuer. A narrow interpretation would fail to offer the issuer an adequate level of protection.

89. From the German respondents' perspective, maintaining the current approach currently in place in Germany is consistent with BaFin Issuer Guidelines and the well-proven practice approach should be maintained to avoid potentially misleading communication in cases an approval is still pending.

90. The legislator was fully aware of the problem in two-tier-systems which is reflected in Recital 50 of MAR which explicitly mentions that pending approval of the second body as a general rule constitutes "legitimate interest" on a non-exhaustive list in order to avoid organizational difficulties.

91. Several respondents proposed drafting changes and below is the summary of the points raised by respondents for each example:

i. four respondents said that the publication of a decision by the management body while the approval of the supervisory body is still pending would give the wrong impression that the decision has been already taken while it is not yet effective under corporate law. Another respondent said following the current drafting may create expectations which are subsequently not met as a result of a later decision (by the supervisory body). They also see a "danger" as such a requirement to disclose information prematurely may restrict the ability of the issuer's decision makers to properly conclude their decision making process. One respondent suggests removing this condition;

ii. three respondents said the proposal would hinder the freedom of the supervisory body would almost be jeopardised, as a refusal would almost certainly cause damage to the issuer and lead to unnecessary volatility in the issuer's share price as the market would receive contradictory signals;

iii. seven respondents consider the drafting is too restrictive and would be impractical. Five respondents cannot see how the other body could approve on the same day the decision and they consider such requirement would seem to contradict the general objective to permit delayed disclosure and would not be realistic. Three respondents said it will nearly be impossible to invite members of the supervisory body at such short notice. These bodies usually have quite a diverse composition that reflects not only an issuer's often international shareholder structure but also employee representation (which is – at least in Germany required as a matter of law under the German co-determination principles). The same respondents, still referring to German practices, added that such rule would run counter good governance as the supervisory body may legitimately require more time to make an informed judgment effective supervision cannot be accomplished if decision making is expected within such a short period of time. Two of these respondents added that according to the corporate law, the OECD principles and codes of corporate governance, directors should receive appropriate information that is necessary to perform their duties with due care.

One respondent said that in the case of prolonged negotiations (for example a bid or merger), a number of small decisions may need to be taken during the course of the negotiations and it may not be possible to ensure that the ultimately responsible body is instantly informed by the lower body.

Another respondent raised another consequence of the current drafting would result in an incentive to delegate the relevant decision to a committee which could decide more quickly.

Several respondents therefore suggested changing "within the same day" either with "as soon as possible", "as soon as legally and practically possible" or "within three days";

iv. all the respondents who provided comments on these criteria are against them. The supervisory body is an independent corporate body whose decisions should be unaffected by earlier announcements. Two respondents consider the proposal contradicts the most basic rule of governance as there is no way to know before the meeting what will be the decision of the supervisory body. One of these respondents in

addition to another respondent indicate the drafting is too narrow and having two announcements, once by the management body and another one by the supervisory body, would lead to market "turbulence" as there could be contradictions between the announcements.

Another respondent said the expectation concerning the decision of the second body is not a suitable criterion as the management board will never pass a decision it knows will not meet the supervisory body's approval and cannot be an indication of future decision making.

One respondent said that due to the inability to predict future decisions of the supervisory body, this assumption with the current drafting places an unreasonable burden of proof on the issuer.

Another respondent said this condition effectively eliminates the possibility to delay the publication of inside information as it can only be complied with in situations where the management body will not present the decision to the supervisory board, but not in the normal day-to-day situations of protracted decision making processes.

Another respondent indicated this condition should instead refer to situations which are not "routine" rather than situations "which are not expected".

The above respondents therefore suggest changing the drafting to "a legitimate interest […] would exist, if the decision of the body responsible […] for such approval is reliably expected to be in line with the decision of the management body".

Finally, one respondent suggested clarifying whether and how this provision on the delay may apply to one-tier system too. The same respondent highlighted that also in one-tier system the CEO or executive directors can have the same powers the management body has in the two-tier system, i.e. taking a decision or defining all the detail of a contract, with the final decision to be taken by the board.

Development of a product or an invention – Point 1(d)

92. The responses highlighted that the word "jeopardise" is too stringent and goes against the term used in the existing CESR standards, therefore suggesting reverting to the terms used in CESR/06-562b section 2.8, i.e. "needs to protect its rights".

The issuer is planning to buy or sell a major holding in another entity – Point 1(e)

93. Several respondents indicate that from reading paragraph 86 of the explanatory text, the delay is only possible if the transaction is very likely to fail. Respondents said it is very difficult to predict the likelihood of the failure of the conclusion of a transaction.

94. The fact that the deal is very likely to fail in case of disclosure should not be considered as a final interpretation and a "mere probability" is sufficient criterion.

95. Another respondent writes they do not consider this example to be a legitimate interest. This should be instead a more general ability to delay disclosure of the planning stages of other kinds of transactions/corporate developments where negotiations may not have started. The same respondent also thinks the word “would jeopardise” is too strict and suggest using similar wording to 1(d) as an issuer will have to make judgement as to whether disclosure of information is likely to jeopardise the conclusion of a transaction without knowing what the reaction of other parties involved would be.

96. Other suggestions were using a wording similar to Recital 50 of MAR, i.e. “would be likely to be affected” instead of “likely to be jeopardised”.

A previously announced transaction is subject to a public authority’s approval – Point 1(f)

97. No respondents commented on the example.

Other issues: CEO’s resignation - Paragraph 63 of the explanatory text

98. Although not part of the non-exhaustive list, six respondents provided comments in relation to paragraph 63 of the explanatory text on the CEO’s resignation.

99. Four of these respondents consider that in certain cases CEO’s resignation may justify a delay in disclosure until a successor is appointed and such example should be included in the list. Three of these respondents said it would be legitimate to delay disclosure if the announcement of the appointment is imminent where the announcement of the successor can be made at the same time as the resignation. In their view this would however not apply if the company is without a CEO for some time. The other respondents suggest it would be legitimate to delay disclosure where, for example, the resignation is not with immediate effect to allow time to find a suitable replacement.

100. Six other respondents however agree with ESMA that a resignation of a CEO does not represent an example of legitimate interest to delay disclosure of inside information until the CEO´s successor has been appointed.

Other issues: verifying accounts / preparation of results - Paragraph 64 of the explanatory text

101. One respondent considers there might be circumstances where a short delay may be acceptable to clarify the situation of the accounts of a subsidiary.

102. Two respondents welcome the clarification that verification of accounts does not amount to legitimate interest to delay disclosure under Article 17(4) of MAR.

103. Another respondent however considered that further clarity is needed for the process of preparing results as this does not trigger the requirement to disclose inside information before the planned date of the publication of the results. The respondent considers it is important that the practice of issuers to publish results in accordance with a planned (and usually disclosed) timetable (except for when a profit warning is

required) and would like ESMA to clarify how it believes issuers should analyse the issue.

Other issues: **relationship between Article 17(4) and (5) of MAR**

104. Some respondents seek clarification on the timeframe to obtain clarification.

105. One respondent suggests the guidelines should contain a clarification in the application of Article 17(4) of MAR to credit institutions, in order to provide legal certainty as to what can be considered a "legitimate interest" for such firms. The respondent provides drafting and indicates the clarification is necessary because Article 17(5) of MAR serves a different purpose than Article 17(4) of MAR (see also Recitals 49 and 52 of MAR). The provisions should apply cumulatively and not alternatively.

OTHER ISSUES

106. One respondent said that it could be useful to include in the list also any kind of structural transactions (segregation of activity, general assignment of all the assets and liabilities, the international transfer of the address, etc.).

107. Another respondent would like the examples to be more detailed and other situations should be added (e.g. covenant breach, restructuring before an issue of the issuer's debt). Business plans should also be considered.

108. A respondent commented that the example on "*impending developments that could jeopardise premature disclosure*" (paragraph 69 of the CP) should be reinstated, at the very least as a statement of principle as its removal could cause issuers to assume that impending developments are incapable of constituting a legitimate interest justifying delayed disclosure.

109. The same respondent notes the commentary at paragraph 61(a) and agrees that this is effectively a sub-set of the proposed guideline 1(a) and considers it should be retained because it represents a helpful example of a situation which falls within that guideline.

110. The existing CESR Guidance contains a statement (in paragraph 2.7) that reads "*Issuers should consider the particular circumstances of their case when deciding whether they can delay disclosure*". The respondent believes that this guideline is helpful in that it emphasises the need to avoid a "*one size fits all*" approach. Its deletion would appear to discourage issuers and their advisers from making informed judgement calls on a case by case basis.

111. Finally, ESMA received a proposal to add to the list of legitimate interests the case where the issuer is a financial institution and the inside information relates to measures taken by a prudential supervisor, where the immediate public disclosure of the inside information is likely to prejudice the final implementation of such measures.

ESMA's response:

112. ESMA would like to remind that the regime for public disclosure of inside information is outlined in Article 17 of MAR. Article 17(11) of MAR requires ESMA only to establish a non-exhaustive indicative list of legitimate interests of the issuer to delay disclosure of inside information.

113. This means that there may be other cases where immediate disclosure of the information may be detrimental to the issuer. At the same time, it should be noted that the list is indicative. It should be for the issuers to explain that they are in a case where their legitimate interests are likely to be prejudiced by immediate disclosure of inside information, and each situation, including those listed in these guidelines, should be assessed on a case by case basis.

114. In drafting these guidelines ESMA took into account the examples contained in Recital 50 of MAR and in the CESR guidance. However, ESMA would like to remind that in fulfilling its mandate it found appropriate to go beyond the examples provided in Recital 50 of MAR and not to be bound by the wording therein used. ESMA is stressing that that in all cases the examples provided are indicative and there may be other cases of legitimate interest than the ones included in the guidelines.

115. With reference to the legitimate interest relating to ongoing negotiations and taking into account the feedback on the CP, ESMA decided to add some examples of negotiations in the guidelines text to include mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations.

116. With reference to the cases where the financial viability of the issuer is in grave and imminent danger some respondents suggested that an example of this would be where the liquidity supply or short funding of the issuer is in grave and imminent danger. In this respect ESMA would like to highlight that the decision of not including a reference to the "long-term" financial recovery of the issuer (present in the examples given in Recital 50 of MAR) was indeed driven by the fact that also the "short-term" financial recovery of the issuer could be a possible legitimate interest.

117. With reference to two-tier system companies many respondents warned that it will be almost impossible for an issuer to meet all the four conditions at the same time. With particular reference to the condition included in point 1(c)(iv) of the drafting proposed in the CP, some respondents criticised that the management boards tend to pass decisions that they know will usually obtain the supervisory body's approval.

118. Taking into account the feedback received ESMA decided to delete the conditions laid down in points 1(c)(ii) and 1(c)(iv) of the drafting proposed in the CP.

119. In relation to the condition laid down in point 1(c)(i), ESMA is of the view that still remains a valid point to qualify a legitimate interest in relation to two-tier companies. In fact, where the correct assessment of the information by the public would not be jeopardised by a statement explaining that the management board has approved a deal

but the supervisory board's decision is still pending, then there should be no legitimate interest of the issuer to delay disclosure of such information. ESMA is of the view that an example of situation where the correct assessment of the information by the public would be jeopardised by immediate public disclosure may be the case where the management body has doubts as to whether the decision of the other body will be in line with its decision.

120. In relation to the condition laid down in points 1(c)(iii) of the guidelines proposed in the CP, taking into account the responses received, ESMA has decided to remove the reference to "*the same day*", now providing that the issuer should arrange for the decision of the body responsible for the definitive approval to be made "*as soon as possible*".

121. Finally, ESMA is of the view that it is not appropriate to extend the example relating to two-tier companies to one-tier companies. The two systems present substantial differences in the decisional process, one being characterised by two separated bodies required to take independent decisions, the other presenting a single body that may voluntarily delegate part of their decisional powers to another person.

122. With reference to the issuer planning to buy or sell a major holding in another entity, ESMA highlights that this particular case differentiates from the case of ongoing negotiations as it involves situations where such a plan has been already decided but the negotiations have not started yet. ESMA would like to highlight that this particular case requires evidence of the decision taken in a view of implementing the plan.

123. It should be reminded that, given that the list of legitimate interests is not meant to be exhaustive, there may be other examples of plans before the start of any negotiations that may constitute a legitimate interest of the issuer.

124. Taking into consideration some responses to the CP, in the final version of the guidelines ESMA decided to include the cases where the risk to the successful implementation of the plan is not proven but only likely.

125. It should be noted that the issuer should always be able to explain to the national competent authorities the reasons why the implementation of the plan is likely to fail with immediate disclosure of that information.

126. With reference to the case of the CEO's resignation from their post as an example of legitimate interest to delay the disclosure of inside information until their successor has been appointed, ESMA reiterates its view that this does not represent a case of legitimate interest to delay disclosure of inside information and therefore that information should be disclosed as soon as possible.

127. In relation to the possible legitimate interest where a delay would be needed in order for a parent company to check the accounting information received by the subsidiaries, ESMA is of the view that if the information as such is not precise (e.g. because the missing information from the subsidiary is significant) then there is no inside information at that point. Differently, if the information is precise enough to be considered inside

information, the time needed for the parent company to check the accounting information received by a subsidiary should not qualify as a legitimate reason to delay disclosure under Article 17(4) of MAR. The issuer will remain subject to the obligation laid down in Article 17(1) of MAR, where it is provided that issuers should inform the public «as soon as possible».

128. In relation to «*impending developments that could be jeopardised by premature disclosure*», ESMA kept its approach and did not include them in the list of legitimate interests, as it was deemed to be a too generic provision.

129. In relation to the proposal to add to the list of legitimate interests the case where the issuer is a financial institution and the inside information relates to measures taken by a prudential supervisor, where the immediate public disclosure of the inside information is likely to prejudice the final implementation of such measures, ESMA decided not to include such situations in the list of legitimate interest. Such situation may fall into one of the other listed case of legitimate interests and, where the relevant conditions are met, may fall into the scope of Article 17(5) of MAR. Differently, the ordinary regime of disclosure as soon as possible should apply.

130. With reference to the request for clarification in the application of Article 17(4) and (5) of MAR, ESMA considers the issue to be beyond the mandate received and therefore the point was not treated in the guidelines.

Q9: Do you agree with the proposal regarding situations where the delayed disclosure is likely to mislead the public?

131. ESMA received 26 responses to this question.

132. In relation to point 2(a) of the guidelines, ten respondents agreed with the proposal. Three respondents suggested that the use of “materially different” is unclear. Some suggested the use of “in contradiction” instead. Two respondents suggested to make reference to a recent public announcement.

