

Bird & Bird

Capital Markets Group: PLC update

November 2017

LSE's consultation on the review of the AIM rules

The London Stock Exchange (the **Exchange**) published 'AIM Notice 46' on 11 July 2017 (the "**Consultation Paper**") which initiated a consultation process on proposed changes to the AIM Rules for Companies and the AIM Rules for Nominated Advisers (together the **AIM Rulebooks**). Bird & Bird welcomed the Consultation Paper and participated in the consultation process

The Consultation Paper welcomed feedback under the following four key headings:

Minimum Free Float and Fundraising Criteria

Currently AIM companies are not subject to including a specific threshold for the portion of shares that can be publicly traded (i.e. free float) in its admission document. However, the Exchange recognises that sufficient free float is fundamental to the orderly trading and liquidity of securities once they are admitted to AIM and has asked whether it should introduce a minimum 'shares in public hands' requirement. We felt that the qualitative approach, which is currently taken by the LSE, is more meaningful than imposing a minimum threshold, which could be seen to be arbitrary but have suggested that additional guidance in Inside AIM would be helpful. We also felt that consideration should be given to the market capital of the company and what investors are comfortable with.

The Consultation Paper also seeks feedback as to the appropriateness of introducing minimum fundraising criteria at admission (including feedback as to the most appropriate level of minimum fundraising) which, at present, only applies to AIM investing companies. We could

understand the logic behind this suggestion i.e. to improve the quality of companies listing on AIM but noted that some companies may wish to list for a variety of reasons, not always tied to an immediate fundraising. For example, there may be instances where the company has agreed to undertake a pre-IPO fundraising for a specific purpose (e.g. to acquire a business, licence, assets) and structured this as a convertible with a commitment to seek a listing, so that it may be fully funded before Admission. If there is support for this proposal, perhaps a broader concept of "associated fundraising" could be adopted which could include a pre-IPO fundraising.

Early clarity for applicants and nominated advisors in the admission process

Where there are any atypical features of a company that is looking to list on AIM, it is the role of the nominated advisor to engage with the Exchange at an early stage to discuss the company's proposed application.

The Consultation Paper proposes to extend the early notification process to all proposed admissions and codify this into the rules, without prejudicing the nominated adviser's ongoing obligation to update the Exchange about a company's appropriateness, any new information or any changes or circumstances that arise during the admission process.

Consistency of approach across the Nomad community in respect of appropriateness considerations

Rule 9 of the AIM Rules for Companies allows the Exchange to impose special conditions on the proposed company or refuse admission where it considers that the nominated adviser has not adequately addressed issues prior to admission or it considers that the proposed admission may be detrimental to the orderly operation of AIM or the reputation of AIM.

Whilst the Exchange admits that it rarely exercises its powers under Rule 9, they are keen to ensure consistency of approach from nominated advisers and to set expectations as to what nominated advisers should take into account when meeting their obligations under the AIM Rules for Nominated Advisers. Accordingly, the Consultation Paper discusses the possibility of the Exchange publishing a list of non-exhaustive examples of factors that should be taken into account by nominated advisers when assessing a company's appropriateness for AIM. One such factor includes concerns as to the good character, skills, experience or previous history of a director or shareholder.

Appropriate levels of corporate governance

The AIM Rulebooks do not currently impose a specific board composition requirement for AIM companies (e.g. to have a specific number of non-executive directors or that those directors are independent of the company to be admitted). Instead, it is down to the nominated adviser to assess and consider the efficacy of the board of the directors and the adoption of appropriate corporate governance standards. The Consultation Paper invites feedback as to whether the current composition of the board is appropriate and effective.

Finally, the Consultation Paper also welcomes feedback as to whether AIM Companies should report annually against a governance code.

The Exchange are currently still considering feedback to its consultation paper and looking to see whether any changes to the AIM Rulebooks should be drafted for further consultation.

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