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Memorandum on directors' continuing obligations and responsibilities under the Market Abuse Regulation and the AIM Rules

Bowleven plc

14 March 2017

CONTENTS

INTRODUCTION

"An AIM company must ensure that each of its directors accepts full responsibility, collectively and individually, for its compliance with [the AIM Rules]" [1]

1. What is the purpose of this memorandum?

1.1 The purpose of this memorandum is to summarise for the directors (the "**Directors**") of Bowleven plc (the "**Company**") certain key continuing obligations under:

1.1.1 the Market Abuse Regulation[2] ("**MAR**") and the related delegated acts, technical standards and guidance made thereunder; and

1.1.2 the "AIM Rules for Companies" (the "**AIM Rules**"), the current version of which is dated July 2016.

1.2 Copies of the AIM Rules have been provided to the company secretary should Directors wish to refer to them. The AIM Rules are also available for download from the website of the London Stock Exchange plc (the "**London Stock Exchange**"). Copies of MAR and the associated regulations and guidance made thereunder are available on request from Shepherd and Wedderburn LLP.

2. What does this memorandum cover?

2.1 This memorandum summarises the principal continuing obligations arising under MAR and the AIM Rules. It also briefly discusses certain potential liabilities that may arise at law should the Directors fail to comply with their continuing obligations.

2.2 This memorandum is designed to be a general guide only and does not purport to be a definitive work. In particular, this memorandum does not consider obligations arising:

2.2.1 at common law;

2.2.2 under the Companies Act 2006, or in relation to insolvency matters, or in relation to the circumstances in which a disqualification order could be made against a director;

2.2.3 under the City Code on Takeovers and Mergers (being the code that regulates, amongst other matters, takeover offers for public companies incorporated in the United Kingdom), save for a brief introduction at paragraph 3 of part 4; or

2.2.4 under any agreements that the Company or the Directors may have entered into.

In addition, this memorandum only briefly discusses the market abuse offences set out in articles 14 and 15 of MAR (the "**Market Abuse Offences**") and the rules on insider dealing set out in part V of the Criminal Justice Act 1993.

If required, separate advice on the above matters should be taken as appropriate

3. What do MAR and the AIM Rules cover?

MAR

3.1 MAR is a pan-European regime intended to enhance market integrity and investor protection by harmonising rules on market abuse across Europe. The MAR regime covers (amongst other things): (i) the disclosure of inside information, (ii) when the disclosure of inside information can be delayed, (iii) the use of insider lists, (iv) the Market Abuse Offences, (v) the market soundings safe harbour and (vi) transactions by persons disclosing managerial responsibilities and their closely associated persons. MAR is directly effective in the UK and other EU member states and, for the purposes of this memorandum, came into effect on 3 July 2016. The FCA can impose penalties for breach of the Market Abuse Offences and certain related information-gathering powers set out in Part VII of the Financial Services and Markets Act 2000 ("**FSMA**") – those responsible for a breach may be subject to unlimited fine or public censure. The FCA also has measures available to it to take protective or remedial action (requiring information or corrective statements to be published) and can even suspend or cancel a company's listing.

AIM Rules

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1 AIM Rule 31.

2 EU/596/2014

3.2 The AIM Rules are rules that apply to a company when its securities are admitted to trading on AIM (a share dealing market of the London Stock Exchange). The rules seek to ensure, amongst other things, that AIM operates in an orderly and smooth manner and that there is investor confidence in AIM while affording smaller, growing companies greater flexibility by way of a simplified regulatory framework. The rules regulate, amongst other things, public announcements by AIM companies, other disclosure requirements for AIM companies and certain transactions by AIM companies. The AIM Rules are published by the London Stock Exchange. The AIM Rules themselves are supplemented for certain types of company by notes issued by the London Stock Exchange[3]. Those notes impose an additional layer of regulation in respect of the types of company to which they apply. If the London Stock Exchange, acting through its AIM Executive Panel, AIM Disciplinary Committee or AIM Appeals Committee, considers that there has been a breach of the AIM Rules it may impose penalties of such amount as it considers appropriate in accordance with the Disciplinary Procedures and Appeals Handbook[4]. Such penalties may be imposed on AIM companies (which includes for this purpose companies who previously had securities admitted to trading on AIM). The type (whether censure, fine, publication of the censure or fine, or cancellation of admission of AIM securities) and amount of any such penalty is determined by the London Stock Exchange having regard to the seriousness of the breach of the rules.

Queries

3.3 If a Director is either in any doubt as to the applicability of a provision of the MAR regime or an AIM Rule, he or she should contact the Company's nominated adviser in the first instance.

[3] Note for Mining and Oil & Gas Companies, June 2009 and Note for Investing Companies, June 2009. The London Stock Exchange provides additional guidance in its Inside AIM newsletter.

[4] AIM Rules 42-45. A copy of the Disciplinary Procedures and Appeals Handbook is available for download from the website of the London Stock Exchange plc.

PART 1 – DISCLOSURE OBLIGATIONS

AIM companies are subject to two disclosure regimes – the provisions on inside information under MAR and the provisions on price sensitive information under the AIM Rule 11. As a result, AIM companies have two regulators – the Financial Conduct Authority ("**FCA**") as competent authority under MAR and AIM Regulation for AIM. AIM companies must consider the two sets of obligations separately.

While there is clear overlap between the two disclosure regimes, compliance with MAR does not necessarily mean that the Company will have satisfied its obligations under the AIM Rules and *vice versa*.[5] Specifically, in considering whether they are able to delay the disclosure of inside information, AIM companies need to consider the position under both the MAR regime and the AIM Rules.[6]

This part of the memorandum is set out as follows:

- Part 1A (paragraphs 1 to 6) deals with the principal disclosure obligations under MAR;
- Part 1B (paragraphs 7 to 10) deals with the general disclosure obligations under the AIM Rules;
- Part 1C (paragraphs 11 and 12) deals with the standard of care required in the preparation of announcements and the control of inside information/ price sensitive information; and
- Part 1D (paragraphs 13 to 19) deals with certain specific disclosure obligations under the AIM Rules.

A table giving a high level overview of the two disclosure regimes (MAR and the AIM Rules) is set out in Appendix 2.[7]

PART 1 A – MAR DISCLOSURE REGIME

1. The general obligation of disclosure under MAR

1.1 Under MAR, the Company is required to publish inside information as soon as possible (unless the exception summarised in paragraph 3 below applies)[8].

1.2 "Inside information" is defined[9] as:

1.2.1 information of a precise nature;

1.2.2 which has not been made public;

1.2.3 relating directly or indirectly to one or more financial instruments; and

1.2.4 which, if it were made public, would be likely to have a significant effect on the prices of these financial instruments or on the price of related derivative financial instruments.

Information of a precise nature

1.3 Information is deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or related derivatives financial instrument.[10]

1.4 In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.[11] An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information.[12]

Made public

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5 Paragraph (b) of guidance note to AIM Rule 11 and Inside AIM newsletter (April 2016).

6 Inside AIM newsletter (April 2016).

7 The table is not a substitute for the more detailed information provided in this part of the memorandum.

8 MAR, Article 17(1)

9 MAR, Article 7(1)(a). Inside information also extends to the following items which are outside the scope of this note: commodity derivatives, emission allowances or auctioned products based thereon and information conveyed to persons executing orders in relation to financial instruments on behalf of clients (MAR, Article 7(1)(b) to (d)).

10 MAR, Article 7(2)

11 MAR, Article 7(2)

12 MAR, Article 7(3)

1.5 The following factors[13] may be taken into account in determining whether or not information has been made public:

1.5.1 whether the information has been disclosed to a prescribed market or a prescribed auction platform through a regulatory information service (being a news information service used to notify a stock exchange of inside information) (an "**RIS**") or otherwise in accordance with the rules of that market;

1.5.2 whether the information is available in records which are open to inspection by the public;

1.5.3 whether the information is otherwise generally available, including through the Internet or some other publication (even if a fee has to be paid to access the information) or is derived from information which has been made public; and

1.5.4 whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality.

Significant effect

1.6 In determining whether information would be likely to have a significant effect on the price of financial instruments, there is no figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes a significant effect on the price of the financial instruments as this will vary from issuer to issuer.[14]

1.7 Information would be likely to have a significant effect on price if it is information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.[15]

1.8 The FCA has indicated that an issuer may wish to take account of the following factors when considering whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions: (i) the significance of the information in question will vary widely from issuer to issuer, depending on a variety of factors such as the issuer's size, recent developments and market sentiment about the issuer and the sector in which it operates, and (ii) the likelihood that a reasonable investor will make investment decisions relating to the relevant financial instrument to maximise his economic self-interest.[16]

1.9 The FCA has also stated[17] that it is not possible to prescribe how the "reasonable investor test" will apply in all possible situations. Any assessment may need to take into consideration the anticipated impact of the information in light of the totality of the issuer's activities, the reliability of the source of the information and other market variables likely to affect the relevant financial instrument in the given circumstances. However, information which is likely to be considered relevant to a reasonable investor's decision includes information which affects (i) the assets and liabilities of the Company, (ii) the performance, or expectation of the performance of the Company's business, (iii) the financial condition of the Company, (iv) the course of the Company's business, (v) major new developments in the business of the Company, or (vi) information previously disclosed to the market.

Assessing whether information is inside information

1.10 The FCA has indicated that an issuer and its advisers are best placed to make an initial assessment of whether particular information amounts to inside information. The decision as to whether a piece of information is inside information may be finely balanced and the issuer (with the help of its advisers) will need to exercise its judgement.[18]

1.11 The FCA has published informal "guidance" on assessing and handling inside information (in its Knowledge Base relating to the Listing Rules (the "**LRs**"), Prospectus Rules and the Disclosure Guidance and Transparency Rules ("**DTRs**"), a copy of which is available on the FCA's website).[19]

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13 Paragraph MAR 1.2.12G of the Code of Market Conduct published by the FCA.

14 DTR 2.2.4G of the Disclosure Guidance and Transparency Rules published by the FCA

15 MAR, Article 7(4)

16 DTR 2.2.5G

17 DTR2.2.6G

18 DTR 2.2.7G

19 UKLA/TN/521.2 https://www.fca.org.uk/markets/ukla/knowledge-base#technical-notes

2. Disclosure of inside information under MAR

2.1 Under MAR, inside information must be disclosed to the market as soon as possible (unless the exception summarised in paragraph 3 below applies)[20].

