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Amnesty International UK  
Burma Campaign  
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CARE International UK  
Christian Aid  
Ecumenical Council for  
Corporate Responsibility  
Engineers Against Poverty  
Global Poverty Project  
Global Witness  
Natural Resource Governance  
Institute  
The ONE Campaign  
OpenCorporates  
Open Knowledge International  
Open Society Foundations  
Oxfam Great Britain  
Peru Support Group  
Save the Children UK  
Scottish Catholic International  
Aid Fund  
Tearfund  
Transparency International UK  
United Nations Association of  
the UK  
World Vision International

## AIM Rules Review 2017

To: AIM Regulation, [aimnotices@lseg.com](mailto:aimnotices@lseg.com)

Subject: Response to Discussion Paper, July 2017: AIM Rules Review,  
<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-discussion-paper-july-2017.pdf>

From: Publish What You Pay UK,  
<http://www.publishwhatyoupay.org/members/united-kingdom/>

Date: 8 September 2017

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“Shareholders, investors, employees, competitors, civil society groups, the media and other external stakeholders view companies’ disclosure of payments ... as an example of principled leadership. ... Regular ... [r]eports on payments and revenues can improve the creditworthiness of both companies and countries.”

– UK Government<sup>1</sup>

### 1. Introduction and summary of response

Publish What You Pay UK is the UK national chapter of the global Publish What You Pay (henceforth “PWYP”) civil society coalition, which calls for oil, gas and mining revenues to form the basis for development and to improve the lives of citizens in resource-rich countries.<sup>2</sup> PWYP advocates a global standard of mandatory public country-by-country project-level disclosure of payments to governments by oil, gas and mining companies as a key component of transparency and accountability in the extractive industries, which are widely recognised as being one of the world’s most corruption-prone economic sectors.<sup>3</sup>

PWYP UK is a coalition of 25 civil society organisations based in the UK, including anti-corruption, faith-based, development and human rights-focused organisations committed to advance transparency, accountability and good governance.

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<sup>1</sup> Guide to the UK Extractive Industries Transparency Initiative (UK EITI), June 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/424168/Guidance\\_document\\_for\\_mining\\_companies\\_on\\_EITI.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424168/Guidance_document_for_mining_companies_on_EITI.pdf)

<sup>2</sup> <http://www.publishwhatyoupay.org/members/united-kingdom/>

<sup>3</sup> OECD, Foreign Bribery Report, 2014, <http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm>

PWYP UK appreciates this opportunity of London Stock Exchange's (henceforth "LSE") request for feedback on its proposed changes to the AIM Rules for Companies and AIM Rules for Nominated Advisers ("AIM Rulebooks"), as described in its Discussion Paper of July 2017, to comment with regard to corporate governance requirements for AIM-traded companies operating in the extractives (also known as natural resources) sector comprising oil, gas and minerals.

Specifically, PWYP UK would like to respond to the following question in the Discussion Paper:

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

Summary: PWYP UK considers that all LSE AIM-traded companies active in the exploration, prospection, discovery, development or extraction of oil, natural gas and minerals should be required to annually report their payments to governments following the same rules that apply to the estimated 90-plus LSE Main Market-traded and large private UK-incorporated extractive companies now disclosing their payments each year under UK law.

## **2. Background: the extractives (natural resources) sector and the global transparency standard**

Oil, gas and mining are ranked globally among the world's most challenging economic sectors in terms of corruption risk, fiscal mismanagement and harmful impacts on host country citizens at national and subnational levels. The widespread literature on the "resource curse" provides ample evidence of this.<sup>4</sup> These challenges involve reputational and material risks for companies, investors and countries, as the UK government has recognised:

"The absence of good governance and the lack of transparency around these payments [to governments] reduce the positive impact that extractive industries can have on economic development. It also negatively impacts on, and increases the risk for, UK companies and investors active in the extractives sector through civil unrest and poor business environment."<sup>5</sup>

In response, years of international civil society advocacy, supported by responsible governments, companies and investors, have resulted in the creation of a global standard of public country-by-country project-level reporting of payments to governments by extractive companies. Systematic and comprehensive public disclosure of these payments, to quote the UK government, gives "citizens of resource-rich countries the information they need to hold their governments to account", while "[p]roject level reporting will provide greater insight into how the industry operates and the range of economic contributions that can result."<sup>6</sup>

