Rights and Accountability in Development

Overhauling AIM

Submission to the *AIM Rules Review*

September 2017

Structure of RAID's submission

RAID's response to the London Stock Exchange's *AIM Rules Review* discussion paper is informed by our detailed research into London-traded mining companies and regulatory compliance. Section (I) provides the perspective from which we our commenting, which concerns whether or not the suggested reforms are likely to prevent the use of AIM to bring to market and legitimise assets acquired through dubious means, including, bribery. This section covers problems with AIM and the need not only to significantly tighten and extend scrutiny at admission, but also a need to ensure that breaches of AIM rules are identified and that serious non-compliance is publicly exposed. Section (II) provides our specific comments on the Exchange's proposals to reform existing AIM rules.

RAID will publish its submission on its website. However, we would ask the Exchange, in the interests of transparency and encouraging discussion, to seek permission to post all the responses that it receives on its website.

Section (I) – RAID's perspective on the reform of AIM

Rights and Accountability in Development (RAID) is a UK based non-governmental organization which promotes responsible conduct and respect for human rights by companies in Africa and around the world. Since its foundation in 1998, RAID has been at the forefront of efforts to strengthen mechanisms that can bring corporate misconduct to light, hold companies to account and achieve justice for victims of human rights abuses. RAID links its extensive knowledge of individual cases it has documented in the Democratic Republic of Congo, Zambia, Zimbabwe, and Tanzania, amongst others, with national and international policy debates at the highest level to press for the development of fair and just policies.

The need for reform

RAID has published three detailed reports raising serious concerns about non-compliance and highlighting areas where we believe AIM has failed to appropriately regulate companies listed on the exchange. This submission is based on our considerable research into these cases. The reports include:

- June 2011, *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce*

Limited, a comprehensive 162 page submission on CAMEC and its nomad covering some 78 issues of non-compliance.[1]

- July 2012, *Asset Laundering and AIM: Congo, corporate misconduct and the market value of human rights*, based upon an earlier highly detailed complaint submitted to the London Stock Exchange and Financial Services Authority (FSA) concerning regulatory compliance of certain London-traded mining companies. [2]
- January 2017, *'Bribery in its purest form': Och-Ziff, asset laundering and the London connection*, a report following on from action in the US under the Foreign Corrupt Practices Act (FCPA).[3] The report sets out the London connection of this massive corruption case and concludes that the activities of some of the entities and individuals concerned could have been severely curtailed if non-compliance with AIM rules had been detected and acted upon at the time.

There have been a considerable number of high-profile scandals and failures on AIM – Globo, Silverdell, Quindell, Langbar International, Regal Petroleum, Versailles, ZTC Telecoms, E - District, Izodia, Fusionex – but the use of AIM to launder assets has not attracted the same attention from investors. As we point out in this submission, we believe this serious issue should receive wider attention: urgent action is required to halt the laundering of assets. There are considerable common factors between the laundering of assets, further set out below, and the more widely-known failures, including opaque offshore ownership, fraud and lack of governance.

The Exchange's discussion paper for review of AIM rules characterises fraud and other inappropriate and criminal behaviours as lying outside the scope of its rulebook. This is fundamentally flawed. The Exchange needs to acknowledge that fraud and other criminal activity by AIM companies is facilitated by non-compliance with AIM rules. Whilst other agencies such as the Serious Fraud Office might investigate and prosecute such activity, AIM regulation should be at the forefront of identifying rule breaches that enable such activity and which bring the market into disrepute.

A recent case in the United States is a prime example of how companies based in London and traded on AIM were at the heart of a massive African corruption scheme, described by the authorities as 'bribery in its purest form'. In September 2016, in settling charges against multi-billion dollar New York hedge fund Och-Ziff, the US Department of Justice (DoJ) and the Securities and Exchange Commission (SEC) set out details of corruption schemes across Africa, including in the Democratic Republic of Congo. [4] RAID published its *'Bribery in its purest form'* report detailing the connections to the UK, based on the findings of the US authorities. Transactions at the heart of the corruption scheme concerned both the main London market and AIM-traded companies. See box below for further details.

[1] RAID, *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited,* May 2011, available at <http://www.raid-uk.org/sites/default/files/aim-submission.pdf>. The report was submitted to the London Stock Exchange's AIM Regulation on 3 June 2011 and made public in July 2012.
[2] RAID, *Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights,* July 2012, available at <http://raid-uk.org/docs/AIM/AIM_Report_2012.pdf>.
[3] RAID, *'Bribery in its purest form': Och-Ziff, asset laundering and the London connection,* January 2017, available at <http://www.raid-uk.org/documents/ozbriberyinitspurestformfullreport-pdf>.
[4] United States of America against Och-Ziff capital Management Group LLC, *Deferred Prosecution Agreement*, Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <https://www.justice.gov/opa/file/899306/download>. The full *SEC Order* is available at: <https://www.sec.gov/litigation/admin/2016/34-78989.pdf>.

