ONCIMMUNE HOLDINGS PLC
(the "Company")

MEMORANDUM ON DIRECTORS' DUTIES & RESPONSIBILITIES

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1. INTRODUCTION

This memorandum has been prepared for the directors of Oncimmune Holdings plc (the **"Company"**) in connection with:

(a) the proposed placing of new and existing shares in the Company; and

(b) the application proposed to be made to the London Stock Exchange (the **"Exchange"**) for all of the Company's shares, issued and to be issued, to be admitted to trading on the AIM market operated by the Exchange (**"AIM"**).

The principal purpose of this memorandum is to highlight the responsibilities and potential liabilities of the directors of the Company arising under English law in connection with the application for AIM admission and the associated placing. These responsibilities and liabilities are summarised in paragraph 2 and, in paragraph 3, we outline the steps which need to be taken in order to minimise the risk of those liabilities materialising in practice.

This memorandum also covers a number of other areas. A company with shares admitted to trading on AIM must comply with an extensive series of continuing obligations, including obligations regarding the disclosure of price-sensitive and other information. These continuing obligations are summarised in paragraph 4. Paragraph 5 describes the statutory regime governing a company's liability to investors in respect of information published by it following AIM admission. An outline of the UK insider dealing and market abuse regimes which operate to restrict certain dealings in a company's securities and other types of behaviour is set out in paragraph 6 and, in paragraph 7, we highlight certain elements of the UK financial promotion regime. Paragraph 8 contains a brief introduction to the UK corporate governance regime for AIM companies. Finally, in paragraph 9, we provide a brief introduction to the conduct of public company takeovers in the UK.

This memorandum deals only with the legal and regulatory framework applicable in England and Wales and does not deal with any other jurisdiction. This memorandum provides general guidance only in relation to the matters covered in it and should not be used as a substitute for specific advice in relation to any particular matter.

If any director of the Company has any query concerning any matter covered in this memorandum or if specific advice is needed in relation to a particular matter, please contact David Wilson of Peachey & Co LLP (*daw@peachey.co.uk*) or Phil Walker of Zeus Capital Limited (*phil.walker@zeuscapital.co.uk*).

2. DIRECTORS' PRINCIPAL RESPONSIBILITIES AND LIABILITIES

2.1 The UK prospectus regime and AIM companies

(a) *Requirement for an approved prospectus*

Under section 85 of the Financial Services and Markets Act 2000 (the **"FSMA"**), a prospectus is, subject to certain exemptions, required when:

(i) transferable securities to which section 85(1) applies are to be offered to the public in the UK; or

(ii) a request is to be made for transferable securities to which section 85(2) applies to be admitted to trading on a regulated market situated or operating in the UK.

The prospectus must be approved by the Financial Conduct Authority (the **"FCA"**) in accordance with section 87A of the FSMA before its publication and, once approved, it must be made available to the public in accordance with the Prospectus Rules made by the FCA under the FSMA.

Failure to comply with section 85 is a criminal offence, punishable on conviction by imprisonment. Such a failure would also be actionable as a breach of statutory duty by a person who suffers loss as a result.

(b) *Meaning of offer to the public*

An offer of transferable securities to the public is widely defined in section 102B(1) of the FSMA as "*a communication to any person which presents sufficient information on the transferable securities to be offered and the terms on which they are offered to enable an investor to decide to buy or subscribe for the securities in question*". The communication may be made in any form and by any means. Section 102B(2) goes on to provide that, to the extent that an offer of transferable securities is made to a person in the UK, it is an offer of transferable securities to the public in the UK.

(c) *Exempt offers to the public*

There are a number of circumstances in which the requirement to publish a prospectus does not apply. In particular, under section 86(1) of the FSMA, a prospectus is not required in connection with a public offer if the offer is made to 'qualified investors' only (broadly, professional investors and

substantial corporations) or to fewer than 150 persons (other than qualified investors) per EEA state.

(d) ***Form of AIM admission document***

A company applying for admission of its securities to AIM must always comply with the AIM Rules for Companies published by the Exchange (the **"AIM Rules"**). The AIM Rules require, amongst other things, the production of an admission document containing detailed information about the company and its directors.

In addition, if the AIM application is accompanied by an offer to the public for which no exemption is available, the admission document will also need to comprise an approved prospectus in accordance with the FSMA requirements outlined above. However, if there is no offer to the public (or an exemption applies), no prospectus requirement arises (because AIM is not a regulated market for FSMA purposes) and an admission document complying with the AIM Rules is all that is required. The distinction is important. Apart from having to meet additional content requirements, a prospectus requires the prior approval of the FCA whereas an admission document does not.

We understand that it is intended that the proposed placing which is to accompany the application for AIM admission will be structured so as to constitute an exempt offer to the public thereby avoiding the need to publish a formal prospectus. However, for the sake of completeness and in case there are any changes to the structure of the transaction as it progresses, paragraph 2.2 briefly outlines certain key aspects of the prospectus regime.

2.2 **Prospectuses**

(a) ***General duty of disclosure***

If a prospectus is required, it would need to comply with the full prospectus content requirements of the FSMA and the Prospectus Rules. In addition to the extensive and detailed content requirements which are principally set out in the Prospectus Rules, section 87A imposes a general overriding duty of disclosure by requiring that a prospectus must contain the information necessary to enable investors to make an informed assessment of:

(i) the assets and liabilities, financial position, profits and losses and prospects of the issuer of the transferable securities; and

(ii) the rights attaching to the transferable securities to which the prospectus relates.

The information must be presented in a form which is comprehensible and easy to analyse and must be prepared having regard to the particular nature of the transferable securities and the issuer.

(b) ***Persons responsible for a prospectus***

Under the Prospectus Rules, the persons responsible for a prospectus include, amongst others:

(i) the issuer of the securities;

(ii) the directors of the issuer at the time the prospectus is published; and

(iii) any person named in, and having authorised himself to be named in, the prospectus as having agreed to become a director.

All the directors of the issuer, whether executive or non-executive, are responsible for the prospectus. Non-executive status is irrelevant for this purpose.

(c) ***Responsibility statement***

The Prospectus Rules also require the inclusion in the prospectus of a statement pursuant to which all the directors expressly accept responsibility for the information contained in the prospectus. This statement must be in substantially the following form:

"*The directors accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.*"

(d) ***Supplementary prospectus***

If, during the period beginning with the approval of the prospectus and ending with the later of the closure of the offer to the public and the commencement of trading in the issuer's securities, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus, it is necessary, in accordance with section 87G of the FSMA, to publish a supplementary prospectus containing

details of the new factor, mistake or inaccuracy. It is the duty of every person responsible for the original prospectus (which, as noted above, includes each director of the issuer) who becomes aware of a new factor, mistake or inaccuracy to bring it to the attention of the issuer.

A person who has accepted an offer of securities to the public prior to the publication of a supplementary prospectus is entitled, under section 87Q of the FSMA, to withdraw his acceptance if the new factor, material mistake or inaccuracy which causes the supplementary prospectus to be published arose before the delivery of the securities. The right of withdrawal must be exercised before the end of the second working day after the day on which the supplementary prospectus is published or such later time as may be specified in the supplementary prospectus.

(e) ***Compensation under section 90 of the FSMA***

Under section 90 of the FSMA, any person responsible for a prospectus (which, as noted above, includes each director of the issuer) is liable to pay compensation to any person who has acquired securities to which the prospectus applies and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from the prospectus of any information required to be included in it. For this purpose, where a prospectus is required to include information about the absence of a particular matter, the omission of that information is to be treated as a statement in the prospectus that there is no such matter. Liability to pay compensation under section 90 may also arise in respect of any untrue or misleading statement in or omission from a supplementary prospectus.

There are a number of exemptions from liability to pay compensation under section 90. For example, a person will not be liable to pay compensation if he is able to satisfy the court that, when the prospectus was submitted to the FCA, he reasonably believed (having made reasonable enquiries) that the relevant statement was true and not misleading or that a matter was properly omitted. To take advantage of this exemption, he would also need to demonstrate to the court that (i) he continued in his belief until the securities were acquired or (ii) the securities were acquired before it was reasonably practicable to bring a correction to the attention of likely investors or (iii) before the securities were acquired, he took all reasonable steps to ensure that a correction was brought to the attention of likely investors or (iv) he continued in his belief until after the commencement of dealings in the securities and the securities were acquired after such a lapse of time that he ought to be reasonably excused.

2.3 AIM admission documents

(a) *Overriding duty of disclosure*

The AIM Rules require that a company applying for admission of its securities to trading on AIM must produce an admission document. The required contents of the admission document are specified in Schedule 2 to the AIM Rules and include by cross-reference certain information prescribed by the Prospectus Rules.