133. In relation to point 2(b) of the guidelines, nine respondents agreed with the proposal. Two respondents pointed out that “financial objectives” are not a defined concept and that ESMA should make reference to “profit forecasts” instead, as they are defined in Article 2 of Commission Regulation (EC) n°809/2004 (Prospectus Regulation). One respondent suggested specifying that non audited financial statements should be excluded from the scope of this point.

134. Another respondent envisaged not to rule out the possibility to delay the disclosure of inside information even where that information regards the fact that the issuer’s financial objectives, previously announced, are likely not to be met.

135. In relation to point 2(c) of the guidelines, four respondents agreed with the proposal. Some suggested introducing a differentiation between inside information that

contradicts market's expectations and inside information that simply confirms or reinforces market's expectations.

136. Eight respondents, including the SMSG, pointed out that "markets expectations" are an undefined, vague concept and that inside information is always in contrast with market's expectations, suggesting that that reference should be removed. Some of them stressed that issuers should not be obliged to take into account the market sentiments and financial analysts' consensus, as they are not responsible for analysts' consensus.

137. Eight respondents disagreed with the drafting proposal, deemed to be not clear and too vague. Some suggested deletion as the case should be already covered in the two previous points.

138. Three respondents suggested that the reference to signals that the issuer has previously set is too far reaching, some suggesting framing the time reference using the wording "has recently set".

139. Three respondents pointed out that the reference to signals is unclear. Some stressed that it should be clear that signals do not include any implicit signals. Some respondents envisaged that issuers could pursue a "no comment" policy if rumour arises in the market that cannot be traced back to a leak in the issuer's domain.

ESMA's response:

140. With reference to the feedback received on point 2(a) of the guidelines, ESMA is of the view that the wording "*materially different*" used in the guidelines has a broader meaning compared to the proposed wording "*in contrast*". In fact, some information may be materially different from other information without necessarily being in contrast with it. Therefore, in the final guidelines the wording proposed in the CP was maintained.

141. To better define the timeframe between previous public announcements and the inside information whose disclosure the issuer intends to delay, in the final guidelines the reference to "*a previous public announcement*" was changed into "*the previous public announcement*". This highlights that the issuer, in assessing whether it is in a situation where the public could be misled by delayed disclosure, should consider only the most recent announcement relating to that information.

142. In relation to point 2(b) of the guidelines, ESMA is of the view that a more general reference to "*financial objectives*" is preferable to the suggested one to "*profit forecasts*", and did not change the drafting in the final guidelines. However, ESMA would like to highlight that "*profit forecasts*" should be captured by the reference to financial objectives publicly announced.

143. ESMA disagrees with the proposal not to rule out the possibility to delay the disclosure of inside information even where that information regards the fact that the issuer's

financial objectives are likely not to be met, as delaying such inside information would certainly represent a situation where the public is likely to be misled.

144. In relation to point 2(c), the final guidelines keep the reference to market's expectations. However, taking into account the responses to the public consultation, in order to provide more clarity to the concept of market's expectations such reference has been linked to the signals that the issuer has previously sent to the market.

145. In addition, ESMA decided to provide some examples of signals that the issuer may have previously sent to the market, such as interviews released by the CEO of an issuer, or the information conveyed by the management of the issuer during a road-show.

Q10: Do you see other elements to be considered for assessing market's expectations?

146. ESMA received nineteen responses to this question.

147. Four respondents agreed with the reference to market's expectations and appreciate the suggestion made in the explanatory text to take into account the market sentiment, for instance considering the consensus among financial analysts.

148. One respondent disagreed with the suggestion to take into account the market sentiment, for instance considering the consensus among financial analysts, in assessing market's expectations.

149. One respondent envisaged a differentiation from expectations which have resulted from statements issued or confirmed by the issuer as opposed to statements made by third parties such as the financial or trade press.

150. Six respondents reiterate that the reference to "market's expectation" is a rather vague and unclear concept, one of them reiterate the suggestion of removing the reference to "market's expectation".

151. One respondent appreciated the link between market's expectations and signals that the issuer has previously set, but consider it too far reaching, some suggesting framing the time reference using the wording "has recently set".

152. One recipient pointed out that market's expectations should be based only on signals set by the issuer, excluding though implicit communication.

153. The SMSG recommended «*a two-step test: ESMA's guidelines should require that (i) the issuer has made statements that go contrary to the new inside information, and (ii) this prior information from the issuer is deemed to have affected the market's expectations and impacted on price formation, i.e. has been noticed or is otherwise of a character that reasonable investors would pay attention to. Thus, not any and all*

'statements/indications' from the issuer would necessarily be seen as relevant as an obstacle to delay, e.g. if they were made to a small constituency or were very vague».

ESMA's response:

154. ESMA appreciated the feedback received on this question. In order to provide more clarity to the concept of market's expectations, in the guidelines they have been directly linked to the signals that the issuer has previously sent to the market.

155. In addition, ESMA decided to provide some examples of signals that the issuer may have previously sent to the market, explicitly mentioning interviews released by the CEO of an issuer, the information conveyed by the management of the issuer during a road-show or any other type of communication organized by the issuer or with its approval.

ANNEX IV – Guidelines for persons receiving market soundings

1. Scope

Who?

1. These guidelines apply to Competent Authorities and persons receiving market soundings.

What?

2. These guidelines apply in relation to the factors, the steps and the records that the persons receiving the market soundings will have to consider and implement according to Article 11(11) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

When?

3. These guidelines apply from [2 months after publication of translations].

2. References, abbreviations and definitions

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
MSR	Person receiving the market sounding
DMP	Disclosing market participant
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
RTS on market soundings	Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings

3. Purpose

4. Article 11(11) of MAR provides that ESMA shall issue guidelines addressed to persons receiving market soundings (MSR) regarding:

   d) the **factors** that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;

   e) the **steps** that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR; and

   f) the **records** that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of MAR.

5. The purpose of these guidelines is to ensure common, uniform and consistent approach in relation to the requirements that MSRs are subject to. These guidelines aim at reducing the overall risk of spreading of the inside information communicated in the course of the market sounding and at providing tools for the Competent Authorities to effectively conduct investigations on suspected market abuse cases.

4. Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 11(11) of MAR. Competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

4.2 Reporting requirements

7. Competent Authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to [MARguidelinesGL2@esma.europa.eu]. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

8. The persons receiving market soundings are not required to report whether they comply with these guidelines.

5. Guidelines for persons receiving market soundings

1. Internal procedures and staff training

9. The MSR should establish, implement and maintain internal procedures that are appropriate and proportionate to the scale, size and nature of their business activity, to:

    a. ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available to the DMP;

    b. ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting channels and on a need-to-know basis;

    c. ensure that the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding are clearly identified and properly trained to that purpose;

    d. manage and control the flow of inside information arising from the market sounding within the MSR and its staff, in order for the MSR and its staff to comply with Articles 8 and 10 of MAR.

10. The MSR should ensure that the staff receiving and processing the information obtained in the course of the market sounding are properly trained on the relevant internal procedures and on the prohibitions, under Articles 8 and 10 of MAR, arising from being in possession of inside information. The training should be appropriate and proportionate to the scale, size and nature of MSR's business activity.

2. Communicating the wish not to receive market soundings

11. After being addressed by a DMP, the MSR should notify it whether they wish not to receive future market soundings in relation to either all potential transactions or particular types of potential transactions.

3. MSR's assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information

12. MSRs should independently assess whether they are in possession of inside information as a result of the market sounding taking into consideration as relevant factors the DMP's assessment and all the information available to the individual(s), function or body entrusted within the MSR to conduct that assessment, including information obtained from sources other than the DMP. In conducting that assessment, the individual(s), function or body should not be required to access information behind any information barrier established within the MSR.

13. Further to the DMP's notification that the information disclosed in the course of the market sounding is no longer inside information, MSRs should independently assess whether they are still in possession of inside information taking into consideration the DMP's assessment and all the information available to the individual(s), function or body entrusted within the MSR to conduct that assessment, including information obtained from other sources than the DMP. In conducting that assessment, the individual(s), function or body should not be required to access information behind any information barrier established within the MSR.

4. Assessment of related financial instruments

14. Where the MSR has assessed they are in possession of inside information as a result of a market sounding, for the purposes of complying with Article 8 of MAR the MSR should identify all the issuers and financial instruments to which they believe that inside information relates.

5. Written minutes or notes

15. Where in accordance with point (d) of Article 6(2) of the RTS on market soundings the DMP has drawn up written minutes or notes of the unrecorded meetings or unrecorded telephone conversation, the MSRs should, within five working days after receipt:

    a. sign those minutes or notes, where they agree upon their content; or

    b. provide the DMP with their own version of those minutes or notes duly signed, where they do not agree upon their content.

6. Record keeping

16. MSRs should keep records in a durable medium that ensures accessibility and readability for a period of at least five years of:

    a. the internal procedures referred to in paragraph 1;

    b. the notifications referred to in paragraph 2;

    c. the assessments referred to in paragraph 3 and the reasons therefor;

    d. the assessment of related instruments referred to in paragraph 4;

    e. the persons working for them under a contract of employment or otherwise performing tasks through which they have access to the information communicated in the course of the market soundings, listed in a chronological order for each market sounding.

ANNEX V – Guidelines on legitimate interests to delay disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public

1. Scope

Who?

87. These guidelines apply to Competent Authorities and issuers.

What?

88. These guidelines provide a non-exhaustive and indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of inside information and situations in which delay of disclosure is likely to mislead the public, according to Article 17(11) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

When?

89. These guidelines apply from [2 months after publication of translations].

2. References, abbreviations and definitions

MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

3. Purpose

90. The purpose of these guidelines is to provide guidance by giving examples to assist the issuers in their decision to delay public disclosure of inside information under Article 17(4) of MAR.

4. Compliance and reporting obligations

4.1 Status of the guidelines

91. This document contains guidelines issued under Article 17(11) of MAR. Competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

4.2 Reporting requirements

92. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to [MARguidelinesGL3@esma.europa.eu]. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

93. Issuers are not required to report whether they comply with these guidelines.

5. Guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public

1. Legitimate interests of the issuer for delaying disclosure of inside information

94. For the purposes of point (a) of Article 17(4) of MAR, the cases where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests could include but are not limited to the following circumstances:

a. the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure. Examples of such negotiations may be those related to mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations.

b. the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer;

c. the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's

bylaws, the approval of another body of the issuer, other than the shareholders' general assembly, in order to become effective, provided that:

i. immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and

ii. the issuer arranged for the definitive decision to be taken as soon as possible.

d. the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;

e. the issuer is planning to buy or sell a major holding in another entity and the disclosure of such an information would likely jeopardise the implementation of such plan;

f. a transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

2. Situations in which delay of disclosure of inside information is likely to mislead the public

95. For the purposes of point (b) of Article 17(4) of MAR, the situations in which delay of disclosure of inside information is likely to mislead the public includes at least the following circumstances:

a. the inside information whose disclosure the issuer intends to delay is materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or

b. the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or

c. the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval.

Questions and Answers

On the Market Abuse Regulation (MAR)

ESMA70-145-111
Version 17
Last updated on 23 September 2022

Table of Contents

1. Purpose and status

1. The purpose of this document is to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of Market Abuse Regulation (No 596/2014, "MAR"). It does this by providing responses to questions asked by the public, financial market participants, competent authorities and other stakeholders. The question and answer (Q&A) tool is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation. Further information on ESMA's Q&A process is available on our website.

2. ESMA intends to update this document on a regular basis and, for ease of reference, ESMA provides the date each question was first published as well as the date/s of amendment beside each question. A table of all questions in this document and dates is provided in Section I.

3. Additional questions on MAR may be submitted to ESMA through the Q&A tool on our website *(here)* Please see the guidance available on our website before submitting your question.

2. Legislative references and abbreviations

Legislative references

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[1]
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Text with EEA relevance)[2]
Implementing directive on reporting to competent authorities of actual or potential infringements	Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation[3]

[1] OJ L 331, 15.12.2010, p. 84
[2] OJ L 173, 12.6.2014, p. 1–61
[3] OJ L 332, 18.12.2015, p. 126–132

Delegated regulation on an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions	Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (Text with EEA relevance)[4]
RTS on financial instrument reference data under Article 4 of MAR	Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications (Text with EEA relevance)5
ITS on financial instrument reference data under Article 4 of MAR	Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)[6]
RTS on disclosing market participants conducting market soundings	Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings (Text with EEA relevance) [7]
ITS on disclosing market participants conducting market soundings	Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and

[4] OJ L 88, 5.4.2016, p. 1–18
[5] OJ L 153, 10.6.2016, p. 13–22
[6] OJ L 72, 17.3.2016, p. 1–12
[7] OJ L 160, 17.6.2016, p. 29–33

(systems, templates and records)	the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)[8]
RTS on accepted market practices	Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (Text with EEA relevance) [9]
RTS on the prevention, detection and reporting of abusive practices or suspicious orders or transactions	Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (Text with EEA relevance)[10]
ITS on insider lists format	Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) [11]
ITS on the notification and disclosure of managers' transactions	Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) [12];
RTS on investment recommendations or other information recommending or	Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment

[8] OJ L 160, 17.6.2016, p. 23–28
[9] OJ L 153, 10.6.2016, p. 3–12
[10] OJ L 160, 17.6.2016, p. 1–14
[11] OJ L 65, 11.3.2016, p. 49–55
[12] OJ L 88, 5.4.2016, p. 19–22

suggesting an investment strategy	recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest (Text with EEA relevance) [13]
RTS on buy-back programmes and stabilisation measures	Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council for the conditions applicable to buy-back programmes and stabilisation measures (Text with EEA relevance) [14]
ITS on the technical means for public disclosure of inside information and for delaying the public disclosure of inside information	Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) [15]

Abbreviations

CIU	Collective investment undertaking
EC	European Commission
DMP	Disclosing Market Participant
EAMP	Emission Allowances Market Participants
EEA	European Economic Area
ETF	Exchange-traded funds
EU	European Union
ESMA	European Securities and Markets Authority
ITS	Implementing technical standards
MTF	Multilateral trading facility
OTF	Organised trading facility

[13] OJ L 160, 17.6.2016, p. 15–22
[14] OJ L 173, 30.6.2016, p. 34–41
[15] OJ L 173, 30.06.2016, p. 47–51

PDMR	Person discharging managerial responsibilities
RTS	Regulatory technical standards