Today hundreds of oil, gas and mining companies meet the global extractives transparency standard by

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<sup>4</sup> NRGI, The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth, 2015, [http://www.resourcegovernance.org/sites/default/files/nrgi\\_Resource-Curse.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf); U4 Anti-Corruption Resource Centre, At the Extremes: Corruption in Natural Resource Management Revisited, 2016, <http://www.u4.no/publications/at-the-extremes-corruption-in-natural-resource-management-revisited/>

<sup>5</sup> HM Government, Impact Assessment, 2014, <http://www.legislation.gov.uk/ukxi/2014/3209/impacts>, page 1.

<sup>6</sup> HM Government, Explanatory Memorandum, 2014, <http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>, paras 7.1, 7.3.

complying with mandatory reporting requirements in force in the United Kingdom,<sup>7</sup> across the European Union,<sup>8</sup> in Canada<sup>9</sup> and in Norway (extended to all sectors).<sup>10</sup> Virtually the same standard is also in force through the voluntary commitments of more than 50 countries – including the UK – adhering to the Extractive Industries Transparency Initiative (EITI),<sup>11</sup> which in 2016 strengthened its requirements by reaffirming that project-level payment reporting is required in all countries no later than 2020. A similar mandatory reporting requirement remains enshrined in law in the United States, where the Securities and Exchange Commission is mandated to create a new implementing rule following the Congress and Administration’s early 2017 axeing of the then current rule.<sup>12</sup> Similar draft legislation is also under consideration in Switzerland.

PWYP UK has to date identified payment-to-government disclosures by 65 LSE Main Market-traded extractive companies for financial years starting in 2015, and 55 for 2016, as well as disclosures by 60 UK-incorporated companies (many of which are also Main Market-traded and several AIM-traded) for financial years starting in 2015, and 20 for 2016.

### 3. Discussion Paper question: response and rationale

#### **Q13 Do you believe that AIM companies should be required to report annually against a governance code?**

**PWYP UK considers that all LSE AIM-traded companies active in the exploration, prospecting, discovery, development or extraction of oil, natural gas and minerals should be required to annually report their payments to governments following the same rules that apply to the estimated 90-plus LSE Main Market-traded and large private UK-incorporated extractive companies now disclosing their payments each year under UK law.**

AIM extractive company reporting should meet the requirements applied by the UK Reports on Payments to Governments Regulations 2014<sup>13</sup> to UK-incorporated extractive companies that are large (as defined in the regulations) and/or whose securities are traded on a regulated market of any EU Member State (such as the LSE Main Market), and as applied by the Payments to Governments and Miscellaneous Provisions Regulations 2014<sup>14</sup> and the Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014<sup>15</sup> to all LSE Main Market-traded extractive companies.

The new annual payment reporting requirements could be inserted into AIM’s current *Note for Mining, Oil and Gas Companies*, published in 2009, in the “Ongoing obligations” section currently on pages 4-5, by updating the existing *Note*.<sup>16</sup>

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<sup>7</sup> <https://extractives.companieshouse.gov.uk/>; <https://www.the-fca.org.uk/markets/ukla/regulatory-disclosures/reports-payments-governments>

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034>; <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1415872329209&uri=CELEX:32013L0050>

<sup>9</sup> <http://www.nrcan.gc.ca/mining-materials/estma/18198>

<sup>10</sup> <http://www.skatteetaten.no/en/About-Skatteetaten/Om-oss/Prosjekter/country-by-country-reporting-for-multinational-enterprises-mne/>

<sup>11</sup> <https://eiti.org/>

<sup>12</sup> <http://www.publishwhatyoupay.org/pwyp-news/us-congress-votes-for-corruption/>

<sup>13</sup> <http://www.legislation.gov.uk/uksi/2014/3209/contents/made>

<sup>14</sup> <http://www.legislation.gov.uk/uksi/2014/3293/contents/made>

<sup>15</sup> [https://www.handbook.fca.org.uk/instrument/2014/FCA\\_2014\\_63.pdf](https://www.handbook.fca.org.uk/instrument/2014/FCA_2014_63.pdf)

<sup>16</sup> <http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf>

Application of the UK mandatory reporting regulations' £86,000 disclosure threshold, applied per single payment or series of related payments, will help ensure that AIM extractive companies are not unreasonably burdened by having to report inconsequential payments.