In addition, the AIM Rules impose an overriding duty of disclosure by stipulating that the admission document must contain all information which the company reasonably considers necessary to enable investors to form a full understanding of:

(i) the assets and liabilities, financial position, profits and losses, and prospects of the company and its securities for which admission is being sought;

(ii) the rights attaching to those securities; and

(iii) any other matter contained in the admission document.

The company must take reasonable care to ensure that the information contained in the admission document is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect the import of such information.

(b) *Persons responsible for an admission document*

The persons responsible for the contents of an admission document are the same as the persons responsible for a prospectus and include all the directors of the company (whether executive or non-executive).

(c) *Responsibility statement*

Similarly, the admission document must contain a declaration by all the directors expressly accepting responsibility for the accuracy and completeness of the contents of the admission document in the same terms as those described above in relation to a prospectus.

(d) ***Supplementary admission documents***

If, at any time after an admission document is submitted and before the date of admission, there arises or is noted any material new factor, mistake or inaccuracy relating to the information included in the admission document, a supplementary admission document must be submitted containing details of the new factor, mistake or inaccuracy. A director who becomes aware of any such matter should inform the company and its nominated adviser immediately.

There are no withdrawal rights flowing from the issue of a supplementary admission document.

2.4 **Civil liability**

An untrue or misleading statement in (or the omission of information from) an admission document could give rise to various forms of civil liability including those briefly outlined below.

(a) ***Compensation under section 90A of the FSMA***

The section 90 compensation regime in respect of misstatements in a prospectus outlined above does not apply in respect of misstatements in an admission document (unless the admission document is also a prospectus). However, a company producing an admission document (but not its directors) may be liable under section 90A and Schedule 10A of the FSMA to compensate investors who suffer loss as a result of an untrue or misleading statement in the document or the omission from the document of any matter required to be included in it. Liability would arise if a director knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading or knew the omission to be a dishonest concealment of a material fact. Although a director would not be directly liable to investors under section 90A of the FSMA, he may, under English law, be liable to the company

The section 90A statutory liability regime also applies to all information formally published by a company following its admission to AIM and is discussed further in paragraph 5.

(b) ***Negligent misstatement***

If an admission document contains an untrue or misleading statement made carelessly or without reasonable grounds for believing it to be true, an investor

who has relied on that statement and suffered loss as a result may be entitled to bring a claim for damages against the directors in an action in tort for negligent misstatement. Damages would be awarded only in respect of those losses suffered by the investor which were reasonably foreseeable.

To found an action for negligent misstatement, there does not need to be a contractual relationship between the claimant and the maker of the statement. However, the claimant would need to show that the maker of the statement owed the claimant a "duty of care". It is generally considered that directors do owe a duty of care to investors in respect of any negligent misstatements in an admission document. The inclusion in the document of the statement by the directors expressly accepting responsibility for the information in the document provides evidence of the existence of this duty.

(c) ***Fraudulent misrepresentation***

A fraudulent misrepresentation is a false representation made knowingly or without belief in its truth or recklessly as to its truth. The inclusion of a fraudulent representation in an admission document could entitle an investor who has relied on it and suffered loss as a result to bring a claim for damages against the directors in an action in the tort of deceit. Damages may be awarded for all losses suffered by the claimant as a result of his reliance on the fraudulent misrepresentation and would not be restricted, as is the case with negligent misstatement, to those losses which are reasonably foreseeable.

In addition to bringing an action in the tort of deceit, the inclusion of a fraudulent misrepresentation would also entitle an investor who has relied on it to rescind his contract to acquire the company's shares. However, the right to rescind will be lost in a number of circumstances (for example, where it is no longer possible for the contracting parties to be restored to their pre-contractual position).

(d) ***Other types of misrepresentation***

The actions in tort founded on negligent misstatement and fraudulent misrepresentation outlined above are not dependent on there being a contractual relationship between the maker of the misstatement or misrepresentation and the investor. Additional forms of redress may be available to an investor who suffers loss as a result of relying on a misrepresentation made to him by a person with whom he has a contractual relationship (which effectively means the company rather than the directors).

If an admission document contains a statement which is made carelessly or without having reasonable grounds for believing it to be true (in other words, a negligent misrepresentation), an investor would be entitled to rescind his contract to acquire the company's shares and claim damages under the Misrepresentation Act 1967. In the case of an innocent representation (that is, a statement made where there are reasonable grounds for believing it to be true), an investor would be entitled to rescind his contract but would have no right to damages. Damages may be awarded for innocent representation in lieu of rescission under the Misrepresentation Act 1967 but this is at the discretion of the court. As noted above, there are a number of circumstances in which the right to rescind would be lost.

(e) ***Breach of contract***

It is possible for a misrepresentation contained in an admission document to be incorporated as a term of the investor's contract and thereby entitle the investor to bring a claim for damages for breach of contract.

(f) ***Breach of directors' general duties under the Companies Act 2006***

The directors must always remain mindful of their general duties under the Companies Act 2006 which include the duty to promote the success of the Company and to exercise reasonable care, skill and diligence. If, as a result of a failure to such care, skill and diligence, an untrue or misleading statement is included in (or material information omitted from) an admission document and the Company suffers loss as a result (for example, by having to compensate investors), the directors may be liable in damages to the Company for breach of duty.

(g) ***Placing agreement***

In connection with the application for AIM admission and the associated placing, the Company and Zeus Capital Limited (**"Zeus"**) will enter into a formal agreement setting out their respective rights and obligations. This agreement will contain warranties by the Company regarding the accuracy and completeness of the information contained in the admission document, compliance with relevant legal requirements and other matters relating to the Company and its business and affairs. It will also contain an indemnity by the Company in favour of Zeus in respect of any loss suffered by it in connection with the application for AIM admission and the associated placing.

The directors may also be required to be a party to the agreement and to assume various obligations under it. In particular, the directors may be

required to give certain warranties to Zeus. Where warranties are sought from directors, the nature of those warranties and the extent of the directors' liability under them will be a matter for detailed negotiation.

2.5 Criminal liability

In addition to the potential civil liabilities outlined above, criminal liability may also arise, although the criminal law will generally only be relevant where there has been wilful or reckless provision of misinformation or deliberate or dishonest concealment.

(a) *Misleading statements*

Under section 89 of the Financial Services Act 2012, it is a criminal offence for a person:

(i) to make a statement which he knows to be false or misleading or to make a statement which is false or misleading, being reckless as to whether it is; or

(ii) to dishonestly conceal any material facts (whether in connection with a statement made by him or otherwise),

if he makes the statement or conceals the facts with the intention of inducing (or is reckless as to whether the making of the statement or the concealment of the facts may induce) another person (who does not have to be the person to whom the statement is made) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement (which includes any agreement for the sale or purchase of shares) or to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(b) *Misleading impressions*

Under section 90 of the Financial Services Act 2012, it is also an offence for a person to do any act or engage in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments if he intends to create the impression and, by so doing, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by the investments. The offence is also committed if the person in question intends to create the impression knowing it to be false or misleading (or being reckless as to whether it is) and:

(i) intends, by creating the impression, to make a gain (whether for himself or another) or cause loss to another person (or expose another person to the risk of loss); or

(ii) is aware that creating the impression is likely to result in he or another person making a gain or another person suffering a loss or being exposed to the risk of loss.

(c) ***Theft Act 1968***

Under section 19 of the Theft Act 1968, it is a criminal offence for any director of a company to publish, or concur in publishing, a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular if he does so intending to deceive members or creditors of the company about its affairs. A misleading or deceptive statement in or omission from an admission document could, if made with the requisite knowledge and intent, result in the commission of this offence.

(d) ***Fraud Act 2006***

Under the Fraud Act 2006, a person commits the offence of fraud if:

(i) he dishonestly makes a false representation; or

(ii) he dishonestly fails to disclose to another person information which he is under a legal duty to disclose; or

(iii) he occupies a position in which he is expected to safeguard or not to act against the financial interests of another person and dishonestly abuses that position,

and, in any such case, he intends (by making the representation, by failing to disclose the information or (as the case may be) by means of the abuse of that position) to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss.

A misleading or deceptive statement in or omission from an admission document could, if made dishonestly and with the requisite intent, result in the commission of this offence.

3. STEPS TO BE TAKEN

3.1 General

In view of the potential liabilities noted in paragraph 2, it is essential that each director believes, and has reasonable grounds for believing, that:

(a) the information contained in the admission document is in accordance with the facts and not misleading and that nothing has been omitted from the document which could affect the import of any information contained in it; and

(b) in addition to satisfying the specific content requirements imposed by the AIM Rules, the admission document contains all the information which is necessary in order to satisfy the overriding duty of disclosure referred to in paragraph 2.3(a).

