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Nilam Statham
Head of AIM Regulation
London Stock Exchange
10 Paternoster Square
London EC4M 7LS

29 February 2012

Dear Ms Statham,

You will recall that we sent a detailed submission to AIM Regulation in June 2011 on the conduct of both the Central African Mining & Exploration Company Plc (CAMEC), formerly listed on AIM, and its nominated adviser, Seymour Pierce Limited.

It has, of course, come to our attention that Seymour Pierce was publicly censured and fined by the Exchange on 21 December 2011. The AIM Disciplinary Notice (AD 11) setting out the sanctions imposed upon Seymour Pierce for breaches of the Nomad Rules touches upon matters raised in our submission and may have implications for how the Exchange intends to act in respect of the conduct that the submission documented.

We appreciate the assurance you gave in your letter to us of 3 August 2011 'that we will be giving serious consideration to the points raised by your submission concerning the former AIM company and Seymour Pierce's conduct in relation to it' and your recognition of 'the detailed submission and consideration of the AIM Rules'.

Whilst we understood the need for the confidentiality of material during any investigation, the matters of confidentiality and due process should not be elided. A request to keep the substance of a case confidential whilst investigations or a disciplinary process are under way safeguards the integrity of the process. However, the confidentiality of material information is a separate issue from denying a complainant any information about due process, *inter alia*, whether an investigation is under way, whether further information or primary sources are required, whether the issuance of a disciplinary notice with apparent import signals an end to disciplinary action. Updates on the status of an investigation, accompanied by the caveat that such updates should be kept confidential until the investigation is concluded, should in no way be precluded by

the requirements of material confidentiality. Moreover, in considering the onus upon a regulator to keep a complainant informed of progress, considerable weight should be given to the standing of the complainant; AIM Regulation has publicly invited third parties to submit information to it and has recognised public complaints as a means of bringing rule breaches to its attention.¹

We are sure that you will understand that, for AIM Regulation to have instigated a process by which it seeks to engage with such parties only to refuse to update them on how the information they submitted is being dealt with or to fail to demonstrate that such information is being acted upon, would, in the eyes of many, constitute a procedural or administrative failure.

We also note your acknowledgement in your letter of 3 August 2011 that AIM Regulation would be unable to comment 'unless and until such time as any public disciplinary sanction is imposed.' The Disciplinary Notice as issued and worded may impinge upon how the material we submitted is acted upon, without the Notice dealing with the substance of the CAMEC case. We believe therefore that the current public sanction constitutes a basis, and places an onus upon AIM Regulation, to enter into a dialogue with us.

We seek clarification and/or reassurances in respect of the following matters:

1. The preclusion of further disciplinary action for past acts or omissions

Paragraph 1(b)(ii) of AD 11 states that:

'The remaining £200,000 ("suspended fine") will become payable if in the future an ADC (or AIM Appeals Committee, if applicable) imposes a sanction on Seymour Pierce (or any successor firm) in accordance with the Handbook, that both:

- constitutes a censure and/or removal from the register together with publication of such action; and
- relates to any acts and/or omissions of Seymour Pierce (or any successor firm) which commence within two years of the publication of this Public Censure.'

Moreover, the proceeding clarification refers to 'such future acts and/or omissions'. It is therefore our understanding that the suspended fine relates solely to future acts by Seymour Pierce and cannot therefore be invoked in respect of prior or past acts or omissions by the nomad, including those pertaining to the period during which Seymour Pierce advised CAMEC. Given the future-focused nature of this element of the sanctions, we would seek the reassurance that the Consent Order agreed with Seymour Pierce in no way signals the preclusion of further possible disciplinary action and sanctions, as the Exchange sees fit, in respect of Seymour Pierce's conduct at any time prior to publication of the Disciplinary Notice.

RAID would be extremely concerned if the disciplinary action taken against Seymour Pierce were to be perceived as 'wiping the slate clean' in respect of any past misconduct which is not the subject of the current disciplinary notice.

2. The time period considered by the Exchange in its investigation of Seymour Pierce's conduct

It is apparent from paragraphs 12 – 15 of AD 11 that the Exchange examined Seymour Pierce's conduct as a nominated adviser in a May 2010 'nomad visit' and that, following this nomad visit, it commenced new investigations. The Exchange also clearly states that the sanctions imposed on Seymour Pierce in AD 11 are 'in respect of breaches...which occurred in relation to the period from early 2010 to early 2011'.

¹ If you have a complaint relating to an AIM company or a Nomad's compliance with the AIM Rules, please e-mail aiminvestigations@londonstockexchange.com. <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-reg-team/aim-regulation-team.htm>>. See also *Inside AIM*, Issue 4 – September 2011, The investigation process, p.1.

However, the Exchange also refers to the fact that '[p]rior to the 2010 Nomad Visit, the Exchange was also undertaking investigations of various potential breaches of the Nomad Rules'. In light of the fact that AD 11 refers only to two cases of misconduct during the period 2010 to 2011, despite apparent investigations into Seymour Pierce's conduct prior to 2010, can AIM Regulations confirm:

- Whether it examined Seymour Pierce's conduct prior to 2010, including the period during which Seymour Pierce was acting as CAMEC's nomad from October 2002 until December 2009?
- Why the Disciplinary Notice is limited to illustrative cases from 2010 – 2011?

So that we can better understand the likelihood of the Exchange scrutinising the matters we raised in our CAMEC submission at the time the alleged conduct took place, please could you provide dates of the routine programme of nomad visits to Seymour Pierce undertaken by the Exchange from February 2006 to December 2009 (from the acquisition of CAMEC's DRC assets until the company's acquisition by Eurasian Natural Resources Corporation – ENRC)?

