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External in-house counsel

LSE PROVIDES GUIDANCE ON AIM COMPLY OR EXPLAIN REGIME

September 2018

The London Stock Exchange ("**LSE**") has provided guidance on the new "comply or explain against" requirements (the "**Guidance**") for Alternative Investment Market companies ("**AIM Companies**"), within the AIM Rule 26. AIM is a submarket of LSE, which allows smaller, less viable companies to float shares with a more flexible regulatory system than that applicable to the main market. The AIM Rule 26 states that from admission, each AIM Company must maintain a website on which certain information should be available to view, free of charge. This information includes, but it is not limited to, country of incorporation, main country of operation, constitutional documents, annual accounts, number of securities on issue, and name of directors ("**Disclosure Information**").

In addition to this information, from 28 September 2018, the Guidance imposes AIM Companies to comply with a recognised corporate governance code; or alternatively, where they depart from the code, explain the reasons why they do so.

The key takeaway points for AIM Companies are as follows:

- timing of disclosure;
- how to make the disclosure;
- requirements for new applicants to AIM;
- recognised code;
- impact on investor engagement; and
- change in content to admission documents.

TIMING OF THE DISCLOSURE

The Guidance provides that the Disclosure Information should be reviewed annually and the company's website should include the date on which the Disclosure Information was last reviewed. The Guidance expects that in most cases the review will take place at the same time as the company prepares its annual report and accounts. The AIM Rule 26 disclosure should then reflect the up to date position when it is published, rather than the position at the company's last year end.

If an AIM Company has not yet made disclosure against a recognised code in its annual report, the corporate governance statement must be disclosed on its website by 28 September 2018. Many AIM companies, however, have already made disclosures against a recognised code in their annual report.

HOW TO MAKE THE DISCLOSURE

Section AIM Rule 26 on the company's website

The disclosure should be clearly presented and easily accessible in the AIM Rule 26 page on the company's website.

Content of the disclosure

AIM Companies need to disclose what recognised corporate governance code they comply with, and if they depart from such a code, explain the reasons why they do so.

This statement can be incorporated by cross reference (for example in a corporate governance section of the annual report), provided that the material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material (for example, the relevant section of the annual report or the URL for the relevant web page).

Review and preparation of disclosure

AIM Companies need to review their corporate governance arrangements; if they don't already disclose on a comply or explain basis against an appropriate corporate governance code, they should (in conjunction with its Nominated Adviser) select an appropriate code and prepare the disclosures that will need to be made in advance of the deadline. AIM Companies that are already disclosing on a comply or explain basis against a corporate governance code will have to consider what further disclosures are required and whether any changes are needed to their internal corporate governance policies and practices.

RECOGNISED CODE

The Guidance does not impose a list of accepted corporate governance codes, with the intent of allowing AIM Companies to apply a code that suits their specific stage of development, sector and size. Nonetheless, the Guidance has the view that an AIM Company should 'comply or explain' against one of the industry codes which is appropriate for a company admitted to a public market; the reference is to established benchmarks such as the recently released Quoted Companies Alliance Corporate Governance Code (widely regarded as suitable for small and mid-size companies) and the recently amended UK Corporate Governance Code, which are the most likely codes to be applied in practice.

For AIM companies that have a dual listing in their home state, it is acceptable to report using an appropriate standard in their home jurisdiction, provided that the disclosure is available on its website and reviewed annually, in accordance with AIM Rule 26.

It is important that AIM Companies ensure that they remain informed of any changes to the recognised code that they apply.

One area where the change could have significant implications is executive remuneration, including quantum, performance conditions and factors such as wider employee pay. Therefore, disclosures in the Directors' Remuneration Report are likely to expand.

IMPACT ON INVESTOR ENGAGEMENT

Good standards of corporate governance are a significant contribution to a company's long term success. Accordingly, rather than simply identifying areas of non-compliance, good corporate governance is enhanced by a meaningful explanation of the company's practices against the principles of the chosen code. The new AIM Rule 26 disclosure requirements aims to provide information to investors, in order to enhance the engagement between them and the boards of AIM Companies. Therefore, the Disclosure Information should be informative and not misleading.

REQUIREMENTS FOR NEW APPLICANTS TO AIM

Timeline for compliance

Although the deadline for complying with the new requirements is 28 September 2018, new applicants are already required from 30 March 2018 to state which corporate governance code they intend to apply. Regardless of this, the final deadline for them to comply is still 28 September 2018.

CHANGE IN CONTENT TO ADMISSION DOCUMENTS

The Guidance also imposes a change to the content required for admission. They must now include:

- details of the recognised corporate governance code that the board has decided to apply (from 30 March 2018); and
- how the company complies with that code and, where it departs from the code, an explanation of the reasons (from 28 September 2018).

NEXT STEPS

AIM Companies should ensure that the content of their disclosure has been prepared and is ready to be published in accordance with the 28 September 2018 deadline.

To view the updates to AIM Rule 26, please click here.

For more information, and any guidance or help with the AIM Rules, Cleveland & Co External in-house counsel, your specialist outsourced legal team, are here to help.

WHY WE'RE DIFFERENT

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Cleveland & Co offer you fixed fees and retainer structures that provide you with certainty of cost and we offer industry experience that cuts through common legal complexity.

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