2.2 The announcement should clearly identify:[21]

2.2.1 that the information is inside information;[22]

2.2.2 the identity of the issuer (full legal name);

2.2.3 the identity of the person making the notification (name, surname, position within the issuer);

2.2.4 the subject matter of the insider information; and

2.2.5 the date and time of the communication.

2.3 Inside information must be disclosed by notification to a RIS. In practice, the Company's public relations agency or nominated adviser will be able to assist with the release of announcements to a RIS. Regulatory information services generally also offer secure web portals that the Company can use itself to post RIS announcements.

2.4 If a RIS is not open for business at a time when the Company is required to disclose inside information, then the Company must distribute the inside information as soon as possible to:

2.4.1 not less than 2 national newspapers in the United Kingdom;

2.4.2 2 newswire services operating in the United Kingdom; and

2.4.3 a RIS for release as soon as it opens[23].

2.5 The fact that a RIS is not open for business is not, in itself, a sufficient ground for delaying the disclosure of inside information.

2.6 Inside information must be made available on the issuer's website for at least five years.[24] The website must (i) allow users to access the information in a non-discriminatory manner and free of charge, (ii) allow users to locate the inside information in an easily identifiable section of the website and (iii) ensure that the disclosed inside information clearly indicates the date and time of disclosure and is organised in chronological order.[25]

Clarifying unexpected events and holding announcements

2.7 If the Company is faced with an unexpected and significant event, a short delay in disclosing inside information may be acceptable if it is necessary to enable the Company to clarify the situation.[26] In such situations, a so-called "holding announcement" should be released if the Company believes that there is a danger of inside information being "leaked" before the facts and their importance can be confirmed[27]. The FCA has indicated that the holding announcement should: (i) detail as much of the subject matter as possible, (ii) set out the reasons why a fuller announcement cannot be made, and (iii) include an undertaking to announce further details as soon as possible. If however the Company is unwilling or unable to make a holding announcement, it may be appropriate for the trading of its financial instruments to be suspended until the Company is in a position to make an announcement. Where there is any doubt as to the timing of announcements required under MAR, the FCA should be consulted at the earliest opportunity.[28]

Press speculation and market rumour

2.8 Where there is press speculation or market rumour regarding a Company, the Company should assess whether a disclosure obligation has arisen. To do this the Company will need to carefully assess whether the speculation or rumour has given rise to a situation where the Company has

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20 MAR, Article 17(1)

21 Article 2 of Commission Implementing Regulation (EU/2016/1055) laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying disclosure of inside information.

22 This can be done by, for example, including the following statement in a prominent position near the top of the announcement: "This announcement contains inside information."

23 DTR1.3.4R.

24 MAR, Article 17(1)

25 Article 3 of Commission Implementing Regulation (EU/2016/1055) laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying disclosure of inside information.

26 DTR2.2.9G.

27 DTR2.2.9G(2).

28 DTR 2.2.9G

inside information. The knowledge that press speculation or market rumour is false may not amount to inside information. If it does amount to inside information, the FCA has indicated that it expects that there may be cases where a company would be able to delay disclosure in accordance with MAR.[29] See also the section sub-headed "Ensuring confidentiality" at paragraph 3 below (and in particular paragraph 3.3).

Monitoring changes and control of inside information

2.9 The directors of the Company should carefully and continuously monitor whether changes in the circumstances of the Company are such that an announcement obligation has arisen.[30]

2.10 The Company should establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the Company.[31]

3. Delaying the disclosure of inside information under MAR

3.1 Under MAR, the Company may only delay the disclosure of inside information to the market if the following conditions are satisfied:[32]

3.1.1 immediate disclosure is likely to prejudice the legitimate interests[33] of the Company;

3.1.2 delayed disclosure is not likely to mislead the public[34]; and

3.1.3 the Company is able to ensure the confidentiality of the information.

Legitimate interests of the Company and misleading the public

3.2 The European Securities and Markets Authority (ESMA) has published final guidelines[35] on (amongst other things) the legitimate interests of the issuer for delaying disclosure of inside information and when delaying disclosure is likely to mislead the public. The ESMA guidelines (insofar as they relate to delaying disclosure of inside information and when delaying disclosure is likely to mislead the public) are set out in the Appendix 1 to this memorandum.

Ensuring confidentiality

3.3 Where the confidentiality of inside information is no longer ensured (including situations where a rumour is sufficiently accurate to indicate that confidentiality is no longer ensured), the Company must make an announcement as soon as possible.[36]

3.4 Where the Company has delayed the disclosure of inside information, it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should include the details set out in DTR2.2.9G(2) (see paragraph 2.7 above).[37]

3.5 Where inside information is disclosed to a third party in the normal course of exercise of employment, profession or duties, the person receiving the information must owe a duty of confidentiality (whether based on law, contract or articles of association). Otherwise, such information must be announced simultaneously in the case of intentional disclosure and promptly in the case of non-intentional disclosure.[38]

FCA informal guidance

3.6 The FCA has published informal guidance on delaying disclosure / dealing with leaks and rumours (in its Knowledge Base relating to the LRs, Prospectus Rules and DTRs, a copy of which is available on the FCA's website).[39]

3.7 The FCA has also indicated that (i) delaying disclosure of inside information will not always mislead the public, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made, (ii) investors understand that some information

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29 DTR 2.7.1 G to DTR2.7.1 G.

30 DTR 2.2.8G

31 DTR 2.6.1G

32 Article 17(4) of MAR.

33 See Appendix 1 to this memorandum.

34 See Appendix 1 to this memorandum.

35 ESMA 2016/1130 published 13 July 2016.

36 MAR, Article 17(7)

37 DTR 2.6.3G

38 MAR, Article 17(8)

39 UKLA/TN/520.1 https://www.fca.org.uk/markets/ukla/knowledge-base#technical-notes

must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the issuer and (iii) an issuer should not be obliged to disclose impending developments that could be jeopardised by premature disclosure and that whether or not an issuer has a legitimate interest which would be prejudiced by the disclosure of certain inside information is an assessment which must be made by the issuer in the first instance.[40]

Notification and record-keeping requirements

3.8 Where the Company has delayed the disclosure of inside information, it is required to inform the FCA about the delay immediately after the information is disclosed to the public.[41] In addition, at the request of the FCA, an issuer must provide the FCA with a written explanation of how the conditions referred to above were met.[42]

3.9 The Company is required to comply with detailed record-keeping requirements where the disclosure of inside information has been delayed. The Company is required to record the following information in an accessible, readable and durable medium:[43]

3.9.1 the dates and times when:

(i) the inside information first existed within the Company;

(ii) the decision to delay the disclosure of inside information was made; and

(iii) the Company is likely to disclose the inside information;

3.9.2 the identity of the persons within the Company responsible for:

(i) making the decision to delay disclosure and deciding on the start of the delay and its likely end;

(ii) ensuring the ongoing monitoring of the conditions for the delay;

(iii) making the decision to publicly disclose the inside information; and

(iv) providing the requested information about the delay and the written explanation to the FCA; and

3.9.3 evidence of the initial fulfilment of the conditions referred to at paragraph 3.1 above and of any change to this during the delay period, including:

(i) the information barriers which have been put in place internally and with regard to third parties to prevent access to inside information by persons other than those who require it for the normal exercise of their employment, profession or duties within the Company; and

(ii) the arrangements put in place to disclose the relevant inside information as soon as possible where the confidentiality is no longer ensured.

4. Selective disclosure of inside information under MAR

4.1 Inside information may only be disclosed in the normal exercise of an employment, profession or duties.[44] The person receiving the information must owe a duty of confidentiality (whether based on law, regulations, articles of association or contract), otherwise the information must be publicly disclosed simultaneously (in the case of intentional disclosure) or promptly (in the case of unintentional disclosure).[45]

4.2 Selective disclosure cannot, however, be made to any person simply because they owe the Company a duty of confidentiality. For example, a company contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. The Company may, depending on the circumstances, be justified in disclosing inside information to certain categories of recipient in addition to those employees of

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40 DTR 2.5.2G and 2.5.5G

41 MAR, Article 17(4). The form to be used is available here http://www.fca.org.uk/static/documents/forms/delayed-disclosure-inside-information-form.pdf

42 MAR, Article 17(4).

43 Article 4 of Commission Implementing Regulation (EU/2016/1055) laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying disclosure of inside information.

44 MAR, Article 10(1)

45 MAR, Article 17(8)

the issuer who require the information to perform their functions. The categories of recipient may include, but are not limited to, the following:

4.2.1 the Company's advisers and the advisers of any other persons involved in the matter in question;

4.2.2 persons with whom the Company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of the financial instruments of the Company);

4.2.3 representatives of the Company's employees or trade unions acting on their behalf;

4.2.4 any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;

4.2.5 major shareholders of the Company;

4.2.6 the Company's lenders; and

4.2.7 credit-rating agencies.[46]

4.3 Selective disclosure to all or any of the persons referred to above may not be justified in every circumstance where an issuer delays disclosure in accordance with MAR.[47]

4.4 The Company should bear in mind that the wider the group of recipients of inside information, the greater the likelihood of a leak which will trigger full public disclosure of the information under article 17(8) of MAR.[48]

4.5 You are also referred to the overview of the market soundings regime set out at paragraphs 3.8 to 3.15 of part 3 of this memorandum below.

5. Insider lists

5.1 Under MAR, the Company is required to maintain an "insider list".[49]

5.2 The Company must:

5.2.1 draw up an insider list (that is, a list of persons who have access to inside information);

5.2.2 promptly update the list; and

5.2.3 provide a copy to the FCA as soon as possible on request.[50]

5.3 The Company (and persons acting on its behalf) must take all reasonable steps to ensure that each person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.[51] Where a person other than the issuer (that is, a person acting on its behalf such as an adviser) maintains the insider list, the issuer remains fully responsible for it and must always have the right to access the list.[52]

5.4 Insider lists should be divided into sections for each piece of deal-specific or event-based inside information. There can also be a separate section for permanent insiders (persons who, due to the nature of their function or position, have access at all times to all inside information within the Company).[53] The prescribed template for, and further guidance on, insider lists is available from Shepherd and Wedderburn LLP on request. Insider lists should be kept in electronic format and ensure that confidentiality is maintained by restricting access to a limited number of identified persons.[54]

5.5 Insider lists should include:

5.5.1 the identity of the insider (including birth surname where relevant);

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46 DTR 2.5.7G.