3.2 Reviewing the admission document

Accordingly, every director should read, and carefully consider the entire contents of, all proofs (and, in particular, later proofs) and the final form of the admission document and satisfy himself that:

(a) each statement of fact contained in the document is true and accurate and not misleading in its context;

(b) each forecast contained in the document is fairly based and made on reasonable grounds after due and careful consideration and enquiry;

(c) each statement of belief, opinion or intention contained in the document is identified as such and is fairly based and made on reasonable grounds after due and careful consideration and enquiry;

(d) no information has been omitted from the admission document which needs to be included in it in order to satisfy the general overriding duty of disclosure referred to in paragraph 2.3(a) or the omission of which makes any information contained in the document misleading; and

(e) the document, taken as a whole, gives a true, accurate and fair impression of the business, assets and liabilities, profits and losses, financial and trading position and prospects of the Company and the rights attaching to the Company's shares.

If a director discovers any errors in or omissions from the document or is concerned that any statement in it is or may be misleading, he should notify the Company and Zeus as soon as possible. It is vital that each director discloses all relevant information in his possession concerning the Company and its business and affairs. Any director who is any doubt about the relevance or materiality of any information should raise the matter with the Company and Zeus without delay.

3.3 **Verification**

In order to provide evidence that all reasonable care has been taken during the preparation and finalisation of the admission document and to minimise the risk of liability arising, a detailed verification exercise will be undertaken in relation to the document in conjunction with the directors and other relevant persons. The purpose of the exercise is to test and confirm the accuracy of the information contained in the document and, so far as possible, to ensure that any inferences a reader might reasonably draw from the document are fully justified and that no incorrect or misleading statement is made by default. Whilst verification is a time-consuming procedure, its importance cannot be overstated and it is in the interests of each director to ensure that his full attention, and that of other persons involved in the exercise, is given to it.

The exercise will include the preparation of verification notes itemising the statements of fact, opinion, belief and intention contained in the document and identifying and recording the source of and evidence for those statements. The notes will, in appropriate instances, incorporate verification provided by persons other than the directors. In such circumstances, each director must be satisfied that it is reasonable to rely on the relevant person in relation to the matter in question and that such person has duly verified the statement and is competent to do so.

The directors will be expected formally to approve the final version of the admission document at a board meeting to be held shortly before its publication. All of the directors should attend this meeting. It provides a final opportunity for each director to ensure that he is satisfied that he has complied with his responsibilities. The completed verification notes will also be tabled for approval at this meeting and, when approved, each director will be asked to sign a copy of the notes. The notes will then serve as a formal record of the steps taken to verify the contents of the document.

If, notwithstanding the verification procedure, incorrect information is included in (or material information is omitted from) the admission document, the directors and others may incur liability on the basis outlined in paragraph 2. Whilst the verification procedure provides evidence that reasonable care has been taken by the persons responsible for the document, it is not in itself a defence to any claim that may be brought. **Accordingly, the verification procedure should not be regarded as a**

substitute for each director reading the document in detail and with the greatest care and satisfying himself that the information contained in it is accurate, complete and not misleading.

3.4 Responsibility letters

As noted above, the admission document will contain a statement pursuant to which the directors expressly accept responsibility for the contents of the document. To confirm acceptance of this responsibility, each director will be asked to sign a responsibility letter which will authorise the issue of the admission document with the inclusion of the responsibility statement. The responsibility letter will be addressed to the Company and to Zeus.

3.5 Powers of attorney

The responsibility letter will be accompanied by a power of attorney under which each director appoints any other director as his attorney to sign any documents arising in connection with the application for AIM admission and the associated placing. The purpose of the power of attorney is simply to avoid problems that might otherwise arise by reason of the last minute or unexpected unavailability of one or more directors.

3.6 Errors and omissions

If, following the publication of the admission document and before the admission of the Company's shares to trading on AIM, a director becomes aware that any information contained in the document is untrue, inaccurate or misleading or becomes aware of any new information (including any new factor or change) which affects any information contained in the document or which would have required disclosure in the document had it been known prior to its publication, he must immediately inform the Company and Zeus so that due consideration can be given as to the need for the publication of a supplementary admission document.

If a director becomes aware, at any later time, of any inaccurate or misleading statement in the admission document (or any omission of material information from the document), he should immediately raise the matter with the Company and Zeus. In such circumstances, a public announcement may be necessary.

3.7 Disclosure of information

No information which is not included in the admission document should be given either in writing or orally to a potential investor with a view to influencing his decision whether or not to invest in the Company. It would be entirely inappropriate for

certain information to be made available to some potential investors but not to others. If information which is not included in the admission document were to be given to potential investors, questions would arise as to the completeness of the admission document and its compliance with the disclosure requirements referred to above. In addition, there would also be risks flowing from the fact such information may not have been subject to the verification procedure.

4. CONTINUING OBLIGATIONS OF AIM COMPANIES

4.1 Introduction

Following admission of its shares to trading on AIM, the Company will need to comply with extensive continuing obligations under the AIM Rules. The Company will also have to comply with the Disclosure and Transparency Rules made by the FCA so far as applicable to AIM companies. In this section of the memorandum, we outline the principal continuing obligations to which the Company will be subject under the AIM Rules and the Disclosure and Transparency Rules.

4.2 Responsibility for compliance (AIM Rule 31)

The Company must have in place sufficient procedures, resources and controls to enable it to comply with the AIM Rules and ensure that each of its directors accepts full responsibility, collectively and individually, for the Company's compliance with the AIM Rules.

4.3 Nominated adviser (AIM Rules 1 and 31)

An AIM company must retain a nominated adviser at all times. The nominated adviser is responsible to the Exchange for advising and guiding an AIM company on its responsibilities under the AIM Rules. If an AIM company ceases to have a nominated adviser, the Exchange will suspend trading in its securities. If a replacement nominated adviser has not been appointed within one month of the suspension, the admission of the AIM company's securities will be cancelled.

An AIM company must, whenever appropriate, seek advice from its nominated adviser regarding its compliance with the AIM Rules and take that advice into account. It is also under a general obligation to provide its nominated adviser with any information which the nominated adviser reasonably requests in order to carry out its responsibilities.

4.4 Retention of a broker (AIM Rule 35)

An AIM company is also obliged to retain a broker at all times.

4.5 **Principles of disclosure (Rule10)**

The primary objective of the continuing obligations imposed by the AIM Rules is to ensure the immediate release of all information concerning an AIM company's activities, performance, financial condition and affairs and the business sectors in which it operates which is necessary in order to keep the market properly informed about an investment in the company. In this connection, AIM Rule 10 sets out certain principles of disclosure which are outlined below.

Information required to be disclosed by the AIM Rules must be notified to a Regulatory Information Service (**"RIS"**) provider for release to the market. An AIM company must retain an RIS provider to ensure that information can be notified as and when required.

Information requiring disclosure must be notified to an RIS no later than it is published elsewhere. For example, where an announcement is proposed to be made at a shareholders' meeting (for instance, a trading statement at an annual general meeting) which might lead to a substantial movement in the share price, arrangements must be made for the relevant information to be notified to an RIS no later than the announcement at the meeting.

An AIM company must take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.

4.6 **Disclosure of price sensitive information (AIM Rule 11)**

AIM Rule 11 imposes on an AIM company a general obligation to disclose price sensitive information. This general disclosure obligation is in addition to any specific notification requirements set out elsewhere in the AIM Rules.

(a) ***Obligation to disclose price sensitive information***

An AIM company must notify an RIS without delay of any new developments which are not public knowledge which, if made public, would be likely to lead to a significant movement in the price of its securities. Matters requiring disclosure may include matters concerning a change in:

(i) its financial condition; or

(ii) its sphere of activity; or

(iii) the performance of its business; or

(iv) its expectation of its performance.

Information that would be likely to lead to a significant price movement includes information of a kind which a reasonable investor would be likely to use as part of the basis of its investment decisions.

Compliance with the principles of disclosure in AIM Rule 10 and the general disclosure obligation in AIM Rule 11 is crucial to ensure that the market is updated accurately and in a timely manner to avoid the risk of a disorderly or false market. It is essential that the directors of an AIM company adopt clear and consistent policies and procedures for the identification of information that is potentially price sensitive in relation to the company and for the prompt release of the information to the market where necessary. In cases of doubt, the directors should seek the advice of the nominated adviser to assist in the determination of whether or not particular information is price sensitive.

Price sensitive information must only be disclosed to the market as a whole and must never be disclosed to investment professionals or other persons on a selective basis. In this context, particular care should be taken when communicating with, and responding to questions from, analysts. If price sensitive information is inadvertently given, a full announcement should be made immediately so that all users of the market have the same information.

(b) ***Impending developments and matters in the course of negotiation***

An AIM company is expected to ensure that information concerning impending developments is kept confidential and, in accordance with AIM Rule 31, must have in place effective procedures and controls designed to ensure the confidentiality of unpublished price sensitive information to minimise the risk of a leak.

