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25 May 2018

Dear Nilam,

AIM Notice 51 – Changes to the AIM Rules for Nominated Advisers

We welcome the opportunity to respond to London Stock Exchange's consultation on changes to the AIM Rules for Nominated Advisers.

The Quoted Companies Alliance Primary Markets Expert Group has examined your proposals and advised on this response. A list of Expert Group members is at Appendix A.

Overall, whilst we do not disagree with the general sentiments of the proposed changes, we are concerned that elements of the proposals either provide insufficient clarity for Nominated Advisers to effectively comply with the AIM Rules for Nominated Advisers, or place a disproportionate burden on Nominated Advisers. In particular, where they extend beyond that required of sponsor firms by the Financial Conduct Authority (FCA).

We believe that it is imperative that any changes to the AIM Rules for Nominated Advisers which affect the relationship between Nominated Advisers and London Stock Exchange are developed in the spirit of collaboration. We believe that a proportionate regulatory regime will help to build trust and confidence between Nominated Advisers and London Stock Exchange.

Specifically, we encourage London Stock Exchange to consider making the following adjustments to the proposed rule changes:

- **Criteria – Rule 2:** The new requirements should be reconsidered to ensure that Nominated Advisers do not face requirements which go beyond that required of sponsor firms. In any event, the types of risk – which Nominated Advisers would be required to identify, assess, manage, monitor and control – should be clearly defined, as they are in the FCA Handbook.
- **Overriding principle of the preservation of the reputation and/or integrity of AIM – Rule 3:** Shareholders of Nominated Adviser firms should only be included in the general "detrimental to AIM" test, where it can be demonstrated that there is a clear potential risk of inappropriate influence over the Nominated Adviser function by the relevant shareholder(s).

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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- **Qualified Executives – Rule 4:** The sentence stating that “Qualified Executive status is not an individual status or qualification” should be deleted.
- **Changes at a Nominated Adviser – Rule 12:** The change of control requirement should be more clearly defined.

We are concerned that the proposed rule changes bring a higher level of subjectivity to certain aspects of the AIM Rules for Nominated Advisers (highlighted above) and that a fear of an inconsistent application of such rules will lead to a reduction of confidence by Nominated Advisers in London Stock Exchange. We would strongly encourage London Stock Exchange to discuss in more detail the proposed rule changes with Nominated Advisers firms, so that any changes to the AIM Rules for Nominated Advisers can be addressed by Nominated Advisers with confidence. We would be happy to arrange a meeting with our Primary Markets Expert Group.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'T. Ward', with a stylized flourish at the end.

Tim Ward
Chief Executive

Response

Criteria – Rule 2

The proposed change will require Nominated Advisers to be "capable of being effectively supervised by the Exchange" and to have "appropriate financial and non-financial resources". We note that these replicate the FCA's threshold conditions included in COND 2.3 ("Effective Supervision") and COND 2.4 ("Appropriate Resources").

We do not consider this to be an appropriate requirement for London Stock Exchange to impose for three reasons:

1. The FCA's threshold conditions are derived from the Financial Services and Markets Act 2000 and are therefore statutory criteria required for regulated firms to provide financial services in the UK. We believe that seeking to apply the same criteria to firms acting as a Nominated Adviser is excessive;
2. The terms "effective supervision" and "adequate resources" are not sufficiently defined in the proposed changes; nor is there any guidance to support Nominated Advisers. We are concerned that this will provide too much discretion for London Stock Exchange such that Nominated Advisers cannot address these requirements with confidence. We would encourage London Stock Exchange to offer examples of the types of non-financial resources that Nominated Advisers should evidence (other than Adequacy of Staff – Rule 24); and
3. There are no similar criteria in LR8.6 or LR8.7 for sponsor firms. Such requirements should only apply to firms operating across the whole spectrum of financial services rather than within one very narrowly defined band of such services.

Furthermore, we note that London Stock Exchange would require Nominated Advisers to have "adequate risk management systems to ensure that it can identify, assess, manage, monitor and control risk appropriately" in place. This is a similar approach taken by the FCA for the whole financial services industry set out in SYSC 4.1.1R, and which is subject to further definition and guidance within SYSC chapter 7. We are concerned that that this would create difficulties for two reasons:

1. The types of "risk" are not defined. We note that the FCA Handbook clearly defines a range of risks including, but not limited to, credit risk, residual risk, market risk, operational risk, remuneration risk, liquidity risk, counterparty risk, position risk, group risk, governance risk and conduct risk; and
2. There are no similar criteria in LR8.6 or LR8.7 for sponsor firms. Such requirements should only apply to firms operating across the whole spectrum of financial services rather than within one very narrowly defined band of such services.