3. Scope of the Rules breached

The Exchange notes in AD 11 that '[t]he proper conduct of the nominated adviser in accordance with the Nomad Rules is...fundamental to the proper operation of AIM' (paragraph 7; see also paragraph 49(a)) and that '[t]he breaches of the Nomad Rules are serious in nature' (paragraph 49(b)). The breaches relate to Nomad Rules 16, 17 and 18 (with regard to OR1 and OR2 of Schedule Three) and underlying AIM Rules 10 and 11 in respect of Case 1 and Nomad Rules 14, 16 and 18 (AR2 of Schedule Three in particular) and underlying AIM Rules 2 and 9 in respect of Case 2.

The Exchange states that the cases referred to are demonstrative and illustrative of Seymour Pierce's breaches (paragraph 49(c)). This is an acknowledgement that Seymour Pierce committed further breaches. Notwithstanding whether the purpose of protecting the interests of shareholders and the reputation of AIM is best served by illustrative cases rather than quantifying or specifying the full range of lesser breaches concerning the same set of rules, it is another matter should a nomad have breached either (i) other Nomad Rules or underlying AIM Rules or (ii) if other breaches of an equally serious nature remain publicly unexamined.

You will appreciate that RAID's CAMEC submission referred not only to a parallel set of apparent serious breaches of the Nomad and AIM Rules, which are not referred to in substance in the Disciplinary Notice, but also to breaches of a further set of Nomad and underlying AIM Rules of which the breaches referred to in AD 11 are categorically not illustrative, *inter alia*:

- Rule 12 [notification substantial transactions] and Schedule Three [class tests]
- Rule 12 [notification substantial transactions] and Schedule Four [notifications]
- Rule 14 [reverse takeovers] and Schedule Three [class tests]
- Rule 17 [notification relevant changes to significant shareholders] and Schedule 5 [notifiable information]
- Rule 19 [accounting]
- Nomad Rules, 19 [liaison with the Exchange]
- Nomad Rules, 25 [maintenance of appropriate records]
- Nomad Rules, OR3 of Schedule Three [monitoring trading, price sensitive information]
- Guidance Note for Mining, Oil and Gas Companies, Part Two, Ongoing Obligations, Notifications

In summary, whilst welcoming the action that the Exchange has taken in AD 11 to ensure market safeguards and promote due diligence, the way in which the Disciplinary Notice is framed causes us serious disquiet *vis-à-vis* the investigation of matters in the CAMEC submission: firstly, any implication that the Consent Order and Disciplinary Notice is future-focused and draws a line under Seymour Pierce's past conduct would leave

questions about the quality of its advice to CAMEC unexamined and unanswered; secondly, this concern is reinforced by the fact that the Disciplinary Notice examines issues from early 2010 to early 2011 and refers to visits and investigations carried out by the Exchange over the same period, thereby excluding the possibility that Seymour Pierce's conduct as CAMEC's nomad has in any way informed the Disciplinary Notice; and, thirdly, whilst the illustrative nature of the Disciplinary Notice is acknowledged, this can neither substitute for action in relation to equally serious misconduct nor for misconduct relating to breaches of other underlying AIM Rules not considered in the Disciplinary Notice.

The illustrative cases referred to by the Exchange exhibit a marked degree of closure. In the first case, the company advised by Seymour Pierce entered into administration and cancelled its admission to AIM. In the second case, the company was never admitted to AIM. In contrast, the underlying companies and assets acquired by CAMEC remain in the hands of London-listed companies following the acquisition of CAMEC by ENRC. Given the way in which such assets were originally acquired and managed by CAMEC, as advised by Seymour Pierce, with all the attendant market and reputational risks borne by shareholders and AIM, considerable legacy issues remain and will continue to have material effect.

Case 2 clearly illustrates that nomads are required to undertake robust due diligence to maintain AIM's reputation by ensuring that companies owned, directed or otherwise controlled by individuals lacking integrity or with unsuitable backgrounds are not brought to market. In the CAMEC submission and covering letter, attention was drawn to the parallel case of Oryx Diamonds Ltd., whose AIM admission was ended by the withdrawal of its nomad. Yet these two examples of blocked admissions only serve to sharpen questions about CAMEC's continued inclusion on AIM, given the shareholding, operational control and standing of a sanctioned individual, Billy Rautenbach, in the company. Either there is a lacuna at the heart of the AIM Rules, whereby the due diligence required at admission is not repeated under rules governing continuing compliance; or else – and there are questions to be answered in this regard on CAMEC's acquisitions – the class tests which otherwise might have triggered further disclosure and closer scrutiny proved ineffective. To put it succinctly, it appears anomalous that Oryx and the Case 2 company failed to achieve an AIM-admission when CAMEC succeeded in maintaining its trading status.

We note that the Disciplinary Notice states: 'nor does it [the arrangement to suspend part of the fine imposed on Seymour Pierce] restrict the Exchange from undertaking any disciplinary action against Seymour Pierce should it think fit.' It may be that we have misread or misinterpreted AD 11 and that it in no way precludes action on the CAMEC case. I am sure you will understand our concern in this regard and the need for AIM Regulation to engage candidly with us about the status of the CAMEC case and any implications arising from the arrangements agreed in AD 11.

Given the pressing need for clarification of the matters raised, we look forward to hearing from you in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Patricia Feeny". The signature is written in a cursive, flowing style.

Patricia Feeny
Executive Director