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AIM DISCIPLINARY NOTICE: PUBLIC CENSURE AND FINE

Nov 30, 2021

SUMMARY

The London Stock Exchange (the "Exchange") has publicly censured and fined an AIM company £580,000 for breach of Rule 13 (*the related party transaction rules*) and Rule 31 of the AIM Rules for Companies (*liaison with the nominated adviser; individual and collective responsibility of directors; sufficient procedures and controls*).

The breaches relate to the payment of one off bonuses and are a reminder to companies that such transactions fall within the scope of related party transactions under AIM Rule 13.

Facts

In November 2018, three months after admission, Sensyne Health plc (the "Company") resolved to award one-off cash bonuses to its CEO and CFO. The bonuses would be related party transactions under Rule 13 of the AIM Rules for Companies (the "AIM Rules"). Under Rule 13, a company must issue notification without delay as soon as the terms of a related party transaction are agreed disclosing:

- certain particulars about the transaction including the name of the related party and their interest in the transaction; and
- a statement that the independent directors, having consulted with the nominated adviser ("nomad"), consider the terms of the transaction to be fair and reasonable insofar as the shareholders are concerned.

Contrary to Rule 13, the nomad was not properly consulted and instead the Company provided the nomad with limited information intimating that the award of the bonuses was only a proposal at this stage. In response, the nomad advised against proceeding with the bonuses and set out a series of reasons why including the fact that the bonuses had not been raised in the admission document. Specifically, the nomad did not provide Rule 13 advice as it believed that this was only a proposal and no further action would be taken.

A subsequent communication between the executive directors recorded that the issue of the bonuses had been raised with the nomad and would not be discussed further with them. Unaware that the Company had already paid the bonuses, the nomad continued to advise against payment of the bonuses some 11 months later stating that it was unlikely to be able to support a fair and reasonable statement. In October 2019, the true status of the bonuses became clear to the nomad following which the market was notified accordingly.

Breaches

In breach of Rule 13, the Company had failed to disclose details of payment of the bonuses as soon as the terms had been agreed. In addition, when the matter was notified to the market in October 2019, the Company was unable to satisfy all the requirements of Rule 13 as the nomad was unable to support the required fair and reasonable statement.

The Company submitted that it did not recognise the Rule 13 disclosure obligations indicative of an inherent failure in the Company's approach to ensuring that all members of its board properly understood and took responsibility for the Company's compliance with the AIM Rules.

The Company's conduct also involved serious failures of AIM Rule 31 including the fact that it did not have sufficient procedures and controls in respect of the award of the bonuses.

The Exchange considers the company's conduct fell below the expected standards required by the AIM Rules for Companies and the fine of £580,000 (discounted to £406,000 for early settlement) reflects the seriousness of the matter.

London Stock Exchange AIM Disciplinary Notice AD 24

RELATED PRACTICE AREAS

- M&A & Corporate Finance
- Securities & Corporate Governance
- UK Public Company

MEET THE TEAM

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