The Och-Ziff case and the London connection

Och-Ziff entered into several transactions with infamous Israeli businessman, Dan Gertler, (referred to as 'DRC Partner' in the DoJ filing) to gain access to investment opportunities in the diamond and mining sectors by making corrupt payments to senior government officials. Gertler has used AIM extensively to deal in Congolese mining assets through the companies he controls. The US Department of Justice details

> 'an April 2008 purchase of approximately $150 million of shares in a publicly traded DRC-focused mining company controlled by DRC Partner ("Company A")' [*DPA*, Statement of Facts, 28]

While the Securities and Exchange Commission (SEC) sets out how

> 'Och-Ziff and DRC Partner worked to acquire and consolidate assets in the DRC into an entity controlled by DRC Partner that could then be sold to a large publicly-traded mining company for a significant profit.' [*SEC Order*, 42]

'Company A' matches Central African Mining and Exploration Company (CAMEC) Limited, admitted to AIM in October 2002. The 'large publicly-traded mining company' is the now controversial Eurasian Natural Resources Corporation (ENRC) plc, at the time listed on London's main market.

AIM-traded CAMEC

Central African Mining and Exploration Company (CAMEC) Limited was admitted to AIM in October 2002. Once set up on AIM, CAMEC was then free to bring DRC and Zimbabwean mining assets of dubious provenance to the London market. Gertler had acquired a large holding in CAMEC, paving the way for the injection of funds from Och-Ziff.[5] According to the DOJ, when Och-Ziff subscribed to the CAMEC share offer, another $11 million was immediately made over by Och-Ziff's DRC Partner [Gertler] to DRC Official 2 (matching Katumba Mwanke, DRC President Kabila's trusted aide).[6]

Soon after receiving the Och-Ziff money, CAMEC also announced a deal to buy a platinum mine in Zimbabwe, making cash available to the Mugabe regime, despite sanctions being in force.[7] The deal was set up by another significant shareholder in CAMEC (the 'Zimbabwe Shareholder'), who matches Billy Rautenbach, an individual placed on EU and US sanctions lists and referred to by the US Treasury as a 'Mugabe crony'.

In June 2011, RAID raised serious questions with AIM: about the appropriateness of Rautenbach, charged with fraud in South Africa (he was later convicted) and identified by a UN expert panel on DRC as an example of 'insufficient due diligence', citing his major shareholding in CAMEC;[8] about how CAMEC became the vehicle by which Dan Gertler consolidated his DRC mining assets on the London market.[9] Gertler achieved this consolidation, despite his status as an individual accused by another UN expert panel of exchanging conflict diamonds for money, weapons and military training and allegations of asset stripping and the 'flipping' of cheaply acquired mining assets for vast profit.[10]

Nikanor plc: another AIM-traded company used by Gertler

Gertler used another AIM company, Nikanor plc, to launder Congolese mining assets. The SEC Order quotes a due diligence report into DRC Partner, commissioned (though not acted upon) by Och-

[5] *DPA*, Statement of Facts, 32.
[6] *DPA*, Statement of Facts 32.
[7] *SEC Order*, 51.
[8] UN Security Council, *Report of the Group of Experts on the Democratic Republic of the Congo in Accordance with Paragraph 2 of the Security Council Resolution 1654 (2006)*, S/2006/525, 18 July 2006, paragraph 132.
[9] *Questions of compliance*, pp.14 – 20; p.36; pp.47 – 52.
[10] UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2. See also the Panel's report S/2001/1072, 13 November 2001, paragraphs 67 – 9 and S/2003/1027, 23 October 2003, confidential Section 5, paragraphs 32 – 35.

Ziff:11 'Based on his history and reputation "a number of London based advisors would not act for [a DRC mining company] or associated (sic) with the listing and many fund managers declined" investment deals "due to [DRC Partner's] involvement."' Clearly, other advisers were found. In Nikanor's case, its nominated adviser and broker for its admission to AIM was JP Morgan Cazenove.

Main market-listed ENRC

ENRC listed on the Main Market in December 2007 and was also listed on the Kazakhstan Stock Exchange (KASE). The company described itself as 'a leading diversified natural resources group with fully integrated mining, processing, energy and transport operations.' At the time of its listing, it ranked high in the FTSE 100, with a market capitalisation of £14,294 million.12 ENRC has since delisted from the Main Market and is now re-organised as the private Eurasian Resources Group (ERG).

ENRC is currently under investigation by the UK's Serious Fraud Office (SFO). The influential Africa Progress Panel, established to promote equitable and sustainable development for Africa and chaired by former UN Secretary-General, Kofi Annan, quotes an example whereby ENRC effectively paid $685.75 million for mining Congolese concessions, which were originally purchased for $63.5 million by a Gertler-controlled entity, 'a return of just under 1,000 per cent for the offshore companies concerned'.[13] The assets had been stripped from Canadian miner First Quantum, causing a storm in London over ENRC's lack of governance when it stepped in as purchaser. The FCPA action confirms that First Quantum's assets were acquired through corruption.

RAID also believes there should be greater attention given to disciplining and sanctioning those who have breached AIM rules, even after the event, thereby sending a strong signal to others who might seek to exploit AIM. The case of CAMEC is a stark example of an opportunity missed, sending out the message that wrongdoers had little to fear (see box for details on CAMEC).

