

AIM Regulation
London Stock Exchange

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Response to Discussion Paper on AIM Rules Review

Dear Sirs,

What follows is a response to the above consultation based on my experience of investing in AIM companies over many years, and my past activities on behalf of ShareSoc of advising members about the market and formulating policies for improving it which have been discussed with AIM management in the past.

In summary, and before I respond to the detail questions below, let me say that I welcome improving the AIM Rules when clearly there is a need to do so. Although many companies have successfully raised capital on AIM, and developed their businesses well as a result, there have been too many poor quality companies listed on AIM and too many failures and delistings.

Although many private investors in AIM companies do not do sufficient due diligence on companies before investing in them, it is also the case that even the experienced and knowledgeable investors can sometimes be caught out by unexpected events. Most of the proposals contained in the consultation I therefore welcome, although it also has to be said that **improved enforcement of the Rules** is also a pre-requisite for a better quality market. I therefore suggest that enforcement be the subject of a separate paper in due course.

Responses to Consultation Questions

What follows are my responses to each of the consultation questions:

Q1 Do you agree that the proposed extension and codification of the existing early notification process would be beneficial?

Answer: Yes I agree. This might assist in the vetting process of new listing applications.

Q2 At what point should this early notification be required in order to make it feasible for the nominated adviser to have identified the information required but also early enough in the process to enable the discussion to have a benefit to the parties in their preparation for admission?

Answer: No comment. It is best for Nomads and AIM regulators to answer this question.

Q3 Does the list proposed at section 4 cover the key information that should be set out in the early notification process and, if not, what additional information would be beneficial?

Answer: It appears to cover most of the key information that might be required although two useful additions might be the key accounting policies followed by the company (for example that of revenue recognition) which are often the source of future problems and also a brief history of the company plus the markets in which it operates.

Q4 Do you agree that it would be helpful to publish a list of non-exhaustive examples of factors to be taken into account by nominated advisers when assessing appropriateness for AIM?

Answer: Yes I agree this would be helpful. One factor that I think should be examined is the regulatory structure and upholding of the rule of law in the countries where the candidate is registered or operates.

Q5 Do you agree with or have any comments on the proposed examples at section 4?

Answer: The factors listed are useful ones, although defining what is an inappropriate corporate structure or business model might be somewhat difficult.

Q6 Do you agree that the current approach to free float strikes the right balance or do you consider that London Stock Exchange should consider the introduction of a minimum “shares in public hands” requirement?

Answer: In general I do not perceive the lack of any minimum free float at present to be a problem. But that is from the point of view of a private investor when institutional investors may take a different view. I also generally dislike to invest in companies where more than 30% of the shares are held by one person or related parties.

Q7 If you believe London Stock Exchange should consider introducing specific free float requirement, what would you consider to be an appropriate minimum and the reasons why? What types of shareholders should be considered as “shares in public hands”?

Answer: I am not sure a single figure is easy to give in answer to this question. It surely depends on the size of the company, and the nature of its development stage. For example, one might expect an early stage company to have a high concentration of shares held by the founders but that should not necessarily prejudice an AIM listing. It would deter such companies from listing if a minimum free float was set and at a high level. For larger and more mature companies I suggest the required minimum free float should be larger.

Q8 Do you believe that it would be beneficial to extend a minimum fundraising criteria at admission, or should it continue to only apply to AIM investing companies?

Answer: I suggest it would be beneficial. This would ensure some institutional involvement in the fund raising which may improve the quality of listings.

Q9 Do you agree that such a proposal should only apply to non-revenue generating companies? If yes or no, please explain why.

Answer: I do not agree. It would be beneficial for all companies.

Q10 If a threshold is introduced, what level of minimum fundraising would be most appropriate on or immediately before admission and why? a) £2m b) £3m c) £6m d) other

Answer: I suggest £2m before experience was gained of the benefits of such a limit, although that is quite a low figure and should be raised later.

Q11 Are there any other circumstance where a company should not have to meet a minimum fundraising criteria, beyond those referred to above with respect to companies with a historic track record?

Answer: No comment.

Q12 Do you consider the current requirements set out in section 6, including duties of the nominated adviser at admission to consider the efficacy of the board and the adoption of appropriate corporate governance standards and disclosure under AIM Rule 26, to be effective? If not, please explain why?

Answer: The current requirements are inadequate and do not cover many of the problems I see as an investor in AIM companies. The lack of adherence to any corporate governance standard is common. The lack of knowledge of AIM company directors about company law and what should be considered good corporate governance are two major deficiencies. There are too many examples of company directors acting in a cavalier fashion, or failing to disclose significant information to investors. The education of directors in ethical principles might also be a good idea.

Q13 Do you believe that AIM companies should be required to report annually against a governance code?

Answer: Yes this would be a positive step. Any such code should be simple though. However it should include rules on disclosure of remuneration of directors (similar to, but simpler than the rules for main market companies), and a requirement for there to be at least an advisory vote to approve the remuneration report.

Q14 Are there further ways London Stock Exchange can helpfully educate market participants, particularly individuals, as to what London Stock Exchange can and can't do in respect of its remit, beyond the information already available on its website?

Answer: I agree that the LSE should do more to educate smaller investors about the regulation of AIM and what it can and cannot do. I think this would be best organised in conjunction with private investor organisations such as ShareSoc and UKSA, and with the support preferably of private client stockbrokers.

Q15 Do you agree with automatic fines for explicit breaches of the AIM Rules for Companies? If so, what types of breaches should the fine be applied to?

Answer: Yes I agree, and should be applied to all breaches. But such fines should only be imposed on Nomads or the directors of AIM listed companies, not the companies themselves as otherwise the shareholders will be the main sufferers.

Q16 In respect of Q15, what do you believe is the appropriate level of fine?

Answer: The level of fine should relate to the nature of the breach, and for example be based on the financial resources of the Nomad. In other words, the penalties should be proportionate and at the discretion of LSE management.

Note though that just as important as penalties are public disclosure of warnings, censures and fines. All such warnings, censures and fines imposed on Nomads or AIM listed companies should be disclosed. Doing so will improve compliance with the Rules.

Q17 Are there other changes to the Disciplinary Handbook that you think London Stock Exchange should consider?

Answer: The maximum fine that can be imposed for Rule breach should be substantially increased.

Conclusion

I hope my answers to your questions are helpful. You are welcome to contact me for further information if required.

Yours sincerely

Roger W. Lawson
Managing Director