3. Summary table

Subject	Q	Topic of the Question	Level 1 / Level 2 provision	Last updated
General	4.1	Blanket cancellation of orders policy	Article 8 of MAR	30/05/2017
Disclosure of Inside information	5.1	Disclosure of inside information related to Pillar II requirements	Article 17 of MAR	23/03/2018
Disclosure of inside information	5.2	Delayed inside information that lost the feature of price sensitivity	Article 17(4) of MAR	29/09/2017
Disclosure of inside information	5.3	Delayed disclosure of inside information under Art. 17(5): assessment of the relevant conditions	Article 17(5) of MAR	01/10/2018
Disclosure of inside information	5.4	Delayed disclosure of inside information under Art. 17(5): notification of the expected duration	Article 17(5) of MAR	01/10/2018
Disclosure of inside information	5.5	Delayed disclosure of inside information under Art. 17(5): NCA's denial of consent	Article 17(5) of MAR	01/10/2018
Disclosure of inside information	5.6	Disclosure of inside information by collective investment undertakings without legal personality voluntarily admitted to trading or traded on a trading venue		29/03/2019
Disclosure of inside information	5.7	Potential cases of inside information in relation to collective investment undertakings voluntarily admitted to trading or traded on a trading venue		29/03/2019
Disclosure of inside information	5.8	Interaction between MAR and CRAR: Article 7 MAR and Article 10(2a) CRAR		06/08/2021
(Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation)				
Disclosure of inside information	5.9	Disclosure to the public of credit ratings and inside information Article 7 MAR and Article 10(2a) CRAR		06/08/2021
(Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation)				

Disclosure of inside information	5.10	Distribution of subscription ratings and disclosure of inside information Article 7 MAR and Article 10(2a) CRAR		06/08/2021

(Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation)

Disclosure of inside information	5.11	Financial guidance and disclosure of inside information		20/09/2022 (new)
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Prevention and detection of market abuse	6.1	Persons professionally arranging or executing transactions	Article 16(2) of MAR	1/09/2017
Managers' transactions	7.1	Exchange rate	Article 19 of MAR	26/10/2016
Managers' Transactions	7.2	Timing of the closed period	Article 19(11) of MAR	13/07/2016
Managers' transactions	7.3	Threshold calculation	Article 19(1) and(8) of MAR	20/12/2016
Managers' transactions	7.4	Price of gifts, donation and inheritance	Article 10(2)(k) of Regulation 2016/522	20/12/2016
Managers' Transactions	7.5	Notification of shares received as part of remuneration package	Article 19(1) of MAR Article 10(2)(i) of Regulation 2016/522	20/12/2016
Managers' transactions	7.6	Price of options granted for free	Article 10(2)(k) of	20/01/2017
Managers' Transactions	7.7	Person closely associated to a PDMR	Article 3(1)(26)(d) of MAR	06/07/2017
Managers' transactions	7.8	Trading during closed periods and prohibition of insider dealing	Article 19(12) of MAR	21/11/2017
Managers' Transactions	7.9	Types of transactions by PDMRs prohibited during closed periods	Article 19(11) of MAR	21/11/2017
Managers' Transactions	7.10	Non-applicability of the ban to transactions of the issuer on its own financial instruments	Article 19(11) of MAR	12/11/2018

Investment recommendation	8.1	Communications made orally or via electronic means	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment Recommendation	8.2	Communications not referring to one or several issuers	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment recommendation	8.3	Main business is not to produce investment recommendations	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment Recommendation	8.4	Information implicitly recommending or suggesting an investment strategy	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment recommendation	8.5	Communications containing purely factual information	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment Recommendation	8.6	Communications on previously disseminated investment recommendations	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment recommendation	8.7	Recommendation on derivatives traded solely outside a trading venue	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment Recommendation	8.8	Identification of derivatives in investment recommendations	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment recommendation	8.9	Recommendations on multiple issuers	Article 20 of MAR	27/01/2017
Investment Recommendation	8.10	Recommendations relating to several financial instruments independently	Article 20 of MAR	27/01/2017
Investment recommendation	8.11	Recommendations on derivatives referencing an index	Article 20 of MAR	27/01/2017

Market soundings	9.1	Financial instruments in scope	Article 11(1) of MAR	1/09/2017
Market Soundings	9.2	Scope of the new Article 11(1a) of MAR	Article 11(1a) of MAR	23/06/2022
(Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation)				
Insider lists	10.1	Subject of the insider list requirements	Article 18(1) of MAR	1/09/2017
Insider lists	10.2	Issuer's responsibility In case of delegation	Article 18(2) of MAR	1/09/2017

Emission Allowances and EAMPs	11.1	Time span for the calculation of the CO_2 equivalent emissions and rated thermal input	Article 17(2) of MAR	14/12/2017
Emission Allowances and EAMPs	11.2	Meaning of parent and related undertaking in Article 17(2) of MAR		29/03/2019
Emission Allowances and EAMPs/ Disclosure Of inside information	11.3	Disclosure of inside information concerning emission allowances, referring to installations of other undertakings of the group of the EAMP		29/03/2019

4. General Questions and Answers

Blanket cancellation of orders policy
Updated: 30 May 2017

Q4.1 **Is a policy pursuant to which, after becoming in possession of inside information, the person should immediately and without the exercise of discretion cancel all orders relating to that information ("blanket order cancellation policy") compliant with the insider dealing prohibition under MAR?**

A4.1 Article 8(1) of MAR states that "*the use of inside information by cancelling or amending an order placed before the person concerned possessed inside information*" constitutes insider dealing. This presumption is rebuttable under Recital 25 of MAR if the person establishes that they "*did not use the inside information when carrying out the transaction*".

For those reasons, it cannot be concluded that a blanket order cancellation policy per se constitutes insider dealing.

It follows that where a firm decides to adopt a blanket cancellation policy for its proprietary trading, the fact that the cancellation may or may not constitute insider dealing will have to be assessed on case-by-case basis, by determining whether or not the cancellation was indeed performed without using the inside information.

5. Questions and Answers on the disclosure of inside information

Q5.1 **Are credit institutions required under MAR to publish systematically the results of the Pillar II assessment and/or any information received in relation to the Minimum Requirement for own funds and Eligible Liabilities (MREL) exercise?**

A5.1 A main objective of the Market Abuse Regulation (MAR) is to enhance market integrity. This is notably achieved through a prompt and fair disclosure of information to the public.

For issuers of financial instruments, this objective has been translated into the requirement under Article 17 of MAR. Issuers who have requested or approved admission of their financial instruments to trading on a Regulated Market, or in the case of instruments only traded on an MTF or on an OTF issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested their admission to trading on an MTF, must inform the public as soon as possible of any inside information relating directly to them. According to Article 7 of MAR, inside information is such information that is:

- non-public,
- precise, and
- if it were made public would be likely to have a significant effect on the price of the issuer's financial instrument or related financial instruments.

MAR offers, by way of exception to the immediate disclosure of inside information, the possibility on a case-by-case basis to delay such disclosure under certain conditions. In accordance with Article 17(4) of MAR, any issuer may thus delay, under its own responsibility, the public disclosure of inside information such as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public[16] and the issuer is able to ensure the confidentiality of the information. Where the issuer is also a credit or financial institution, Article 17(5) of MAR allows for another possibility to delay in exceptional circumstances, the public disclosure of inside information, under the issuer's responsibility, in order to preserve the stability of the financial system. Where such an issuer intends to delay under Article 17(5) of MAR, it needs the prior consent of the competent authority on the basis that the following conditions are fulfilled: i) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system, ii) it is in the public interest to delay disclosure and iii) the confidentiality of the information can be ensured.

[16] ESMA issued MAR Guidelines on delay in the disclosure of inside information (ESMA/2016/1478; 20 October 2016).

However it is not feasible to define ex-ante, in a general manner, how the relevant conditions should be met and therefore the concerned issuer needs to assess, on a case-by-case basis, the particular circumstances before deciding to delay the disclosure of inside information under Article 17(4) of MAR or notifying to the competent authority its intention to delay under Article 17(5) of MAR.

Under MAR, an issuer can also be liable for market manipulation in case of dissemination of false and misleading information, including failure to properly disclose inside information to the public.

Many credit institutions across the European Union are issuers of financial instruments and thus subject to the regime established under MAR, when at the same time they are also subject to the prudential supervision of the banking regulators.

Consequently, in the context of the Supervisory Review and Evaluation Process (SREP) to be conducted in accordance with Article 97 of Directive 2013/36/EU (CRD IV), whenever a credit institution subject to the market abuse regime is made aware of information, notably the results of the exercise, it is expected to evaluate whether that information meets the criteria of inside information.

Along the same line, in the context of the MREL exercise to be conducted by the Single Resolution Board in accordance with the Bank Recovery and Resolution Directive, whenever a credit institution subject to the market abuse regime is made aware of information, it is expected to evaluate whether that information meets the criteria of inside information.

If these criteria are met, the MAR provisions apply with respect to the relevant disclosure requirements. Such a credit institution would have then to publicly disclose the inside information as soon as possible unless it has delayed such a disclosure after having assessed that all the conditions for delaying apply.

ESMA recalls that, if and when a publication (e.g. an article published in the press or internet postings) which is not resulting from the issuer's initiative in relation to its disclosure obligations or a rumour in the market relates explicitly to (a piece of) information that is inside information within the issuer, according to Article 17(7) of MAR that issuer is expected to react and respond to the relevant publication or rumour if that (piece of) information is sufficiently accurate to indicate that the confidentiality of this inside information is no longer ensured. In such circumstances, which should be the exception rather than the rule and should be examined by the issuer on a case-by-case basis, a policy of staying silent or of "no comment" by the issuer would not be acceptable. The issuer's reaction or response should be made publicly available in the same conditions and using the same mechanisms as those used for the communication of inside information, so that an ad hoc announcement has to be published without undue delay.

Finally, it is noted that the disclosure of inside information is a matter of national supervision and enforcement of MAR, solely under the competence of the national competent authorities designated to that effect in accordance with Article 22 of MAR and whose heads are members of the Board of Supervisors of ESMA.

Delayed inside information that lost the feature of the price sensitivity

Updated: 29 September 2017

Q5.2 **How should an issuer deal with a situation where it has delayed a disclosure of inside information in accordance with Article 17(4) of MAR and, due to subsequent circumstances, that information loses the element of price sensitivity and therefore its inside nature?**

A5.2 According to Article 17(1) of MAR, an issuer has to inform the public as soon as possible of inside information that directly concerns that issuer. Article 17(4) of MAR states that an issuer may, on its own responsibility, delay disclosure of inside information to the public, provided that all of the conditions therein contained are met. Where an issuer has delayed the disclosure of inside information according to Article 17(4) of MAR, immediately after the information is disclosed to the public the issuer needs to inform the competent authority that disclosure of inside information was delayed, and provide written explanation on how the conditions set out in Article 17(4) of MAR were met.

Where the issuer has delayed the disclosure of inside information in accordance with Article 17(4) of MAR and the information subsequently loses the element of price sensitivity, that information ceases to be inside information and thus is considered outside the scope of Article 17(1) of MAR. Therefore, the issuer is neither obliged to publicly disclose that information nor to inform the competent authority in accordance with the last paragraph of Article 17(4) that disclosure of such information was delayed.

However, given that the information had been inside information for a certain period of time, the issuer had to comply with all relevant obligations relating to the drawing up and updating of insider lists and the maintenance of the information relating to the delay of disclosure, stemming from MAR and its delegated and implementing Regulations.

Delayed disclosure of inside information under Article 17(5) of MAR: assessment of the relevant conditions

Updated: 1 October 2018

Q5.3 **When issuers that are credit/financial institutions intend to delay disclosure of inside information under Article 17(5) of MAR, what are the elements they should consider in their assessment of the conditions therein contained?**

A5.3 When a credit/financial institution intends to resort to the financial stability delay under Article 17(5) of MAR, it should provide evidence to the NCA that the conditions laid down in points a), b) and c) of the same article are met.

The assessment of those conditions should be as complete as possible to the best of the credit/financial institution's knowledge.

If the NCA gives its consent to the delay further to its own assessment of the relevant conditions, the credit/financial institution is expected to share with the NCA any subsequent additional information relating to the conditions for the delay.

Point a) of Article 17(5) of MAR: disclosure of inside information entails a risk of undermining the financial stability of the issuer and the financial system

It should be noted that to resort to the delay under Article 17(5) of MAR, disclosure of inside information has to entail a risk of undermining the financial stability of both the issuer and the financial system.

For the disclosure of inside information to entail a risk of undermining the stability of the financial system, it is likely for it to pertain and be performed by an institution of relevance, e.g. in terms of impact and interconnection.

In this context, credit/financial institutions should not simply rely on *ex ante* categorisations but rather look at the specific circumstances.

Point b) of Article 17(5) of MAR: the public interest to delay the disclosure

In the absence of any definition of "*public interest*", Recital 52 of MAR provides guidance stipulating that "*the wider public and economic interest in delaying disclosure outweighs the interest of the market in receiving the information which is subject to delay*".

When assessing the public interest, the credit/financial institution should attempt to identify different entities or groups who could be directly or indirectly affected by the decision to delay the disclosure of the inside information and whose interests may be understood as a public interest.

During the assessment of the public interest, it is important to consider interests beyond the direct economic impacts and other non-financial interests of the public. All of these interests would need to be considered, and none of them should be considered in isolation.

If there are divergent interests of the public, the credit/financial institution should assess on a case-by-case basis if the prevailing public interest(s) is to delay the disclosure of inside information. For example, a potential loss to investors who have made or may make an investment decision should be weighed against the adverse effect of public disclosure on other groups, such as depositors and consumers.

Point c) of Article 17(5) of MAR: the confidentiality of the information

Credit/financial institutions should provide the NCA with information on how the confidentiality of the inside information can be ensured.

Credit/financial institutions are expected to assess the confidentiality of the information at the time of the notification to the NCA, but also how the confidentiality can be ensured during the period in which the information might be delayed.

To that purpose, credit/financial institutions should consider their procedures and measures put in place to ensure the confidentiality and draw up their insider list given that, pending the NCA's decision to consent to the delay, the disclosure of the inside information is de facto already delayed.

Delayed disclosure of inside information under Article 17(5) of MAR: notification of the expected duration

Updated: 1 October 2018

Q5.4 **Are credit/financial institutions required to notify the NCA of the expected duration of the delay under Article 17(5) of MAR?**

A5.4 Yes. The credit/financial institutions notifying the NCA of their intention to resort to the financial stability delay are expected to provide their assessment on the expected length of the delay and the details of expected trigger events.