CAMEC and its nomad at the time, Seymour Pierce, was publicly censured and fined, but only for 'illustrative' cases of non-compliance. This 'selective' approach left the whole sorry tale of its failings – to ensure timely and accurate notifications, to apply the class tests, to flag the absence or incompleteness of accounts, to scrutinise the conduct and reputation of key managers and business associates – in the CAMEC case untold.

AIM appears fundamentally flawed

Given the extent of the failings and the almost total lack of public accountability, one can only draw the conclusion that an exchange-regulated market, which relies on private advisers (nomads) for day-to-day compliance, is fundamentally flawed. It is highly doubtful that self-regulation, relying on private firms with vested interests as gatekeepers, and designed to be 'light touch', will ever eliminate or even significantly reduce the use of AIM to launder assets and dirty money through London. The Exchange recognizes the difficulty in the discussion paper:

> 'Whilst the nominated adviser's role is important to the AIM model…the nominated adviser cannot guarantee an AIM company's compliance either with the AIM Rules for Companies or its wider statutory responsibilities.'

[11] *SEC Order*, 46.g.
[12]< http://www.londonstockexchange.com/exchange/prices-and-news/stocks/summary/company-summary.html?fourWayKey=GB00B29BCK10GBGBXSET1>, visited 9 March 2010.
[13] *Africa Progress Report 2013*, Box 9, The Kolwezi project, p.58.

While it is true that even in tightly regulated markets there will be instances when rules are broken, it is a peculiar proposition to begin with the premise that the nomad system will fail to ensure compliance on AIM.

Based on our research, we believe AIM has serious shortcomings:

- The AIM rules are formulated so that already diluted due diligence exercised at the admission stage, once self-certified and approved by the nomad, is seldom repeated.
- Ongoing rules modulate market impact rather than expose non-compliance: an inertia attaches itself to a company that has already been brought to market, and further due diligence is easily circumvented, even when the company's asset-base or control alters to encompass resources or relationships derived from conflict or exploitation. Once a company is admitted and trading on a market, exposing such legacies and non-compliance can only endanger an orderly market in a company's shares. **Even the Exchanges current review of the AIM rules focuses on pre-admission and admission, not the need to improve and extend rules governing ongoing scrutiny.**
- It is perhaps not surprising, then, that alongside the gaps and silences on due diligence in the ongoing rules, **those areas of potential non-compliance that are captured – for example, on price sensitive information, information of import, market reputation – are not necessarily rigorously implemented or enforced, at least not in a sufficiently transparent and accountable way.**
- Moreover, there have been instances – including in the CAMEC case – when nomads have failed to apply class tests to transactions that would otherwise have triggered disclosure or a new admission document with its attendant due diligence requirements.
- In general, if blame for non-compliance is laid at the door of the nomad as gatekeeper, **the question arises as to how much faith ought to be placed in commercial hands with vested interests in earning fees, the bulk of which are front-loaded at the time of admission.**

The recourse left to AIM Regulation is disciplinary action, having transferred immediate, day-to-day matters of compliance into the hands of the nomads. But here too there are shortcomings:

- Disciplinary action is mainly retrospective, generally kicking in long after a specific instance of non-compliance has passed. Moreover, there must be a threshold above which any **findings of serious and repeated non-compliance bring the whole nomad-led regulatory system into question**. The stakes may be too high for further and repeated public censure of nomads.
- **Disciplinary action is extremely rare:** over AIM's entire existence, only six companies and four nomads have been publicly censured, with two of these companies and three nomads also being fined between £75,000 and £600,000. The last disciplinary notices against nomads, issued in 2015 and imposing fines of £75,000 and £90,000, have both taken the form of anonymised censures, as has the Exchange's last two 2014 and 2016 notices against unnamed companies. The Exchange's discussion paper confirms its secretive and opaque approach to holding companies and nomads to account. Between 2013-2016 the vast majority of cases (93) were dealt with at the lowest level of disciplinary action through private Recorded Breaches and Education, while there were only 16 Private Censures/Fines. Despite all the scandals, the Exchange continually fails to publicly name the wrongdoers. To place this record of disciplinary action in context, AIM has been in existence for over 20 years, admitting over 3700 companies (of which less than one thousand are currently trading), advised by over 35 approved nomads and raising £100 billion in investment.

In cases where there is considerable controversy or a public interest, RAID would resist any notion – as recently opined by the Exchange – that disciplinary action is not 'enforcement-led'. **Without enforcement there is no accountability and little incentive to others to stamp out malpractice and non-compliance.**

The case of ENRC, currently under investigation by the SFO, demonstrates all too clearly how, even on the more tightly regulated main market, it is possible for companies of ill-repute to exploit their listed status. Yet calls for a quality committee in the wake of the scandal caused by ENRC's total disregard for governance, let alone the still to be determined questions of corruption, were rejected.

Both on AIM and the main market, one reason such recalcitrant companies are able to operate with impunity is because of the hidden nature of who the ultimate beneficial owners are. Whilst the UK has already set up, and the European Union has committed to, publicly-accessible registers of beneficial owners, a massive loophole remains offshore in overseas territories where anonymously-owned companies and trusts thrive. RAID's research into the ultimate ownership of AIM companies such as CAMEC and Nikanor has been frustrated by the deliberately complex, opaque and anonymised offshore structures through which shares are held.

