

STOCK EXCHANGE AIM DISCIPLINARY NOTICE

AD 24

30 November 2021

PUBLIC CENSURE AND FINE – SENSYNE HEALTH PLC

1. London Stock Exchange plc ("**Exchange**") has agreed settlement terms with Sensyne Health plc (the "**Company**") for a public censure and fine of £580,000 for breaches of Rules 13 and 31 of the AIM Rules for Companies ("**AIM Rules**"). The Exchange has agreed with the Company that the fine of £580,000 shall be discounted to £406,000 for early settlement.
2. The Exchange is publishing details of this public censure for the purpose of educating the market about the expected standards of conduct for AIM companies under the AIM Rules.

SUMMARY OF EVENTS

3. The Company's securities were admitted to trading on AIM on 17 August 2018.
4. The relevant events that are the subject of this public censure took place between November 2018 and October 2019.
5. Peel Hunt LLP has acted as nominated adviser to the Company from admission to date.
6. On 20 November 2018, three months after admission, the Company resolved to award one-off cash bonuses to its CEO and CFO (the Company's two executive directors). The quantum of the bonuses was subsequently agreed by the Company's Interim Non-Executive Chairman, in the sums of £200,000 for the CFO and £850,000 for the CEO (the "**Bonuses**"), which were paid on 21 December 2018. The Bonuses were characterised by the Company as 'post IPO bonuses' in relation to work of the CEO and CFO on the successful admission of the Company to AIM. The possibility of IPO related bonuses for the CEO and CFO was not referred to in the Company's Admission Document.
7. The nominated adviser was not properly consulted in respect of the Bonuses, which were related party transactions and subject to the protections afforded by AIM Rule 13. The Company's approach was to provide the nominated adviser with limited information in two text messages from the CFO that described the Bonuses in such a way as to give the impression, on any reasonable interpretation, that the award of the Bonuses was a proposal that was not yet finalised, whereas, in fact, the terms of the Bonuses were agreed and about to be paid.
8. The nominated adviser's initial reaction to the limited information in the text messages was to unequivocally advise, by email, against proceeding with such proposed Bonuses. In that context, the nominated adviser, reasonably, did not provide specific AIM Rule 13 advice, believing that the Company would not proceed without a further fuller and proper discussion with it. However, in its email response, the nominated adviser did set out a series of reasons why the Company should not proceed including (amongst other matters): that such Bonuses had not been referred to in the Admission Document; concerns over both the quantum and form (a cash award); and likely adverse shareholder reaction. The nominated adviser emphasised that the Company's Remuneration Committee should think very seriously about its views and offered to speak with the Chair of the Remuneration Committee directly as to why the Company should not proceed with the proposed Bonuses.

9. Notwithstanding the nominated adviser's reaction, a subsequent communication between the executive directors recorded that having raised the subject of the Bonuses with the nominated adviser (solely via text message): the Company would not pursue further discussion regarding the Bonuses with the nominated adviser; and that disclosure of the Bonuses would be made with the publication of the Company's next Annual Report (which was over 10 months away), by which time it was hoped that the Company would have made commercial progress, shareholder sentiment towards the Company would have improved, and so the Bonuses would be of little interest to shareholders. Following this, the Company proceeded with payment of the Bonuses on 21 December 2018.
10. It was not until the end of August 2019, when the nominated adviser was sent a draft Remuneration Committee report to be incorporated in the 2019 Annual Report, that it became aware of the fact that the Company maintained its intention to award the Bonuses (despite the nominated adviser's views in 2018). Given it had not received any update about the proposed Bonuses since providing its previous views not to proceed in December 2018, the nominated adviser believed that the Bonuses remained proposals. At this stage the nominated adviser had not been informed by the Company that the Bonuses had in fact already been paid.
11. Based on the nominated adviser's understanding that the Bonuses remained proposals, it proceeded to advise the Company that the Bonuses would likely be treated as related party transactions, pursuant to AIM Rule 13. This would require both consultation with the nominated adviser in respect of the required fair and reasonable statement¹ and notification of the transactions without delay. Having provided its views previously, the nominated adviser indicated that it was unlikely to be able to support a fair and reasonable statement in respect of the proposed Bonuses.
12. Over the course of the next month, the nominated adviser and the Company engaged in extensive discussions about the Bonuses and the nominated adviser continued to understand them to be proposals.
13. The true status of the Bonuses only became clear to the nominated adviser one month into the discussions, following which the details were notified to the market on 4 October 2019. The nominated adviser was unable to support a fair and reasonable statement in respect of the Bonuses.
14. Following notification of the Bonuses, the Company undertook remedial action to appoint additional members to its Board to enhance the Board's public company experience, appoint additional members to its Senior Management Team, review its corporate governance structure and enhance its procedures, resources and controls. Whilst the Exchange considers that in light of the events, remedial action was urgently required, it also observes that, for the reasons set out below, the breaches extended beyond failures in procedures and controls.