47 DTR 2.5.8G

48 DTR2.5.9G

49 MAR, Article 18

50 MAR, Article 18(1).

51 MAR, Article 18(2). A memorandum on inside information and a form of acknowledgement letter which can be used for these purposes are available from Shepherd and Wedderburn LLP on request.

52 MAR, Article 18(2). A form of letter which the Company can use to send to its advisers in connection with the insider list obligations is available from Shepherd and Wedderburn LLP on request.

53 Implementing Regulation (2016/347/EU) – Format of insider lists and for updating insider lists - Recitals (5) and (6) and Article 2(1) and (2).

54 Implementing Regulation (2016/347/EU) – Format of insider lists and for updating insider lists - Article 2(3) and (4).

5.5.2 professional and personal telephone numbers of the insider;

5.5.3 the name and address of the Company;

5.5.4 the function of, and reason for being, an insider;

5.5.5 the date and time the person had access to the inside information;

5.5.6 the date and time the person ceased to have access to the inside information;

5.5.7 date of birth;

5.5.8 national identification number (if applicable);

5.5.9 personal full address;

5.5.10 the date and time the insider list (or section of it) was created; and

5.5.11 the date and time the insider list (or section of it) was last updated.[55]

5.6 Insider lists should be promptly updated:

5.6.1 where there is a change in the reason for including someone on the list;

5.6.2 where a new person is added to the list; and

5.6.3 where someone ceases to have access to the information,

and each update should specify the date and time when the change triggering the update occurred.[56]

5.7 Insider lists should be kept by issuers (or persons acting on their behalf) for at least five years.[57]

5.8 The GC100 (the association of general counsel and company secretaries working in the FTSE 100 companies) has produced guidelines on the requirement to maintain insider lists. A copy is available from Shepherd and Wedderburn LLP on request.

6. Transactions by PDMRs and closely associated persons under MAR

6.1 Certain disclosure (and other) obligations arise under Article 19 of MAR which deals with transactions by persons discharging managerial responsibilities[58] ("**PDMRs**") and their closely associated persons[59] ("**PCAs**").

6.2 The Company is required to notify PDMRs of their obligations under Article 19 of MAR in writing.[60] PDMRs are, in turn, required to notify their closely associated persons of their obligations under Article 19 in writing and to keep a copy of the notification.[61]

6.3 PDMRs, and their closely associated persons, are required to notify the Company and the FCA of every transaction conducted on their own account in shares or debt instruments of the Company or derivatives or other financial instruments linked to them.[62]

6.4 The notification referred to in paragraph 6.3 should be made promptly and no later than three[63] business days after the date of the transaction. The form to be used for the notification by PDMRs

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55 MAR, Article 18(3) and Annex I of Implementing Regulation (2016/347/EU) – Format of insider lists and for updating insider lists.

56 MAR, Article 18(4)

57 MAR, Article 18(5)

58 Directors and other senior executives who are not members of the board who have regular access to inside information relating directly or indirectly to the Company and power to take managerial decisions affecting the future developments and business prospects of the Company. (MAR, Article 3(1)(25))

59 Closely associated persons in relation to a PDMR means: (i) a spouse or civil partner; (ii) a child (including a step-child) who is under 18 years of age, is unmarried and does not have a civil partner; (iii) a relative who has shared the same household for at least one year on the date of the transaction concerned; (iv) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (i), (ii) or (iii), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person. (MAR, Article 3(26) and regulation 4 of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016)

60 MAR, Article 19(5). A form of such notification is available from Shepherd and Wedderburn LLP.

61 MAR, Article 19(5). A form of such notification is available from Shepherd and Wedderburn LLP.

62 Note that under MAR (as implemented in the UK), the obligation to notify kicks in once the total amount of transactions exceeds a *de minimis* threshold of EUR 5,000 within a calendar year. However, many UK companies require PDMRs and their PCAs to notify all transactions, regardless of threshold, pursuant to the company's dealing code. The Company's dealing code may provide that the Company will deal with the notification obligations to the FCA in certain circumstances.

63 Article 19(1) of MAR requires notification within three business days of the transaction, however, many companies have shortened this to one business day in their dealing codes in order to ensure that the company is able to comply with its announcement obligation referred to at paragraph 6.5.

and their closely associated persons is available here: http://www.fca.org.uk/your-fca/documents/forms/pdmr-notification-form.

6.5 PDMRs and their closely associated persons should note that the Company is required to announce the information contained in the above notification promptly and within three business days of the transaction date.

6.6 Subject to paragraph 6.7 below, a PDMR must not conduct any transactions on his or her own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the Company or to derivatives or other financial instruments linked to them during a closed period.[64] For these purposes, a closed period is the period of 30 calendar days before the announcement of the Company's interim financial report or year-end report.[65]

6.7 The Company may allow a PDMR to trade on his or her own account or for the account of a third party during a close period either (i) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares, or (ii) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, qualification, or entitlement of shares, or transactions where the beneficial interest in the relevant security does not change.[66] Further details of the circumstances in which the Company may allow a PDMR to deal are set out in the Company's dealing code.

6.8 The above paragraphs should be read alongside the Company's dealing code and any related procedures. For the avoidance of doubt, PDMRs must not conduct transactions in any shares or debt instruments or related derivatives or financial instruments of the Company without obtaining advance clearance in accordance with the Company's dealing code and any related procedures.

PART 1B – AIM DISLOSURE REGIME

7. The general obligation of disclosure under the AIM Rules

7.1 As noted above: (i) there is clear overlap between the Company's disclosure obligations under MAR and its disclosure obligations under the AIM Rules and (ii) compliance with MAR does not necessarily mean the Company will have complied with its obligations under the AIM Rules and *vice versa*. The Company must consider the position under both sets of rules.

7.2 The general obligation to disclose price sensitive information is set out in AIM Rule 11. This rule is intended to promote the prompt and fair disclosure of price sensitive information to the market.

7.3 Under AIM Rule 11, a company whose securities have been admitted to trading on AIM must notify a RIS without delay of any new developments which are not public knowledge and which, if made public, would be likely to lead to a significant movement in the price of its securities traded on AIM. This could include matters concerning a change in:

7.3.1 its financial condition;

7.3.2 its sphere of activity;

7.3.3 the performance of its business; or

7.3.4 its expectation of its performance.

7.4 Accordingly, generally, any information that would be likely to significantly affect the market price of the Company's AIM securities (price sensitive information) must be disclosed without delay.

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64 MAR, Article 19(11).

65 MAR, Article 19(11). ESMA has confirmed that where a company announces preliminary results, the closed period, when dealing is prohibited, will end immediately before the preliminary results are announced (assuming the preliminary results announcement contains all key information/ inside information expected to be included in the year-end report) (ESMA Q&A on MAR). AIM Regulation has indicated that it supports the use of LR9.7A.1 (*preliminary statement of annual results*) of the Listing Rules made by the FCA as a benchmark in relation to the preparation of preliminary results announcements (Inside AIM newsletter August 2016).

66 MAR, Article 19(12).

AIM Regulation has emphasised that information which requires to be notified through a RIS under the AIM Rules must be notified through an RIS no later than it is published elsewhere.[67]

7.5 Information that would be likely to lead to a significant movement in the price of the securities of the Company (or on the price of investments related to the securities of the Company) includes, but is not limited to, information which is of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.[68]

7.6 There is no figure (percentage change or otherwise) that can be set for any company when determining what constitutes a significant effect on the price of its securities.

8. Delaying the disclosure of price sensitive information under the AIM Rules

8.1 Save where disclosure is required under MAR, an AIM company may delay the disclosure of price sensitive information under AIM Rule 11 in the case of impending developments or matters in the course of negotiation. AIM companies are however expected to keep such matters confidential and must have procedures and controls in place which are designed to ensure the confidentiality of such matters with a view to minimising the risk of any leak.[69]

9. Selective disclosure of inside information under the AIM Rules

9.1 Where an AIM company is able to delay the disclosure of information relating to impending developments or matters in the course of negotiation as described in the preceding paragraph, the company may give the information in confidence to any of the following:

9.1.1 the company's advisers and the advisers of any other person involved in the development or matter in question;

9.1.2 persons with whom the company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including any underwriter or placees of securities issued by the company);

9.1.3 representatives of its employees or trade unions acting on their behalf;

9.1.4 any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority; and

9.1.5 the company's lenders.[70]

9.2 Before selectively disclosing the relevant information, the AIM company must be satisfied that the recipients are bound by a duty of confidentiality. In addition, the AIM company must be satisfied that the proposed recipient of the information is aware that he may not deal in the securities of that company until the price sensitive information has been notified to a RIS.[71] (This is sometimes referred to as obtaining permission to place a person "on the inside" or to make them "an insider" or to "wall cross" them.)

9.3 If a company has reason to believe that "an insider" is about to or has breached its obligation of confidence or that price sensitive information has been or is about otherwise to be leaked, then the company must issue an announcement through a RIS. That announcement should either provide information in respect of the impending development or matter in the course of negotiation or should advise the market that such information will be announced shortly. This latter form of announcement is sometimes referred to as a "holding announcement".[72] Whenever a company has decided not to disclose information relating to impending developments or matters in the course of negotiation it should as a matter of course have prepared a holding announcement that can be issued quickly in the event of a leak or threatened leak of that price sensitive information.

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67 Inside AIM newsletter (December 2016). In particular, disclosure through social media does not satisfy the disclosure requirements under the AIM Rules.

68 Guidance note to AIM Rule 11.

69 Guidance note to AIM Rule 11.

70 Guidance note to AIM Rule 11.

71 Guidance note to AIM Rule 11.

72 Guidance note to AIM Rule 11.

10. Disclosure of information at general meetings of shareholders

10.1 If the Directors wish to make an announcement at any meeting of holders of the Company's AIM securities which contains information that might lead to substantial movement in their price, they must make arrangements for notification of that information to a RIS so that the announcement at the meeting is made no earlier than the time at which the information is published to the market.[73] The purpose of this rule is to ensure that all market users have simultaneous access to price sensitive information.

10.2 In practice, many companies issue an AGM trading update announcement through a RIS as a matter of course to ensure that they do not inadvertently breach this requirement.

