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Dear Sirs,

AIM Notice 44 – Consultation on proposed changes to AIM Rules for Companies

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Finance and Legal Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. We welcome the London Stock Exchange's initiative to consult on changes to the AIM Rules for Companies in advance of the Market Abuse Regulation (MAR) coming into effect on 3 July 2016.

As an overarching comment, we are concerned with the notion that a company complying with Article 17 of MAR – part of a legally binding regulatory framework – does not necessarily indicate its compliance with Rule 11. This presumption could potentially result in companies being required to disclose inside information when carefully considered legal requirement (which are thought to be sufficient) state that they do not, or to do so may prejudice the company's legitimate commercial interests or one where AIM Regulation takes disciplinary action against companies in spite of their compliance with MAR. We strongly believe that this may result in AIM companies being in a conflicted position due to the uncertainty as to how to follow both the legal requirements and the market rules. To address this concern, we strongly encourage AIM Regulation to provide maximum clarity through guidance and FAQs as soon as possible, as this will have a direct impact on small and mid-size quoted companies.

We have responded below in more detail to the specific amendments from the point of view of our members, small and mid-size quoted companies.

Responses to specific amendments

1. Amendments to the AIM Rules for Companies

1.1 AIM Rule 11 – General disclosure of price sensitive information

As a general comment, we believe that Rule 11 as drafted may put AIM companies in a conflicted position due to the similarities of scope of this rule and Article 17 of MAR. If AIM Regulation is to retain Rule 11, then it should, through FAQs, give one or more examples of a circumstance in which an announcement is required under AIM, but not MAR. If such examples are not identified so that they can be understood by small and mid-size quoted companies and their advisers, we believe that Rule 11 should not be retained once MAR comes into force.

We are concerned that having a disclosure requirement in Rule 11 that is wider in scope than Article 17 of MAR will be burdensome and present difficulties for our members, small and mid-size quoted companies. By covering similar areas, this could lead to situations where companies are uncertain as to the correct application of the rules. One example of such uncertainty would be whether information falls within the definition of 'inside information' under MAR and/or whether disclosure of such information may be delayed. This would result in a lack of clarity for the company, which would have to seek the views of its advisers, as well as both the FCA and AIM Regulation. Therefore, we would strongly encourage AIM Regulation and the FCA to clarify as soon as possible and issue public guidance on how the joint approach will work in practice, in order to allow small and mid-size quoted companies and their advisers sufficient time to adjust to the new procedures. Again, we are concerned that overlapping requirements will be unnecessarily confusing for our members.

As an alternative, in order to retain Rule 11, this rule could be modified to state that "an AIM company shall comply with the disclosure obligations of Article 17 of MAR". This would mean that AIM Regulation would be able to continue to exercise disciplinary action if the company were in breach but would avoid the difficult overlap identified above.

In case the Rule 11 is kept as proposed, we suggest amending the use of "without delay", as currently stated, to "as soon as possible", to further harmonise the requirement to disclose of price sensitive information with that in Article 17 (1) in MAR. We believe that the current variance of terminology serves no practical purpose; harmonising these terms will provide more clarity and certainty to small and mid-size quoted companies.

We support the principle of Rule 11 regarding the general disclosure of price sensitive information as stated in Guidance Note a).

Regarding Guidance Note b), we believe that it could be helpful for companies to include a provision requiring AIM Regulation to inform them and their nominated advisers if the London Stock Exchange (the Exchange) has referred a potential breach of MAR to the FCA. We would also suggest that, for clarity, the words "does not" are replaced with "may not", since following the requirements of MAR may result in compliance with the AIM Rules.

We observe that, in most cases, the tests for inside information as detailed in both the CESR Guidance (CESR/06-562b), and the FCA's DTR 2.2.6G (as proposed) are more specific and broader than the equivalent provisions of Rule 11 or related guidance given by the Exchange. For this reason, we suggest inserting "or

under an AIM company's legal obligations under MAR" to the end of Guidance Note c) for Rule 11. We believe that this would provide additional clarity to the Exchange's intention not to replicate MAR disclosure obligations.

Regarding Guidance Note d), we note that Article 7 (4) of MAR states that price sensitive information is information that a reasonable investor uses. By contrast, the AIM Rules state that price sensitive information is not limited to information used by a reasonable investor. In this respect, the AIM Rules go beyond the legal requirement. However, it is difficult to conceive of any information that is likely to move a share price that a reasonable investor would not use in practice. On this basis, we believe that the distinction serves no practical purpose and would therefore support the deletion of the words "but is not limited to", as this would better align Rule 11 requirements with the legal requirements of MAR without creating any detriment to the interests of reasonable investors.