An AIM company is not required to notify information about impending developments or matters in the course of negotiation and may give such information in confidence to certain limited categories of persons (namely, its advisers and the advisers of any other persons involved in the matter in question, persons with whom the company is negotiating or intends to negotiate any commercial, financial or investment transaction, representatives of its employees or trades unions, and any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority). The company must be satisfied that the recipients of such information are aware that they must not trade in its securities before the relevant information has been made public.

However, if the AIM company has reason to believe that a breach of confidence has occurred or is likely to occur and, in either case, the matter is such that knowledge of it would be likely to lead to substantial movement in its share price, then the company must, without delay, make at least a warning notification to an RIS to the effect that it expects shortly to release information regarding the matter in question. Where that information has been made public, the AIM company must notify an RIS of that information without delay.

Where a matter is in the course of negotiation or a development is pending which is likely to be the subject of a regulatory announcement by an AIM company in the near future, the company's share price and trading volumes should be closely monitored and a draft holding announcement prepared in advance for use in the event of a leak.

When an AIM company is making progressive updates about a matter which is yet to be concluded, particular care must be taken to avoid giving a misleading impression of the status of the matter. The sequence of events which needs to occur before the matter is finally concluded must be clearly explained.

4.7 **Disclosure of corporate transactions (Rules 12 to 16)**

(a) ***Classification of transactions***

Certain transactions carried out by an AIM company may require to be notified to an RIS and may in some cases need to be made conditional on shareholder approval depending on their size and nature. The size of a transaction is determined by reference to a number of class tests which operate by comparing the size of the transaction with the size of the AIM company. There are in total five class tests, namely:

(i) the gross assets the subject of the transaction expressed as a percentage of the gross assets of the AIM company;

(ii) the profits attributable to the assets the subject of the transaction expressed as a percentage of the profits of the AIM company;

(iii) the turnover attributable to the assets the subject of the transaction expressed as a percentage of the turnover of the AIM company;

(iv) the consideration expressed as a percentage of the market capitalisation of the AIM company; and

(v) the gross capital of the company/business being acquired expressed as a percentage of the gross capital of the AIM company.

Under the AIM Rules, these class tests are relevant in the context of substantial transactions, related party transactions, reverse takeovers and fundamental changes of business.

(b) ***Substantial transactions (AIM Rule 12)***

A substantial transaction is a transaction which exceeds 10 per cent in any of the class tests. For this purpose, a transaction includes any transaction by a subsidiary of an AIM company but excludes any transactions of a revenue nature in the ordinary course of business and transactions to raise finance which do not involve a change in the fixed assets of the AIM company or any of its subsidiaries.

An AIM company must notify an RIS of a substantial transaction without delay as soon as its terms are agreed. The notification must include the information specified in Schedule 4 to the AIM Rules (the **"Schedule 4 Information"**). This information includes, amongst other things, particulars of the transaction, a description of the assets which are the subject of the transaction and the profits (or losses) attributable to those assets, the full consideration and how it is to be satisfied and the effect of the transaction on the AIM company.

(c) ***Transactions with related parties (AIM Rule 13)***

A related party transaction is any transaction whatsoever with a related party. A "related party" is broadly defined in the AIM Rules and includes:

(i) any person who is a current director of the AIM company or of any of its subsidiary undertakings or who was a director of the AIM company or any of its subsidiary undertakings within the 12 months preceding the transaction;

(ii) any person who is, or was within the 12 months preceding the transaction, a substantial shareholder of the AIM company (being a holder of a direct or indirect legal or beneficial interest in 10 per cent or more of the AIM company's shares or voting rights); and

(iii) any person who is an associate of any such director or substantial shareholder.

Where a related party transaction exceeds 5 per cent in any of the class tests, the company must notify an RIS without delay as soon as the terms of the transaction are agreed. The notification must include the Schedule 4 Information together with the name of the related party and the nature and extent of the related party's interest in the transaction. Importantly, the notification must also include a statement by the directors of the company (other than any director involved in the transaction as a related party) that they consider, having consulted with the nominated adviser, that the terms of the transaction are fair and reasonable insofar as shareholders are concerned.

When the percentage ratio of a related party transaction is 0.25 per cent or more, details of the transaction (whether or not previously disclosed under the AIM Rules) must, in accordance with AIM Rule 19, be included in the company's next published annual accounts.

(d) ***Reverse take-overs (AIM Rule 14)***

A reverse take-over occurs where any acquisition or series of acquisitions by an AIM company in a 12 month period would exceed 100 per cent in any of the class tests or result in a fundamental change in the company's business, board or voting control.

Any agreement which would result in reverse takeover must be conditional on shareholder approval and must be notified to an RIS without delay. The notification must include the Schedule 4 Information together with (where relevant) the additional information required in relation to the notification of a related party transaction. In addition, an admission document in respect of the proposed enlarged entity must be published.

Where shareholder approval is granted, trading in the AIM company's securities will be cancelled and, if the enlarged entity wishes to be admitted to AIM, it must make an application in the same manner as any other first-time applicant. However, application may be made in advance of the general meeting so that admission of the new entity to AIM takes place on the day after the general meeting which approves the reverse takeover.

Following the announcement of a reverse takeover that has been agreed or is in contemplation, the AIM company's securities will be suspended until the company has produced an admission document in respect of the enlarged entity (unless the target is listed on the Official List or it is another AIM company). The Exchange expects that the negotiations leading to a reverse takeover will be kept confidential until the AIM company notifies that a binding agreement effecting the reverse takeover has been entered into and

that this should, as far as possible, be accompanied by the publication of the requisite admission document.

(e) ***Fundamental changes of business (AIM Rule 15)***

Any disposal by an AIM company which, when aggregated with any other disposal(s) over the previous 12 months, exceeds 75 per cent in any of the class tests is deemed to be a disposal resulting in a fundamental change of business. Any such disposal must be conditional on shareholder approval and must be notified to an RIS without delay. The notification must include the Schedule 4 Information together with (where relevant) the additional information required in relation to the notification of a related party transaction. In addition, the AIM company must publish an explanatory circular containing inter alia details of the disposal and any proposed change in business and convening the necessary general meeting.

If:

(i) the effect of the disposal is to divest the AIM company of all, or substantially all, of its trading business, activities or assets; and/or

(ii) the AIM company takes 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 (in which case such action should be notified to an RIS without delay and include all relevant information that shareholders may require)

then upon completion of the disposal or action, the AIM company will be regarded as an AIM Rule 15 cash shell.

Within six months of becoming an AIM Rule 15 cash shell, the AIM company must make an acquisition or acquisitions which constitute(s) a reverse takeover under AIM Rule 14.

(f) ***Aggregation of transactions (AIM Rule 16)***

For the purposes of determining whether a transaction amounts to a substantial transaction, a related party transaction, a reverse takeover or a fundamental change of business, the AIM Rules require that there is aggregated with the latest transaction all other transactions completed during the previous 12 months where such transactions:

(i) are entered into by the AIM company with the same person persons or their families; or

(ii) involve the acquisition or disposal of securities or an interest in one particular business; or

(iii) together lead to a principal involvement in any business activity or activities which did not previously form part of the company's principal activities.

4.8 **Disclosure of significant share interests**

(a) ***DTR requirements***

Chapter 5 of the Disclosure and Transparency Rules ("**DTR 5"**) deals with disclosure of major shareholdings and applies to a range of companies including UK-incorporated companies with shares admitted to trading on a prescribed market including AIM.

Under DTR 5, the basic notification obligation requires a person to notify a UK-incorporated AIM company if the percentage of its voting rights he holds as shareholder (or through his direct or indirect holding of financial instruments) reaches, exceeds or falls below 3 per cent. or any whole percentage figure above 3 per cent. The requirement to notify changes in voting rights also applies where a person is an indirect holder of shares (that is, he is entitled to acquire, dispose of or exercise voting rights in certain circumstances).

The principal obligations of a UK-incorporated AIM company under DTR 5 are as follows:

(i) the company must, on receipt of a notification of a major shareholding, make public all of the information contained in the notification as soon as possible and in any event by not later than the third trading day following receipt of the notification;

(ii) the company must disclose to the public the total number of voting rights and capital in respect of each class of its shares then in issue and the total number of voting rights attaching to its shares which are held by it in treasury:

(A) at the end of each calendar month during which an increase or decrease has occurred; and

(B) as soon as possible and in any event no later than the end of the business day following the day on which a 'relevant' increase or decrease occurs. A 'relevant' increase or decrease is any increase or decrease in the total number of voting rights produced when an issuer completes a transaction unless its effect on the total number of voting rights is immaterial. Materiality is for the issuer to assess but in the FCA's view an increase or decrease of one per cent or more is likely to be material; and

(iii) if the company acquires or disposes of its own shares, it must make public as soon as possible (but not later than four trading days following the acquisition or disposal) the percentage of voting rights attributable to those shares where that percentage reaches, exceeds or falls below the thresholds of 5 or 10 per cent of the voting rights.