To avoid a potentially duplicative reporting burden for companies, the *Note* could also state that where an AIM-traded extractive company is already required to report its payments to governments because of its listing on another stock exchange in the EU, or because it is subject to equivalent reporting requirements elsewhere (such as in Canada), and a report covering the same period has been submitted, the company can make its disclosures by citing and providing, or linking to, such an existing report.

Payment reporting to Companies House<sup>17</sup> by UK-incorporated AIM extractive companies, which is currently in machine-readable XML and CSV formats only, would need to be converted into a "human readable" format such as PDF or HTML.<sup>18</sup>

## **Rationale**

### **Consistency in addressing investor and reputational risk**

London is a centre of global importance for investment in the extractive industries. Approximately 80 companies active in oil, gas and mining trade securities on the LSE Main Market, and roughly 200 generally smaller oil, gas and mining companies trade on AIM.<sup>19</sup> While Main Market extractive companies' combined market capitalisation of hundreds of billions of pounds far outstrips that of their AIM counterparts, the combined market capitalisation of AIM extractive companies remains significant, especially relative to the size of host countries' economies, where many citizens are desperately poor.<sup>20</sup>

Just as numerous governments have recognised the particular risks associated with the extractive industries by legislating for public country-by-country project-level reporting of payments to governments, and by joining the EITI, so LSE has recognised certain elements that make the extractives sector challenging for companies and investors by issuing its *Note for Mining, Oil and Gas Companies* in 2009.<sup>21</sup> This *Note*, which addresses the importance of transparency about extractive company assets and estimates of reserves and resources, requires extractive companies applying for admission to AIM also to disclose in their admission document "any payments aggregating over £10,000 made to any government or regulatory authority or similar body ... by the applicant or on behalf of it, with regard to the acquisition of, or maintenance of, its assets" (page 4). This latter requirement responds to the need to help prevent, and to reveal, opaque and potentially corrupt payments between companies and officials.

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<sup>17</sup> <https://extractives.companieshouse.gov.uk/>

<sup>18</sup> Main Market extractive company reports are required by the FCA to be "human readable": see [http://www.fca.org.uk/static/fca/article-type/consultation\\_paper/cp16-8.pdf](http://www.fca.org.uk/static/fca/article-type/consultation_paper/cp16-8.pdf), para 3.21: "While XML meets the 'open and accessible' format ... it is not a *human readable* format, therefore filing in this format alone would not meet the [EU Directive] requirements for regulated information" (emphasis added).

<sup>19</sup> Estimates based on House of Commons Business, Innovation and Skills Committee, Sixth Report: The Extractive Industries, 2014, <https://publications.parliament.uk/pa/cm201415/cmselect/cmbis/188/18807.htm#n24>, and PWYP UK's analysis of LSE 31 August 2017 statistics at [http://www.londonstockexchange.com/statistics/companies-and-issuers.htm](http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-and-issuers.htm)

<sup>20</sup> AIM extractive mining companies' combined market capitalisation was close to £17 billion in mid-2013: <https://publications.parliament.uk/pa/cm201415/cmselect/cmbis/188/18807.htm#n24>. Countries of operation include 40 developing and transition countries: Botswana, Cameroon, Guinea, Liberia, Madagascar, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of Congo, Sierra Leone, South Africa, Tanzania and Zimbabwe; Bangladesh, China, India, Indonesia, Mongolia, Papua New Guinea and the Philippines; Argentina, Brazil, Chile, Colombia, Mexico, Nicaragua and Peru; Egypt, Iraq and Turkey; and Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Ukraine: <http://www.londonstockexchange.com/statistics/companies-and-issuers/aim-country-of-operation.xls>

<sup>21</sup> <http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf>

LSE therefore already requires extractive companies to disclose payments to governments on applying for admission to AIM, as well as to disclose their estimated reserves and resources both on application and, under AIM Rule 11, on an annual basis. At the same time, the UK Listing Authority – the Financial Conduct Authority – already requires Main Market extractive companies to annually disclose payments to governments above the threshold of £86,000. It is therefore entirely consistent for LSE to also require annual reports of payments to governments above £86,000 from AIM companies once admitted.