RAID therefore calls not for a mild revision of AIM rules, but **a wholesale, independent review of AIM, terms of reference. This must include whether AIM can or should be reformed at all or if it should be closed down.** RAID calls for an inquiry by the Treasury Select Committee to look into why AIM failed to prevent companies controlled by individuals of ill-repute being admitted to AIM, and allowed such companies to trade corruptly obtained assets on the London market, while hiding the beneficial ownership of key shareholders.

That said, and if AIM is to persist in the interim, RAID's response to the Exchange's discussion document is laid out in the next section, structured accordingly, and focused upon those areas/questions of particular relevancy to our concerns of accountability, transparency and combatting the laundering of illicitly acquired assets.

Section (II) – Specific responses to the *AIM Rules Review*

The role of the nominated adviser

According to the review document, the role of the nominated adviser in assessing a company's appropriateness for AIM remains key. Based on our experience, it is apparent that nomads and the Exchange have failed to exclude the most disreputable companies from AIM. However, formalising current practice at admission will have a limited impact unless scrutiny is ongoing and moves beyond a reliance upon disclosure, especially when, in RAID's experience, such disclosure is either (i) meaningless because the real identity of controlling shareholders is concealed through anonymous companies and trusts or (ii) the class tests, which should trigger further disclosure and scrutiny, are either misapplied or circumvented.

Formalising the early notification process

Q1	*Do you agree that the proposed extension and codification of the existing early notification process would be beneficial*?	**Yes**

RAID agrees that such extension and codification would be beneficial, but with the significant caveat that such scrutiny at admission can be entirely beside the point.

AIM Regulation used its October 2012 *Inside AIM* communication to nomads to set out further guidance on the requirements of due diligence and on best practice in their contacts with client companies. RAID's report highlighted lapses in due diligence in the CAMEC case. It should be noted that AIM Regulation, in deciding to provide further guidance, refers specifically to its disciplinary notice on the nomad Seymour Pierce, which was also CAMEC's adviser. AIM Regulation now advises on the equal application of due diligence not only on directors but also on substantial shareholders or key controlling individuals, clarifying previous ambiguities highlighted by RAID.[14]

However, and irrespective of any tightening of admission criteria, the gap between due diligence at admission and ongoing due diligence needs to be closed. Currently, a contrast exists between at least the potential to block companies with tainted assets or with directors, shareholders and key personnel of dubious reputation under the admission rules – as happened in the case of Oryx Diamonds (see below) – and the absence of meaningful scrutiny under ongoing rules for existing AIM-traded companies.

The CAMEC case exemplifies such a flawed system: Rautenbach, as a key manager and shareholder, escaped scrutiny because CAMEC acquired its dubious Congolese assets long after admission; mines were later bought in Zimbabwe, providing cash to the sanctioned regime of President Robert Mugabe; Gertler later bought into CAMEC, exercising *de facto* control over the company, without any meaningful due diligence.

One consequence of 'front loading' any scrutiny is that it is better to secure admission before acquiring controversial companies, assets, shareholders or personnel – analogous to the idea of a 'cash shell' (a company, already admitted to an exchange, with cash assets waiting to buy a business). Moreover, in CAMEC's case, serious questions remain over the basis upon which

[14] There is ambiguity between the AIM rules for companies and the rules for nomads on the question of the background of managers. Whilst the company rules waive requirements for information on managers, the nomad rules suggest that investigations can be extended to such personnel. RAID called for more clarity on whether the investigation of key managers is limited to those named in the admission document: if so, given that under the AIM rules a company need not name managers, an applicant may omit reference to controversial figures and thereby avoid the nomad check of their records. The non-mandatory nature of due diligence in respect of key mangers raises the distinct possibility that Rautenbach's role in CAMEC's subsidiary companies may have remained unexamined, even if CAMEC had owned these companies at admission (which it did not).

the class tests – used to determine the requirement for further disclosure – were carried out. This leads to recommendations in areas of regulation not covered by the Exchange's consultation:

- There needs to be a strengthening under AIM rules of on-going due diligence for all substantial transactions involving assets in conflict-affected or weak governance zones: checks on the validity of titles and licences, the reputation of key managers, business partners and associates and the rigour of accounting practices.
- Consideration should be given to the reinstatement of the carve-outs from the EU Prospectus Directive on the investigation of key managers. At a minimum, such investigation must be mandatory when either applicants or significant transactions concern assets associated with zones of conflict or weak governance.
- There should be a requirement that immediate notification is issued when directors, key managers or other key personnel are charged with or convicted of criminal offences pertinent to integrity or business conduct, designated on sanctions lists or identified and named by statutory, official, industry or intergovernmental organisations, including UN bodies, for conduct that would prompt concern over their business integrity.
- Rules should be introduced to redistribute the balance between initial and ongoing fees, to encourage nomads to bring bona fide companies to market and to ensure that proper attention is given to ongoing compliance. For example, the same company should be prevented from being both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from the capital raised. There is evidence to show that nomads are pushing to list unsuitable applicants, despite concerns raised in repeated due diligence investigations. Undoubtedly the front-loaded fees that are to be earned at admission contribute to this impetus.