PART 1C – PREPARATION OF ANNOUNCEMENTS AND CONTROL OF INSIDE INFORMATION

11. Standard of care required in the preparation of RIS announcements

11.1 The Company must take reasonable care to ensure that any RIS announcement or information made available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.[74]

11.2 In addition, the disclosure of inside information should not be combined with the marketing by the Company of its activities.[75]

11.3 The Directors should note that the release by the Company of a misleading, false or deceptive RIS announcement could constitute a Market Abuse Offence or the criminal offence of making misleading statements[76] and could also give rise to civil liability. Accordingly care should be taken in the preparation of RIS announcements.

11.4 The Company is liable to pay compensation to any person who:

11.4.1 deals or continues to hold shares in the Company in reliance upon information announced via a RIS (or upon information whose availability is announced via a RIS[77]); and

11.4.2 suffers loss as a result of any untrue or misleading statement in that information or as a result of any omission from that information,

if either: (i) a person discharging managerial responsibilities (see paragraph 6 above for further information on who constitutes a "person discharging managerial responsibilities") within the Company knew that the statement was untrue or misleading or was reckless as to whether it was untrue or misleading; or (ii) in the case of any omission of information, a person discharging managerial responsibilities within the Company knew that the omission was a dishonest concealment of a material fact. [78]

In addition, the Company is liable to pay compensation to any person who:

11.4.3 deals or continues to hold shares in the Company; and

11.4.4 suffers loss as a result of any delay in announcing information,

if a person discharging managerial responsibilities within the Company acted dishonestly in delaying the publication of the information.

This statutory liability regime only applies to companies (and not also to directors). However, a director who either knew that information announced via a RIS was untrue or misleading or who acted dishonestly in delaying the announcement of information may be liable to the Company for breach of director's duty.[79]

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73 AIM Rule 10 (together with the guidance note to AIM Rule 10).

74 AIM Rule 10

75 MAR, Article 17(1)

76 Part 7, Financial Services Act 2012. An overview of the criminal offences relating to misleading statements/impressions is set out in paragraph 4 of part 3 of this memorandum.

77 Note that this would include the annual report and accounts and half yearly report.

78 Section 90A and schedule 10A of FSMA (as inserted with effect from 1 October 2010 by The Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010).

79 In the case of errors in the directors' report, directors' remuneration report or the strategic report in the annual report and accounts, a director may also have statutory liability to the Company under section 463, Companies Act 2006.

12. Steps to control and protect inside information

12.1 The Company should consider adopting a formal policy on the control and disclosure of inside information/ price sensitive information. Any such policy (and the procedures, systems and controls that are put in place to implement such a policy) should be effective to deny access to inside information to persons other than those who require it for the exercise of their functions within the Company.[80]

12.2 Such a policy might include the following elements:

12.2.1 a procedure for the training of directors and employees in the handling of inside information/ price sensitive information;

12.2.2 a procedure governing communication with the market (including with analysts, the press and shareholders). It should also be noted that the Company must ensure that the London Stock Exchange has up-to-date details, including an email address) for a contact at the Company;[81]

12.2.3 a procedure for complying with the MAR rules on delaying disclosure, including documenting the reasons why a particular piece of information was considered by the Company to be or not to be inside information / price sensitive information and the reasons for delaying or selectively disclosing the same, as well as notifying the FCA when inside information (the announcement of which has been delayed) is made public;

12.2.4 establishing clear reporting lines in relation to inside information/ price sensitive information and constituting a disclosure committee with responsibility for such matters;

12.2.5 a policy to determine when the Company should take advice on its disclosure obligations and agreed procedures with the Company's nominated adviser, public relations agency and other advisers for involving them in the preparation of RIS announcements;

12.2.6 a procedure for monitoring the price of the securities of the Company, press speculation and market rumours;

12.2.7 a procedure to ensure that RIS announcements are verified and that inside information/ price sensitive information is released first on a RIS and then subsequently on the Company's website (and maintained on the Company's website for the requisite period of not less than 5 years);

12.2.8 a procedure to ensure that access to inside information/ price sensitive information is restricted to those within the Company who have a "need to know" and that insider lists (see paragraph 5 above) are maintained in accordance with the relevant requirements);

12.2.9 a procedure for identifying and training (in their disclosure obligations) those persons who discharge managerial duties within the Company and their respective connected persons (see paragraph 6 above);

12.2.10 where the Company uses social media, the Company's systems, procedures and controls should take into account the use of social media and other forms of communication used by the Company in order to manage its disclosure obligations under MAR and the AIM Rules[82]

12.3 The GC100 has produced guidelines for establishing procedures, systems and controls to ensure compliance with Listing Principle 1. Although primarily directed at companies listed on the main market, the guidelines will nonetheless be instructive for AIM companies. A copy is available from Shepherd and Wedderburn LLP on request.

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80 DTR2.6.1R

81 AIM Rule 38

82 Inside AIM newsletter (December 2016). If relevant: (i) there should be a clear policy on the use of social media, (ii) the effectiveness of that policy should be considered, (iii) the policy should be regularly reviewed, (iv) the Company should ensure that any third parties using social media on the Company's behalf do not compromise compliance with the AIM Rules, and (v) the Company should consider the use of social media with its nominated adviser. The Company through its nominated adviser should make the London Stock Exchange aware of significant rumours or problems relating to internet discussions which may impact on the orderly market in its shares.

PART 1D – SPECIFIC DISCLOSURE OBLIGATIONS UNDER THE AIM RULES

13. Specific disclosure obligations

13.1 As well as the general obligation of disclosure summarised above, the Company is required to disclose certain information on the occurrence of certain specific events because those events are or are deemed to constitute price sensitive information (or are otherwise prescribed). These specific disclosure obligations are set out in various AIM Rules (including rules 12 to 15 (inclusive), 17 to 20 (inclusive) and 26 together with Schedules 2 and 4 to 7 (inclusive) of the AIM Rules) and also, in the case of UK incorporated companies, DTR5 of the Disclosure Guidance and Transparency Rules. Part 2 of this memorandum summarises the disclosure requirements of AIM Rules 12 to 15 (inclusive) which relate to transactions undertaken by the Company. The remainder of this part of the memorandum summarises the disclosure requirements set out in AIM Rules 17 to 20 (inclusive) and DTR5.

14. Disclosure of miscellaneous information (AIM Rule 17)

14.1 The specific disclosure obligations under AIM Rule 17 are as follows:

14.1.1 *Major interests in shares*

The Company must notify a RIS without delay of certain changes in the holding of a shareholder in the Company who holds 3% or more of the Company's share capital (excluding any treasury shares in issue). A change only requires to be notified by the Company where that shareholder's shareholding increases or decreases through any single percentage point. In so far as the Company has the information, it should disclose the identity of the shareholder concerned, the date on which it became aware of the change, the date on which the change occurred, the price, amount and class of shares concerned, the nature of the shareholder's interest in the transaction concerned and certain other information set out in Schedule 5 to the AIM Rules.

In addition to the requirements of AIM Rule 17, the requirements of DTR5 apply to UK incorporated companies and non-UK companies who have a principal place of business in the UK traded on AIM.[83] These provide that a person must notify the Company of the percentage of the voting rights held by that person (whether directly or indirectly) if the percentage of those voting rights reaches, exceeds or falls below 3% and each 1% thereafter up to 100% as a result of an acquisition or disposal of shares or other financial instruments. Typically this notification is made on a standard form provided by the FCA.[84] As soon as possible (and in any event by not later than the end of the third trading day following receipt of such a notification), the Company must make public all information contained in the notification received.[85]

Typically compliance with DTR5 will also result in compliance with AIM Rule 17 save that, notwithstanding the time limits for disclosure set out in DTR5, notifications under AIM Rule 17 must be made “without delay”.[86]

The provisions of DTR5 can also have an impact upon general meetings of UK incorporated companies traded on AIM. Under DTR5, an announcement is required in respect of the "voting rights" held by a particular person. It is often the case that the form of proxy (or electronic proxy appointment) used by shareholders in connection with a general meeting of a UK incorporated company traded on AIM will appoint the chairman of the company (as the default proxy with discretion as to how to vote). In such

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[83] DTR 5.1.1R. Note that where DTR5 does not apply to an AIM company (that is, foreign companies on AIM which are not incorporated in the United Kingdom and which do not have a principal place of business in the United Kingdom), the foreign AIM company must nonetheless use all reasonable endeavours to comply with the disclosure obligations for significant shareholders set out in AIM Rule 17 notwithstanding that the local law applicable to the foreign AIM company does not contain provisions that are similar to DTR5 requiring holders of voting rights to make the notifications referred to in paragraph 15.1.1 above. In such circumstances, foreign AIM companies are advised to include provisions in their constitutional documents requiring “significant shareholders” (as defined in the glossary to the AIM Rules) to notify the AIM company of any relevant changes to their shareholdings in similar terms to DTR5 (and having regard to the differences between the requirements of DTR5 and AIM Rule 17 referred to at paragraph (b) of the guidance to AIM Rule 17). Such foreign AIM companies are also advised to disclose the fact that statutory disclosure of “significant shareholdings” is different and may not always ensure compliance with the requirements of AIM Rule 17. See paragraph (d) of the guidance to AIM Rule 17.

[84] Form TR1.

[85] DTR5.8.12(2).

[86] Paragraph (b) of guidance to AIM Rule 17.

circumstances, it should be noted that DTR5 may require an announcement to be made in respect of the number of discretionary proxy votes which are capable of being exercised by the chairman.

14.1.2 *Changes of Directors*

The Company must notify a RIS without delay of the resignation, dismissal or appointment of any director and, in the case of the appointment of a new director, must include the information set out in paragraph (g) of Schedule 2 of the AIM Rules (being his / her full name (current and previous), the names of all companies and partnerships of which the new director has been a director or partner at any time in the previous 5 years, any unspent convictions, details of any bankruptcies or individual voluntary arrangements, details of any business insolvencies / receiverships / administrations and details of any public criticisms / disqualifications) and also details of any shareholding the new director has in the Company. In addition, the Company must notify a RIS without delay of any subsequent change to certain of the information previously disclosed in respect of a director.

14.1.3 *Material changes*

The Company must notify a RIS without delay of any material change between the Company's actual trading performance or financial condition and any profit forecast, estimates or projection included in any admission document or which has otherwise been made public by or on behalf of the Company.

14.1.4 *Changes of nominated adviser or nominated broker*

The Company must advise a RIS without delay of the resignation, dismissal or appointment of any nominated adviser or nominated broker.