If the NCA gives its consent to the delay further to its own assessment of the relevant conditions, credit/financial institutions should inform the NCA whenever they become aware of a new element or event that may affect the duration of the delay under Article 17(5) of MAR.

Delayed disclosure of inside information under Article 17(5) of MAR: NCA's denial of consent

Updated: 1 October 2018

Q5.5 **Where the NCA does not consent to the delay of disclosure under Article 17(5) of MAR, can a credit/financial institution resort to Article 17(4) of MAR?**

A5.5 No. Where the relevant conditions are not met, the NCA cannot consent to the delay under Article 17(5) of MAR and, according to Article 17(6) of MAR, the credit/financial institution will have to disclose the inside information immediately.

In that case, credit/financial institutions will not be able to resort to the delay of disclosure under Article 17(4) of MAR.

Disclosure of inside information by collective investment undertakings without legal personality voluntarily admitted to trading or traded on a trading venue

Updated: 29 March 2019

Q5.6 **Is a collective investment undertaking (CIU) without legal personality subject to the obligation to disclose inside information under Article 17 of MAR?**

A5.6 Yes. Article 17(1) of MAR establishes the obligation of the issuer to inform the public as soon as possible of inside information which directly concerns that issuer, without exempting any sort of issuers.

For the purposes of Article 17 of MAR, a CIU without legal personality meets the definition of 'issuer' contained in Article 3(1)(21) of MAR regardless of the fact that the effective issuance/redemption of the shares/units of the CIU, and any obligations arising from MAR (or from any other piece of legislation) are discharged by the relevant asset manager.

In that context, the asset manager could be held responsible for a potential infringement of the CIU's obligation to disclose inside information under MAR.

However, ESMA recalls that the obligation to publish inside information under Article 17(1) of MAR only covers issuers that have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or an OTF, issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

ESMA would like to highlight that, like any other issuer, a CIU without legal personality (and therefore, its management company on its behalf) may, on its own responsibility, delay the disclosure of inside information, provided that the relevant requirements set out in Article 17 of MAR are met.

Finally, ESMA recalls that the obligation to publicly disclose inside information under Article 17 of MAR is different from any other disclosure obligations arising from the UCITS Directive and AIFM Directive, as it strictly refers to cases involving 'inside information' (as defined in Article 7 of MAR) that directly concerns the issuer.

Potential cases of inside information in relation to collective investment undertakings voluntarily admitted to trading or traded on a trading venue

Updated: 29 March 2019

Q5.7 **Are there any specific cases of inside information that may arise with respect to CIUs admitted to trading or traded on a trading venue under Article 17 of MAR?**

A5.7 According to Article 7 of MAR, inside information is such information that is non-public, precise, directly or indirectly related to one or more financial instruments or issuer, and if it were made public would be likely to have a significant effect on the price of the issuer's financial instrument or related financial instruments.

The examples provided below are a non-exhaustive list of cases where inside information may arise. They do not aim at covering all the possible instances of inside information. Ultimately, the final assessment has to be made on a case-by-case basis. Some of the situations listed below may not constitute inside information in all cases.

For CIUs *admitted to trading/traded on a trading venue in general (including ETFs)* the following situations can be envisaged as potential cases of inside information:

a. any situation with significant impact (appreciation or depreciation) on the valuation of the CIU assets and, as a result, on the value of the CIU's units;

b. cases where the CIU has been affected by fraud, theft or an adverse tax ruling;

c. unexpected circumstances in the creation/redemption of units of a CIU, including:

   - any situation under which the CIU cannot issue/redeem its units;
   - creation of excessive or insufficient units due to a material mistake.

d. events that will directly affect the liquidity of the market in units of an ETF arising from events impacting the entities acting as counterparties in the secondary market: bankruptcy of the official liquidity provider/s, absence of authorised participants, decision to change the segment on which the CIUs are traded, etc.;

e. failure or delay of a counterparty to an OTC derivative impacting the return or the risk of the CIU;

f. failure or delay of a counterparty in a securities lending transaction;

g. issues related to the total or partial liquidation of the CIU's assets, such as:

   - imminent insolvency or termination of the CIU, or a sub-fund where the CIU is an umbrella fund;
   - partial liquidation of the CIU's units; or

- modalities and payment terms preceding the liquidation or delisting of the CIU.

In particular, for *real estate CIUs admitted to trading/traded on a trading venue*, inside information according to Article 7 of MAR may also arise in the context of significant events related to the acquisition, sale or management of the CIU's real estate assets, including rents renegotiation or possible relevant losses derived from legal disputes.

Credit ratings, rating outlooks and information relating thereto, pursuant to article 10(2a) of Regulation No 1060/2009

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation
Updated: 6 August 2021

Q5.8 **Are credit ratings, rating outlooks and information relating thereto, pursuant to article 10(2a) of Regulation No 1060/2009, presumed to be inside information until disclosure to the public, or should a case-by-case assessment of the conditions in Article 7 of Regulation (EU) No 596/2014 be anyhow carried out?**

A5.8 Credit ratings, rating outlooks and information relating thereto are presumed to be inside information until disclosure to the public.

Article 10(2a) of Regulation No 1060/2009 (Credit Rating Agencies Regulation or "CRAR") provides that "Until disclosure to the public of credit ratings, rating outlooks and information relating thereto, they shall be deemed to be inside information, as defined in and in accordance with Directive 2003/6/EC"[17]. As a consequence of the presumption set out in article 10(2a) of CRAR, for "credit ratings, rating outlooks and information relating thereto", the assessment of the conditions laid down in Article 7(1)(a) of MAR is not required and those ratings should always be treated as inside information.

"Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the

[17] Directive 2003/6/EC was repealed by Regulation (EU) No 596/2014 (Market Abuse Regulation or "MAR"), and references to the provisions contained therein are to be read as references to MAR according to the correlation table provided in Annex II of MAR.

position that the European Commission might take before the Union and national courts."

Disclosure to the public of credit ratings and inside information

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation

Updated: 6 August 2021

Q5.9 **Where a credit rating agency discloses credit ratings, rating outlooks and information relating thereto on its public website, does such disclosure suffice to consider them no longer inside information under Regulation (EU) No 596/2014?**

A5.9 Yes.

Further to their disclosure on the public website of the credit rating agency, credit ratings, rating outlooks and information relating thereto are no longer to be considered inside information.

Article 10(2a) of Regulation No 1060/2009 (Credit Rating Agencies Regulation or "CRAR") provides a presumption that credit ratings and rating outlooks are to be deemed inside information until their "*disclosure to the public*" without further specifying the formalities of such public disclosure[18].

Article 7(1)(a) of MAR defines inside information as an information "*that has not been made public*" regardless of whom has published the information or by which means.

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The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts."

[18] Directive 2003/6/EC was repealed by Regulation (EU) No 596/2014 (Market Abuse Regulation or "MAR"), and references to the provisions contained therein are to be read as references to MAR according to the correlation table provided in Annex II of MAR.

Distribution of subscription ratings and disclosure of inside information

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation

Updated: 6 August 2021

Q5.10 **Where a CRA distributes its credit ratings by subscription, would disclosure of credit ratings only to its subscribers constitute "disclosure to the public" within the meaning of Article 10(2a) and would subscribers be permitted to trade on the basis of these credit ratings?**

A5.10 Yes.

Further to their disclosure to a distribution list of subscribers, credit ratings are no longer to be considered inside information.

Article 2 of Regulation No 1060/2009 (Credit Rating Agencies Regulation or "CRAR") "applies to credit ratings issued by credit rating agencies registered in the Union and which are disclosed publicly or distributed by subscription" and explicitly excludes from its scope those "not intended for public disclosure or distribution by subscription".

Article 10(2a) of CRAR provides a presumption that credit ratings and rating outlooks are to be deemed inside information until their "disclosure to the public" without further specifying in which cases such public disclosure occurs.

Depending on the business model of the CRA, certain credit ratings could be disclosed exclusively to subscribers of distribution lists subject to the payment of a license fee and, therefore, they should no longer be deemed as inside information pursuant to Article 10(2a) of CRAR.

Article 7(1)(a) of MAR defines inside information as an information "that has not been made public" regardless of whom has published the information or by which means.

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The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts."

Q&A on financial guidance and disclosure of inside information

Updated: 20 September 2022 *** new***

Q5.11 ***Should the issuer generally consider the first financial guidance for a given financial year to be inside information in the context of MAR, bearing in mind that such financial guidance forms part of the financial reports prepared under the Transparency Directive and national legislation, which do not require or even anticipate premature disclosure?***

A5.11 In principle, the financial expectations to be published by the issuer in certain jurisdictions (i.e. financial guidance), must follow the schedule established under the Transparency Directive (TD) and the corresponding national legislation, just like the yearly and half-yearly reports under the TD.

However, a piece of inside information under Article 7 of MAR can be identified while preparing the financial guidance, the half-yearly or the yearly reports. In that case, that piece of inside information has to be immediately published unless delayed disclosure under Article 17 of MAR takes place, irrespective of the date of publication of the financial guidance, the half-yearly or the yearly report as determined by the relevant national legislation.

Q&A on market analysts' expectations and the identification of inside information

Updated: 20 September 2022 *** new***

Q5.12 ***Is the issuer permitted to take into consideration market analysts' expectations (consensus), when considering whether an event or items in a financial report or the first financial guidance for a given financial year may constitute inside information?***

A5.12 All available information has to be considered by the issuers to determine whether a piece of information may constitute inside information in accordance with Article 7 of MAR. This also includes the consensus of market analysts' expectations.

In particular, ESMA understands that the consensus of market analysts' expectations may impact the market expectation (also known as investor sentiment) and would be part of the investment decision, which is described in Article 7(4) of MAR.

As a side note, ESMA reminds that delayed disclosure of inside information is likely to mislead the public "where the inside information is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval" (Guideline 2.c of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision[19]).

[19] https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-delayed-disclosure-under-mar

6. Questions and Answers on the Prevention and detection of market abuse

Persons professionally arranging or executing transactions
Updated: 1 September 2017

Q6.1 **Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?**

A6.1 The definition of "person professionally arranging or executing transactions" laid down in point (28) of Article 3(1) of MAR is activity based, does not cross refer to definitions under MiFID and is independent from the latter, leading thus to consider that the scope of Article 16(2) of MAR is not only limited to firms or entities providing investment services under MiFID.

In the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial European legislation, ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and "persons professionally arranging or executing transactions" thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders).

Non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes) can be considered firms professionally arranging or executing transactions in financial instruments under Article 16(2) of MAR. The fact that they have staff or a structure dedicated to systematically deal on own account, such as a trading desk, or that they execute their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions.

It is reminded that detecting and reporting suspicious orders and transactions under Article 16(2) of MAR should be applied by "persons professionally arranging or executing transactions" through the implementation of arrangements, systems and procedures that are appropriate and proportionate to the scale, size and nature of their business activity

7. Questions and Answers on Managers' transactions

Exchange rate
Updated: 26 October 2016

Q7.1 **For transactions carried out under Article 19(1) of Regulation (EU) No 596/2014 of the European Parliament and of the council (MAR) in a currency which is not Euro (EUR), which exchange rate should be used to determine if the threshold set forth in Article 19(8) MAR of EUR 5 000 has been crossed?**

A7.1 If transactions are carried out in a currency which is not the EUR, the exchange rate to be used to determine if the threshold is reached is the official daily spot foreign exchange rate which is applicable at the end of the business day when the transaction is conducted. Where available, the daily euro foreign exchange reference rate published by the European Central Bank on its website should be used.

Timing of the closed period
Updated: 13 July 2016

Q7.2 **Does the «announcement» of the interim or year-end financial results determines the timing of the closed period referred to in Article 19(11) of Regulation (EU) No 596/2014 (MAR)?**

A7.2 According to MAR, there should be only one closed period relating to the announcement of every interim financial report and another relating to the year-end report.

The term «*announcement*» of an interim or a year–end financial report used in Article 19(11) of MAR is the public statement whereby the issuer announces the information included in an interim or a year-end financial report that the issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or national law. The date when the «*announcement*» is made is the end date for the thirty-day closed period.

With particular reference to the year-end financial report, the «*announcement*» is the public statement whereby the issuer announces, in advance to the publication of the final year-end report, the preliminary financial results agreed by the management body of the issuer and that will be included in that report. This can apply only if the disclosed preliminary financial results contain all the key information relating to the financial figures expected to be included in the year-end report. In the event the information announced in such way changes after its publication, this will not trigger another closed period but should be addressed in accordance with Article 17 of MAR.

In any case, persons discharging managerial responsibilities remain subject at all times to Articles 14 and 15 of MAR prohibiting insider dealing and attempted insider dealing, unlawful disclosure of inside information, as well as market manipulation and attempted market manipulation.

Threshold calculation
Updated: 20 December 2016

Q7.3 **When calculating whether the threshold triggering the notification obligation under Article 19(1) of MAR is reached (5.000 EUR or 20.000 EUR), should the transactions carried out by a person discharging managerial responsibilities (PDMR) and by closely associated persons to that PDMR be aggregated?**

A7.3 No, the transactions carried out by a PDMR and by closely associated persons to that PDMR should not be aggregated.

This involves that where the overall transactions singularly carried out by either a PDMR or any closely associated person to that PDMR do not reach the threshold, those persons should not notify those transactions even where the threshold is reached aggregating all the transactions carried out by the PDMR and all the closely associated persons to them.

A practical example is a CEO buying 4.000 EUR of equity and her spouse buying another 2.000 EUR. In such a case, none of them has reached the 5.000 EUR threshold and thus a notification is not required.

Price of gifts, donation and inheritance
Updated: 20 December 2016

Q7.4 **Which are the rules to calculate the price of gifts, donations and inheritance for the purpose of the notifications and disclosure of managers' transactions under Article 19 of MAR?**

A7.4 According to Article 10(2)(k) of Commission Delegated Regulation (EU) 2016/522, donations and gifts made or received or inheritance received are transactions to be notified under Article 19(1) of MAR.

The value of these transactions need to be taken into consideration for the purpose of calculating the cumulated amount of the transactions of a PDMR or a person closely associated to a PDMR, to assess whether the threshold (EUR 5 000 or EUR 20 000) referred to in Article 19(8) and (9) of MAR has been crossed, hence triggering the duty to notify and disclose all subsequent transactions.