Q3	Does the list proposed above cover the key information that should be set out in the early notification process and, if not, what additional information would be beneficial?	**No**

All the key information set out in the discussion paper should be included under early notification. In addition, or to add clarity to listed items, early notification should include:

- details of companies or trusts holding shares where the beneficial owner has not been identified;
- details of any shareholdings held via offshore entities.
- Under issues that may give rise to a concern that admission of the applicant will damage AIM's reputation and integrity, there should be non-exhaustive list of matters that will automatically require further details: for example, the designation of a company or its directors, major shareholders or key personnel on sanctions lists; their naming by a competent or expert body, including national (including parliamentary committees) or intergovernmental bodies, examining matters pertinent to business conduct; unresolved criminal charges and convictions, pertinent to integrity or business conduct; settled or ongoing civil cases concerning business conduct or disputes. The existence of credible public reports, critical of the applicant or its directors and key managers, including reports by NGOs and the media should also be notified.
- For the avoidance of doubt, a list of shareholders is insufficient: details should include preliminary due diligence checks.
- Such initial due diligence checks on directors, significant shareholders and managers should include details of whether other AIM companies in which they have had a

similar involvement have recoded breaches and/or have been issued with warnings or censure and the circumstances of any non-compliance.

Guidance on when the Exchange may exercise its AIM Rule 9 powers

Under rule 9, the London Stock Exchange can stop an admission where it considers it may be detrimental to the orderly operation or reputation of AIM. The consultation document states: 'Notwithstanding the existence of this power, London Stock Exchange rarely needs to exercise this in practice, as issues are either addressed satisfactorily or the application is withdrawn.'

Q4	Do you agree that it would be helpful to publish a list of non-exhaustive examples of factors to be taken into account by nominated advisers when assessing appropriateness for AIM?	**Yes**

It is RAID's view that, in order to further the Exchange's stated 'consistency if approach' under rule 9, there needs to be not only guidance for nominated advisers, but also transparency and accountability in the way in which companies are either admitted or blocked. RAID originally raised this concern back in 2011.

- As a starting point, it would be pertinent to know how many times and in what circumstances the Exchange has had cause to resort to its rule 9 powers, even if this was not followed through.
- RAID advocates that the Exchange should use its rule 9 power to refuse to admit companies to AIM whose directors and/or executives and/or significant shareholders have a dubious reputation or track record or where existing assets are if dubious provenance. In this regard, it is useful for the Exchange to provide guidance to nomads, but not ultimately to seek their withdrawal from supporting an admission, rather for the Exchange to openly declare its recourse to rule 9 to prevent an admission.

Currently, the Exchange instead chooses to exert influence behind closed doors on nomads to withdraw their support for an admission to AIM, which has led to inconsistent and perplexing decisions. In 2000, Oryx Natural Resources, a company exploiting DRC diamonds in a secretive deal between the Congolese and Zimbabwean regimes, was rightly blocked from trading on AIM by this opaque process, whereas CAMEC was able to bring to market Congolese mineral assets with a parallel, disreputable, provenance because it already existed as a company on AIM.[15]

Again, unless there is repeat scrutiny by nomads in accordance with formal guidance, an ultimately untenable situation exists on AIM where it is purely the timing of the acquisition of assets (pre- or post-admission) and not their inherent suitability or provenance or the character of controlling interests that determines the degree of scrutiny and access to the market thereafter.

Put succinctly, while the contrast between Oryx's prohibition at admission and CAMEC's enjoyment of the advantages conferred by AIM can be *explained* by the relative absence of due diligence under ongoing rules, it is difficult to *justify* how assets with the essentially the same tainted provenance and controlled and/or manged by individuals with a dubious history can be deemed acceptable or unacceptable on the basis of when they were acquired.

Q5	Do you agree with or have any comments on the proposed examples?	**Yes, with comment**

[15] On Oryx Natural Resources and its abortive AIM listing, see RAID, *Asset Laundering and AIM*, Box 10 - Parallels in the provenance of Oryx diamond and CAMEC copper/cobalt assets, pp.32 – 33.

RAID believes all the example factors in the list should be taken into account when assessing appropriateness. RAID has additional comments on certain of these proposed examples.

(i) Concerns as to the good character, skills, experience or previous history of a director, key manager, senior executive, consultant or shareholder.

This factor (numbered (i) for clarity), as well as factor (ii) (see below), should be subject to ongoing due diligence and scrutiny, not just at admission. This is especially important every time there is a significant transaction or notifiable change in shareholdings or the appointment of a new director or key manager. Without making the assessment of appropriateness an ongoing requirement, the likes of Rautenbach and Gertler will continue to sidestep scrutiny and this risk is heightened by:

- failures, misapplication or ambiguities in the class tests;
- the anonymised nature of companies and trusts holding shares in AIM companies, when beneficial ownership is unknown.