14.1.5 *Changes to shares*

The Company must advise a RIS without delay of the reason for admission or cancellation of any securities admitted to trading on AIM and the consequent number of such securities in issue.

14.1.6 *Other exchanges or trading platforms*

The Company must notify a RIS without delay of any admission to trading (or cancellation from trading) of any securities on any other exchange or trading platform.

14.1.7 *Dividends*

The Company must notify a RIS without delay of any decision to pay or make any dividend or other distribution on AIM securities or to withhold any dividend or interest payment on AIM securities, giving details of the exact net amount payable per share, the payment date and the record date (where applicable). As regards dividends / distributions, the Company should also liaise with its nominated adviser in order to comply with the dividend procedure timetable which is published by the London Stock Exchange each year.

14.1.8 *Treasury shares*

The Company must notify a RIS without delay of the information specified in Schedule 7 of the AIM Rules in relation to treasury shares (being shares in a company held by that company itself). The information to be disclosed includes the date of movement into or out of treasury shares and the number of treasury shares transferred into or out of treasury.

14.1.9 *Accounting reference date, registered office, company name, website*

The Company must notify a RIS without delay of any change in the accounting reference date of the Company, the registered office of the Company, the name of the Company or the address of the website on which the Company makes available certain prescribed information (see paragraph 16 below). On a change of name, a copy of the change of name certificate should be sent to the London Stock Exchange (Admissions).[87] Any change to the accounting reference date should be discussed in advance with AIM Regulation.[88]

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[87] Paragraph (g) of guidance to AIM Rule 17.

[88] Guidance to AIM Rules 18 & 19.

14.2 Where information requires to be submitted to the London Stock Exchange it should be sent to aimregulation@lseg.com.[89]

Total voting rights under DTR5

14.3 In addition to the information required to be disclosed by AIM Rule 17, DTR5 imposes the following additional disclosure requirements:

14.3.1 if the Company acquires or disposes of its own shares, then the Company must make public (by notifying the transaction to a RIS) the percentage of voting rights attributable to the shares the Company holds as a result of the transaction if that percentage reaches, exceeds or falls below the thresholds of 5% or 10% of the total voting rights in the Company[90]; and

14.3.2 the Company must, at the end of each calendar month during which an increase or decrease in the total number of voting rights in the capital of the Company has occurred, disclose to the public (by notification to a RIS) the total number of voting rights and capital in respect of each class of share issued by the Company and the total number of voting rights attaching to shares that are held by the Company in treasury[91].

15. Disclosure of financial information

15.1 Rules 18 and 19 impose the following obligations in terms of financial information:

15.1.1 **Half-yearly reports**

Rule 18 provides that the Company must prepare a half-yearly report in respect of the 6 month period from the end of the financial period for which financial information has been disclosed in any admission document and at least every subsequent 6 months thereafter (apart from the 6 month period preceding the Company's accounting reference date for its annual accounts). The report must be notified to a RIS without delay and in any event within 3 months of the end of the relevant period.

15.1.2 **Annual accounts**

Rule 19 provides that the Company must publish annual audited accounts and issue these to shareholders without delay and in any event within 6 months of the end of the financial period to which the accounts relate. For companies incorporated in the UK, this 6 month period is consistent with that set out in the Companies Act 2006.[92] These annual audited accounts must also provide details of each director's remuneration (including share and long term incentives and pension contributions) during the relevant financial period.

16. Documents and information to be made available on website (AIM Rule 26)

16.1 The Company is required to maintain a website on which certain prescribed documents and information are made available free of charge.[93] That information includes:

16.1.1 a description of the Company's business (and, where it is an “investing company” for the purposes of the AIM Rules, its investing policy and details of any investment manager and/ or key personnel);

16.1.2 the names of the Directors and a brief biography in respect of each;

16.1.3 a description of the responsibilities of the members of the board and the details of any committees of the board (and their responsibilities);

16.1.4 the country of incorporation and the main country of operation of the Company;

16.1.5 where the Company is not incorporated in the United Kingdom, a statement that the rights of shareholders may be different from the rights of shareholders in a UK incorporated company;

16.1.6 the current constitutional documents of the Company;

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89 Paragraph (h) of guidance to AIM Rule 17.

90 DTR5.5.1R.

91 DTR5.6.1R.

92 Section 442(2)(b), Companies Act 2006.

93 AIM Rule 26.

16.1.7 details of any other exchanges or trading platforms on which the Company's securities are traded;

16.1.8 the number of securities in issue in the capital of the Company (noting any held as treasury shares) and, so far as the Company is aware, the percentage of its securities that is not in public hands (together with the identity of any shareholders holding more than 3% of the securities in issue). This information should be updated at least every 6 months and the website should also include the date on which this information was last updated;

16.1.9 details of any restrictions on the transfer of securities in the Company;

16.1.10 the annual accounts for the last three years (or, if shorter, the period since admission to AIM) and all half-yearly reports of the Company published since the last annual accounts;

16.1.11 all notifications made to a RIS during the past 12 months (though note the requirement under MAR to make available announcements of inside information on the Company's website for at least five years (see paragraph 2.6 above));

16.1.12 the most recent admission document issued by the Company and any other circulars or similar publications sent by the Company to its shareholders during the past 12 months;

16.1.13 details of the corporate governance code (if any) that the Company has decided to apply and how the Company complies with that code. If no corporate governance code has been adopted, this should be stated and the Company should provide details of its current corporate governance arrangements;

16.1.14 whether the Company is subject to the City Code on Takeovers and Mergers (or any other such legislation or code or any similar provisions which the Company has voluntarily adopted); and

16.1.15 details of the nominated adviser and other key advisers (e.g. brokers, auditors, solicitors and bankers) to the Company.

16.2 The Company must make copies of any document sent to shareholders by it available to the public on its website (without delay) and must notify the availability of such documentation to a RIS.[94] The Company must also forward to the London Stock Exchange an electronic copy of such document (other than, generally, the annual accounts and half-yearly reports).[95]

17. Requirement to disclose other information

17.1 In addition to the disclosure obligations summarised above, the London Stock Exchange has wide powers under AIM Rule 22 to require an AIM company to provide information and may at any time require an AIM company to provide to the London Stock Exchange such information in such form and within such time limit as the London Stock Exchange considers appropriate. The London Stock Exchange may also require an AIM company to publish such information.[96] The Company should ensure that information provided to the London Stock Exchange is correct, complete and not misleading (and must advise the London Stock Exchange as soon as practicable if that subsequently turns out not to have been the case).[97]

18. Additional obligations for mining companies and oil and gas companies

18.1 In their application to mining companies and oil and gas companies, the AIM Rules are supplemented by a note issued by the London Stock Exchange.[98] That note sets out: (i) specific provisions that apply to resources companies; and (ii) the minimum expectations of the London Stock Exchange in relation to such companies.

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94 AIM Rule 20.

95 Guidance to AIM Rule 20.

96 Similarly, the FCA may require a company to publish such information in such form and within such time limits as it considers appropriate to protect investors or ensure the smooth operation of the market and, if the company fails to comply, the FCA may itself publish the information (after giving the company an opportunity to make representations as to why it should not be published) (DTR1A.3.1). The Company must inform the London Stock Exchange (through its nominated adviser) if the FCA takes any action under DTR1A.3.1 (paragraph (c) of the guidance to AIM Rule 17).

97 Guidance to AIM Rule 22.

98 Note for Mining and Oil & Gas Companies, June 2009.

18.2 The note imposes the following additional on-going obligations on resources companies:

18.2.1 in any resources update announcement issued by a company, the company should state the relevant internationally recognised standard under which the resources have been reported;

18.2.2 each resources update announcement must contain a glossary of the key terms used in the announcement and use a similar format to the reserves / resources disclosures made by the company in its admission document;

18.2.3 if a resources company is undertaking drilling activities, then it should issue a drilling update announcement under AIM Rule 11; and

18.2.4 a suitably qualified person (either from an appointed adviser or from the company itself) should review and sign off on each resources update or drilling announcement. The name, position and qualifications of the qualified person who has reviewed the announcement should be set out in the announcement together with a statement to the effect that they have reviewed the information contained in the announcement.

18.3 In addition to the review by a suitably qualified person, the London Stock Exchange expects that an appropriate person from the nominated adviser to the Company should undertake a prior review of all announcements made by a resources company.

19. Additional obligations for investing companies

19.1 The AIM Rules impose the following additional on-going obligations on investing companies:

19.1.1 an investing company must state and follow an investing policy[99];

19.1.2 the Company's website must contain the investing policy and details of any investment manager and/or key personnel[100];

19.1.3 the investing policy must be prominently stated in any circular relating to that policy and should be regularly notified via a RIS and at a minimum should be stated in the annual accounts of the Company[101];

19.1.4 any material change to the investing policy must be approved by the Company's shareholders in general meeting[102];

19.1.5 if the investing policy has not been substantially implemented within 18 months of admission to AIM, then the Company must seek the consent of its shareholders for its investing policy at its next annual general meeting and on an annual basis thereafter, until such time as its investing policy has been substantially implemented. In making its assessment of whether a company has substantially implemented its investing policy, the London Stock Exchange will review what portion of the funds (including agreed debt facilities) have been invested by the Company in accordance with its investing policy. Usually at least in excess of 50% of those funds must have been invested to meet this test[103];

19.1.6 in relation to any requirement under the AIM Rules to seek shareholder approval of an investing policy[104], if such approval is not obtained, the investing policy should be amended and further approval sought as soon as possible. If shareholder approval is not obtained following such amendment, then resolving action (such as the return of funds to shareholders) should be considered. The nominated adviser must keep the London Stock Exchange informed if such a situation occurs. If shareholder approval for the change to an investing policy is not obtained, then the existing investing policy shall continue to be effective[105].

19.2 In their application to investing companies, the AIM Rules are supplemented by a note issued by the London Stock Exchange[106]. That note sets out: (i) specific provisions that apply to investing

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99 AIM Rule 8.

100 AIM Rule 26.

101 Guidance note to AIM Rule 8.

102 AIM Rule 8.

103 AIM Rules 8 together with guidance notes to AIM Rule 8.

104 For example, pursuant to AIM Rules 8 or 15.

105 AIM Rule 8 (together with the guidance notes to AIM Rule 8).

106 Note for Investing Companies, June 2009.

companies, and (ii) the minimum expectations of the London Stock Exchange in relation to such companies.