We would therefore encourage London Stock Exchange not to proceed with the proposed changes without more detailed clarification of these new rules and further detailed consultation with Nominated Adviser firms.

Overriding principle of the preservation of the reputation and/or integrity of AIM – Rule 3

We note that the proposed rule changes regarding the general "detrimental to AIM" test have been extended to include shareholders of Nominated Adviser firms, as well as their staff. We believe that this would create two problems:

1. There are no qualitative or quantitative criteria for which shareholders may be relevant for this consideration. We are concerned that this will provide too much discretion for London Stock Exchange such that Nominated Advisers cannot address these requirements with confidence.; and
2. There are no similar criteria in LR8.6 or LR8.7 for sponsor firms. Such requirements should only apply to firms operating across the whole spectrum of financial services rather than within one very narrowly defined band of such services.

We encourage London Stock Exchange to adjust the proposed changes to Rule 3 so that shareholders of Nominated Adviser firms are only included in the general "detrimental to AIM" test, where it can be demonstrated that there is a clear potential risk of inappropriate influence over the Nominated Adviser function by the relevant shareholder(s). Furthermore, we would also encourage London Stock Exchange to provide clear guidance for the assessment of which shareholders are relevant within this context.

Qualified Executives – Rule 4

We note that the proposed additional paragraph includes a sentence stating that "Qualified Executive status is not an individual status or qualification". We consider this sentence to be superfluous to the rest of the proposed paragraph; we note that there are clearly defined criteria that determine whether or not an executive "qualifies" in order to be designated a "Qualified Executive". We would therefore encourage London Stock Exchange to delete this sentence.

If it is desired to retain this sentence, then we would encourage London Stock Exchange to have further detailed discussions with Nominated Advisers about the position of Qualified Executives and the recognition of Nominated Adviser status.

Changes at a Nominated Adviser – Rule 12

We believe that the proposed new rule goes beyond the requirements imposed by the FCA's sponsor regime – particularly with respect to commencement of an investigation, disciplinary action or criminal proceedings. We note that the FCA only ever requires notification where a case or investigation has been determined.

We are concerned that this could result in a Nominated Advisers' rights to confidentiality being encroached. We question why London Stock Exchange needs to be aware of allegations against a Nominated Adviser unless, and until, they are proven. Accordingly, we believe that any notification should only be required for fully developed/proven events.

Furthermore, we would encourage London Stock Exchange to more clearly define the change of control requirement. We note that the FCA Handbook extensively defines the concept of "controllers", which sets out clear criteria for evaluating whether a change in shareholdings represents a notifiable change of control.

Other supervisory power – Rule 27

Given Rule 24, we believe that the wording contained in paragraph (a) is excessive and that London Stock Exchange should not be able to require actions be undertaken by a Nominated Adviser and nor should London Stock Exchange be able to direct a Nominated Adviser to employ more staff. A more appropriate approach would be to “recommend” remedial action and “propose” that the Nominated Adviser takes specific steps.

Other matters

- In the Index on page 1 “Criteria for becoming a nominated adviser” should be replaced with “Criteria for being a nominated adviser”;
- Rule 12 – a Nominated Adviser can often be in a position where it is considering changing its name, address or place of business which then do not come to fruition. We would recommend removing the need to notify “proposed” actions and just require actual changes to be notified; and
- Rule 12 – we do not see the need for the wording “proposed or contemplated” in the listed example notification regarding change of control given the wording “which is reasonably likely”.

Quoted Companies Alliance Primary Markets Expert Group

Richard Evans (Chair)	Strand Hanson Limited
Nick Naylor David Worlidge	Allenby Capital Ltd
Chris Hardie	Arden Partners PLC
Andrew Buchanan	Canaccord Genuity Ltd
David Foreman	Cantor Fitzgerald Europe
Stephen Keys	Cenkos Securities PLC
Peter Stewart	Deloitte
Stuart Andrews	finnCap
Samantha Harrison	Grant Thornton
Niall Pearson	Hybridan LLP
Richard Crawley	Liberum Capital Ltd
Tom Price	Northland Capital Partners Limited
Peter Whelan	PricewaterhouseCoopers LLP
Mark Percy	Shore Capital Group Ltd
Azhic Basirov	Smith & Williamson LLP
David Arch Stewart Wallace	Stifel
Andy Crossley	Stockdale Securities Limited
James Spinney	Strand Hanson Limited
Katy Mitchell	W H Ireland
Nicholas How	Zeus Capital