The field 4(c) on “Price(s) and volume(s)” of the template in the annex to Commission Implementing Regulation (EU) 2016/523 (Implementing technical standards on the notification and public disclosure of managers’ transactions) specifies the data standards to be used for expressing the price, depending on the type of financial instruments concerned. In that respect, such template makes reference to data standards defined for the purpose of the transaction reporting under Regulation (EU) 600/2014 (MiFIR) and related technical standards. However, it does not explain the rules about the price to take into account to calculate the value of a donation, a gift or inheritance.

For the purpose of the threshold calculation, the price to consider for donations, gifts and inheritance is the last published price for the financial instrument concerned in accordance with the post trade transparency requirements under MiFIR (Articles 6, 10, 20 and 21) on the date of acceptance of the donation, gift or inheritance (i.e. the date of the transaction), or where such price is not available that day, the last published price.

In the period before MiFIR becomes applicable, the price to use will be:

- for shares admitted to trading on regulated markets (RM), the last published price in accordance with the post trade transparency requirements under Articles 30 and 45 of Directive 2004/39/EC (MiFID I) on the date of acceptance of the donation, gift or inheritance or where such price is not available that day, the last published price;

- for shares admitted to trading or traded on MTFs only, bonds and derivatives or financial instrument linked thereto, the last traded price on the trading venue where the concerned financial instruments are traded, on the date of acceptance of the donation, gift or inheritance, or where such price is not available that day, the last traded price before the date of acceptance.

During the interim, in the case of shares being traded on several venues (RMs and/or MTFs), then the concept of “most relevant markets in terms of liquidity” under MiFID I and specified in the Commission Regulation (EC) 1287/2006 implementing MiFID I should be used to determine the trading venue to consider when looking at the last traded price. For other instruments, the concept of trading venue of first admission should be used.

Furthermore, where debt instruments admitted to trading or traded on a RM or a MTF are only traded OTC (i.e. there is no trading on RM nor MTF), then the price to consider should be the last publicly available price for that debt instrument (whatever is the source).

However, when a notification has to be made in accordance with Article 19(1) of MAR and Article 2 of the Implementing technical standards on the notification and public disclosure of managers' transactions, the price field for a gift, donation or inheritance is expected to be populated with 0 (zero).

Notification of shares received as part of remuneration package
Updated: 20 December 2016

Q7.5 **Do shares received by a PDMR as part of a remuneration package have to be notified pursuant to Article 19(1) MAR and Article 10(2)(i) Commission Regulation 2016/522 only upon the occurrence of certain conditions?**

A7.5 The rationale of Article 19(1) of MAR is mainly to prevent insider dealing and to provide investors with a highly valuable source of information. A notification of entering into a remuneration package contract, according to which a PDMR is entitled to receive shares only upon the occurrence of certain conditions, is not covered by that rationale. Therefore, pursuant to Article 19(1) of MAR and Article 10(2)(i) of Commission Delegated Regulation (EU) 2016/522, the PDMR has to notify only upon the occurrence of the conditions and the actual execution of the transaction.

Price of options granted for free
Updated: 20 January 2017

Q7.6 **Which are the rules to calculate the price of options granted for free to managers or employees for the purpose of the notifications and disclosure of managers' transactions under Article 19 of MAR?**

A7.6 According to Article 10(2)(b) of Commission Delegated Regulation (EU) 2016/522, such transactions have to be notified under Article 19(1) of MAR.

The value of these transactions needs to be taken into consideration for the purpose of calculating the cumulated amount of the transactions of a person discharging managerial responsibility (PDMR) or a person closely associated to a PDMR, to assess whether the threshold (EUR 5 000 or EUR 20 000) referred to in Article 19(8) and (9) of MAR has been crossed, hence triggering the duty to notify and disclose all subsequent transactions.

The field 4(c) on "Price(s) and volume(s)" of the template in annex to Commission Implementing Regulation (EU) 2016/523 (Implementing technical standards on the notification and public disclosure of managers' transactions) specifies the data standard to be used for expressing the price, depending on the type of financial instruments concerned. In that respect, such template makes reference to data standards defined for the purpose of the transaction reporting under Regulation (EU)

600/2014 (MiFIR) and related technical standards. However, it does not explain the rules about the price to take into account to calculate the value of the received options.

For the purpose of the threshold calculation, the price to consider for the received options should be based on the economic value assigned to the options by the issuer when granting them. If such an economic value is not known, the price to consider should be based on an option pricing model that is generally accepted in the reasonable opinion of the PDMR. This model determines the price of the granted option based on variables such as the current share price of the issuer, exercise price of the option and time until expiry of the option. Other variables that can be used in the option pricing model are (risk free) interest rates, future dividends and implied volatility. The variables used for the price determination of the granted option depends on which general accepted option pricing model is used.

However, when a notification has to be made in accordance with Article 19(1) of MAR and Article 2 of the Implementing technical standards on the notification and public disclosure of managers' transactions, the price field for options granted for free to managers or employees is expected to be populated with 0 (zero).

Closely associated persons under Article 3(1)(26)(d) of MAR

Updated: 6 July 2017

Q7.7 **According to Article 3(1)(26)(d) of Regulation (EU) No 596/2014 of the European Parliament and of the council (MAR) a closely associated person is, inter alia, «*a legal person, trust or partnership, the managerial responsibilities of which are discharged*» by a person discharging managerial responsibilities (PDMR) or by a closely associated natural person. Is the reference to «*the managerial responsibilities of which are discharged*» contained in Article 3(1)(26)(d) of MAR to be read in the same way as the definition of PDMR within an issuer contained in Article 3(1)(25) of MAR?**

A7.7 No, the reference to «*the managerial responsibilities of which are discharged*» in Article 3(1)(26)(d) of MAR should be read to cover those cases where a PDMR within an issuer (or a closely associated natural person) takes part in or influences the decisions of another legal person, trust or partnership (hereinafter "legal entity") to carry out transactions in financial instruments of the issuer.

For example, in the case of mere cross board membership, where a person sits in the administrative, management or supervisory body of an issuer and also in the board of another legal entity where they exercise executive or non-executive functions, without however taking part nor influencing the decisions of that legal entity to carry out transactions in financial instruments of the issuer, then that person should not be considered discharging managerial responsibilities within that legal entity for the purposes of Article 3(1)(26)(d) of MAR. Therefore, that legal entity should not be subject to the notification obligations under Article 19(1) of MAR, unless it is directly

or indirectly controlled by, is set up for the benefit of, or its economic interests are substantially equivalent to those of that person.

Trading during closed periods and prohibition of insider dealing
Updated: 21 November 2017

Q7.8 **How should permission to trade in a closed period, which may be granted in certain circumstances to PDRMs in accordance with Article 19(12) of MAR, be considered in the context of Article 14 of MAR?**

A7.8 The insider dealing prohibition contained in Article 14 of MAR applies during closed periods referred to in Article 19(11) of MAR in the same way as it does at any other time, and must therefore be complied with by PDMRs. This means that when an issuer allows a PDMR to trade under Article 19(12) of MAR, the general insider dealing provisions still apply and the PDMR must always give consideration as to whether or not the relevant transaction would constitute insider dealing.

Types of transactions by PDMRs prohibited during closed periods
Updated: 21 November 2017

Q7.9 **Are the types of "transaction" by a PDMR prohibited during a closed period under Article 19(11) of MAR the same as those types of transaction subject to the notification requirements set out under Article 19(1) of MAR?**

A7.9 Yes.

It is pointed out that Article 19(11) of MAR only applies to a PDMR when conducting transactions on its own account or for the account of a third party whereas the notification of transactions required under Article 19(1) of MAR also applies to persons closely associated to a PDMR.

Application of the prohibition contained in Article 19(11) MAR to issuers
Updated: 12 November 2018

Q7.10 **Does the prohibition in Article 19(11) MAR encompass transactions of the issuer relating to its own financial instruments even if it is the PDMRs taking the decision or bringing a previous decision into practice?**

A7.10 No. Article 19(11) of MAR prohibits PDMRs within an issuer, and not the issuer itself, to conduct “any transactions on its own account or for the account of a third party, directly or indirectly, relating to the share or debt instruments of the issuer […]

during a closed period of 30 calendar days" before the announcement of a financial report.

Since the actions of the PDMR, in their capacity of director or employee of the issuer, are not PDMR transactions for the account of a third party but transactions of the issuer itself, the prohibition of Article 19(11) is not applicable.

Nevertheless, it should be noted that any transaction carried out by the issuer during a closed period should be carefully treated, as the issuer remains subject to the prohibition of insider dealing contained in Article 14 of MAR.

Therefore, where the issuer is in possession of inside information relating to its own financial instruments, it will be prevented from trading on them unless it had established, implemented and maintained the internal arrangements and procedures laid down in Article 9(1) of MAR.

8. Questions and Answers on investment recommendation and information recommending or suggesting an investment strategy

For the purpose of this section, it is recalled that:

Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public";

Article 3(1)(34) of MAR sets out that "*information recommending or suggesting an investment strategy means information:*
(i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or

(ii) produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument."

Communications made orally or via electronic means
Updated: 26 October 2016

Q8.1 **Do communications made orally or via electronic means such as telephone calls and "chat" functions, or communications labelled e.g. "morning notes" or "sales notes", constitute an "*investment recommendation*" under MAR?**

A8.1 Any communication that meets the criteria of the definition of investment recommendation within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime. When determining whether a communication is an "investment recommendation", an assessment should be made based on the substance of the communication, irrespective of its name or label and the format, form, or the medium through which it is delivered (whether electronically, orally or otherwise). As such, whether a specific oral or electronic communication, or a communication labelled as "morning notes" or "sales notes", may be considered an investment recommendation within the meaning of MAR, it should be established on a case-by-case basis.

Where a standardised communication, including oral or electronic communication, is structured and pre-planned for distribution channels and it implicitly or explicitly suggests an investment strategy in relation to a financial instrument or issuer, it should be regarded as "investment recommendation".

Communications not referring to one or several issuers

Updated: 26 October 2016

Q8.2 **Can communications that do not refer to either one or several financial instruments or issuers be considered investment recommendations under MAR?**

A8.2 Communications that meet the criteria of the definition of "investment recommendation" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime.

In particular, Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "*information recommending or suggesting an investment strategy, explicitly or implicitly,* ***concerning one or several financial instruments or the issuers*** [emphasis added]*, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public*".

Therefore, a communication that does not refer to either a financial instrument or an issuer, should generally not be considered an investment recommendation. However, the producer's assessment as to whether the above communication may be investment recommendation should be conducted on a case-by-case basis.

Communication relating solely to spot currency rates, sectors, interest rates, loans, commodities, macroeconomic variables or industry sectors and not referring to a financial instrument or an issuer would be considered as investment recommendation where it contains information assessed as allowing a reasonable investor to deduce that the communication is implicitly recommending specific financial instruments or issuers and provided that the other criteria of the definition of "*investment recommendation*" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR are met. For example, an opinion on a specific sector that is composed of a very limited number of issuers may be considered an investment recommendation regarding those issuers.

Main business is not to produce investment recommendations
Updated: 26 October 2016

Q8.3 **Would an investment firm which produces an investment recommendation be considered to fall within the scope of Article 3(1)(34)(i) of MAR, even though the production of such recommendation is not its main business?**

A8.3 With regard to an investment firm, any information that comprises direct or indirect investment proposals in respect of a financial instrument or an issuer will be considered as information recommending or suggesting an investment strategy as defined under point (i) of Article 3(1)(34) of MAR. This is regardless of whether or not the production of investment recommendations is the main business of the investment firm, noting that the condition "*whose main business is to produce investment recommendations*" contained in point (i) of Article 3(1)(34) of MAR concerns any other person than independent analysts, investment firms and credit institutions.

Information implicitly recommending or suggesting an investment strategy
Updated: 26 October 2016

Q8.4 **Does material intended for distribution channels or for the public concerning one or several financial instruments that contains statements indicating that the concerned financial instruments are "undervalued", "fairly valued" or "overvalued" fall within the definition of "investment recommendation" under MAR?**

A8.4 Such material which concerns one or several financial instruments admitted to trading on a regulated market or a multilateral trading facility or for which a request for admission to trading on such a market has been made, or, traded on a multilateral trading facility or an organised trading facility, is considered as information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR, insofar as it contains a valuation statement as to the price of the concerned financial instruments.

Furthermore, material containing an estimated value such as a "quantitative fair value estimate" that is providing a projected price level or "price target", or any other elements of opinion on the value of the financial instruments, is also considered to be information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR.

As the material referred to above is an investment recommendation under MAR, it needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council concerning the objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and the disclosure of particular interests and conflicts of interest by producers of such recommendations. In addition, a third party that disseminates such material is considered as a disseminator of investment recommendations and therefore needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council.

Communications containing purely factual information

Updated: 20 December 2016

Q8.5 **Do communications to clients containing purely factual information on one or several financial instrument or issuers constitute an 'investment recommendation' under MAR?**

A8.5 In consideration of the definition of an investment recommendation within the meaning of Article 3(1)(35) of MAR, in conjunction with Article 3(1)(34) of MAR, any communication containing purely factual information on one or several financial instruments or issuers would not constitute an investment recommendation under MAR provided that it does not explicitly or implicitly recommend or suggest an investment strategy.

In this context, factual information might, among other things, include recent events or news relating to one or several financial instruments or issuers.

Communications on previously disseminated investment recommendations

Updated: 20 December 2016

Q8.6 **Do communications intended for distribution channels or for the public which only report or refer to previously disseminated investment recommendation and do not include any new elements of opinion or valuation or confirmation of a previous opinion or valuation constitute an investment recommendation under MAR?**

A8.6 No, such a communication will not amount to a new investment recommendation, but would still be subject to Article 7 of Commission Delegated Regulation (EU) 2016/958, if it is disseminated by the producer of the investment recommendation, and therefore such a communication shall include, the date and time of first issuance of the investment recommendation.

If a communication reports or refers to a former investment recommendation but contains either confirmation of the previous opinion or valuation or new elements of opinion or valuation, which may be based on new facts or events concerning the issuer which are considered in the valuation, it will be viewed as a new investment recommendation and all aspects of Commission Delegated Regulation (EU) 2016/958 would need to be considered.

In case a person disseminates recommendations produced by third parties, articles 8 to 10 of Commission Delegated Regulation (EU) 2016/958 need to be considered.

Recommendation on derivatives traded solely outside a trading venue

Updated: 20 December 2016

Q8.7 Are recommendations relating to derivatives traded solely outside a trading venue in scope of Article 20 of MAR?

A8.7 In line with Articles 2(1)(d) and 2 (3) of MAR, a derivative traded outside a trading venue is in scope of MAR insofar as its price or value depends on, or has an effect on the price or value of a financial instrument referred to in Article 2(1)(a), (b) or (c) of MAR.