19.3 The note imposes the following additional on-going obligations on investing companies:

19.3.1 the nominated adviser of the Company should consider, with the Company, whether periodic disclosures (such as a regular net asset value statement or details of main investments) should be notified through a RIS in order to update the market, having due regard to market practice and the activities of the Company. The Company's approach to making such updates should be included in its admission document (or other circular relating to its investing policy) and changes to the approach taken to such updates should be notified through a RIS;

19.3.2 any appointment, dismissal or resignation of any investment manager (or any key personnel within the Company, or investment manager, which might impact achievement or progression of the investing policy) would generally be considered price sensitive information requiring notification without delay and such notification should include information on the consequences of the appointment, dismissal or resignation; and

19.3.3 the Company should assess on an on-going basis, with its nominated adviser, whether any change to the information required to be disclosed on admission by virtue of the AIM Note for Investing Companies should be notified through a RIS. This would include, by way of examples, any change to the expertise that the directors have, as a board, in respect of the investing policy and the name, experience and regulatory status of any investment manager[107].

[107] Note for Investing Companies, June 2009, para 5.3.

PART 2 – SIGNIFICANT TRANSACTIONS

This part of the memorandum summarises the principal obligations relating to transactions by AIM companies.

1. Introduction

1.1 AIM Rules 12 to 16 deal with the requirements in respect of transactions, principally acquisitions and disposals, by the Company.

1.2 AIM Rule 12 applies to "substantial transactions" by the Company, AIM Rule 13 applies to "related party transactions", AIM Rule 14 applies to "reverse take-overs" and AIM Rule 15 applies to significant disposals by the Company.

2. Substantial transactions (AIM Rule 12)

2.1 All transactions (including non pre-emptive offerings of securities by the Company) (other than transactions of a revenue nature in the ordinary course of business or transactions to raise finance which do not involve a change in the fixed assets of the Company or its subsidiaries) have the potential to be "substantial" transactions.

2.2 Whether a transaction is classified as "substantial" is determined by assessing its size relative to that of the Company using ratios, expressed as a percentage, resulting from each of the following calculations:

2.2.1 assets - the gross assets the subject of the transaction divided by the gross assets of the Company;

2.2.2 profits - the profits attributable to the assets the subject of the transaction divided by the profits of the Company;

2.2.3 turnover - the turnover attributable to the assets the subject of the transaction divided by the turnover of the Company;

2.2.4 consideration to market capitalisation - the consideration divided by the aggregate market value of all the ordinary shares (excluding treasury shares) of the Company; and

2.2.5 gross capital - in the case of an acquisition of a company or business the gross capital of the company or business being acquired divided by the gross capital of the Company.

A transaction will be deemed to be "substantial" where any of the percentage ratios exceeds 10%.

The AIM Rules include further guidance to ascertain what constitutes "gross assets", "assets", "profits", "consideration" and "gross capital" in Schedule 3 of the AIM Rules.

2.3 In circumstances where the above calculations produce anomalous results or where the calculations are inappropriate to the sphere of activity of the Company, the London Stock Exchange may (except in the case of a transaction with a related party) disregard the calculation and substitute other relevant indicators of size, including industry-specific tests.

2.4 AIM Rule 12 provides that as soon as the terms of any substantial transaction are agreed, the Company must notify a RIS without delay. The notification must contain the specific information required by Schedule 4 of the AIM Rules.

3. Related party transactions (AIM Rule 13)

3.1 AIM Rule 13 contains certain safeguards which are aimed at preventing current or recent directors or substantial shareholders (or associates of either) from taking advantage of their position in relation to their dealings with the Company. For this purpose "related party" means:

3.1.1 a substantial shareholder (that is, any person (excluding a bare trustee) who is, or was within the 12 months preceding the date of the transaction, entitled to exercise or to control the exercise of 10% or more of the voting rights (excluding treasury shares) of the Company or any company in the same group);

3.1.2 any person who is (or was within the 12 months preceding the date of the transaction) a director or shadow director of the Company or any company in the same group; or

3.1.3 an associate of a related party within one of the categories set out above.

3.2 If the Company proposes to enter into any transaction (including a non pre-emptive issue of shares) with a related party where any percentage ratio as specified in Schedule 3 of the AIM

Rules (and as summarised in paragraph 2.2 above) exceeds 5% then the Company must notify a RIS of the details required by AIM Rule 13 and Schedule 4, including the name of the related party concerned and the nature and extent of the interest of the related party in the transaction. The notification must also include a statement from the Directors (excluding any Director who is involved in the transaction as a related party) that, in their opinion, having consulted with the Company's nominated adviser, the terms of the transaction are fair and reasonable so far as the shareholders of the Company are concerned.

3.3 Whenever any percentage ratio as specified in Schedule 3 of the AIM Rules (and as summarised in paragraph 2.2 above) exceeds 0.25% in any transaction with a related party, details (including the identity of the related party and the value of the consideration for the transaction) must be included in the Company's next published annual consolidated accounts, whether or not the transaction has been notified to a RIS in accordance with AIM Rule 13.[108]

4. Reverse takeovers (AIM Rule 14)

4.1 A reverse takeover (being an acquisition or a series of acquisitions in a 12 month period which exceed 100% in any of the percentage ratios referred to in Schedule 3 of the AIM Rules (as summarised in paragraph 2.2 above) or which result in a fundamental change in its business, board or voting control) must be:

4.1.1 conditional upon shareholder approval being obtained in general meeting; and

4.1.2 notified without delay to a RIS, disclosing the information specified in Schedule 4 of the AIM Rules, and accompanied by the publication of an admission document in respect of the proposed enlarged entity and convening a general meeting to approve the reverse takeover.[109]

4.2 Special rules apply in the event of a reverse takeover, including, if the reverse takeover completes, the requirement that the Company seek re-admission as a new applicant and that trading in the Company's securities be suspended if it is unable to publish its admission document at the same time as it announces the reverse takeover.

5. Fundamental changes of business (AIM Rule 15)

5.1 Any disposal by the Company which, when aggregated with any other disposals over the previous 12 months, exceeds 75% in any of the percentage ratios referred to in Schedule 3 of the AIM Rules (as summarised in paragraph 2.2 above) is deemed to result in a fundamental change of business and must be:

5.1.1 conditional upon shareholder approval being obtained in general meeting; and

5.1.2 notified without delay to a RIS, disclosing the information specified in Schedule 4 of the AIM Rules (and, in so far as it is with a related party, the additional information required by AIM Rule 13), and accompanied by the issue of a circular containing certain specified information and convening a general meeting to approve the disposal and any proposed change to the business.[110]

5.2 Where the effect of the proposed disposal is to divest the Company of all, or substantially all, of its trading business, activities or assets, the Company will, upon completion of the disposal, be treated as an "AIM Rule 15 cash shell" and will have to complete a reverse takeover within 6 months of having become an AIM Rule 15 cash shell. Failure to do so will result in trading in the shares in the Company being suspended on AIM. The London Stock Exchange will cancel the admission to AIM of shares in the Company if trading in those shares is suspended for 6 months.[111] Becoming an investing company following a disposal of substantially all of an AIM company's business will be treated as a reverse takeover transaction, and the normal rules, including the requirement to publish an admission document, will apply.[112]

5.3 Where the Company proposes to take any other action, the effect of which is that it will cease to own, control or conduct all, or substantially all, of its existing trading business, activities or assets (including the cessation of all, or substantially all, of the Company's business), the above

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[108] AIM Rule 19.

[109] AIM Rule 14.

[110] AIM Rule 15.

[111] AIM Rule 41.

[112] AIM Rule 15

requirements to notify via a RIS the action, publish a circular setting out its investing policy going forward, obtain shareholder consent for that investing policy and implement it within 12 months of taking such action, will apply. Shareholder consent for the action itself will not be required.

5.4 AIM should be consulted as soon as possible where there is any question as to whether or not or when an AIM company has become an AIM Rule 15 cash shell, and must be notified where there is any possibility that the AIM company has become an AIM Rule 15 cash shell.[113]

6. Aggregation of transactions (AIM Rule 16)

6.1 When assessing whether a transaction is a "substantial transaction", a "related party transaction", a "reverse takeover" or a "related party transaction" requiring disclosure in the Company's annual accounts, AIM Rule 16 requires that transactions completed during the 12 months prior to the date of the latest transaction be aggregated with the latest transaction in the following circumstances:

6.1.1 where they are entered into by the Company with the same person or with persons connected with one another;

6.1.2 they involve the acquisition or disposal of securities or an interest in one particular business; or

6.1.3 if together they lead to substantial involvement in a business activity which did not previously form a part of the Company's principal activities.

7. Additional rules for transactions by investing companies

Substantial transactions

7.1 As noted above in paragraph 2 of this part 2, as soon as the terms of any substantial transaction are agreed, the Company must notify a RIS without delay. However, there is a dispensation for investing companies in certain circumstances. If an investment is made by the Company that is in accordance with its investing policy and that investment only breaches the profits and turnover class tests then that investment will be considered to be of a 'revenue nature in the ordinary course of business'. It would therefore not require disclosure as a substantial transaction. However, such a transaction may still require disclosure under the rules for general disclosure of inside information/ price sensitive information.[114]

Related parties

7.2 As summarised in paragraph 3 of this part, AIM Rule 13 requires that any proposed transaction between the Company and a related party be notified via a RIS. For the purposes of this rule, an investment manager (or any company in the same group) and any of its key employees that are responsible for making investment decisions in relation to the Company will be considered to be a director and, as such, a related party. Accordingly, any proposed transaction between the Company and any such person must be notified via a RIS.[115]

Reverse takeovers

7.3 For the purposes of the AIM Rules relating to reverse takeovers, as detailed in paragraph 4 of this part, any acquisition or acquisitions (which should be interpreted broadly and includes an investment in a company or assets) in a 12 month period, which would result in the Company departing materially from its investing policy, will be deemed to amount to a reverse takeover. In addition, an investment which is in accordance with the Company's investing policy and which exceeds 100% in any of the class tests will also be considered a reverse takeover. However, an acquisition by the Company that is in accordance with its investing policy, which only breaches the profits and turnover class tests and which does not result in a fundamental change in its business, board or voting control, will not be considered a reverse takeover.[116] Any transaction which is deemed to be a reverse takeover will result in the Company having to seek re-admission to AIM.

Becoming a trading company

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[113] Guidance to AIM Rule 15.

[114] Note for Investing Companies, June 2009, para 5.2.