(b) ***AIM Rule requirements (AIM Rule 17)***

An AIM company must notify an RIS of any changes to the holding of a person with a holding of 3 per cent. or more of any class of its securities if such change increases or decreases the holding of such a person through any single percentage. For this purpose, a person's holding includes not only his direct and indirect legal and beneficial interests and those of his family but also positions in financial instruments. The notification must include (so far as the company has such information) details of the price and nature of the transaction and the other information specified in Schedule 5 to the AIM Rules.

As noted above, an AIM company incorporated in the UK is also required to comply with DTR 5. Compliance with DTR 5 will usually mean that the AIM company is also in compliance with the significant shareholder disclosure obligations in AIM Rule 17. However, it is important to note that compliance with AIM Rule 17 requires that the relevant information is notified 'without delay' notwithstanding the time limits for disclosure under DTR 5.

4.9 **Disclosure of dealings by directors (AIM Rule 17)**

An AIM company must notify an RIS without delay of any deals by any of its directors (or members of a director's family) in its securities. The notification must include (so far as the company has such information) details of the price and nature of the transaction and the other information specified in Schedule 5 to the AIM Rules.

For this purpose, a "deal" includes any change whatsoever to a director's (or family member's) holding of securities of an AIM company (and, in this context, a holding encompasses any legal or beneficial interest, whether direct or indirect). In addition to sales and purchases, and agreements for the sale and purchase of, securities, the definition covers, amongst other things:

(a) the grant to, or acceptance by, a director (or family member) of any option relating to securities or of any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities;

(b) the acquisition, disposal, exercise or discharge of, or any dealing with, any such option, right or obligation; and

(c) deals between directors, off-market deals and transfers for no consideration.

The definition of a 'deal' also covers the acquisition, disposal or discharge of a related financial product (that is, a financial product whose value in whole or in part is determined directly or indirectly by reference to the price of securities of an AIM company - for example, a contract for differences).

4.10 **Other disclosure obligations**

In addition to the disclosure obligations described above, AIM Rule 17 sets out various miscellaneous matters which an AIM company must notify to an RIS. The notification must be made without delay in each case.

(a) ***Material changes to trading performance***

Any material change between an AIM company's actual trading performance or financial condition and any profit forecast, estimate or projection which was included in the company's admission document or otherwise made public on the company's behalf must be notified to an RIS. It is the responsibility of the nominated adviser to review regularly an AIM company's actual trading performance and financial condition against any such profit forecast, estimate or projection in order to help the company to determine whether a notification is necessary.

(b) ***Board changes***

An AIM company must notify an RIS of the resignation or dismissal of any director and the appointment of any new director, specifying in each case the date of the occurrence in question. In the case of an appointment, the notification must include the same information regarding the new director as

the information which must be included in an admission document regarding each director of a company applying for AIM admission. This information includes, amongst other things:

(i) all directorships and partnerships which the appointee currently holds or has held at any time in the past five years;

(ii) details of various insolvency events affecting the appointee personally (for example, bankruptcy) or affecting any company or partnership (for example, compulsory liquidation or administration) where he was a director or partner at the time of or within the 12 months preceding the relevant event; and

(iii) details of any unspent convictions, public criticisms by statutory or regulatory authorities and disqualifications from acting as a director.

If there is any change in certain information disclosed in relation to a director in an AIM company's admission document or notified to an RIS on his subsequent appointment to the board, that change must also be notified to an RIS. Broadly speaking, the information relevant for this purpose is that referred to in sub-paragraphs (ii) and (iii) above.

(c) ***Change of nominated adviser or broker***

An AIM company must notify an RIS of the resignation, dismissal or appointment of its nominated adviser or broker. In this connection, it should be noted that an AIM company must retain a nominated adviser at all times and, if an AIM company ceases to have a nominated adviser, the Exchange will suspend trading in its securities.

(d) ***Other matters requiring notification to an RIS***

Other matters which an AIM company is obliged to notify to an RIS include:

(i) any change in its accounting reference date, registered office, legal name or website address;

(ii) any decision to make any payment in respect of its securities, specifying the net amount payable per security, the payment date and the record date; and

(iii) the transfer of shares into or out of treasury following a purchase of own shares or a sale of treasury shares (the notification must include

the number of shares transferred into or out of treasury, the date of the transfer, the number of shares held in treasury following the transfer and the total number of shares in issue (excluding treasury shares) following the transfer).

4.11 **Obligation to provide information to the Exchange (AIM Rule 22)**

The Exchange has a general power to require an AIM company to provide it with any information it considers appropriate and to require the company to publish that information. An AIM company must use all due skill and care to ensure that any information provided is correct, complete and not misleading. If an AIM company becomes aware that incorrect, incomplete or misleading information has been provided, it must advise the Exchange as soon as practicable.

4.12 **Website availability of company information (AIM Rule 26)**

An AIM company must from admission maintain a website and make certain information available on it, free of charge. The relevant website address will need to be included in the pre-admission announcement. The information which is required to be made available in this manner includes:

(a) a description of the company's business;

(b) the name and brief biographical details of each director;

(c) a description of the responsibilities of board members and of any committees of the board;

(d) the company's country of incorporation and main country of operation:

(e) the company's current constitutional documents;

(f) details of any other exchanges or trading platforms on which the AIM company's securities are admitted or traded;

(g) the number of its securities in issue (noting any held as treasury shares) and, so far as it is aware, the percentage of its securities that is not in public hands together with the identity and percentage holdings of its significant shareholders (please note that this information needs to be updated every six months and the website should include the date on which this information was last updated);

(h) details of any restrictions on the transfer of its securities;

(i) the annual accounts for the last three years (or since admission) and any half-yearly report published since the last annual accounts;

(j) all notifications to an RIS made under the AIM Rules within the past 12 months;

(k) the company's most recent admission document together with any circular or similar publication sent to shareholders within the past 12 months;

(l) details of the corporate governance code that the company has decided to apply and how the company complies with that code (if no code has been adopted, this should be stated together with the company's current corporate governance arrangements);

(m) a statement as to whether the company is subject to the UK City Code on Takeovers and Mergers or any other such code or legislation in its country of incorporation or any other similar provisions it has voluntarily adopted; and

(n) details of the company's key advisers (including its nominated adviser).

The information made available on an AIM company's website in accordance with AIM Rule 26 should be kept up-to-date and the date on which it was last updated should also be included.

4.13 **Dealing restrictions**

(a) ***Restriction on deals (AIM Rule 21)***

In addition to any restrictions on share dealings flowing from the criminal insider dealing and civil market abuse regimes described in paragraph 6, an AIM company is obliged under AIM Rule 21 to ensure that its directors and those of its employees who are likely to be in possession of unpublished price sensitive information in relation to the company because of their employment do not deal in its securities during a close period. In addition, an AIM company must not, during a close period, purchase or effect early redemption of its own securities or sell any of its own securities out of treasury.

The AIM Rule 21 restriction on dealings will not apply if the relevant person has entered into a binding commitment prior to the commencement of the close period provided that, at the time the commitment was made, it was not reasonably foreseeable that a close period was likely and provided that the commitment was duly notified at the time it was made.

The Exchange has a discretion to permit a director or relevant employee to sell AIM securities during a close period to alleviate severe personal hardship (for example, in situations where the director or an immediate relative has an urgent need for a medical operation or to satisfy a court order where no other funds are reasonably available).

(b) ***Unpublished price sensitive information***

Unpublished price sensitive information is defined in the AIM Rules as information which:

(i) relates to particular AIM securities or to a particular AIM company (as opposed to securities or issuers in general);

(ii) is specific or precise;

(iii) has not been made public; and

(iv) if it were made public, would be likely to have a significant effect on the price or value of any AIM security.

(c) ***Close period***

A close period for an AIM company is the period of two months preceding the publication of its annual accounts (or, if shorter, the period from the end of its financial year to the time of publication) and:

(i) if it reports only half yearly, the period of two months preceding the notification of its half-yearly results; or

(ii) if it reports on a quarterly basis, the period of one month preceding the notification of its quarterly results.

In any such case, if the period between the end of the relevant financial period and the relevant publication or notification date is shorter than two months or one month (as the case may be), the close period is such shorter period.

An AIM company is also in a close period at any time when it is in possession of unpublished price sensitive information or any time it has become reasonably probable that such information will be required to be notified in accordance with the AIM Rules.

