HUNTON& WILLIAMS

CLIENT ALERT

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New AIM Rules and AIM Note for Investing Companies

On 1 June 2009 the London Stock Exchange issued a new guidance note for investing companies (the "**Note**"), to clarify the requirements for investing companies, and updated the AIM Rules for Companies (the "**AIM Rules**"), primarily to reflect such changes. The new AIM Rules took effect immediately, although transitional provisions allow existing AIM companies some time to comply with them. This note looks at the main changes that have been introduced — both in relation to the Note and further, additional changes which are described below.

Background

The previous version of the AIM Rules contained rules in relation to investing companies that were introduced in 2005 to regulate "cash shell" companies. Since then, more diverse and sophisticated investing companies have been admitted to AIM and the new AIM Rules and the Note are intended to deal with these.

New AIM Rules and Note

The new AIM Rules have specific provisions for investing companies, contained primarily in Rule 8 and the Note, and introduce the following requirements:

→ *Appropriateness for AIM*

The nominated adviser should consider whether an investing company is suitable for AIM. In terms of its structure, the investing company should be a closed-ended entity similar to a public limited company and should issue primarily ordinary shares. This reflects the London Stock Exchange's approach that AIM should retain its status as a "junior" market — complex funds are considered more appropriate for listing on the Main Market or the Specialist Fund Market. The nominated adviser should also have regard to the level of separation between the investing company and any investments in which it has a controlling stake, its exposure to risk through any cross-holdings and also its relationship with any relevant feeder funds.

→ *The Investment Manager*

The investment manager must have sufficient experience for the investment company's investing policy. It is required to be independent from the nominated adviser, the board of directors and significant shareholders in the investing company and, to the extent that this is not the case, the company must disclose this. The investing company should also ensure that it has appropriate agreements in place between itself and the investment manager, as well as sufficient safeguards and procedures to ensure that the investing company has sufficient control over its business.

→ *Admission Document*

The Note confirms the existing best practice that the admission document of an investing company should include all the disclosure requirements of Annex XV of the Prospectus Rules, in addition to specific information that an investment company must disclose under Schedule Two(k) of the AIM Rules.

- *Fundraising*

  The Note makes clear that investing companies should raise a minimum of £3 million on admission, from independent sources other than related parties.

- *Interpretation of AIM Rules*

  The Note provides that the investment manager and any of its key employees who are responsible for making investment decisions in relation to the investment company will be considered to be "directors" for the purposes of Rule 7 (lock-ins for new businesses), Rule 13 (related party transactions), Rule 17 (disclosure of miscellaneous information) and Rule 21 (restriction on deals in close periods) of the AIM Rules.

- *Investing Policy*

  Instead of an "investing strategy", as was required under the previous AIM Rules, an investing company must now publish an "investing policy" in its admission document, on its website and in its annual accounts. The investing policy must be sufficiently detailed and precise and the AIM Rules set out certain minimum information that it must contain. Any material changes to the investing policy must be agreed by the shareholders in general meeting. The investing policy must be implemented by the company, by investing 50 per cent or more of the funds available, within 18 months of admission otherwise the investing company must seek annual approval of the policy from its shareholders.

- *Transactions*

  The Note takes into account the fact that a new investing company may not have turnover or profits. It therefore clarifies that an investment by an investment company which is in accordance with its investment policy, but which breaches only the turnover and profits tests:

  - if it exceeds 10 per cent in such class tests, will not require disclosure as a "substantial transaction" in accordance with Rule 12 of the AIM Rules; and
  - if it exceeds 100 per cent in such class tests, will not be considered a "reverse take-over", provided that it does not result in a fundamental change in the business, board or voting control of the company.

  It also provides that a disposal by an investing company which constitutes a fundamental change of business for the purposes of Rule 15 of the AIM Rules will not require shareholder consent, provided that it is within the company's investing policy. Nevertheless, if an investing company disposes of substantially all of its assets, it will have 12 months from the date of that disposal to implement its investing policy, failing which its shares will be suspended.

Additional Changes

The new AIM Rules have also:

- given binding status to the Note for Mining, Oil and Gas Companies, which now form part of the AIM Rules; and
- incorporated the reduced subscription period, of ten business days, in relation to rights issues that was announced in AIM Notice 31.

Implementation and Practical Effect

The new AIM Rules took effect from 1 June 2009. However, there are certain transitional provisions that allow existing investing companies a grace period in which to comply with them.

Investing companies must ensure, by 30 September 2009, that their investment manager is independent in accordance with the new AIM Rules. If independence cannot be confirmed by this date then the company will have to make an announcement to this effect. The company should also announce any information required by the new AIM Rules that has not been previously announced.

In addition, they have until 1 December 2009 in which to ensure that they have made any necessary changes to their investing policy. Shareholder approval will not be required for any changes to such companies' investing policies which are incidental to the implementation of the new AIM Rules unless they materially change the objective and risk profile of such policy. Any change to such an investing policy will need to be announced via an RNS and also made available on the company's website. Details of the amended policy should also be included in the company's next annual report.

It is important that investing companies take the time prior to these dates to review and, where necessary, make changes to their policies and governance structures.

How We Can Help

Hunton & Williams' London office has extensive experience in AIM transactions and ongoing governance, having acting on more than 90 AIM transactions in the last five years. The Firm was recently listed in the Top 10 law firms based upon number of AIM clients. If you would like to discuss any of the issues raised in this note, please contact James Green or Christopher Raggett at this Firm.