[115] Note for Investing Companies, June 2009, para 5.1.

[116] Note for Investing Companies, June 2009, para 5.5.

7.4 Further to paragraph 7.3 above, if the Company makes an investment that results in it having a controlling stake in a company, then the Company will be deemed to have become a trading company and as such will be required to re-apply for admission to AIM as detailed in paragraph 4.2 above. In order to seek to avoid this, the Company should ensure that there is sufficient separation between the Company and the investment to ensure that the Company remains an investing company.[117] Accordingly, any cross-financing or sharing of facilities should be limited.

Disposal within investing policy

7.5 As summarised in paragraph 5 of this part 2 in respect of fundamental changes of business, a disposal by the Company which constitutes a fundamental change of business requires to be notified immediately via a RIS and a circular requires to be issued convening a general meeting at which shareholder approval of the fundamental change should be sought. However, in respect of an investing company, there is a dispensation that applies if the disposal is within its investing policy. In those cases, shareholder approval of the disposal is not required. A RIS announcement containing certain specified information in respect of the disposal should, however, be made. Notwithstanding this dispensation, where an investing company disposes of all, or substantially all, of its assets then the company will have 12 months from the date of the disposal to implement its current investing policy. If this condition is not met, then trading in the securities of the Company will be suspended. If, following such a disposal, the Company wishes to change its investing policy then shareholder approval will be required, but the 12 month investment period will still apply.[118] This 12 month investment period contrasts with the 18 month investment period following admission as detailed in paragraph 19.1.5 of part 1 of this memorandum.

[117] Note for Investing Companies, June 2009, para 3.1.

[118] Note for Investing Companies, June 2009, para 5.6.

PART 3 - DIRECTORS

This part of the memorandum summarises certain civil and criminal offences and other matters of which the Directors should be aware.

1. Transactions by directors and their closely associated persons

1.1 See paragraph 6 of part 1 of this memorandum for a summary of the rules under MAR on transactions by PDMRs and their closely associated persons.

2. Disclosure of interests of investment managers in shares in investing company

2.1 An investment manager (or any company in the same group) and any of its key employees that are responsible for making investment decisions in relation to the Company will be considered a director for the purposes of the disclosure of any deals by directors under AIM Rule 17.[119]

3. Insider dealing and market abuse

Insider Dealing and the Criminal Justice Act 1993

3.1 Under the Criminal Justice Act 1993, it is a criminal offence for an individual who has information as an insider to deal on a regulated market (e.g. AIM), or through or as a professional intermediary, in securities whose price would be significantly affected if the relevant inside information were to be made public. In other words, the insider dealing legislation applies to so-called "on-market" dealing or dealing through a professional intermediary (e.g. a stockbroker). It is also an offence to encourage insider dealing and to disclose inside information with a view to others profiting from it. If a person is found guilty of insider dealing then he may be imprisoned (for up to 7 years) and/or an unlimited fine may be imposed upon him.

Market Abuse Offences under MAR:

3.2 Under MAR, it is an offence to:

3.2.1 engage or attempt to engage in insider dealing;

3.2.2 recommend that another person engages in insider dealing or induce another person to engage in insider dealing;

3.2.3 unlawfully disclose inside information; and/or

3.2.4 engage or attempt to engage in market manipulation.

3.3 There are safe harbours for buyback programmes and stabilisation measures conducted in accordance with the relevant rules. Where the insider dealing and market manipulation offences are committed by a legal person, they are also committed by any natural person who participated in the decision to carry out the activities.

3.4 Insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, either for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. It is also insider dealing to cancel or amend an order to which inside information relates where the order was placed before the person possessed the information.

3.5 In relation to insider dealing and unlawful disclosure of inside information, MAR sets out certain "legitimate behaviours", although the rules can still be infringed if it is established that there was an illegitimate reason for the trade or behaviours concerned.

3.6 Market manipulation comprises:

3.6.1 false or misleading behaviour;

3.6.2 behaviour which secures, or is likely to secure, the price of financial instruments at an abnormal or artificial level;

3.6.3 deceptive behaviour;

3.6.4 dissemination through the media, including the internet, of false or misleading information which the person knew or ought to have known was false or misleading; and

3.6.5 manipulation of benchmarks.

[119] Note for Investing Companies, June 2009, para 5.1.

MAR Annex I gives non-exhaustive indicators of paragraphs 3.6.1 to 3.6.3. MAR also sets out certain behaviours which are considered to be market manipulation.

3.7 Those who contravene a provision of MAR or of a supplementary EU Regulation can be: (i) punished by an unlimited fine or by a public censure[120], and if the contravention is of articles 14 or 15 of MAR they can be: (ii) ordered to make restitution[121]; and (iii) restrained by injunction (interdict in Scotland)[122].

Market soundings safe harbour

3.8 As noted above, under MAR it is an offence (amongst other things) to unlawfully disclose inside information.[123] Unlawful disclosure of inside information occurs where a person discloses inside information other than in the normal exercise of an employment, profession or duties.[124]

3.9 MAR creates a new safe harbour for the disclosure of inside information in the course of market soundings.[125] Market soundings comprise the communication of information,[126] prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing. There are separate provisions in MAR dealing with market soundings in the context of takeovers.[127]

3.10 When conducting market soundings, the disclosing market participant ("**DMP**") must: (i) consider whether the market sounding will entail the disclosure of inside information,[128] (ii) make a written record of its conclusion and the reasons therefor, and (iii) provide the written records to the FCA on request. This applies to each disclosure of information in the course of the market sounding and the records must be updated accordingly.[129]

3.11 Before making the disclosure, the DMP must (i) obtain the consent of the recipient, (ii) inform the recipient that he is prohibited from using, or attempting to use, that information, by acquiring or disposing of for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information, (iii) inform the recipient that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning financial instruments to which the information relates, (iii) inform the recipient that he is obliged to keep the information confidential and (iv) keep a record of all information given to the recipient and the identity of the potential investors (including legal and natural persons acting on behalf of potential investors) and the date and time of each disclosure (and provide that record to the FCA on request).[130]

3.12 When inside information disclosed in the course of a market sounding ceases to be inside information, the DMP must inform the recipient as soon as possible (and keep a record).[131]

3.13 Records kept in accordance with the provisions on market soundings must be kept for five years and disclosed to the FCA on request.[132]

3.14 The EU Commission Delegated Regulation[133] and EU Commission Implementing Regulation[134] relating to market soundings set out in greater detail the procedures to be followed and records to be kept in connection with the conduct of market soundings. Details of these requirements are available from Shepherd and Wedderburn LLP on request.

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120 Section 123, FSMA.

121 Section 383, FSMA.

122 Section 381, FSMA.

123 MAR, Article 14

124 MAR, Article 10(1)

125 MAR, Article 11(4).

126 Note that the market soundings regime is not restricted to inside information.

127 MAR, Article 11(1). See MAR, Article 11(2) for market soundings in the context of takeovers.

128 The recipient is also required to assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information (MAR, Article 11(7)).

129 MAR, Article 11(3).

130 MAR, Article 11(5).

131 MAR, Article 11(6).

132 MAR, Articles 11(3), (5), (6) & (8).

133 Commission Delegated Regulation (2016/960/EU) with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings.

134 Commission Implementing Regulation (2016/959/EU) laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of records.

3.15 The person receiving the market sounding must assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information. [135]

4. Misleading statements and impressions

4.1 The Directors should also be aware of the criminal offences created by part 7 of the Financial Services Act 2012. Part 7 makes it an offence to make false or misleading statements or to create false or misleading impressions.[136] Further information on these offences is set out below.

Misleading statements

4.2 Under section 89 of the Financial Services Act 2012, any person who:

4.2.1 makes a statement which he knows to be false or misleading in a material respect; or

4.2.2 recklessly makes a statement which is false or misleading in a material respect; or

4.2.3 dishonestly conceals any material facts whether in connection with a statement made by him or otherwise,

is guilty of a criminal offence if he makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether it may induce, another person to enter into (or offer to enter into), or to refrain from entering into (or refrain from offering to enter into), a relevant agreement[137], or to exercise, or refrain from exercising, any rights conferred by a relevant investment[138]. For the purpose of section 89 of the Financial Services Act 2012, a person will be reckless if he deliberately shuts his eyes to the possibility that his statement is misleading where, if any thought were given to the matter, it would be obvious that it was. A person may also be reckless if he would have been aware that his statement was misleading if he had made all reasonable enquiries as to its accuracy and was aware at the time of making the statement that he should make all reasonable enquiries. To commit the offence, it is not necessary for the person who has been induced to act (or refrain from acting) to be the same person to whom the statement was made

Misleading impressions

4.3 Under section 90 of the Financial Services Act 2012, any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in, or price or value of, any relevant investments commits an offence if he intends to create the impression and:

4.3.1 he intends, by creating the impression to induce another person to acquire, dispose of, subscribe for or underwrite the investments (or refrain from doing so) or to exercise (or refrain from exercising) any rights conferred by the investments; and/or

4.3.2 he knows that the impression is false or misleading or is reckless as to whether it is, and he intends by creating the impression to (or is aware that creating the impression is likely to) make a gain for himself or another or to cause loss to another person (or to expose them to the risk of loss).

4.4 There is no need for the prosecution to prove dishonesty on the part of such person or an intention by such person to create a false impression. All the prosecution need establish is an intent or purpose to create an impression which, in the event, turns out to be false or misleading. Such a person will then only have a defence if he can prove that he reasonably believed that his act or conduct would not create a false or misleading impression.

4.5 A person guilty of an offence under sections 89 or 90 of the Financial Services Act 2012 is liable to a maximum of 7 years imprisonment or a fine or to both.

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135 MAR, Article 11(7); ESMA Final report: guidelines for persons receiving market soundings (ESMA/2016/1130).

136 Part 7 also makes it an offence to make false or misleading statements or to create false or misleading impressions in relation to specified benchmarks. Under Article 3 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013/637, LIBOR benchmarks are considered 'relevant benchmarks' for these purposes.

137 For the definition of 'relevant agreement' see Article 2 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013/637.

138 For the definition of 'relevant investment see Article 4 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013/637.

PART 4 – MISCELLANEOUS CONTINUING OBLIGATIONS

In addition to the specific rules and legislation summarised in parts 1 to 3 of this memorandum, there are various miscellaneous AIM Rules, voluntary codes and practice guidelines of which the Directors should be aware. Certain of the more important rules and guidance are summarised in this part of this memorandum.