Regarding Guidance Note e), we agree with the deletion of the requirement not to disclose non-binding agreements. However, we are concerned that the reasons to delay disclosure of inside information under MAR are potentially wider than those in Rule 11. In unusual situations, AIM Regulation might be, in effect, requiring AIM companies to disclose inside information when MAR allows AIM companies to delay such disclosure, where the company's legitimate commercial interests may be prejudiced. We believe this regulatory burden on smaller quoted companies to be disproportionate, as these companies should be able to protect their interests without it being perceived a detriment to the objectives of investor protection and orderly markets. In this regard, we would recommend that this guidance is aligned with Article 17 (4) of MAR.

In passing, there is a typo in Guidance Note e) v) – there should be a full stop instead of a semi-colon.

1.2 AIM Rule 17 – Directors' dealings

We support the deletion of the current Rule 17 requirement to disclose directors' dealings and to signpost an AIM company's obligations under Article 19 of MAR in the new guidance to Rule 17 as the new legal requirement means that there is no longer a need for a specific market rule.

1.3 AIM Rule 21 – Restrictions on dealings

We agree with AIM Regulation's approach to remove the existing provisions of Rule 21 along with the associated definitions of "deal" and "unpublished price sensitive information" contained in the glossary. This would conflict with MAR's provisions imposing a legal prohibition on trading during close periods and exemptions to those prohibitions, and it would be unhelpful for companies not to have clarity on this.

However, we believe that substituting the use of "director" and "applicable employee" with the MAR definition of a "person discharging management responsibility" (PDMR) would further harmonise AIM Regulation with MAR requirements and subsequently facilitate compliance with both AIM Rules and MAR by small and mid-size quoted companies. As such, we suggest amending the first line to read: "An AIM company must have in place a dealing policy setting out the requirements and procedures for dealings in any of its AIM securities by persons discharging management responsibility as defined by MAR."

We believe this would also serve to prevent confusion in the AIM rules by restricting the definition of the term "applicable employee" to only the lock-in requirements relating in Rule 7. We note that amending

"director" and "applicable employee" to the MAR definition of PDMR would need to be replicated in the rest of Rule 21, as well as deleting part b) under "applicable employee" in the glossary.

We believe that the use of the words "from admission" may be misleading as this should apply at all times. Furthermore, the words "reasonable and effective" could also be deleted. We believe that these words may misleadingly imply that AIM Regulation will have jurisdiction over the PDMR dealing regime when this will, in fact, be a matter for the FCA to determine.

In light of the fact that some elements of MAR will still be unclear for companies when it comes into force on 3 July 2016, we believe that AIM Regulation should provide a grace period for companies with regards to the revision or establishment of their dealing policies in respect of these areas of uncertainty. This will allow these companies to adjust to any guidance on MAR that is still to be published in the coming months.

1.4 Preliminary statement of annual accounts

With regards to the preliminary statement of annual accounts, we support AIM Regulation's approach of only considering making changes to the AIM rules or issuing further guidance once ESMA or the Commission clarify whether an issuer will be able to end its close period through the publication of preliminary statements of annual accounts under MAR.

We note, however, that this debate has particular relevance to employee share schemes and 30 June year-end companies, which will need to see this issue resolved for their proposed awards. On this issue, and in general, it would be helpful if AIM Regulation could issue guidance as soon as possible on preliminary statements and AIM Regulation's ability to continue, or not, to operate the derogation referred to in Inside AIM No 5.

If, after further guidance from ESMA or the Commission is issued on this, it is permitted to the issuer to end its close period through the publication of preliminary statements of annual accounts, we consider that it would be better for small and mid-size quoted companies if the AIM rules were then changed to introduce the concept of company preliminary statements (for companies that wish to produce them) and to explore what should be included in a company's preliminary statement so that a company could easily comply with Rule 21. We believe that this would introduce more transparency in the market and we would welcome further consultation on this issue in due course.

2. Consequential changes to the AIM Rules for Nominated Advisers and the AIM Note for Investing Companies

We believe that the proposed amendment to AR5 of Schedule Three of the AIM Rules for Nominated Advisers is non-sequitur to the wording of that provision, but this can be remedied by deleting the word "review" without changing the intention of ensuring that new applicants have in place a dealing policy consistent with the proposed requirements of Rule 21.

3. Other changes to the AIM Rules for Companies - Guidance to Rule 41

We generally agree with the clarification included in the Guidance to Rule 41. However, we believe that it would be more efficient, both for AIM Regulation and nominated advisers, to move the exemptions set out in the guidance note to the rule itself.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Corporate Finance Expert Group

Richard Evans (Chairman)	**Strand Hanson Limited**
Nick Naylor David Worlidge	Allenby Capital Ltd
Chris Hardie	Arden Partners PLC
Chris Searle	BDO LLP
Nicholas Narraway	Hewitson Moorhead
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Sandra Bates	Pillsbury Winthrop Shaw Pittman LLP
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Dalia Joseph	Stifel
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Paul Arathoon Andrew Collins David Hicks Tom Shaw	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Mark Taylor	Dorsey & Whitney
June Paddock	Fasken Martineau LLP
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