If the price or value of a derivative traded outside a trading venue does not depend on or have an effect on the price or value of a financial instrument referred to in Article 2(1)(a), (b) or (c) of MAR, the derivative would not be in scope of MAR and therefore any recommendation relating to the financial instrument would not be in scope of Article 20 of MAR.

Therefore, firms are responsible for conducting their own assessment on a case by case basis as to whether a recommendation on a given derivative traded solely outside a trading venue is in scope of Article 20 of MAR and subject to the requirements of Commission Delegated Regulation (EU) 2016/958.

Identification of derivatives in investment recommendations

Updated: 20 December 2016

Q8.8 **Where a recommendation relates to a derivative, how should it be determined whether a recommendation has been given on the same financial instrument, for the purposes of complying with Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958?**

A8.8 Where a unique identifier exists for the concerned derivative, such identifier has to be used to determine whether there has been a change in a previous recommendation given by the producer on the same financial instrument.

For as long as a unique identifier does not exist for a derivative instrument, all reasonable efforts should be made to identify such a financial instrument by other means, so as to comply with Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958. For example, these efforts may include establishing a proprietary taxonomy. In determining recommendations on the same financial instrument (for the purposes of Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958), common features of a given derivative contract, including but not limited to strike, underlying or maturity could be identified. Such an approach should allow producers of recommendations to provide meaningful disclosures to recipients and still comply with the requirements.

Recommendations on multiple issuers

Updated: 27 January 2017

Q8.9 **How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation relates to multiple issuers independently?**

A8.9 When a recommendation refers to several issuers independently, for example as part of sectorial research, the requirements would apply independently to every issuer that is the subject of the recommendation.

Recommendations relating to several financial instruments independently

Updated: 27 January 2017

Q8.10 **How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation relates to several financial instruments independently?**

A8.10 Where a recommendation refers to several financial instruments independently, such as part of sectorial research, the requirements would apply to each financial instrument that is the subject of the recommendation.

Recommendations on a derivative referencing an index

Updated: 27 January 2017

Q8.11 **How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation is a derivative referencing an index?**

A8.11 If a recommendation relates to a derivative referencing an index of financial instruments, the derivative itself should be treated as a financial instrument subject to the requirements of the Commission Delegated Regulation (EU) 2016/958, and not the individual instruments that comprise the index.

9. Questions and Answers on Market soundings

Financial instruments in scope of the market sounding regime
Updated: 1 September 2017

Q9.1 **Does the scope of Article 11 of MAR cover all communications of information to one or more potential investors prior to the announcement of a transaction, in order to gauge their interest in a possible transaction and the conditions relating to it?**

A9.1 Under the market sounding regime outlined in Article 11 of MAR, the communication of information by an issuer, a secondary offeror, an emission allowances market participant or third party acting on their behalf or account (the Disclosing Market Participant – DMP) should be deemed to be made in the normal course of the employment, duties or profession of such a person where all the conditions contained in Article 11 of MAR are met, and therefore not constitute unlawful disclosure of inside information.

Article 11(1) of MAR concerns market soundings that gauge the interest of potential investors in a possible transaction in a financial instrument and the conditions relating to it such as its potential size or pricing. Those financial instruments have to be financial instruments covered by the MAR scope as specified in Article 2(1) of MAR:

a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;

b) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;

c) financial instruments traded on an OTF;

d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

Where the financial instrument subject to the possible transaction is already admitted to trading (or a request for admission to trading has been made) or is traded on a trading venue, as for example when the new transaction relates to an increase of an existing issuance, then that transaction will fall within scope of Article 11.

Where the financial instrument subject to the possible transaction is not admitted to trading (nor a request for admission to trading has been made) nor traded on a trading venue, that financial instrument would not fall under Article 2(1)(a)-(c) of MAR. That financial instrument would fall under Article 2(1)(d) of MAR if its price or value depends on or has an effect on the price or value of another existing financial instrument in scope of MAR.

In such a case, to determine if Article 2(1)(d) applies, the DMP must assess on a case by case basis whether there is any relationship between the price or value of the financial instrument that is the subject of the sounding and any other existing financial instrument falling under Article 2(1)(a)-(c) of MAR such as, for instance, other financial instruments of the issuer in question or of a parent company. DMPs are expected to be able to document their assessment.

Where the DMP assessed that such relationship exists, then the financial instrument will be in scope of MAR and the related possible transaction will be in scope of the MAR market sounding regime.

If there is uncertainty as to whether there is a price or value relationship, such as where there are no data available regarding a new financial instrument, in order to receive the protection under Article 11, should it be subsequently shown that there was a relationship, an appropriate approach would be for the DMP to apply the provisions of Article 11 of MAR and the relevant delegated and implementing regulations.

Where a recommendation refers to several financial instruments independently, such as part of sectorial research, the requirements would apply to each financial instrument that is the subject of the recommendation.

Scope of the new Article 11(1a) of MAR
Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation
Updated: 23 June 2022

Q9.2 **Is the scope of Article 11(1a) of MAR limited to the communication of information to the potential investors who negotiate the terms and conditions to subscribe to the bonds or does it encompass the full process of private placement of bonds to qualified investors including the offering of the bonds to potential investors contacted after the terms and conditions have been determined?**

A9.2 The scope of Article 11(1a) of Regulation (EU) No 596/2014 (MAR) is limited to the communication of information to the potential qualified investors who negotiate the terms and conditions to subscribe to the bonds only. Article 11(1a) sets forth an exception from the market soundings regime provided in Article 11(1), which has to be interpreted narrowly. The communication of information to potential investors contacted after the terms and conditions have been determined therefore falls in the scope of Article 11(1), as it takes place prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it.

Recital 6 of Regulation (EU) 2019/2115[20] clarifies that the aim of the communication of information in that negotiation phase is to structure and complete the transaction as a whole, and not to gauge the interest of potential investors as regards a predefined transaction. This reasoning is based on the fact that the negotiation phase of the transaction essentially differs from the communication of information to gauge the interest of potential investors. Therefore, the exception provided in Article 11(1a) relates only to private placements being the result of negotiations between an issuer and a limited number of potential qualified investors, aiming to determine the contractual terms and conditions of the transaction.

"Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

[20] Regulation 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019).

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts."

10. Questions and Answers on Insider lists

Subject of the insider list requirements
Updated: 1 September 2017

Q10.1 **Are persons acting on behalf or account of the issuer (e.g. advisors and consultants) subject to the obligation to draw up, update and provide to the NCA upon request their own insider list under Article 18(1) of MAR?**

A10.1 Yes, the legislative aim of the insider list regime under MAR is to cover any person that, by virtue of its action on behalf or account of the issuer, has access to inside information.

Therefore, not only the issuer but also all the persons acting on behalf or account of the issuer that have access to inside information relating to the issuer (e.g. advisors and consultants) are subject to the obligation to draw up, update and provide to the NCA upon request their respective insider list under Article 18 of MAR.

Issuer's responsibility in case of delegation
Updated: 1 September 2017

Q10.2 **When does the issuer remain fully responsible under the second subparagraph of Article 18(2) of MAR for the compliance with the insider list requirements by persons acting on behalf or account of the issuer?**

A10.2 The issuer remains fully responsible under the second subparagraph of Article 18(2) of MAR only where a service provider "*assumes the task of drawing up and updating the insider list*" of the issuer, on the basis of a specific delegation to that purpose.

The issuer is not responsible for the fulfilment of the insider list requirements of the persons acting on its behalf or account mentioned in Article 18(1) of MAR and first subparagraph of Article 18(2) (e.g. advisors and consultants) who are personally responsible for the obligation to draw up, update and provide to the NCA upon request their own insider list.

Where the person that "*assumes the task of drawing up and updating the insider list*" of the issuer under the second subparagraph of Article 18(2) of MAR is also a person acting on behalf or account of the issuer under Article 18(1) of MAR (e.g. advisors and consultants), that person will be responsible for the obligation to draw up, update and provide to the NCA upon request its own insider list. The issuer will remain responsible for complying with the insider list requirements in relation to its own insider list, the drawing up and updating of which has been delegated to the same person as part of a separate agreement.

11. Questions and Answers on emission allowances and emission allowances market participants (EAMPs)

Time span for the calculation of the CO2 equivalent emissions and the rated thermal input

Updated: 14 December 2017

Q11.1 **What period should be used to calculate whether one of the thresholds set out in Article 17(2) of MAR has been exceeded? As of when is this threshold deemed to be crossed?**

A11.1 A participant in the emission allowance market should use a calendar year period (one-year period that begins on January 1 and ends on December 31) for the annual calculation of the carbon dioxide equivalent emissions and the rated thermal input (RTI) of 31 December of the same year.

The calculated emissions over a given year (Y) or the RTI as of 31 December of a given year (Y) should be assessed against the minimum thresholds of 6 million tonnes a year of equivalent carbon dioxide or the minimum RTI threshold of 2 430 MW specified in Article 5(1)(a) and (b) of the Commission Delegated regulation (EU) 2016/522. Where either of these thresholds is exceeded, the market participant will be deemed to be an emission allowance market participant (EAMP) as defined in Article 3(20) of MAR as of 1 May of the following year (Y+1) and thus subject to the obligations applicable to EAMPs under MAR, including the requirement to disclose inside information concerning emission allowances it, or its parent undertaking or related undertakings, may hold. This approach for MAR purpose will be aligned with the compliance cycle of the EU Emissions Trading System stemming from Directive 2003/87/EC.

In practice, this means that the year of reference for the calculations should be 2016 to determine whether a participant is an EAMP between 3 January and 30 April 2018,

and 2017 to determine whether a participant is an EAMP from 1 May 2018 onwards, until the next calculations become applicable on 1 May 2019.

It is reminded that the calculations should take into account all business, including aviation activities or installations, which a participant in the emission allowance market, or its parent undertaking or related undertaking owns or controls or for the operational matters of which that participant, or its parent undertaking or related undertaking is responsible, in whole or in part.

Meaning of 'parent' and 'related undertaking' in Article 17(2) of MAR

Updated: 29 March 2019

Q11.2 **What is the meaning of 'parent' and 'related undertaking' in Article 17(2) of MAR?**

A11.2 Article 17(2) of MAR provides that an emission allowance market participant shall "*disclose inside information concerning emission allowances which it holds in respect of its business* [...] *or installations* [...] *which the participant concerned, or its parent undertaking or related undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part*".

For the purposes of defining the parent company, Article 30(2) of MAR refers to Directive 2013/34/EU. Article 2 points (9) and (10) of Directive 2013/34/EU define parent undertaking as "*an undertaking which controls one or more subsidiary undertakings*", and a subsidiary undertaking as "*an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking*". Considering also that the definition of a group in Directive 2013/34/EU comprises the parent undertaking and all its subsidiary undertakings, ESMA considers that also ultimate parent undertakings are relevant for the purposes of Article 17(2) of MAR.

With reference to the related undertakings, ESMA's reading is that: (i) in line with Article 4 of Regulation 1227/2011/EU (REMIT), related undertakings are "*either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of*" current Article 22(7) of Directive 2013/34/EU, and (ii) for the purposes of Article 17(2) of MAR the relevant related undertakings are those of the parent undertaking of the EAMP.

Disclosure of inside information concerning emission allowances, referring to installations of other undertakings of the group of the EAMP

Updated: 29 March 2019

Q11.3 Are EAMPs under the obligation to disclose inside information concerning emission allowances where such inside information regards installations of other undertakings of the group of the EAMP?

A11.3 Yes, in the circumstances explained below.

Article 3(1)(20) of MAR sets forth two cumulative requirements to be an EAMP: (i) being a person that enters "into transactions, including the placing of orders to trade, in emission allowances, auctioned products based thereon, or derivatives thereof", and (ii) exceeding a threshold of carbon dioxide equivalent (or having had a rated thermal input exceeding a minimum threshold, where the participant carries out combustion activities).

As regards the first condition, ESMA's technical advice on possible delegated acts concerning the Market Abuse Regulation (ESMA/2015/224) provides indications on several examples of participants to the emission allowances market. ESMA considers that market participants that enter into transactions or place orders to trade in emission allowances either directly and indirectly fall within the definition of Article 3(1)(20) of MAR. The latter is the case, for instance, for polluting companies that trade emission allowances through trading companies within the same group.

As regards the second condition, the minimum thresholds are provided for by Article 5 of the Commission Delegated Regulation (EU) 2016/522 and consist of carbon dioxide equivalent of 6 million tonnes a year or 2,430 MW of rated thermal input. The threshold applies "*at group level and relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.*".

Hence, in the case of two participants to the emission allowances market, respectively A and B, that are part of the same group, if the threshold set in Article 5 is met by summing up their emissions, each of A and B is an EAMP and is individually subject to the obligation to disclose inside information concerning emission allowances under Article 17(2) of MAR. In other words, provided that the threshold is met at group level, both A and B are EAMPs, even if individually they are below the threshold of Article 5.

An EAMP has to disclose inside information concerning emission allowances where the installation of an undertaking that is a parent company of the EAMP or a related

company (see A.5.6 above) has an impact on the EAMP's demand of emission allowances.

For instance, an EAMP operating a fossil fuel power plant would be directly impacted in its demand of emission allowances by the establishment of a significant wind farm by a related undertaking. Namely, relevant production of renewable energies could allow the EAMP to keep any spare allowances to cover its future needs or to sell them to another company that lacks allowances. In light of this, the EAMP would have to disclose inside information concerning emission allowances regarding the establishment of a relevant plant producing renewable energy.

The EAMP would also be responsible for any delay of disclosure of the inside information concerning emission allowances pursuant to Article 17(4) of MAR.

Should there be, as in the case of A and B above, more than one EAMP in a group, the obligation to disclose the inside information concerning emission allowances falls on the EAMP whose demand of emission allowances is impacted by the parent or related company's business (that would also be responsible for any delay in the disclosure). Where both A and B are impacted, each of them would be obliged to disclose such information and the disclosure obligation is fulfilled once the inside information concerning emission allowances is published.

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AIM Designated Market Route

The London Stock Exchange permits certain existing quoted companies to apply to have their shares admitted to the AIM Market of the London Stock Exchange (AIM) under what is known as the AIM Designated Market Route or the 'fast track procedure'. This is on account of the reduced amount of information required to be provided by these companies in seeking permission to have their shares traded on AIM. The salient details of the fast track procedures are set out below. Please contact your usual Gowling WLG (UK) LLP contact or Jeffrey Elway if you require further advice or assistance.