RAID has continued to warn the UK government and authorities about other AIM-traded companies with questionable provenance. In October and November 2013, RAID asked AIM regulation about how the same directors and executives who ran CAMEC – former England cricketer Philippe Edmunds (chairman), Andrew Groves (managing director and chief executive), and Andrew Burns (chief financial officer) – were allowed to set up a new shell company on AIM, Africa Oilfield Logistics Limited (AOL).[16] RAID asked whether there was adequate consideration of the suitability and investigation into the background of AOL's directors; if the Exchange had considered whether or not the applicant's admission was detrimental to the reputation of AIM; and why the Exchange did not exercise its powers under rule 9 to refuse admission.[17] AIM refused to disclose any information on the admission of AOL, at the same time implying that the prior conduct of a company's directors and the compliance record of companies under their directorship were not of central concern when it came to the admission of AOL.[18] In December 2013, AIM regulation told RAID 'for reasons of confidentiality, we are unable to provide you with further details of any investigations that have either taken place or may be under consideration…'.[19]

(ii) Formal criticism of the applicant and/or any of its directors by other regulators, governments, courts, law enforcement or exchange bodies.

The consideration of such criticisms should be extended beyond the applicant/directors to include controlling and/or substantial shareholders and key managers, who may be associated with other companies that have been criticised.

AIM's current practice of private warnings or even anonymised public censure and fines, if practiced by other official bodies and regulators would fail to trigger any scrutiny if this is limited to 'formal criticism'.

[16] Africa Oilfield Logistics Limited, incorporated and registered in Guernsey, was set up as a 'cash shell' by Andrew Groves and Philippe Edmonds with the objective of acquiring or investing in one or more businesses to provide the logistics support for oil and gas exploration and other development projects in sub-Saharan Africa. AOL was admitted to trade on AIM on 25 June 2013.
[17] RAID, letter to Nilam Statham, Head of AIM Regulation, 1 October 2013; RAID, letter to Nilam Statham, Head of AIM Regulation, 28 November 2013.
[18] AIM Regulation, e-mail to RAID, 20 November 2013: 'We note that your concerns are primarily based on the involvement of AOL's directors and advisers with Central African Mining and Exploration Company Limited ("CAMEC"). Should you have any information or evidence that relates specifically to the matters you raise in respect of AOL, we would be grateful if you would provide this to us.'
[19] AIM Regulation, e-mail to RAID, 23 December 2013.

The examples of bodies whose pronouncements/findings are pertinent should be extended to include, *inter alia*, sanctions bodies, competent or expert bodies, including national (for example, parliamentary committees) or intergovernmental bodies, examining matters pertinent to business conduct; unresolved criminal charges and convictions, pertinent to integrity or business conduct; settled or ongoing civil cases concerning business conduct or disputes. Account should also be taken of credible public reports, critical of the applicant or its directors and key managers, including reports by NGOs and the media.

(iii) The applicant has been denied admission to trading on another platform or exchange.

If other platforms or exchanges adopt a similar approach to AIM by precluding applicants through opaque processes behind closed doors without ever exercising formal powers to block admission, then how can the nomad and AIM regulation know of such cases?

This provision should include examining withdrawn applications or asking whether directors/significant shareholders/key managers have been associated with other refused/withdrawn applications.

(iv) Corporate structure and business models that give rise to concerns regarding appropriateness for a public market.

Where the applicant holds assets or has significant holdings in the company through complex and/or anonymised offshore companies or trusts, this should give rise to particular concern. Questions must be asked about the control of such companies seeking admission and who the beneficial owners are.

The development of AIM and eligibility criteria

Free float: maintaining an orderly market

Q6	Do you agree that the current approach to free float strikes the right balance or do you consider that London Stock Exchange should consider the introduction of a minimum "shares in public hands" requirement?	**Introduce minimum requirement**

The Exchange states: 'On submission of an application for admission, amongst other factors, London Stock Exchange wants to understand the nominated adviser's consideration relating to free float, taking into account factors such as:

- the influence and visibility of any major shareholder;
- the existence of concentrated shareholdings (e.g. connected due to family, business or other interests) and what measures are in place, at admission, to address these.'

On the buy-side, the amount of shares in public hands acts as counter-balance to a dominant shareholder and the free float is an acknowledged tool for ensuring effective corporate governance. The Exchange should introduce a minimum free float for this reason alone, given the damage to AIM's reputation caused by examples of poor governance and how this dissuades potential applicants and not be swayed by sell-side respondents mindful of damaging London's attractiveness to issuers. There is also merit in ensuring that free-float requirements should be applied on a continuing basis.

Corporate governance requirements for AIM companies

Composition of boards

Q12	Do you consider the current requirements set out above, including duties of the nominated adviser at admission to consider the efficacy of the board and the adoption of appropriate corporate governance standards and disclosure under AIM Rule 26, to be effective? If not, please explain why?	**No, with comment**

The Exchange states: 'Whilst the AIM Rulebooks require nominated advisers to assess the efficacy of boards on admission and on an ongoing basis, they do not mandate specific composition requirements, such as requiring an AIM company to have a specific number of non-executive directors. Nor do they mandate that these directors be independent of the AIM company.'