(d) ***Share dealing code***

As part of the AIM admission process, the Company will be required to adopt a share dealing code which will contain prohibitions on dealings in the Company's securities reflecting the restrictions set out in AIM Rule 21 and also impose a procedure under which directors and relevant employees must obtain advance clearance prior to dealing. Please refer to the Company's share dealing code.

4.14 **Financial reporting**

The financial reporting obligations of an AIM company under the AIM Rules are outlined below.

(a) ***Annual accounts (AIM Rule 19)***

An AIM company must publish annual audited accounts which must be sent to its shareholders without delay and in any event by not later than six months after the end of the financial period to which they relate. In the case of an AIM company incorporated in an EEA country, the annual accounts must be prepared and presented in accordance with International Accounting Standards (**"IAS"**) (unless it is not a parent company in which case it may prepare and present its annual accounts either in accordance with IAS or the accounting and legal requirements applicable in its country of incorporation).

Subject to its constitution, an AIM company incorporated in the UK may satisfy the requirement to send accounts to its shareholders by sending the accounts by electronic communication to shareholders in compliance with the requirements of the Companies Act 2006.

(b) ***Half-yearly reports (AIM Rule 18)***

An AIM company must prepare a half-yearly report which must include at least a balance sheet, an income statement and a cash flow statement and must contain comparative figures for the corresponding period in the preceding financial year (apart from the balance sheet which may contain comparative figures from the last balance sheet notified). Each such report must be notified by not later than three months after the end of the relevant period.

(c) ***Late publication***

The Exchange will suspend AIM companies which are late in publishing their half-yearly reports or annual accounts.

4.15 **Suspension, cancellation and sanctions**

(a) ***Precautionary suspension (AIM Rule 40)***

The Exchange may suspend the trading of a company's securities on AIM where:

(i) trading in those securities is not being conducted in an orderly manner;

(ii) it considers that the company has not complied with the AIM Rules;

(iii) the protection of investors so requires; or

(iv) the integrity and reputation of the market has been or may be impaired by dealings in those securities.

When considering requests for a suspension, the Exchange will wish to ensure that any interruption to trading is kept to a minimum.

(b) ***Cancellation (AIM Rule 41)***

The Exchange will cancel the admission of securities to trading on AIM where those securities have been suspended for six months or more.

If a company wishes to cancel its AIM admission, it must give at least 20 business days' notice and, unless the Exchange otherwise agrees, the cancellation must be conditional upon the consent of shareholders in general meeting; a majority of 75 per cent. of the votes cast on the relevant resolution is required for this purpose.

(c) ***Sanctions (AIM Rule 42)***

If the Exchange considers that an AIM company has contravened the AIM Rules, it may take one or more of the following measures:

(i) issue a warning notice;

(ii) fine the company;

(iii) censure the company;

(iv) cancel the admission of the company's securities to trading;

(v) publish the fact that the company has been fined or censured and the reasons for that action.

(d) ***Jurisdiction (AIM Rule 43)***

If an AIM company ceases to have its shares traded on AIM, the Exchange retains jurisdiction over it for the purpose of investigating and taking disciplinary action in relation to prior breaches or suspected breaches of the AIM Rules.

5. STATUTORY LIABILITY FOR PUBLISHED INFORMATION

5.1 Introduction

Following admission to AIM, it will be of paramount importance to ensure that, price sensitive and other relevant information is released to the market in a timely manner and that the information so released is accurate, fairly presented and not misleading. Failure to do so could, in certain circumstances, result in the Company incurring liability under the statutory regime governing the civil liability of issuers to investors in respect of misstatements and omissions in published information. This regime which is contained in section 90A and Schedule 10A of the FSMA applies inter alia to securities that are, with the issuer's consent, admitted to trading on a securities market situated or operating in the UK (and, for this purpose, a 'securities market' includes a regulated market (such as the Main Market of the London Stock Exchange) or a multilateral trading facility (such as AIM)).

5.2 Liability to pay compensation

Under this statutory regime, an issuer of securities is liable to pay compensation to a person who acquires, continues to hold or disposes of the securities in reliance on published information and suffers loss in respect of the securities as a result of any untrue or misleading statement in that published information or the omission from that published information of any matter required to be included in it. An issuer of securities is also liable to pay compensation to a person who acquires, continues to hold or disposes of the securities and suffers loss in respect of the securities as a result of the issuer's delay in publishing information.

5.3 Basis of liability

Fraud is the basis of liability. In the case of a loss resulting from a misstatement or omission, the issuer is only liable if a person discharging managerial responsibilities within the issuer knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading or knew the omission to be a dishonest

concealment of a material fact. In the case of a loss resulting from a delay, the issuer is only liable if a person discharging managerial responsibilities within the issuer acted dishonestly in delaying the publication of the information. For these purposes:

(a) a person's conduct is regarded as dishonest if it is regarded as dishonest by persons who regularly trade in the relevant securities market and the person was aware (or must be taken to have been aware) that it was so regarded; and

(b) the persons discharging managerial responsibilities within the issuer will in this context be its directors.

5.4 Information covered by the regime

The regime covers all information which is disclosed by recognised means. 'Recognised means' means a recognised information service (such as an RIS) and any other means required or authorised to be used to communicate information to the market in question or to the public when a recognised information service is unavailable. The regime also extends to information which is disclosed by a means other than recognised means where the availability of that information is announced by recognised means. Accordingly, where an RIS announcement refers to a document (for example, the annual accounts) being made available (for example, on the company's website), then the entirety of that document falls within the statutory liability regime. It is immaterial whether the information is actually required to be published.

5.5 Persons liable

Only the issuer is liable under this regime. In particular, directors have no liability directly to investors in respect of losses suffered as a result of errors and omissions in published information or delays in publishing information. However, they may, as a matter of English law, be liable to the issuer.

6. SHARE DEALINGS FOLLOWING AIM ADMISSION

6.1 Introduction

As briefly described in paragraph 4.13, dealings in the Company's shares following AIM admission will be subject to restrictions under AIM Rule 21 and the share dealing code to be adopted by the Company as part of the AIM admission process. In this context, it is also important that the directors are fully aware of the criminal insider dealing regime under the Criminal Justice Act 1993 (the **"CJA"**) and the FSMA civil market abuse regime. These regimes will, in certain circumstances, operate to prohibit

dealings in the Company's shares and render unlawful certain other types of behaviour.

6.2 **Criminal insider dealing regime**

(a) ***The offence of insider dealing***

Under the CJA, the criminal offence of insider dealing is committed if an individual who has information as an insider:

(i) deals in securities which are price-affected securities in relation to the information where the dealing takes place on a regulated market (which, in this context, includes AIM) or involves a professional intermediary; or

(ii) encourages another person to deal in securities which are price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place on a regulated market or involve a professional intermediary; or

(iii) discloses the information to another person (otherwise than in the proper performance of his employment, office or profession).

Dealing is defined as acquiring or disposing of (or agreeing to acquire or dispose of) securities (whether as principal or agent); the definition also covers the entering into or ending of a contract which creates the security. In addition, the legislation provides that a person deals in securities if he procures, directly or indirectly, an acquisition or disposal of securities by another person.

The reference to securities covers not only shares and debt securities but also warrants, depositary receipts, options, futures and CFDs.

(b) ***Insiders and inside information***

The offence of insider dealing can only be committed by an individual 'who has information as an insider'. This requirement is satisfied if (but only if) the information is (and the individual knows it to be) inside information and the information was acquired from a source which the individual knows to be an inside source.

For this purpose, information is obtained from an inside source if the individual obtained the information through being a director, employee or

shareholder of a company or through having access to the information by virtue of his employment, office or profession. Information is also treated as being so obtained if the individual obtained the information, directly or indirectly, from a person who himself obtained the information in one of the ways described above.

The statutory definition of 'inside information' lies at the heart of the offence of insider dealing and has four limbs. Inside information is information which:

(i) relates to particular securities or to a particular issuer of securities or to particular issuers of securities (and not to securities generally or to issuers of securities generally);

(ii) is specific or precise;

(iii) has not been made public; and

(iv) if it were made public would be likely to have a significant effect on the price of any securities.

Information is not inside information if it has been made public. Information is made public if, among other things, it is published in accordance with the rules of a regulated market for the purpose of informing investors and their advisers. Accordingly, information notified to an RIS in accordance with the requirements of the AIM Rules summarised in paragraph 4 cannot be inside information.

(c) ***Defences***

The legislation provides a range of defences; in all cases, the burden of proof lies with the accused.

An individual has a defence to the dealing offence and the offence of encouraging dealing if he can show that:

(i) he did not at the time expect the dealing or encouragement to result in a profit (or the avoidance of a loss) attributable to the fact that the information he possessed was price-sensitive information in relation to the securities; or

(ii) at the time he believed on reasonable grounds that the information had been or (in the case of the offence of encouraging dealing) would

be disclosed widely enough to ensure that no one taking part in the dealing would be prejudiced by not having the information; or

(iii) he would have done what he did even if he had not had the inside information.