Which companies can use the fast track procedure?

The procedure is available to companies whose shares have been traded on the top tiers or the main boards of the following markets for at least 18 months prior to the application to have those securities admitted to AIM and which seek to take advantage of that status in applying for admission to AIM:

- Australian Securities Exchange
- Johannesburg Stock Exchange
- NASDAQ
- NYSE
- SIX Swiss Exchange
- TMX Group
- Official List of the Financial Conduct Authority

or any UK or EEA Regulated Market or SME Growth Market. (NB this category will not be considered an AIM Designated Market for the purposes of the guidance note to AIM Rule 41.)

The requirement for 18 months is to ensure that the company has had a sufficient period of disclosure prior to admission.

Note that where a business has changed substantially in the 18-month period (eg it has carried out the equivalent of a Rule 14 reverse takeover), or undertaken smaller transactions to substantially change its business, the fast track procedure may not be available.

If an applicant is admitted to a UK or EEA Regulated Market or SME Growth Market only, an applicant must also (a) have a market capitalisation of at least £20m upon admission to AIM; and (b) have its admission documentation on its home market and all disclosure required under the Market Abuse Regulation published in English.

What is the likely timetable for admission?

Like any regulated stock exchange eligibility requirements are imposed on AIM applicants by the AIM Rules. Among other things, an AIM company must retain a nominated adviser and a broker at all times. The appointment of a nominated adviser and broker (positions which can be held by the same financial intermediary) can take several weeks to arrange. Appointment will be formalised through an engagement letter, which may be replaced or augmented by a nominated adviser and broker agreement with effect from admission of shares to trading on AIM.

Other professionals who will need to be involved in the application process will include lawyers, accountants, registrars, security printers and public relations advisers. The involvement of some of these latter classes of professionals may be minimal.

At least 20 clear business days before the expected date of admission to AIM, the applicant must file a 'pre-admission announcement' (Schedule 1) with the London Stock Exchange containing prescribed information, rather than an admission document. It is estimated that approximately two weeks will be needed from engagement of advisers until the 'pre-admission announcement' has been prepared and approved (subject to any other requirements imposed by the prospective nominated adviser and broker). The London Stock Exchange will notify the RNS, the regulatory information service operated by it, of the 'pre-admission announcement' (Schedule 1). Any changes to such information prior to admission must be given to the London Stock Exchange immediately. If any such new information is significantly different, the London Stock Exchange may delay the expected date of admission by a further 20 clear business days.

At least three clear business days before the expected date of admission to AIM, the following have to be submitted to the London Stock Exchange:

- payment of the relevant AIM fee;
- an electronic version of its latest report and accounts;
- a completed application form; and
- a completed nominated adviser's declaration form.

What prescribed information is required in the pre-admission announcement (Schedule 1)?

The information which must be included by a company in the 'pre-admission announcement' and submitted to the London Stock Exchange at least 20 clear business days before the intended

date of admission includes certain basic information about the applicant (which would also be required for a standard AIM listing) such as its name, address, business activities, details of the securities to be admitted, of the management team and directors and major shareholders. In addition, the following information must also be included, which is particular to companies seeking a listing via the 'fast track procedure':

(a) the size of any capital raised in conjunction with the application for admission to AIM;

(b) confirmation that the company has adhered to the legal and regulatory requirements of the relevant AIM Designated Market;

(c) details of the business of the company and its intended strategy following admission;

(d) a description of significant changes in the financial or trading position of the company since the date to which the last audited accounts were prepared;

(e) a statement that the directors have no reason to believe that the company's working capital will be insufficient for at least 12 months from the date of its admission to AIM;

(f) the rights attaching to, and the arrangements for settling transactions in, the shares being admitted;

(g) any other information which has not been made public which would otherwise be required of an AIM company;

(h) the address of a website containing the company's latest published annual report and accounts which must have a financial year end not more than nine months prior to admission (otherwise interim accounts will be required); and

(i) all other AIM rules continue to apply as for any AIM applicant (for example rule 7 on lock-ins) and the Notes accompanying the rules.

Companies considering using the 'fast track procedure' should note in particular the requirement at paragraph (g) above. While the 'fast track procedure' is generally accepted to be less costly and time consuming than a standard AIM listing, the amount of information the company is required to include in its 'preadmission announcement' (Schedule 1) will depend on the disclosure requirements which the company is subject to by virtue of its existing listing on a designated market. While it is likely that companies using the 'fast track procedure' will have publicly available accounts which will contain much of the requisite financial information, companies should consider what other information is already in the public domain of the information which needs to be included in the 'pre-admission announcement' (Schedule 1) as if the information is limited, the 'pre-admission announcement' (Schedule 1) may need to have annexed to it an appendix more akin to a standard AIM admission document.

Natural Resources Companies

Natural resources companies must also comply with the requirements of the AIM Guidance Note for Mining and Oil and Gas Companies. These requirements include that the company must have a Competent Person's Report which is no more than six months old which complies with the requirements set out in the guidance note. In addition, where the company's assets are located outside the United Kingdom, legal opinion(s) must be obtained from an appropriate legal adviser which cover the good standing of the company which holds the assets and the legal title to or validity and enforceability of those assets. These additional requirements may impact on the timetable for admission.

Investing Companies

Investing companies seeking to use the 'fast track procedure' should note that, unless they obtain a specific derogation from the London Stock Exchange, they will be required to raise a minimum of £6 million in cash via an equity fundraising on, or immediately before, admission (AIM Rule 8: Investing companies). This is regardless of any existing resources or investments of the investing company.

Are there any restrictions on the sale of shares?

Applicant companies who are carrying on a new business (which has not been independent and earning revenues for at least two years) must ensure that related parties and certain employees do not dispose of any interest in the company's securities for one year from the date of admission (AIM Rule 7: Lock in). This is unlikely to affect any applicant company under the fast track procedure as one of the fundamental conditions of the procedure is having had its shares traded on another major market for at least 18 months.

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AIM/Official List/SFS – investment companies

Major admission criteria and continuing obligations

Market	AIM	Official List – UKLR 11 (Closed-ended investment funds)	Specialist Fund Segment
Regime	AIM Rules, the Prospectus Regulation Rules and in certain circumstances, Rule 5 of the Disclosure Guidance and Transparency Rules. Not a regulated market.	UK Listing Rules (UKLR), Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules and the LSE Admission and Disclosure Standards. A regulated market.	Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules and the LSE Admission and Disclosure Standards. A regulated market.
Entity type and suitability	Generally straightforward only (closed-ended entity of a similar structure to a UK plc, not requiring a restricted investor base). Available to retail investors (subject to prospectus requirements).	Straightforward or complex. Available to retail investors.	Must be a closed-ended investment company. Straightforward or complex. May not be marketed to retail investors.
Admission			
Prospectus/ admission document	Admission document (unless a prospectus is required by the Prospectus Regulation Rules).	Prospectus.	Prospectus.
Required content	Schedule Two of the AIM Rules for Companies (which includes modified Annexes 1, 11 and 20 of the Prospectus Regulation Rules and details of the company's investing policy), the AIM Note for Investing Companies and Annex 4 of the Prospectus Regulation Rules.	Chapter 11 of the UKLR, Annexes 1, 4, 11 and 20 of the Prospectus Regulation Rules and the LSE Admission and Disclosure Standards.	Annexes 1, 4, 11 and 20 of the Prospectus Regulation Rules and the LSE Admission and Disclosure Standards.
Feeder Fund	The impact of being a feeder fund on the investing policy (and whether the master fund's investing policy should mirror that of the feeder fund) should be considered.	The investment policies must be consistent with the issuer's investment policies and provide for spreading investment risk .(UKLR 11.2.7)	No equivalent provisions.
Shares in public hands	No minimum requirement for admission but a suitability consideration for admission. Admission at the discretion of London Stock Exchange who may refuse an admission to AIM and/or make the admission of an applicant subject to special conditions.	Minimum 10% in public hands.	No minimum requirement.
Required adviser(s)	Nominated adviser and broker.	Sponsor on admission and certain specified events.	No sponsor requirement. Financial adviser recommended.
Board independence and experience	Board as a whole and nominated adviser are usually expected to be independent from any investment manager and substantial shareholders. The nominated adviser must be satisfied that the board and the investment manager are suitably experienced in view of investing policy.	Majority of the board must be independent of any investment manager or of other funds managed by the same investment manager. (UKLR 11.2.10) No express provisions regarding experience.	No equivalent provisions.
Transferability of shares	Freely transferable (except for restrictions because of jurisdiction, statute or regulation or to limit the number of shareholders in a particular country to avoid being subject to a particular statute or regulation).	Freely transferable (this requirement can be modified or dispensed with in exceptional circumstances where there is a power to disapprove the transfer provided this power would not disturb the market in those shares).	Freely negotiable.
Minimum market capitalisation	£6 million (via an equity fundraising from independent sources).	£30 million.	No minimum.

Market	AIM	Official List – UKLR 11 (Closed-ended investment funds)	Specialist Fund Segment
Lock-ins	One year lock-in from admission for directors, investment manager (and its key personnel) and related parties.	None.	None.
Share dealing rules	Yes (AIM Rule 21) and Article 19 UK MAR.	Article 19 UK MAR.	Article 19 UK MAR.
Pre-emption rights	No equivalent provisions.	Overseas companies must provide pre-emption rights in constitution.	No equivalent provisions.
Continuing obligations			
Further share issue	No requirement to publish a new admission document unless (a) required to issue a Prospectus under the Prospectus Regulation Rules; (b) seeking admission for a new class of securities; or (c) undertaking a reverse takeover under Rule 14 (Rule 27). Shares can be issued below prevailing NAV unless contrary statement in existing admission document	Prospectus required unless, inter alia, new shares over 12 month period represent less than 20% of existing shares admitted or another exemption applies. Unless authorised by shareholders, shares cannot be issued below prevailing NAV unless first offered pro rata to existing shareholders. (UKLR 11.4.18)	Prospectus required unless, inter alia, new shares over 12 month period represent less than 20% of existing shares admitted or another exemption applies. Shares can be issued below prevailing NAV unless contrary statement in existing prospectus
Significant transactions	AIM Rules regarding corporate transaction disclosures applicable. Transactions in accordance with investing policy that only breach profits and/or turnover test are not 'substantial transactions'. Acquisitions in accordance with investing policy which do not result in a fundamental change of business or board and only exceeds 100% of the profits and/or turnover test are not reverse take-overs.	UK Listing Rules regarding significant transaction only applicable to transactions outside the scope of published investment policy. (UKLR 11.5.1)	No equivalent provisions
Cross holding	No restrictions but any cross holding risk should be a suitability for admission consideration	No more than 10% of gross assets can be invested in other listed closed-ended investment funds (other than investment funds with a 15% limit to invest in other listed closed-ended investment funds). (UKLR 11.2.6)	No equivalent provisions
Related party transactions	AIM Rules regarding related parties are applicable requiring, inter alia, a fair and reasonable opinion from the company's directors. The investment manager (and its key personnel) is considered a related party.	Shareholder vote required for transactions with a percentage ratio of 5% or more. (UKLR 11.5.5) The investment manager is considered a related party. (UKLR 11.5.3)	No equivalent provisions
Investing policy	Prior shareholder consent required for any material change to investing policy. Shareholder consent required on an annual basis if not substantially invested within 18 months	Prior shareholder consent required for any material change to investing policy. Investment policy must have object of spreading investment risk. (UKLT 11.2.3)	No equivalent provisions
Financial reporting	Annual audited accounts and unaudited half-yearly financial reports to be sent to shareholders not later than six months and three months after the end of the financial period to which they relate respectively. Interim Management Statement not required	Annual audited accounts and unaudited half-yearly financial reports to be sent to shareholders not later than four months and three months after the end of the financial period to which they relate respectively. Interim Management Statement not required	Annual audited accounts and unaudited half-yearly financial reports to be sent to shareholders not later than four months and three months after the end of the financial period to which they relate respectively. Interim Management Statement not required.
Requirement to publish price sensitive / inside information as soon as possible	Yes (AIM Rule 11) and Article 17 UK MAR	Yes (DTR2) and Article 17 UK MAR	Yes Article 17 UK MAR.
Prohibition on significant trading activity	Yes	Yes	Yes
Corporate governance	Required to report against a recognised corporate governance code chosen by board of directors. Requirement to disclose on investment company's website details of how investment company complies with that code (or explain why not complied with).	Required to comply with (or explain why not complied with) the UK Corporate Governance Code/AIC Code	Not required to comply with the UK Corporate Governance Code/AIC Code

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Distinctions between Main Market: ESCC category, international secondary category and transition category and AIM