Several AIM extractive companies are known from their disclosures as UK-incorporated companies to Companies House to make reportable payments to governments in a single year in excess of the £86,000 threshold,<sup>22</sup> and there are likely to be a considerable number of others. Disclosure of such payments by AIM extractive companies operating in developing and transition countries will enable citizens of these countries to hold their governments to account for revenues received, generate investor benefits and enhance LSE's and AIM's reputation for good governance and benchmarking.

### Investor benefits

Investors value transparency, as the Discussion Paper recognises when it refers to enabling investors to fully understand the businesses in which they invest and the associated risks. Payment to government disclosure helps investors make informed decisions and promotes confidence in the market. This is why scores of institutional investors and fund managers in Europe and North America support the EITI,<sup>23</sup> and why many investors are on record as supporting mandatory public country-by-country project-level reporting by extractive companies as required under UK, European and North American laws. See for example this investors' 2013 letter to the US SEC:

"Payment disclosure regulations, such as [US Dodd-Frank Act] Section 1504 and the European Union Transparency Directive, play a critical role in encouraging greater stability in resource-rich countries, which benefits both the citizens of those countries and investors. ... [D]isclosure requirements ... protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."<sup>24</sup>

### Maintaining AIM's, and the UK's, global leadership in a changing world

As the Discussion Paper points out, AIM is a leading international growth market for companies with a reputation as a benchmark for growth markets globally. AIM needs to ensure continuing appropriate levels of corporate governance as the external environment changes and public expectations regarding corporate accountability rightly become more demanding.

The Discussion Paper acknowledges the steady growth of AIM-traded companies in terms of market capitalisation. With a current average market capitalisation of approximately £50 million, AIM oil, gas and mining companies are not, from the perspective of the general public, small. And not all AIM companies will see AIM as a stepping stone towards trading on the Main Market. These factors make differentiation less justifiable in terms of applying fewer transparency requirements to AIM extractive companies than to their Main Market counterparts.

Alongside this, since the extractives transparency requirement became law in the EU in 2013 and in the UK in 2014, public country-by-country project-level reporting has come to be more widely

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<sup>22</sup> Named examples can be provided on request.

<sup>23</sup> See Investors' Statement on Transparency in the Extractives Sector, September 2015, <https://eiti.org/sites/default/files/documents/investorsstatement-sep-2015.pdf>

<sup>24</sup> Investor letter to US SEC Chairman Mary Jo White, August 2013, <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf>

implemented and more universally accepted as the industry norm. As the COE of the International Council on Mining and Metals (ICMM) said in early 2017:

“[T]he global trend is in the [pro-transparency] direction. The train has left the station. It is driven by investors and other stakeholders and the desire of the industry to maintain its social license to operate. One way to maintain that is for everyone to see that the taxes and other payments the mining industry makes are applied sensibly to the development of the country.”<sup>25</sup>

No UK institution should be encouraging a race to the bottom in terms of corporate transparency standards.

#### **4. Conclusion**

These factors make it critical and timely for the LSE to extend annual payment disclosure beyond Main Market-traded extractive companies to AIM-traded ones. This will maintain AIM's, and the UK's, global leadership as a centre of transparency for growth companies as well as for more established ones. Anything less will potentially weaken AIM's, and the UK's, reputation for good governance in the extractives sector.

In the UK government's words:

“Shareholders, investors, employees, competitors, civil society groups, the media and other external stakeholders view companies' disclosure of payments ... as an example of principled leadership. ... Regular ... [r]eports on payments and revenues can improve the creditworthiness of both companies and countries.”<sup>26</sup>

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<sup>25</sup> Tom Butler, ICMM, quoted in Reuters, Mine bosses say transparency will not be clouded by US rule changes, February 2017, <http://www.reuters.com/article/us-africa-mining-transparency-idUSKBN15O1KG>

<sup>26</sup> Guide to the UK Extractive Industries Transparency Initiative (UK EITI), June 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/424168/Guidance\\_document\\_for\\_mining\\_companies\\_on\\_EITI.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424168/Guidance_document_for_mining_companies_on_EITI.pdf)