BREACHES OF THE AIM RULES

Breaches of AIM Rule 13 – related party transactions

15. The Bonuses were awarded to related parties (directors) of the Company, were not within usual remuneration parameters of the executive directors and exceeded the 5% threshold pursuant to the class tests in Schedule Three of the AIM Rules. Accordingly, prior to agreeing the Bonuses, it was incumbent upon the Company's Board to consider the AIM Rule 13 implications and seek advice from the nominated adviser.
16. Pursuant to AIM Rule 13 the Company was required to make a disclosure without delay as soon as the terms of the Bonuses had been agreed. The disclosure would have required the inclusion of a fair and reasonable statement. In breach of AIM Rule 13, no such disclosure was

¹ A statement that with the exception of any director involved in the transaction as a related party the AIM company's directors consider, having consulted with its nominated adviser, that the terms of the transaction were fair and reasonable insofar as the AIM company's shareholders are concerned

made at that time. When disclosure was made in October 2019, over 10 months after the disclosure obligation had arisen, the Company was unable to satisfy all the requirements of AIM Rule 13, as the nominated adviser was unable to support the required fair and reasonable statement.

17. The Company has submitted that it did not recognise the AIM Rule 13 disclosure obligations arising in respect of the Bonuses. This is 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. Further, in this instance, the Company did recognise there might be AIM Rules implications (albeit not specifically AIM Rule 13). However, it did not then properly engage with the nominated adviser to ensure compliance with its AIM Rules obligations.

Breaches of AIM Rule 31 – liaison with the nominated adviser; individual and collective responsibility of directors; sufficient procedures and controls

18. The Company's conduct in this matter involved serious failures in its compliance with its AIM Rule 31 responsibilities, including failures:
 - to properly understand its AIM Rule obligations;
 - by its further actions (as described below) depriving the nominated adviser of the opportunity to advise on the Company's AIM Rule 13 obligations;
 - to properly engage with the nominated adviser, by raising matters in a limited manner and failing to deal openly and transparently with its nominated adviser;
 - to provide its nominated adviser with accurate and not misleading information in relation to the award and payment of the Bonuses, which was information reasonably required by the nominated adviser;
 - to take into account and follow up on the nominated adviser's clear concerns about the award of the proposed Bonuses; and
 - to have in place sufficient procedures and controls in respect of the award of the Bonuses, including: (i) a failure to minute consideration given to the decision to award the Bonuses, which would be required for the purpose of evidencing and supporting the required fair and reasonable statement under AIM Rule 13; (ii) failure to ensure that the Board knew and understood what was discussed with the nominated adviser; and (iii) failures in governance to enable the Company to comply with its AIM Rules obligations.

EXPECTED STANDARDS FOR AIM COMPANIES

19. The Company's approach in not taking appropriate care and responsibility for compliance with its AIM Rules obligations had the effect of undermining important protections afforded by the role of the nominated adviser within the AIM regulatory model.
20. An AIM company is required to engage openly and transparently with its nominated adviser so that the nominated adviser is in a position to advise and guide on the AIM Rules on a fully informed basis. An AIM company's obligations in this regard are not discharged by merely mentioning a matter or providing incomplete and/or misleading information. Failing to properly engage with the nominated adviser creates a higher risk of non-compliance with the AIM Rules and is not an acceptable approach for an AIM company.
21. In this instance, the direct and reasonably foreseeable consequence of the Company's failure to engage properly with its nominated adviser, was to prevent transparency and scrutiny of the payment of the directors' bonuses by the nominated adviser and by its shareholders, thereby undermining the protections afforded by AIM Rule 13.
22. The Exchange considers the Company's conduct fell below the expected standards required by the AIM Rules for an AIM public company.
23. Given the seriousness of the breaches in respect of this matter, the Exchange considers a public censure and a fine is the appropriate regulatory sanction. The fine level of £580,000 reflects the seriousness of the matter.

Any queries relating to this AIM Notice should be addressed to: aimregulation@lseg.com

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Notes:

AIM Rules for Companies

Sanctions against an AIM company

Pursuant to AIM Rule 42, if the **Exchange** considers that an **AIM company** has contravened these rules, it may take one or more of the following measures in relation to such **AIM company**:

- issue a **warning notice**;
- fine it;
- censure it; or
- cancel the admission of its **AIM securities**; and
- publish the fact that it has been fined or censured and the reasons for that action

Disciplinary process

Pursuant to AIM Rule 44 where the Exchange proposes to take any of the steps described in Rule 42, the **Exchange** will do so in accordance with the **AIM Disciplinary Procedures and Appeals Handbook** (the "**Handbook**"). Under Section B.32 of the Handbook, the Exchange may publish in part, in summary or in full details of any public censure and fine.