	Main Market – equity shares (commercial companies) category ("ESCC")	Main Market – equity shares (international commercial companies secondary listing) category	Main Market – equity shares (transition) category	AIM
Regulated Market?	Yes – Official List	Yes	Yes	No – AIM Market
What documentation is required for listing?	Prospectus	Prospectus	n/a – no new entrants	Admission document (NB: If public offer, Prospectus)
Applicable rules in relation to listing?	UK Listing Rules (UKLR); Admission & Disclosure Standards (A&DS)	UKLR (in particular UKLR 14) and A&DS	UKLR (for continuing obligations - UKLR 22)	AIM Rules
Domicile	Any	Must be an overseas company (UKLR 14.2.1)	n/a	Any
Minimum free float	10% (UKLR 5.5.2)	10% (UKLR 14.2.2)	n/a	Nomad assessment of suitability
Minimum market capitalisation	Yes – £30m (UKLR 3.2.7)	Yes - £30m (UKLR 3.2.7)	n/a	No – Nomad assessment of suitability
Audited historical financial information to be disclosed	No UKLR requirement for historical financial information. Last 3 years or such shorter period as an issuer has been in operation (PRR Annex I)	No listing requirement for historical financial information. Last 3 years or such shorter period as an issuer has been in operation (PRR Annex I)	n/a	Last 3 years or such shorter period as an issuer has been in operation (AIM Rules and PRR Annex1))
Revenue earning track record required?	No	No	n/a	No
Working capital statement in Prospectus/Admission Document?	Yes (PRR Annex 11). Not under the UKLR	Yes (PRR Annex 11)	n/a	Yes (must be unqualified) (AIM Rules)
Eligibility for electronic settlement	Yes (/A&DS 2.7)	Yes (A&DS 2.7)	n/a	Yes (AIM Rule 36)
Sponsor, Nomad or Key Adviser required?	Yes – Sponsor required on admission (UKLR 4.2.1))	On application for transfer to commercial companies or shell companies category (UKLR 4.22)	On application for transfer to commercial companies or shell companies category (UKLR 4.22)	Yes – Nomad required (AIM Rule 1)
Sponsor, Nomad or Key Adviser required at all times?	No – Sponsor required for certain transactions only (UKLR 4.2)	No sponsor regime (excluded from UKLR 4)	No – UKLR 22.1.4	Yes – Nomad required at all times
Deadline for publishing annual accounts	4 months after end of financial year (DTR4)	4 months after end of financial year (DTR4) (UKLR 14.3.19/20)	4 months after end of financial year (DTR4) (UKLR 22.2.19/20)	6 months after end of financial year (AIM Rule 19)
Deadline for publishing half yearly financial report	3 months after end of financial period (DTR4)	3 months after end of financial period (DTR4 and UKLR 14.3.19/20)	3 months after end of financial period (DTR4) (UKLR 22.2.19/20)	3 months after end of financial period (AIM Rule 18)
Requirement to publish price sensitive / inside information as soon as possible	Yes (DTR2) and Article 17 UK MAR	Article 17 UK MAR and UKLR 14.3.11" : *should consider its obligations under the disclosure requirements and transparency rules"*	Article 17 UK MAR and UKLR 22.2.11 : "should consider its obligations under the disclosure requirements and transparency rules"	Yes (AIM Rule 11) and Article 17 UK MAR
Insider List	Yes Article 18 UK MAR	Yes Article 18 UK MAR	Yes Article 18 UK MAR	18(6) UK MAR – exempt if certain conditions are met
Does the major shareholder notification regime in DTR 5 apply?	Yes (DTR5)	Yes (UKLR 14.3.19/20)	Yes (UKLR 22.2.19/20)	Yes – UK issuers on AIM are subject to DTR 5 (AIM Rules). Overseas companies need equivalent provisions in constitution (AIM Rules)
Restrictions and notifications on deals by PDMRs and Directors?	Yes (DTR3) and Article 19 UK MAR	Yes (DTR3) and Article 19 UK MAR	Yes (DTR 3 and) Article 19 MAR	Yes (AIM Rule 17) and Article 19 UK MAR

Corporate governance	UK Corporate Governance Code will apply (UKLR 6.6.6(6) "Comply or explain" disclosure statement in the Directors Report (DTR7.2)	DTR 7.2 - must include a corporate governance statement in its directors' report. (UKLR 14.3.21)	DTR 7.2 - must include a corporate governance statement in its directors' report. (UKLR 22.2.21)	Market practice is to comply with the Quoted Companies Alliance guidelines and adhere to the UK Corporate Governance Code as appropriate depending on the size and type of AIM company
Share dealing rules	Yes (Article 19 UK MAR)	Yes (Article 19 UK MAR)	Yes (Article 19 UK MAR)	Yes (AIM Rule 21 and Article 19 UK MAR)
Pre-emption rights	Yes (UKLR 9.2) Overseas premium listed companies must provide in their constitutions for shareholders to have pre-emption rights on secondary share issues (UKLR 5.4.7)	No	No (unless a UK company subject to Companies Act 2006)	No (unless a UK company subject to Companies Act 2006)
Significant transactions	If exceed 25% in class tests, prescribed announcement of key transaction details required. Shareholder vote and circular only required for a reverse takeover	Not required	Not required	Yes – announcement required for substantial transactions which exceed 10% (AIM Rule 12). Shareholder approval required for reverse takeovers (100%) (AIM Rule 14) & disposals resulting in a fundamental change of business (75%) (AIM Rule 15)
Compliance with related party transactions	If ≥5% require board approval, market notification and sponsor fair and reasonable opinion. (UKLR 8). No shareholder approval required. DTR 7.3 does not apply (*DTR 1B.1.12*)	Must comply with DTR 7.3 subject to modifications (UKLR 14.3.22) – disclosure only, no board approval required	Must comply with DTR 7.3 subject to modifications (UKLR 22.2.22) – disclosure only, no board approval required	No shareholder approval required but need notification and fair and reasonable confirmation (if >5%) (AIM Rule 13)
Prospectus/document required for further issues?	Required if more than 20% shares of same class admitted to trading (PRR 1.2.4)	Required if more than 20% shares of same class admitted to trading (PRR 1.2.4)	Required if more than 20% shares of same class admitted to trading (PRR 1.2.4)	Only required if: (a) required to issue a Prospectus under the Prospectus Regulation Rules; (b) seeking admission for a new class of securities; or (c) undertaking a reverse takeover under Rule 14 (Rule 27).
Shareholder approval required for transfer between listing categories?	Yes – 75% shareholder approval (UKLR 21.5.6)	No (ULKR 21.5.6)	No (UKLR 21.5.6)	N/A
Does the Takeover Code apply?	Yes (if registered office in UK, Channel Islands or Isle of Man)	No	Yes (if registered office in UK, Channel Islands or Isle of Man)	Yes (if registered office in UK, Channel Islands or Isle of Man)
Cancellation of listing/ admission to trading	75% shareholder approval required (UKLR 21.2.8))	RIS giving at least 20 business days notice of intended cancellation. No shareholder approval required (UKLR 21.2.17)	RIS giving at least 20 business days notice of intended cancellation. No shareholder approval required (UKLR 21.2.17)	75% shareholder approval required (AIM Rule 41)

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Listing Requirements for Exploration and Mining Companies

	TSX Venture / TSX	AIM	Main Market – Equity shares (commercial companies) category
Definition	A mining company is a company operating in the mining sector which includes those companies producing, undertaking mineral exploration, and investing in development. Neither the TSX Company Manual nor the TSXV Corporate Finance Manual has a definition of "mining Issuer", though the concept of a "mining Issuer" is referenced without definition at multiple points.	*Resource Companies* – companies operating in the mining and oil & gas sectors which are admitted or are seeking admission to AIM.	*Mineral company* – a company or group whose principal activity is, or is planned to be, the extraction of mineral resources (which may or may not include exploration for mineral resources) – Listing Rules.
Applicable Rules in Relation to Listing	TSXV Corporate Finance Manual / TSX Company Manual	• AIM Rules. • Note for Mining and Oil & Gas Companies (AIM Mining Note). • Prospectus Regulation Rules (if offer to the public which requires the publication of the Prospectus).	• UK Listing Rules (UKLR); • Prospectus Regulation Rules; • Disclosure Guidance and Transparency Rules; • FCA Primary Technical Note: Guidelines on disclosure requirements under the Prospectus Regulation; and • Admission & Disclosure Standards (A&DS).
Technical Data	General disclosure prescribed by Canadian securities laws and National Instrument 43-101 – Standards of Disclosure for Mineral Projects (NI 43-101). A technical report must be filed in connection with the prospectus or listing document to support the scientific or technical information contained therein. The technical report needs to be prepared by or under the supervision of a qualified person that is, subject to limited exceptions, independent of the mining company. Geological reports are required for each of the principal properties (TSXV).	*Resource Companies* – Admission Document must include a competent person's report (**CPR**) which, as a minimum, should be dated no more than 6 months prior to the date of the admission document.	The FCA Primary Market Technical Note: Guidelines on disclosure requirements under the Prospectus Regulation provide that additional information be included where mineral companies are preparing a prospectus for a public offer/ admission to trading. The guidance also contains details of information required for prospectuses of mineral companies (paragraphs 131-133). Additionally, Guideline 133 provides that all prospectuses of mineral companies should include a CPR. Appendix II of the FCA Technical Note recommends content for a mining CPR
Reporting Standards	The technical report must comply with NI 43-101 and mineral resource and mineral reserve disclosure must comply with the CIM definition standards, but resource or reserve disclosure in accordance with SAMREC, JORC code, PERC, SEC Guide 7 or the Certification Code (prepared by the Mineral Resources Committee of Chile) is permitted for non-Canadian issuers on non-Canadian projects if a reconciliation to the Canadian mineral resource and reserve categories is included in the report.	International standards for mineral resources and reserves: CIM; IMMM; JORC; Russian; SAMREC; and SME.	International standards for mining reporting (Appendix I FCA Technical Note): JORC, SAMREC, CIM, SME, PERC, the exploration code published by the Instituto de Ingenieros de Minas de Chile, NAEN
Property Requirement	Separate requirements in relation to the percentage interest in the relevant property applies. In general, a company must hold or have a right to earn and maintain at least a 50% interest in the qualifying property. At a minimum, the TSXV requires that no less than CDN$100,000 has been spent on qualifying exploration expenditures during the prior 36 months.	Not applicable, but AIM Mining Note does not apply to purely investment companies.	No eligibility and ongoing rules requiring that a company has an independent business and has operational control over its main activities.
Work Program	Separate requirements in relation to the work program required apply. CDN$500,000 (TSXV Tier1) CDN$200,000 (TSXV Tier 2), through CDN$750,000 (TSX) to commercial level mining operations (TSX Exempt).	–	–
Working Capital	Working capital is linked to work program requirements and time period varies accordingly. At a minimum, the TSXV requires adequate working capital and financial resources to carry out stated work program for 12 months following listing and CDN$100,000 in unallocated funds. The TSX requires, at a minimum, CDN$2,000,000 in working capital and sufficient funds to complete the planned program of exploration and/ or development, to cover G&A, property payments and Capex for 18 months.	Unqualified working capital statement by the directors that in their opinion, having made due and careful enquiry, the working capital available is sufficient for present requirements (at least 12 months from the date of admission).	Working capital statement that working capital is sufficient for present requirements, or, if not, how the additional working capital required shall be provided (Prospectus Regulation Rules, Annex 11).
Report	Varies from an independent technical report prepared in accordance with NI 43-101 recommending completion of a minimum CDN$200,000 work program (TSXV), through to an 18 month projection (by quarter) of sources and uses of funds, signed by CFO (TSX) to comprehensive technical report prepared by independent qualified person (TSX Exempt).	Under the AIM Mining Note specific requirements of a competent person apply. It is the Nomad's responsibility to ensure that the CP has the relevant qualifications, experience and technical knowledge required.	FCA Technical Note: the CPR must be prepared by an individual who has the required competency standards as prescribed by the relevant codes and/or organisations set out above (see Appendix I FCA Technical Note). If the code or organisation does not prescribe such requirements, then those set out in 133 of the FCA Technical Note apply.

	TSX Venture / TSX	AIM	Main Market – Equity shares (commercial companies) category
Net Tangible Assets, Earnings or Revenue	Varies from: (i) no net tangible assets (TSXV Tier 2); (ii) CDN$2,000,000 net tangible assets (TSXV Tier 1); (iii) CDN$3,000,000 net tangible assets (TSX); and (iv) CDN$7,500,000 net tangible assets plus CDN$700,000 pre-tax cash flow for the last fiscal year and an average of CDN$500,000 pre-tax cash flow for the past two fiscal years (TSX Exempt).	No trading record required	No UKLR requirement for historical financial information For a prospectus: the last 3 years or such shorter period as an issuer has been in operation (PRR Annex I)
Management and Board of Directors	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Both the TSX and TSXV require at least two independent directors. TSXV requires a minimum of a 3 person audit committee, all of whom must be directors, and a majority must be independent. TSX requires a minimum of a 3 person audit committee, all of whom must be both financially literate and independent directors of the company. Foreign issuers are exempt from certain audit committee requirements under NI 71-102.	It is the Nomad's responsibility to ensure that the company is and remains suitable for AIM and this includes the constitution of the board. Market practice is for AIM companies to comply with the Quoted Companies Alliance (QCA) guidelines and adhere to the UK Corporate Governance Code (UKCGC) as appropriate, depending on the size of the AIM company. The QCA guidelines or UKCGC dictate the committees the company is required to constitute for compliance.	UK Corporate Governance Code will apply. (UKLR 6.6.6(6) - "Comply or explain" statement.
Distribution, Market Cap and Public Float	Public float of 1,000,000 freely tradable shares with aggregate market value of CDN$4million; 300 public shareholders each holding at least one board lot (TSX) (TSX Exempt). Public float of 500,000 shares; 200 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders. (TSXV)	No minimum market capitalization – Suitability on the minimum free float to be determined by the Nomad.	Market capitalisation of at least £30 million (UKLR 3.2.7)). At least 10 per cent of the shares must be held by the 'public' (10 per cent free float). (UKLR 14.2.2)
Sponsorship	Sponsor report may be required (TSXV). Required but may be waived if sufficient previous party due diligence has been conducted (TSX). Not required (TSX Exempt).	Not required	Sponsor required for certain transactions only (UKLR 4.2).
Transactions Notifiable	TSXV listed issuers must comply with the TSXV Timely Disclosure Policy and advise the TSXV of most material transactions, including any potential acquisition, issuance of securities, non-arm's length transaction, change of control, reverse take-over bid or other significant transaction. TSX issuers must obtain the consent of the TSX before proceeding with any transactions • that involve the issuance of securities; • ·that involve insiders or related parties and does not involve an issuance of securities; or • ·involve a change of control of the company. Shareholder approval may be required to approve transactions resulting in a change of control (greater than or equal to 20%) or related party transactions (if exemptions are not available). The TSX also requires shareholder approval if the transaction provides consideration to insiders in aggregate of 10% or greater of the market capitalisation during any 6 month period and for any private placement for an aggregate number of listed securities issuable greater than 25% of the number of securities outstanding if the price per security is at a discount to the market price (subject to a 3 month look-back period). TSX-listed mining companies must also adhere to the "Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production", whereby certain periodic disclosures relating to activities on material properties and information on resources and reserves must be made in accordance with NI 43-101.	Substantial transactions exceeding 10 per cent. in any of the class tests must be announced and the company must issue a notification without delay once the terms are agreed. (AIM Rule 12). Any transaction with a related party which exceeds 5% in any of the class tests must be announced and the company must issue a notification without delay once the terms are agreed. (AIM Rule 13). Shareholder approval is required for reverse takeovers (an acquisition exceeding 100% of the class tests) (AIM Rule 14) Shareholder approval is required for disposals exceeding 75% in the last 12 months resulting in a fundamental change of business (AIM Rule 15).	UKLR 7 –significant transactions and reverse takeovers and UKLR 8 – related party transactions) apply to mineral companies with a listing in the equity shares (commercial companies) category. Transactions are classified by size (the class tests) and must be announced and, in certain circumstances, approved by the shareholders of the company. If the transaction exceeds 25% in class tests a prescribed announcement of key transaction details required. Shareholder vote and circular will only be required for a reverse takeover. For related party transactions: if the class test is ≥5% then board approval, market notification and sponsor fair and reasonable opinion is required (UKLR 8). No shareholder approval required.

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