An individual has a defence to the offence of disclosing inside information if he can show that:

(i) he did not at the time expect any person to deal in securities on a regulated market or as or through a professional intermediary as a result of the disclosure; or

(ii) although he did expect a dealing to take place, he did not expect the dealing to result in a profit (or the avoidance of a loss) attributable to the fact that the information he possessed was price-sensitive information in relation to the securities.

The CJA also includes a number of special defences relating to market makers, the dissemination of market information and permitted price stabilisation activities.

(d) ***Penalties***

An individual found guilty of insider dealing is liable, on conviction on indictment, to an unlimited fine and/or imprisonment for up to 7 years.

6.3 **Criminal offences relating to financial services**

The Financial Services Act 2012 contains a number of criminal offences relating to financial services which could be committed where a person knowingly or recklessly makes a materially false or misleading statement or dishonestly conceals material facts or intentionally creates a false or misleading impression as to the market in or the price or value of a relevant investment. These offences are described in paragraph 2.5 in the context of the criminal liabilities which could potentially arise as a result of the inclusion of false or misleading information in an admission document.

6.4 **The FSMA civil market abuse regime**

In addition to the criminal sanctions outlined above, the FCA is able to take civil action against persons who engage in behaviour which is considered to be an abuse of the financial markets. This civil market abuse regime is set out in Part VIII of the FSMA and is supplemented by the FCA's Code of Market Conduct.

Under the FSMA civil market abuse regime, the FCA has the power to impose significant sanctions on persons who engage in market abuse. It is important to note, in this context, that the regime applies not only to market participants but to any person whose actions have an effect on the market. It therefore applies to industrial and commercial companies and their directors as much as it does to brokers and investment banks.

(a) ***Market abuse***

Section 118 of the FSMA lists various types of behaviour which amount to market abuse. Further guidance about each type of behaviour is then provided in the FCA's Code of Market Conduct. The behaviour must occur in relation to qualifying investments admitted to trading on a prescribed market or for which a request for admission to trading on a prescribed market has been made. For this purpose:

(i) any market established under the rules of a UK recognised investment exchange (including AIM) falls within the definition of a prescribed market; and

(ii) all financial instruments within the meaning of Article 1(3) of the Market Abuse Directive (including shares and other transferable securities) are qualifying investments.

(b) ***Types of behaviour constituting market abuse***

The types of behaviour listed in section 118 are as follows:

(i) *Insider dealing*

This occurs where an insider deals, or attempts to deal, in a qualifying investment (or related investment) on the basis of inside information relating to the investment in question. A related investment is one whose price or value depends on the price or value of the qualifying investment (for example, derivatives).

Inside information is defined as information which is of a precise nature, not generally available, relates directly or indirectly to one or more issuers or qualifying investments and would, if generally available, be likely to have a significant effect on the price of the qualifying investments or related investments.

To be an insider, a person must have inside information:

(A) as a result of his membership of an administrative, management or supervisory body of an issuer of qualifying investment - this obviously includes directors;

(B) as a result of his holding in the capital of an issuer of qualifying investments;

(C) as a result of having access to the information through the exercise of his employment, profession or duties;

(D) as a result of his criminal activities; or

(E) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

(ii) *Improper disclosure of inside information*

This occurs where an insider discloses inside information to another person unless the disclosure is made in the proper course of his employment, profession or duties. As is the case with behaviour amounting to insider dealing, behaviour amounting to improper disclosure includes behaviour which occurs in relation to related investments as well as qualifying investments.

(iii) *Manipulating transactions*

This type of behaviour consists of effecting transactions or orders to trade (other than for legitimate reasons and in conformity with accepted market practices on the relevant market) which:

(A) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments; or

(B) secure the price of one or more qualifying investments at an abnormal or artificial level.

(iv) *Manipulating devices*

This type of behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

(v) *Dissemination*

This type of behaviour consists of the dissemination of information which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

(vi) *Misleading behaviour and market distortion*

This type of behaviour is behaviour (not falling within the manipulating transactions, manipulating devices or dissemination behaviours outlined above) which:

(A) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for, or price or value of, qualifying investments; or

(B) would be (or would be likely to be) regarded by a regular user of the market as behaviour that would distort (or would be likely to distort) the market in a qualifying investment.

In each case, the behaviour must also be likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

This final type of behaviour is subject to a sunset clause under which it ceases to have effect on 3 July 2016.

(c) ***Penalties and other sanctions for market abuse***

Enforcement of the civil market abuse regime lies with the FCA.

Where the FCA is satisfied that a person:

(i) is or has engaged in market abuse; or

(ii) by taking or refraining from taking any action, has required or encouraged another person to engage in behaviour which, if engaged in by the first person, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate. There is no limit to the amount of the fine that may be imposed.

The FCA may not however impose a penalty on a person if there are reasonable grounds for it to be satisfied that the person either believed, on reasonable grounds, that his behaviour did not amount to market abuse or requiring and encouraging market abuse or took all reasonable precautions and exercised all due diligence to avoid engaging in market abuse or requiring or encouraging market abuse.

Where the FCA is entitled to impose a penalty on a person, it may instead make a public statement that he has engaged in market abuse.

Where the FCA determines that market abuse has occurred, it may also apply to the court for an injunction to restrain threatened or continued market abuse, an injunction requiring a person to take steps to remedy market abuse or a freezing order restraining a person from disposing of assets. In appropriate cases, the FCA may also apply to the court for a restitution order or itself require the payment of compensation to victims.

7. THE FINANCIAL PROMOTION REGIME

7.1 Introduction

This section of the memorandum contains a brief introduction to the financial promotion regime under the FSMA which imposes strict limitations on the communication of invitations or inducements to engage in investment activity. The regime is of relevance not only in relation to communications issued or made by the Company or the directors in the context of the AIM admission process but also in relation to communications issued or made by the Company or the directors (whether to the market, shareholders or any other persons) on an ongoing basis following admission to AIM.

7.2 The financial promotion restriction

The financial promotion restriction is set out in section 21 of the FSMA which provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity (such as entering into an agreement to buy or sell shares) unless he is an authorised person under the FSMA or the content of the communication is approved by an authorised person. As noted below, the restriction covers all forms of communication including both written and oral communications.

The financial promotion restriction is subject to a number of exemptions under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 including exemptions in respect of communications to investment professionals, certain high

net worth individuals, companies and other entities and certain sophisticated investors. The detailed terms of an exemption must be complied with for it to apply and, given the complexity of this area, it would be imprudent to rely on an exemption without the benefit of specialist advice.

A person who contravenes the financial promotion restriction is guilty of a criminal offence and liable, on conviction on indictment, to up to two years' imprisonment or a fine or both. In addition, agreements entered into by a person as a customer as a result of an unlawful financial promotion are unenforceable against that customer.

7.3 **Forms of communication covered and action to be taken**

The financial promotion restriction covers all forms of written and oral communication including press releases, corporate brochures, company newsletters, media advertising, information made available through internet activities and information made available during the course of press conferences, meetings, telephone conversations, presentations and interviews. By way of illustration, each of the following is capable of constituting a financial promotion:

(a) a press release containing statements about development plans for a company's business and the likely impact on future revenues or profits;

(b) statements made in an investor presentation or at the annual general meeting concerning the company's future performance or share price; and

(c) information of a similar nature made available on the company's website.

The scope of the financial promotion restriction is very wide and the consequences flowing from contravention of it are serious. Accordingly, no communication which could potentially constitute a financial promotion in the context of the AIM admission process (for example, a communication containing information which might encourage or influence investor interest or which relates to matters such as the Company's operations, performance, assets and liabilities, financial position, revenues, profits or prospects) should be issued or made by the Company or the directors without the prior approval of Zeus. On an ongoing basis following AIM admission, it will be important to ensure that due consideration is given to communications proposed to be issued or made by the Company or the directors to assess whether they fall within the financial promotion regime and, where necessary, the advice of Zeus should be sought. In all cases, particular care should be taken in relation to oral communications, for example when giving presentations or interviews or dealing with the media or analysts or brokers.

8. CORPORATE GOVERNANCE

8.1 The UK Corporate Governance Code

In the UK, the cornerstone of the corporate governance regime is the UK Corporate Governance Code published by the Financial Reporting Council (the **"UK Code"**). The UK Code sets out a series of main principles of good governance together with supporting principles and additional provisions covering a number of areas including, amongst others, the role and responsibilities of the board of a company and the various board members, the composition of the board and its committees, the accountability of the board to shareholders, directors' remuneration and the conduct of relations between the board and shareholders.

