

## Introduction

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice.

## AIM: the LSE Consults on Proposed Changes to the AIM Rules and the Nomad Rules

In AIM Notice 38, issued on 27 January 2014, the London Stock Exchange (LSE) seeks views on certain changes to the AIM Rules for Companies and the AIM Rules for Nominated Advisers. While many of the proposals are administrative or confirmatory in nature, the more substantive of the proposed changes to the AIM Rules for Companies include the following:

- jurisdiction of the LSE: the notice makes clear that the LSE has jurisdiction over a company whose shares are no longer admitted to AIM for the purpose of investigating and taking disciplinary action against breaches by the company of the AIM Rules at a time when the company was seeking, or had, an AIM listing; and
- AIM Rule 26: information regarding an AIM company that must be available on a website: the notice proposes that the company should also be required to disclose which corporate governance code it has adopted and how it complies with that code. If no code has been adopted, the company should disclose that fact.

Proposed changes to the Nomad Rules include:

- clarification of the criteria for Nomad eligibility: a Nomad will be required to employ a minimum of four Qualified Executives ('QEs'). The LSE will have regard to the overall experience of the QEs – both as individuals and as a team;
- eligibility of QEs:
  - existing QEs will continue to be eligible provided they have acted in a lead corporate finance capacity on three applicable transactions in the preceding five year period (instead of the existing three year qualification period);
  - QEs with over five years continuous experience who are actively involved in a corporate finance advisory role will continue to be eligible if they have acted in a lead corporate finance capacity in one applicable transaction in the preceding five year period; and
  - if an individual ceases to be an employee of a Nomad, or if the firm ceases to be a Nomad, that person will lose QE status and will have to reapply;
- continuing eligibility requirements for Nomads: notification must be made by a Nomad on change of control. A change of control will trigger the requirement for a new application for Nomad status.

Comments are requested by 3 March 2014. The LSE intends to introduce the new Rules during the course of this year.

AIM Notice 38: AIM Rules and Nomad Rules consultation available at:

<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aimnotice38.pdf>

## Cyber-Security in Corporate Finance: Guidance Issued by the ICAEW

The Institute of Chartered Accountants in England and Wales, in conjunction with a working party comprised of a number of other bodies<sup>1</sup>, has published a guide on cyber-security in relation to corporate finance transactions. The guide highlights the areas of concern and offers advice on managing the risks which may be encountered during the corporate finance process. Among other things it suggests:

- implementing an incident management plan for each specific transaction;
- nominating one person in each organisation to be responsible for the information being shared;
- sharing information by means of a secure data store, separate from the organisation's usual IT system;
- raising cyber-security issues in relation to the target company as part of the due diligence exercise; and
- considering whether to keep any very sensitive information (e.g. the final bid price) off-line.

Cyber- Security in Corporate Finance available at:

<http://www.icaew.com/~media/Files/Technical/Corporate-finance/Corporate-finance-faculty/tecpln12526-cyber-web.pdf>

<sup>1</sup> Members of the working party include the Cabinet Office, the CBI, the Law Society, the Takeover Panel, the London Stock Exchange and KPMG.

## The Listing Regime: the FCA Consults on Proposed Changes to the Listing Rules in Relation to Sponsor Competence, and on Other Amendments to the Listing Rules and Prospectus Rules

In its consultation paper CP14/2, published on 30 January 2014, the Financial Conduct Authority (FCA) makes a number of proposed changes to the Listing Rules and the Prospectus Rules. Among other things, proposed amendments to the Listing Rules relating to sponsor competence would require a sponsor to adopt an appropriate “competence framework” and embed this within its systems and controls, while proposed changes to the Prospectus Rules introduce specific obligations for an applicant to submit a compliant and factually correct prospectus in line with the specific requirements in other EU member states.

Comments are requested by 30 April 2014, with FCA feed-back expected in the last quarter of this year.

CP 14/2: Proposed amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-02.pdf>

## Prospectuses: ESMA Publishes Version 21 of its “Prospectuses: Questions and Answers” Document

On 15 January 2014, the European Securities and Markets Authority (ESMA) published the latest version of its “Prospectuses: Questions and Answers” document. Two new questions have been added since the last edition to deal with the following:

- the format for the individual summary relating to several securities (Q. 91); and
- the registration document schedule applicable when a listed issuer proposes to issue convertible or exchangeable debt securities where the underlying securities are the issuer’s shares (Q. 92).

Prospectuses: Questions and Answers: Version 21, January 2014 available at:

[http://www.esma.europa.eu/system/files/2014-esma-35\\_21st\\_version\\_qa\\_document\\_prospectus\\_related\\_issues.pdf](http://www.esma.europa.eu/system/files/2014-esma-35_21st_version_qa_document_prospectus_related_issues.pdf)

## Takeovers: the Takeover Panel Issues a Practice Statement on Directors’ Irrevocable Commitments and Letters of Intent

The Takeover Panel’s Practice Statement, No 27, published on 17 January 2014, clarifies the way the Panel applies Rule 21.2 of the Takeover Code regarding irrevocable commitments and letters of intent given by target company shareholders who are also directors of the target company. The Panel has confirmed that, while the Rule allows such a person to enter into an irrevocable commitment or letter of intent to accept an offer, or vote in favour of a scheme, in relation to his shares, it does not permit him to enter into any other type of offer-related arrangement with the bidder or the bidder’s concert parties.

If there is any doubt whether a proposed irrevocable undertaking or letter of intent complies with the Rule, the Panel should be consulted.

Practice Statement No. 27: Rule 21.2 – Directors’ Irrevocable Commitments and Statements of Intent available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PS27.pdf>

## EU: Market Abuse: Directive on Criminal Sanctions for Market Abuse

The European Parliament has adopted (on 4 February 2014) a new Directive on criminal sanctions for market abuse and insider dealing. This, together with the Market Abuse Regulation (which was endorsed by the European Parliament on 10 September 2013), will form the framework to replace and strengthen the existing regime under the Market Abuse Directive (2003/6/EC).

The new regime will apply to all financial instruments which are traded on organised platforms and over the counter, and includes rules to take account of new technology. It aims to strengthen the fight against market abuse across commodity and related derivative markets, explicitly bans the manipulation of benchmarks (such as LIBOR) and reinforces the co-operation between financial and commodity regulators. Sanctions will be tougher and more harmonised.

Among other things, the new Directive:

- includes a more detailed definition of “insider dealing”;
- makes it clear that both direct and indirect dealings may be caught;
- sets out the categories of person who will be deemed to be “insiders”;
- expands the prohibition against the unlawful disclosure of inside information to include the onward disclosure of a recommendation or inducement to deal if the person disclosing the information knows that it was based on inside information;
- clarifies the definition of “market manipulation”; and
- specifies the minimum penalties for natural persons and includes details on the sanctions that member states may apply to legal persons.

The new Directive is subject to formal approval by EU member states and will enter into force on the twentieth day after its publication in the Official Journal. It is anticipated that this will be in June this year. Member states will then have two years to implement the new regime.

Texts adopted at the sitting of the European Parliament on Tuesday 4 February 2014 available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20140204+SIT+DOC+WORD+V0//EN&language=EN>

## How Squire Sanders Can Help

We would be pleased to discuss with you in more detail any of the matters raised in this article.

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