1. Company and directors responsible for compliance (AIM Rule 31)

1.1 Under AIM Rule 31, the Company must:

1.1.1 have in place sufficient procedures resources and controls to enable it to comply with the AIM Rules;

1.1.2 seek advice from its nominated adviser regarding compliance with the AIM Rules whenever appropriate and take that advice into account;

1.1.3 provide its nominated adviser with any information it reasonably requests or requires in order to carry out its responsibilities as nominated adviser, including any proposed changes to the board of directors and the provision of draft announcements in advance;

1.1.4 ensure that the directors accept full responsibility, collectively and individually, for the Company's compliance with the AIM Rules;

1.1.5 ensure that the directors disclose to the Company without delay all information which the Company needs in order to comply with AIM Rule 17 (see paragraph 14 of part 1 of this memorandum) insofar as that information is known to the directors or could with reasonable diligence be ascertained by the directors.

1.2 The AIM Disciplinary Committee has indicated that AIM Rule 31 should not be interpreted narrowly. An AIM company's obligation to inform its nominated adviser, and seek advice regarding business developments, covers a wider range of developments than would be required to be announced under AIM Rule 11. Moreover, it is insufficient simply to send agendas and minutes of board meetings to the nominated adviser without any context or conversation and assume that such actions discharge the company's AIM Rule 31 responsibilities. Developments within the business need to be shared openly and fully with, and advice sought from, the nominated adviser.[139]

1.3 It is also likely that the Company's nominated adviser will obtain undertakings from the Directors (amongst other things) to procure that the Company complies with the AIM Rules.

1.4 In the event of a failure to comply with the AIM Rules, the London Stock Exchange may impose a fine on the Company or may censure the Company. In addition, the London Stock Exchange may publish the fact that the Company has been fined or censured for failing to comply with the AIM Rules or it may suspend trading in or cancel admission of the Company's securities to trading. If the Company's nominated adviser has obtained undertakings from the Company's Directors to procure that the Company complies with the AIM Rules, then (in the event of a breach of those rules) the Directors may find themselves personally liable for breach of those undertakings.

2. Codes of Best Practice & Corporate Governance

2.1 In addition to the legal and regulatory requirements imposed by general law and the AIM Rules, the Company should also have regard to various non-statutory guidelines, codes and statements issued by a number of bodies representing institutions and other shareholders. In particular, various committees (including the Cadbury[140], Greenbury, Hampel, Turnbull[141], Higgs[142], Smith[143] and Walker[144] committees) and representative bodies (including the Association of British Insurers, the Investor Protection Committee, and the Pre-emption Group) have, over a number of years, produced codes and guidelines in respect of corporate governance, directors' remuneration, rights of shareholders and the implementation of internal control systems.

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139 Stock Exchange AIM Disciplinary Notice AD15 (15 December 2016).

140 The Cadbury Committee produced the first version of the UK Code on Corporate Governance in 1992.

141 Guidance on internal controls.

142 Replaced by the March 2010 FRC Guidance on Board Effectiveness.

143 Guidance on audit committees, now replaced by the December 2010 FRC Guidance on Audit Committees.

144 Guidance on the governance of banks and other financial institutions.

Although these codes and guidelines do not have force of law, failure to comply may well affect the willingness of many institutional investors to invest in shares in the Company. The Company's nominated adviser will be able to advise the Directors regarding compliance with these guidelines, codes and statements of best practice.

2.2 Possibly the best known of these codes of best practice is the UK Corporate Governance Code,[145] which is principally applicable to companies whose securities are listed on the Official List and traded on the main market of the London Stock Exchange. However, its recommendations are also regarded as best practice for AIM companies. In terms of the rules of the Official List, a listed company must state the principles of the UK Corporate Governance Code in its report and annual accounts, giving sufficient explanation to enable the company's shareholders to evaluate properly how the principles have been applied. Further, a listed company must state whether or not the UK Corporate Governance Code has been complied with during the accounting period and if not, why not (the so-called "comply or explain" approach). Some AIM companies also report in this way.

2.3 The main principles of the UK Corporate Governance Code are as follows:

2.3.1 **Leadership** - Every company should be headed by an effective board which is collectively responsible for the long-term success of the company. There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision. The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role. As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

2.3.2 **Effectiveness** - The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge. The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.

2.3.3 **Accountability** - The board should present a fair, balanced and understandable assessment of the company's position and prospects. The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems. The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors.

2.3.4 **Remuneration** – Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied. There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

2.3.5 **Relations with shareholders** - There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. The board should use the AGM to communicate with investors and to encourage their participation.

2.4 As noted above, many AIM companies elect to comply to a greater or lesser extent with the UK Corporate Governance Code. The Quoted Companies Alliance ("**QCA**"), a body which

[145] This memorandum is correct to the April 2016 version of the UK Corporate Governance Code. A copy of the UK Corporate Governance Code is available on the FRC's website at http://www.frc.org.uk/corporate/ukcgcode.cfm.

represents the interests of small and mid-sized quoted companies, has produced the "Corporate Governance Code for Small and Mid-Size Quoted Companies". The QCA produces various other guides for smaller and mid-sized companies including a remuneration committee guide and an audit committee guide.[146]

3. City Code on Takeovers and Mergers

3.1 The City Code on Takeovers and Mergers (the "**Code**") issued by the Panel on Takeovers and Mergers (the "**Panel**") (pursuant to the statutory authority conferred by section 943, Companies Act 2006) sets out a number of responsibilities incumbent upon the parties involved in transactions to which the Code applies.

3.2 The Code applies to takeover offers for all companies which have their registered offices in the UK, the Channel Islands or Isle of Man if any of their securities are traded on a stock exchange in the UK, the Channel Islands or Isle of Man. The Code also applies to any takeover offer for a public company which has its registered office or principal office in the UK, the Channel Islands or Isle of Man and which is considered by the Panel to have its place of central management and control there. In certain circumstances, the Code can also apply to takeover offers for private companies.

3.3 Generally, the rules of the Code require that all shareholders of the offeree company are given sufficient information in a timely manner to enable them to assess any offer for the offeree company and that shareholders within the same class are treated fairly by the offeror. Furthermore, where a shareholder (and any persons acting in concert with him) acquires 30% or more of the voting rights of a company, that shareholder must offer to purchase the entire issued share capital of the company.

3.4 The Code applies to the Company. In the event that the Company is approached by a potential offeror, the directors should immediately seek advice from the Company's professional advisers to ensure that the Code is complied with.

Shepherd and Wedderburn LLP

14 March 2017

[146] Copies are available on the QCA website http://www.theqca.com/shop/guides/

APPENDIX 1

DELAYING DISCLOSURE OF INSIDE INFORMATION
ESMA GUIDELINES - FINAL REPORT (ESMA/2016/1130) 13 JULY 2016

1. Legitimate interests of the issuer for delaying disclosure of inside information

For the purposes of point (a) of Article 17(4) of MAR, the cases where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests could include but are not limited to the following circumstances:

(a) the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure of that information. Examples of such negotiations may be those related to mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations;[147]

(b) the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders, jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer;[148]

(c) the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's bylaws, the approval of another body of the issuer, other than the shareholders' general assembly, in order to become effective, provided that:

  (i) immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and

  (ii) the issuer arranged for the definitive decision to be taken as soon as possible;[149]

(d) the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;

(e) the issuer is planning to buy or sell a major holding in another entity and the disclosure of such an information would likely jeopardise the implementation of such plan;

(f) a transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

2. Situations in which delay of disclosure of inside information is likely to mislead the public

For the purposes of point (b) of Article 17(4) of MAR, the situations in which delay of disclosure of inside information is likely to mislead the public includes at least the following circumstances:

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147 The FCA has indicated that, in its opinion, this paragraph does not envisage that that an issuer will (a) delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation or (b) delay disclosure of inside information on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.

148 See the immediately preceding footnote.

149 The FCA has indicated that this reference in the ESMA guidelines to issuers with dual board structures (e.g. a management board and supervisory board (where decisions of the management board require ratification by the supervisory board)) is not available to issuers with a unitary board structure (DTR 2.5.4G(2))

(a) the inside information whose disclosure the issuer intends to delay is materially different from a previous public announcement of the issuer on the matter to which the inside information refers to; or

(b) the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are likely not to be met, where such objectives were previously publicly announced; or

(c) the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval.

APPENDIX 2

OVERVIEW OF GENERAL DISCLOSURE OBLIGATIONS

MAR v AIM RULES

As noted in part 1 of this memorandum, AIM companies are subject to two disclosure regimes – the provisions on inside information under MAR and the provisions on price sensitive information under the AIM Rule 11. AIM companies must consider the two sets of obligations separately. While there is clear overlap between the two disclosure regimes, compliance with MAR does not mean that the Company will have satisfied its obligations under the AIM Rules and *vice versa*. The following table gives a high level overview of the two disclosure regimes (MAR and the AIM Rules). The table is provided for convenience only and is not a substitute for the more detailed information provided in part 1 of this memorandum.

	MAR	**AIM Rules**
Inside information/ price sensitive information	Inside information: • precise • not in the public domain • relates to the company • significant effect on price	Price sensitive information: • new development • not public knowledge • significant price movement May include change to: • financial condition • sphere of activity • performance of business • expectation of performance
Disclosure	Announcement: • via RIS • as soon as possible • include prescribed details • also on website for at least 5 years	Announcement: • via RIS • without delay • also on website for 12 months
Standard of care	Take reasonable care to ensure: • not misleading false or deceptive • does not omit anything likely to affect the import	Take all reasonable care to ensure: • not misleading false or deceptive • does not omit anything likely to affect the import
Delaying disclosure	Conditions to be satisfied: • delay likely to prejudice legitimate interests • delay not likely to mislead public • confidentiality can be ensured Detailed record-keeping requirements Inform FCA of delay on announcement	Disclosure can be delayed in case of: • impending developments • matters in course of negotiation Must be kept confidential
Selective disclosure	To certain categories of recipient depending on circumstances (categories slightly differ between MAR regime and AIM Rules). Must be: • normal exercise of employment, profession or duties • duty of confidentiality on recipient	
Insider lists	Same MAR Rules apply	
Transactions by PDMRs/ closely associated persons	Same MAR Rules apply	
Market soundings	Same MAR Rules apply	