RAID advocates that AIM boards should include independent directors. Moreover, ensuring the protection of the independence of directors should be a continuing obligation. On the Main Market, ENRC faced criticism after two independent directors were voted off the board in June 2011 for raising concerns over corporate governance because of the DRC deals.[20] Concerns over the governance of ENRC and other premium listed companies eventually fed through into a strengthening by the Financial Conduct Authority (FCA) of listing rules to enhance shareholder protection.[21]

There must be a parallel move to extend corporate governance measures to AIM. Many of the companies that RAID considers to have damaged AIM's reputation – for example, CAMEC, Sable Mining, Africa Oilfield Logistics – have had board members in common, acting without constraint and with a disregard for corporate governance.

Disclosure of corporate governance codes

Q13	Do you believe that AIM companies should be required to report annually against a governance code?	**Yes, with comment**

The Exchange states: '…one option includes making it mandatory for AIM companies to comply and explain against one of the industry codes of their choosing.'

In RAID's view, much greater consideration needs to be given to which codes are deemed to be of sufficient standing rather than allowing free choice. It may be that minimum standards should be supplemented rather than replaced by industry-specific codes.

Drawing on RAID's work in critiquing human rights reporting by companies, RAID has serious reservations over whether self-reporting of governance issues by companies will have the rigour and independence necessary to be meaningful. Unless there is an independent body to investigate and publicise non-compliance – and such a prospect seems entirely remote – then there is a significant danger that annual self-reporting will be little more than a 'tick-box' exercise, adding credibility for good governance where none exists.

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[20] See, for example, Tom Bawden, 'Sir Richard Sykes: voted out, but not down', *The Guardian*, 10 June 2011, available at: <http://www.guardian.co.uk/business/2011/jun/10/enrc-richard-sykes-kazakh-mining-firm?INTCMP=ILCNETTXT3487>; Nikhil Kumar, 'ENRC shares a 'no go' over governance', *The Independent*, 18 August 2011, available at: <http://www.independent.co.uk/news/business/news/enrc-shares-a-nogo-over-governance-2339570.html>.

[21] See FCA, 'The FCA strengthens the listing rules to enhance protection for shareholders', *Press Release*, 5 November 2013, available at: <http://www.fca.org.uk/news/the-fca-strengthens-the-listing-rules-to-enhance-protection-for-shareholders>. The FCA consulted on its proposals in October 2012: see RAID, *Polishing the family silver: Response to the FSA's Consultation Paper CP12/25 Enhancing the effectiveness of the Listing Regime*, available at: <http://raid-uk.org/docs/Response_FSA_Consultation_2012.pdf>.

Standards of conduct and approach to non-compliance with the AIM Rulebooks

Q14	Are there further ways London Stock Exchange can helpfully educate market participants, particularly individuals, as to what London Stock Exchange can and can't do in respect of its remit, beyond the information already available on its website?	**Yes**

In RAID's experience, AIM should certainly focus on keeping its own house in order as AIM-traded companies with an appalling record of non-compliance with AIM rules will undoubtedly have the same disregard for rules, or even laws, covering, for example, market abuse, money laundering or corruption. Had RAID's concerns over non-compliance with AIM rules been taken seriously in respect of CAMEC and the use of AIM-traded companies by Gertler to launder Congolese mining assets, then the Exchange could have contributed to the curtailing of such malpractice within its own remit, rather than being embarrassed by the FCPA findings on the role of London companies in the corruption schemes. **The Exchange may not be tasked with policing corruption, but it is tasked with exposing the kind of market non-compliance that facilitates corruption.**

While the Exchange recognises the reputational risk to AIM when such malpractice is exposed – '[i]nappropriate or fraudulent behaviour has a detrimental impact on market participants and the reputation of AIM' – rather than retreating to its strict remit and emphasising the limits of what it can do, the Exchange should instead make clear that:

- It will act against non-compliance within its own remit and will support all other regulators and law enforcement agencies in their investigation and sanctioning of malpractice and criminal acts;
- That it will forward on any information it receives to the relevant agency.
- Consideration should be given to the setting up of a body, to include the Exchange/AIM regulation, designed to coordinate action across relevant regulators (such as the FCA) and enforcement agencies (including the Serious Fraud Office and the National Crimes Agency, the Asset Freeze Unit and the Office of Financial Sanctions Implementation). For example, in Canada, the Ontario Securities Commission coordinates with the Royal Canadian Mounted Police through the Joint Securities Intelligence Unit.
- It will consider the reputational risks or risks to shareholders posed by such information and will, within the limits of confidentiality set by the lead authority, consider instructing the company concerned to disclose information

According to the Exchange, '[t]he AIM Rules for Companies are focused on disclosure to ensure investors have the relevant information to make informed investment decisions.' However, a sole reliance on disclosure is totally inadequate when dealing with companies and individuals who may be involved in extensive non-compliance or even unlawful activities.

- When serious and credible allegations are bought to the attention of AIM regulation or a nomad, then all ongoing AIM compliance, including on disclosure and the class tests, should undergo extra scrutiny.

Q15	Do you agree with automatic fines for explicit breaches of the AIM Rules for Companies? If so, what types of breaches should the fine be applied to?	**Yes**

Any explicit breach of any AIM rule should trigger an automatic fine as attaching a penalty to non-compliance reinforces the messages that breaches are taken seriously.