Strict compliance with the UK Code is not an absolute requirement. Rather, companies subject to the UK Code are required to disclose whether or not they have complied with the provisions of the UK Code and to explain and justify any non-compliance.

The UK Code applies to companies with a premium listing of equity shares; it does not apply directly to AIM companies.

8.2 The QCA Corporate Governance Code and the NAPF

As noted above, AIM companies are not directly subject to the UK Code. However, it is clearly essential that AIM companies establish and maintain appropriate and effective corporate governance arrangements and, whilst full adherence to the UK Code is not the expectation for all, it does serve as a standard which many AIM companies should aspire to. In addition, the Quoted Companies Alliance, a non-profit organisation which represents the interests of smaller quoted companies, has published guidance on good corporate governance for smaller companies in the form of the Corporate Governance Code for Small and Mid-Size Quoted Companies (the **"QCA Code"**). The QCA Code adopts key elements of the UK Code and applies them to the needs and particular circumstances of small and mid-size quoted companies on a public market.

Finally, the National Association of Pension Funds has also published its own corporate governance guidelines for smaller companies which take the UK Code as their starting point. The NAPF expects that smaller quoted companies (including AIM companies) will apply the highest standards of corporate governance consistent with the size and complexity of their business.

8.3 **Position of the Exchange on corporate governance for AIM companies**

The Exchange believes that good corporate governance is just as relevant and important for AIM companies as it is for companies on the main market. There is no requirement in the AIM Rules to comply with a specific set of corporate governance rules but this is merely because the Exchange is firmly of the view that, given the nature and range of smaller, growing companies on AIM, a blanket requirement to observe a particular code, in a "one size fits all" style, is not appropriate. The Exchange expects nominated advisers to be actively involved, both during the AIM admission process and on an ongoing basis, in setting the corporate governance standards which their AIM company clients are to follow and helping them to meet those standards. These standards should be set for each AIM company having regard to its size, stage of development, business sector and other relevant matters. The Exchange reiterates that the UK Code should serve as a standard that AIM companies should aspire to even though full adherence is not the expectation for all and also supports the use of the QCA Code to assist AIM companies to achieve the level of corporate governance measures appropriate for them.

8.4 **Corporate governance memorandum**

A detailed memorandum dealing with corporate governance issues including a summary of the main principles and provisions of the UK Code and the QCA Code will be circulated separately.

9. CONDUCT OF PUBLIC COMPANY TAKEOVERS IN THE UK

9.1 **Introduction**

In the UK, the conduct of takeovers and mergers of public companies is regulated principally by the City Code on Takeovers and Mergers (the **"Takeover Code"**) which is issued and administered by the Panel on Takeovers and Mergers (the **"Panel"**). The Takeover Code has statutory effect and the Panel has statutory powers of enforcement under the Companies Act 2006.

9.2 **Companies and transactions to which the Takeover Code applies**

(a) ***Companies subject to the Takeover Code***

The primary application of the Takeover Code is to takeover offers for companies which have their registered offices in the UK, the Channel Islands or the Isle of Man and whose securities are admitted to trading on a regulated market in the UK (such as the Main Market of the London Stock Exchange) or a multilateral trading facility in the UK (such as AIM) or on a stock

exchange in the Channel Islands or the Isle of Man. The residency of the company in question is not relevant.

The Takeover Code also applies to takeover offers for certain other companies including:

(i) public companies registered in the UK, the Channel Islands or the Isle of Man whose securities are admitted to trading solely on a public market which is neither a UK or EEA regulated market nor a UK multilateral trading facility nor a stock exchange in the Channel Islands or the Isle of Man or whose securities are not traded on any public market; and

(ii) in certain limited circumstances, private companies registered in the UK, the Channel Islands or the Isle of Man,

but, in the cases referred to in (a) and (b) above, the Takeover Code only applies if the Panel considers that the company in question has its place of central management and control in the UK, the Channel Islands or the Isle of Man.

In all cases, it is the nature of the offeree company which determines whether or not the Takeover Code applies. The place of incorporation and residence of the offeror is immaterial.

(b) ***Transactions subject to the Takeover Code***

The Takeover Code applies to takeovers and mergers, however they may be effected. Its application is therefore not limited to contractual takeover offers but extends to takeovers effected by statutory merger or court-approved scheme of arrangement. The Takeover Code also regulates other transactions which have as their objective or potential effect obtaining or consolidating control of a company to which the Takeover Code applies, as well as partial offers to shareholders in such a company. For this purpose, an interest or interests in shares carrying in aggregate 30 per cent or more of the voting rights of a company constitutes control of that company (irrespective of whether such interest or interests give de facto control).

(c) ***Applicability of the Takeover Code to an offer for the Company***

As a company incorporated in the UK whose securities are admitted to trading on AIM, any takeover offer for the Company following AIM admission would be subject to the Takeover Code.

9.3 **Purpose and structure of the Takeover Code**

The Takeover Code provides an orderly framework for the conduct of takeovers and is designed principally to ensure that:

(a) shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover; and

(b) shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror.

The Takeover Code is based on six General Principles which are essentially statements of standards of commercial behaviour and which are reproduced in full below. These General Principles are expressed in broad general terms and the Takeover Code does not define the precise extent of, or the limitations on, their application. They are to be applied in accordance with their spirit in order to achieve their underlying purpose.

General Principles

1. **All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.**

2. **The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.**

3. **The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.**

4. **False markets must not be created in the securities of the offeree company, of the offeror company or of any company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the market is distorted.**

5. **An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.**

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

In addition to the General Principles, the Takeover Code contains a series of Rules (accompanied by detailed notes) which relate to specific aspects of the takeover process. Whilst expressed in more detailed terms, these Rules are, as is the case with the General Principles, to be interpreted to achieve their underlying purpose. Accordingly, their spirit must be observed as well as their letter.

9.4 **The Panel Executive**

The day-to-day work of takeover supervision and regulation is carried out by the Panel Executive, which is a full-time body comprising a mixture of permanent and seconded staff. The work of the Panel Executive includes giving rulings on the interpretation, application and effect of the Takeover Code, dealing with compliance issues, investigating possible breaches of the Takeover Code and ruling on disputes. The Panel Executive is available at short notice for consultation and for the giving of rulings and must always be consulted in advance whenever there is any doubt whatsoever as to whether a proposed course of conduct is in accordance with the Takeover Code or whenever a waiver or derogation from the application of a provision of the Takeover Code is sought.

9.5 **Directors' responsibility for compliance with the Takeover Code**

Responsibility for compliance with the Takeover Code rests with the directors of both the offeror and the offeree company, as well as their professional advisers.

Each director has a responsibility to ensure, so far as he is reasonably able, that the Takeover Code is complied with. The onus to ensure compliance falls upon all directors and not merely on the executive directors or those directors specifically charged with the conduct of the offer. An individual director will not be able to absolve himself from responsibility by pointing to his lack of knowledge of, or involvement in, the conduct of the takeover.

It is recognised that, in practice, a board of directors may delegate the day-to-day conduct of an offer to individual directors or a board committee. However, in such circumstances, the Takeover Code requires that the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct so that each director is able to fulfil his responsibilities under the Takeover Code. In particular, procedures must be put in place so as to ensure that:

(a) the full board is provided promptly with copies of all offer-related documents and announcements published by the company together with details of all

dealings in relevant securities by the company (or any persons acting in concert with it) and details of all non-routine obligations incurred by the company in the context of the offer;

(b) those directors with day-to-day responsibility for the offer are in a position to justify to the full board all their actions and proposed courses of action; and

(c) the opinions of advisers are available to the full board where appropriate.

9.6 **Acquisition of control and protection of shareholders**

One of the key principles of the Takeover Code is that, if a person acquires control of an offeree company, the other shareholders must be protected. The Takeover Code seeks to achieve this by imposing timing restrictions on the ability of a person to acquire control of an offeree company and by obliging a person who does acquire control to extend an offer to the other shareholders.

In particular, Rule 9 of the Takeover Code provides that, if a person acquires an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30 per cent or more of the voting rights of an offeree company, that person must make an offer to the other shareholders to acquire their shares. Such an offer must also be made where a person (together with persons acting in concert with him) is already interested in shares which carry 30 per cent or more (but not more than 50 per cent) of the voting rights of an offeree company and that person (or a person acting in concert with him) acquires an interest in additional shares carrying voting rights.

A mandatory offer under Rule 9 must be in cash at no less than the highest price paid by the offeror (or any person acting in concert with it) for shares in the offeree company during the 12 months prior to the announcement of the offer. The offer may be conditional on the offeror receiving acceptances which give it more than 50 per cent of the offeree company's voting rights. The usual 90 per cent acceptance condition cannot be included. No other conditions are permitted.

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