

## *New AIM Rules and Guidance Note for Investing Companies*

June 2009

Following its consultation in December 2008, the LSE has published a revised edition of its AIM Rules for Companies, as well as a new AIM Note for investing companies, both of which have effect from 1 June 2009. Both the new Rules and the Note have been implemented substantially as originally proposed. They require an investing company to have a sufficiently "precise and detailed investing policy", typically to have an independent board of directors and to treat investment managers as directors for the purposes of several AIM rules.

### **Required actions**

Further detail on the rule changes is set out under the heading Rule Changes below but, in short, an existing investing company should:

- make any necessary changes to its investing policy as soon as practically possible, and in any event by 1 December 2009. The AIM team will not require shareholder approval to be sought for any changes arising solely as a result of the rule changes, unless the changes are considered to change materially the overall objective and risk profile of the existing strategy;
- make an announcement when the revised investing policy has been finalised, as well as making the revised policy available on the company's website, and publish it in the company's next annual accounts;
- if the company does not comply with the independence requirements of the new Rules (see below), make an announcement to this effect prior to 30 September 2009. Where the company has not disclosed, either in its admission document or in a subsequent announcement, certain information required by the Note ("Further disclosures on admission"), this information should also be announced (this includes information about its investment manager, the expertise of its board in respect of the investing policy, its taxation status and any policy or strategy in relation to taxation);
- ensure that its investing policy meets the criteria set out in the revised Rules in order to obtain the benefit of partial carve-outs to the rules on substantial transactions and reverse-takeovers; and
- if its website refers to multiple AIM companies, ensure there is no scope for confusion between the companies and that information can be located without using search functions on the site.

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## Rule Changes

The key changes to the Rules, and the key information set out in the AIM Note for investing companies, are summarised below.

### Investing policy

The new Rules use the term "investing policy" rather than "investing strategy" and include a new definition of the term. The AIM team has also altered the content requirements of the investing policy and introduced a requirement to obtain shareholder approval in relation to any subsequent material changes to the policy. The guidance to Rule 8 (investing companies) has been expanded to state that the investing policy must be "sufficiently precise and detailed so that it is clear, specific and definitive". The investing policy should be prominently stated in the admission document and subsequent circulars relating to the investing policy and should, at a minimum, be stated in the company's annual accounts. The guidance also clarifies how companies should assess what constitutes a material change to the policy. If a company has not "substantially" implemented its investing policy within 18 months of admission (i.e. invested at least 50% of all funds available to it in accordance with its policy), there will be a requirement to obtain shareholder consent for the investing policy on an annual basis until the company is substantially invested. Since the definition includes a requirement for the policy to be precise and detailed, the AIM team is unlikely to consider it appropriate for the policy to include a catch-all provision which would potentially allow the company to invest in a range of assets outside the stated policy.

### Investment managers

The AIM team has introduced a definition of this term as well as specific disclosure requirements in relation to investment managers for externally managed investing companies. The definition also includes external advisers who provide material advice to the investment manager or AIM company. Such managers, their group companies and their key investment decision-making employees will be regarded as directors for some of the AIM requirements such as related party transactions. The company's website must also state the company's investment managers and/or key personnel.

The AIM team have also made it clear that the appointment, dismissal or resignation of any such managers or any of their key personnel should be notified to the market together with information on the consequences of such an event.

### Independence and experience

The AIM team has introduced provisions about the need for independence between the board, the Nomad and any investment manager or substantial shareholders to ensure that both the investment manager and the board are appropriate for AIM and have sufficient experience. Companies should disclose whether or not their board of directors and nominated advisers are independent from their investment managers in the admission document, and announce any subsequent changes to this position.

### Admission document disclosures

The LSE has confirmed the market practice of using Annex XV of Appendix 3 to the Prospectus Rules as the basis for admission document disclosure for investing companies.

### Corporate transaction rules

The Rules now contain information on how to apply the class tests to investing companies. This takes account of situations where companies may not have turnover or profits at the outset – an investment made by an investing company which is in accordance with its investing policy and which only breaches the profits and turnover tests contained in the class tests will be considered a transaction of a "revenue nature in the ordinary course of business" and therefore not require disclosure as a substantial transaction in accordance with the AIM Rules.

### Fundamental changes of business

Rule 15 (Fundamental changes of business) previously provided that the investing policy of an investing company created by the disposal of a pre-existing business should be approved by shareholders and implemented within 12 months. The rule has now been broadened to cover situations where there is a divestment of all or substantially all of a

*By introducing more tailored rules for investing companies, the AIM team hopes to ensure that the regulatory framework for such companies remains appropriate.*

company's business due to actions such as the cessation of business, or the gradual disposal of assets over a number of years as well as where there is a disposal of assets. However, the Note clarifies that a disposal by an investing company which is within its investing policy but would otherwise trigger Rule 15 will not be subject to the requirement to obtain shareholder consent.

## Rules applicable to new investing companies

The AIM team has clarified that it expects the minimum £3m fundraising required by Rule 8 of the AIM Rules to be from independent investors rather than via a subscription by existing owners or managers. It has also codified the practice of permitting new investing companies that have not traded to omit a financial report from their admission document.

It has, in addition, added a carve out to rule 7 (lock-ins for new business) for funds whose investments are managed by an appropriately authorised investment manager acting on a fully discretionary basis.

## Guidance for future investing companies

The AIM team has taken this opportunity to reiterate that admission to AIM should only be sought by investment companies which are straightforward in their structure, securities and investing policies. More complex entities should consider admission to an alternative market, such as the Main Market or Specialist Fund Market.

## Further information

The revised Rules and Note are available [here](#). For further information, please contact your usual Travers Smith contact or:

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