

Action for breach of the AIM Rules

As well as adapting to changes to governance requirements, recent disciplinary action by the London Stock Exchange highlights the importance of regular discussion with Nominated Advisers to mitigate the risk of inadvertent breach of the AIM Rules.

01 February 2019

As well as adapting to changes to governance requirements, recent disciplinary action by the London Stock Exchange highlights the importance of regular discussion with Nominated Advisers to mitigate the risk of inadvertent breach of the AIM Rules.

The examples of enforcement action below emphasise the importance of managing disclosure of potentially price sensitive information in the context of social media strategy and consulting with the appointed Nominated Adviser, notwithstanding a breakdown in the relationship.

Social media and AIM Rules 10 and 31

Earlier this year, the London Stock Exchange imposed disciplinary action against an AIM listed company for breaching AIM Rule 10 (principles of disclosure) and AIM Rule 31 (company and directors' responsibility for compliance).

The company provided an update as to progress of business on social media. Some of the information contained on social media should have been notified via a Regulatory Information Service first.

The company did not have an adequate social media policy to monitor its social media content, i.e. there were no procedures in place to check whether certain information should be notified in accordance with the AIM Rules before being released elsewhere.

As a result, the company was found to be in breach of AIM Rule 10 (by making information public via social media before it was disclosed in a regulatory notification) and AIM Rule 31 (by failing to have sufficient measures in place to monitor disclosures made on social media).

What should you do?

AIM listed companies should ensure that they have sufficient procedures, resources and controls in place to manage communications on social media so that any relevant information is disclosed in a regulatory notification before it is disclosed via any other means.

Companies should also have regard to the Market Abuse Regulations when disclosing information on social media; any early or selective disclosure may give rise to market abuse issues.

Guidance has been issued by [AIM Regulation regarding the use of social media here](#).

Breakdown of the relationship with your Nominated Adviser could lead to a breach of the AIM rules

Earlier this year, the London Stock Exchange imposed disciplinary action against an AIM listed company for breaching AIM Rule 11 (general disclosure of price sensitive information) and AIM Rule 31 (company and directors' responsibility for compliance).

The company did not keep its Nominated Adviser informed as to progress in appointing a new Nominated Adviser, despite frequent requests from the existing Nominated Adviser during its notice period; this information was required so that the Nominated Adviser could advise the company on its disclosure obligations.

As a result, the company delayed notifying the market when (i) the departure of the existing Nominated Adviser and the failure to appoint a replacement Nominated Adviser had become price sensitive, and (ii) it could no longer withhold this information under AIM Rule 11

guidance.

The company has been privately censured and fined to £75,000 for breaching AIM Rules 11 and 31.

What should you do?

As the breaches related to the breakdown of communication between the company and its Nominated Adviser, your Nominated Adviser should be fully aware of the developments within the company so it is able to fulfil its regulatory and advisory role to the company, as well as its obligations to the London Stock Exchange.

If there is a breakdown in relationship between the company and its Nominated Adviser, it is the company's responsibility to meet the reasonable requests of the Nominated Adviser and to seek its advice regarding compliance with the AIM Rules. These requirements still apply during the Nominated Adviser's notice period.

Contact

Sam Sharp

Partner

sam.sharp@brownejacobson.com

+44 (0)115 908 4812

Related expertise

Services

Commercial law

Copyright and related rights

Data protection and privacy