

## AIM: Dealing with turbulent times - key principles for 2009

The purpose of this briefing is to highlight some key continuing obligations for AIM companies and their directors which are of particular importance in these turbulent times. Three recent decisions by the Financial Services Authority have highlighted the importance of these basic rules.

On 4 February 2009, the FSA announced that it had fined Mr Darwin Lewis Clifton OBE £59,500 for dealing in the shares of Desire Petroleum plc on the basis of inside information. Desire is an AIM-quoted company of which Mr Clifton is a non-executive director. Margaret Cole, director of enforcement at the FSA said: *“Mr Clifton held a position of trust as a non-executive director of Desire, but he fell short of the high standards expected of someone in that position. Senior people at publicly quoted companies should ensure that they understand when material is inside information and do not trade when they have it. If they fail to do this they can expect the FSA to impose substantial financial or other sanctions, even where they have not deliberately set out to commit market abuse.”*

On 23 January 2009 the FSA fined Entertainment Rights plc £245,000 for failing to disclose information to the market in a timely manner. The FSA found that the delay in disclosing inside information led to a false market in the company's shares for about 78 days.

On 13 November 2008, the FSA fined Richard Ralph, the former British ambassador to Peru and the former executive chairman of AIM-quoted mining company, Monterrico Metals Plc, £117,691.41 and his friend Mr Filip Boyen £81,982.95 for dealing in Monterrico's shares on the basis of inside information.

A focus on the key principles set out below should help you to ensure that directors can focus on running the business and no one at the company finds themselves subject to regulatory action either by the LSE or the FSA. Simple objectives but, as these recent decisions illustrate, difficult to achieve in practice.

### Key principles

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#### **ONE – TALK TO YOUR NOMAD**

It is a fundamental tenet of the AIM Rules that AIM companies liaise appropriately with their Nomad.

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#### **TWO – DON'T SIT ON BAD NEWS**

Disclosure of negative trading information cannot be delayed because a company believes trading performance will improve in the short term or that it will shortly be in a position to announce other positive news.

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#### **THREE – CHECK YOUR ANNOUNCEMENTS**

Companies must carry out proper verification to ensure the accuracy of any results announcements.

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#### **FOUR – FUTURE PROSPECTS**

Careful consideration must be given as to whether any forward-looking statements notified to the market are potentially misleading to investors in the absence of an explanation as to the assumptions on which those statements are based.

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#### **FIVE – CONSISTENT COMMUNICATIONS**

Companies must take into account information previously notified to the market when considering their disclosure requirements under the AIM Rules for Companies.

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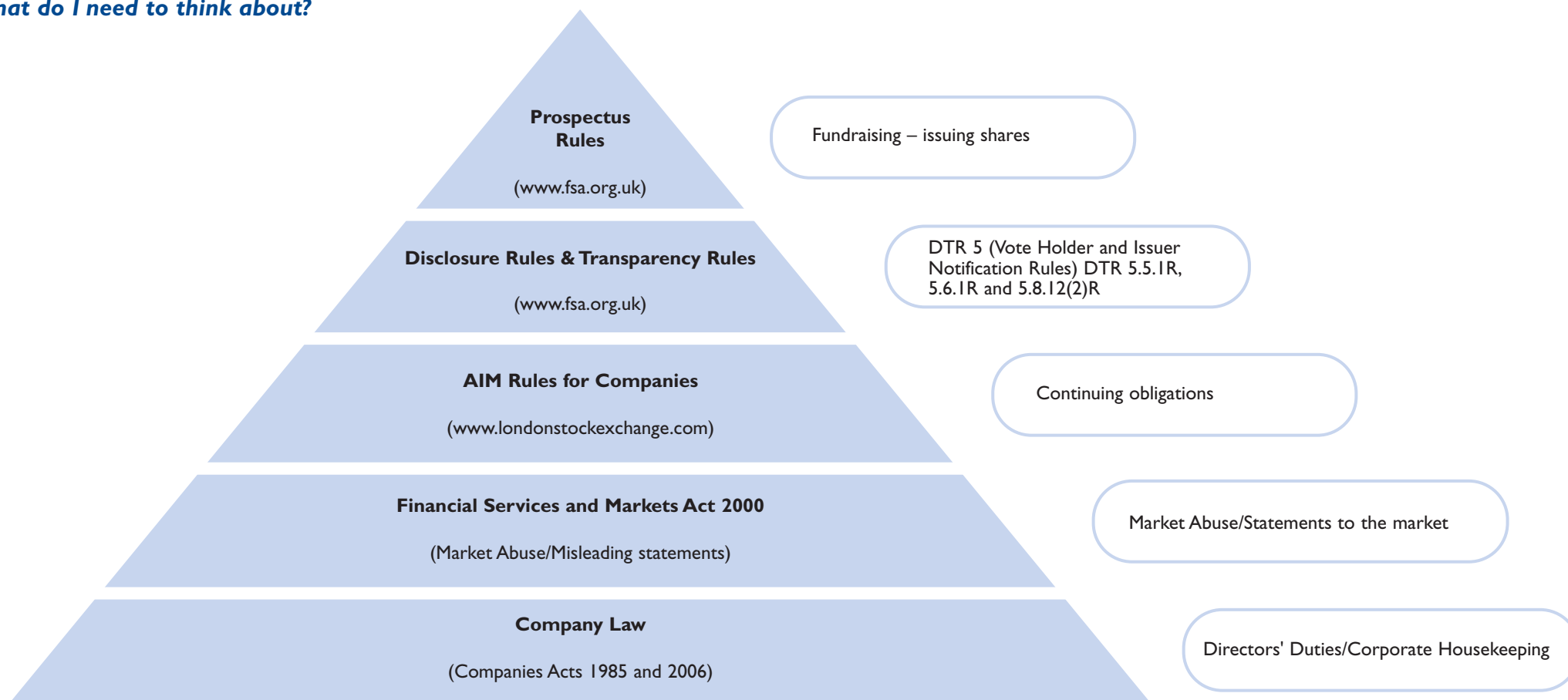
#### **SIX – RAISE AWARENESS OF THE MODEL CODE**

Make sure all of your directors understand the restrictions on dealing in company shares.

We have recently updated our model code for AIM companies. If you would like a copy please speak to your usual contact at Burgess Salmon.

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## Continuing obligations: What do I need to think about?



## Contacts

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