Equally important, in RAID's view, is that the Exchange keep a public register of all fines and breaches, naming the company or nomad concerned.

Q16	In respect of Q15 what do you believe is the appropriate level of fine?

Fines should be proportionate to the seriousness of the breach, taking into consideration the company's or nomad's ability to pay. Where ability to pay is a factor, the Exchange should make clear that a reduced fine reflects this consideration, but does not diminish the seriousness of the breach. Multiple or repeat breaches should also attract higher penalties.

Again, RAID's view is that full details of all fines imposed are published.

Q17	Are there other changes to the Disciplinary Handbook that you think London Stock Exchange should consider?	**Yes**

RAID recommends that the Exchange:

- Make all breaches by nomads public, and name the adviser concerned. In relation to accountability and market integrity and reputation, the wrong message is being sent by suggesting that disciplinary action is not 'enforcement-led'. This is particularly the case when disciplinary action relates to the conduct of nomads: given the trust placed in them to ensure the compliance of their clients, it is of the utmost importance that their own conduct is of the highest standard.

- Ends the recently-introduced practice of restricting the public censure of nomads to illustrative cases. Such a practice leaves questions in the minds of other client companies as to the extent of a nomad's non-compliance and its level of competence, making it hard to reach a decision whether to change nomad.

  In the CAMEC case, the question arises as to why the consent order agreed with Seymour Pierce in AD11 puts in place arrangements that have no precedent in other disciplinary actions: on future-focused non-compliance, a suspended fine and censure based on 'illustrative' cases. This question of unusual treatment is a particularly pertinent one, given that AD11, with its future orientated focus, was published at a time when RAID's submission on CAMEC had already been filed and must, surely, have been under active consideration by the Exchange as it agreed the consent order.

- Makes use of rule 43 of the *AIM Rules for Companies*, introduced in May 2014, and holds companies who have ceased to trade on AIM responsible for past non-compliance. Given the deeply disturbing role of AIM companies described in the US action under the FCPA; and given the detailed information available, even in the public domain, on the suspected non-compliance of these companies with AIM rules, it is imperative that the Exchange launches an immediate investigation. RAID wrote to AIM Regulation in January 2017 to clarify the applicability of rule 43. In response, AIM Regulation confirmed 'this rule was proposed to clarify the position regarding our investigative and enforcement jurisdiction over cancelled companies'. The Exchange should state explicitly whether or not rule 43 – which made explicit the Exchange's existing position on jurisdiction – applies to companies who ceased trading on AIM before rule 43 was introduced.

Other areas of compliance not covered by the AIM Rules Review

RAID recommends that the AIM rulebook is revised to:

- Draw up rules and transparent procedures on handling complaints, to support the standing given by the Exchange to third parties and the public in submitting complaints on company and nomad conduct and compliance with the AIM rules.

  At present, blanket confidentiality cloaks the whole process and excludes the complainant, even to the extent that AIM regulation refuses to seek further information or clarification about the complaint. Commercial confidentiality should not be used as a pretext to restrict the regulator from disclosing information about investigations.

- Extend the degree of mandatory due diligence on material assets in the AIM Note for Mining, Oil and Gas Companies to cover substantial transactions in conflict or weak governance zones. Such due diligence should include, for example, thorough checks on the validity of titles and licences, the reputation of key managers, business partners and associates, and the rigour of accounting practices.

- Ensure that due diligence on such assets explores and discloses criticisms made by competent bodies about the provenance of assets, to include the impact of exploitative arrangements upon the human rights and security situation; and appoint a competent person, if necessary, in addition to the appropriate legal adviser, to assist the nomad in this regard.

  It is apparent that the means by which mineral concessions are obtained in extremis in conflict or weak governance situations often leads to the exploitative transfers of concessions. The exposure of such transfers fuels calls for the renegotiation of contracts and may even lead to the cancellation of licences or the expropriation of assets.

- Revision is required to ensure that the class tests are effectively applied. Rather than leaving the decision on compliance with the class tests to nomads, capacity should be developed within AIM Regulation to verify the calculations relating to transactions, at the very least.

  There have been instances when these tests have not been rigorously applied, to the extent that even transactions of the magnitude of reverse takeovers have not been notified at the time, with the attendant failure to produce a new admission document underpinned by due diligence.

- The class tests should be revised to increase transparency. At a minimum, the absence of reliable financial information needs to be made notifiable without delay; substitute tests need to be specified and disclosed in such a case; and the results of all class tests and substitute tests should be made public.

  The current arrangement, whereby the Exchange may substitute tests (relevant indicators of size, including industry-specific tests) when the class tests produce anomalous results, needs to be revised if transactions such as CAMEC's acquisition of Rautenbach's mining and transport companies are failing to trigger disclosure, shareholder approval, a new admission document or further due diligence. Moreover, although only the Exchange can decide to disregard one or more of the class tests, or substitute another test, presumably the system can work only when the nomad, responsible for advising clients on the class tests, communicates full information to the Exchange.

Communication to the Exchange of all class tests, as calculated, should be made mandatory, with public censure and a fine as the automatic penalty for failure to properly apply the class tests or for failing to communicate and seek the advice of the Exchange on anomalous results.