

AIM - AN ATTRACTIVE MARKET FOR US COMPANIES?

by

Robin Johnson, Partner, and Wyn Jones, Associate, Eversheds LLP

WHAT IS AIM?

AIM is the market established in 1995 by the London Stock Exchange ("LSE") providing a market for smaller, growing companies from around the world who would not generally be eligible for the Main Market of the LSE (referred to as the "Official List"). AIM describes itself as "the most successful growth market in the world".

There are 1,580 companies currently listed on AIM ranging from small to mid-sized companies to even some larger companies. Whilst the market capitalisation of the largest company on AIM as at December 2008 was £779.78m the vast majority of companies fell into the £0 - £100m bracket.

AIM is seen as providing many of the benefits of a main market listing but with few of the associated downsides. AIM listed companies have a similar ability to fund acquisitions with paper and raise initial finance from a large available pool of capital using a variety of financial instruments. It can also enable companies to raise their international profile and provide a benchmark valuation. However as we will examine below, the regulated framework in which the AIM market operates is significantly less onerous than that of the main market of the LSE.

SO WHAT ARE THE ADVANTAGES OF LISTING ON AIM?

The LSE claims that AIM's success is "built on a simplified regulatory environment which has been specifically designed for the needs of smaller companies".

AIM is certainly a very accessible market. Unlike a lot of markets, AIM does not stipulate minimum criteria in relation to company size, track record or a set number of shares to be held in public hands.

The costs and timetable to list are also much more favourable for smaller companies than the Official List or other markets such as the New York Stock Exchange or NASDAQ. To trade on AIM, companies pay an annual fee of £4,750 (approximately \$6,600). By contrast the annual cost of listing on the New York Stock Exchange ranges from \$35,000 to \$300,000 while NASDAQ charges between \$30,000 and \$95,000.

In terms of timetable the entire process from starting formal due diligence to joining AIM can take as little as 3 months. Whilst entrants must publish an "Admission Document" containing prescribed information on the company, its management, financial history, its business and markets and relevant risk factors there is generally no prior review or approval process. It is only when a company is making an offer to the public when it joins AIM (as opposed to merely placing shares with institutional investors) that it must

also publish a prospectus which has to be approved in advance by the Financial Services Authority in the UK. However it is very rare that a company will make an offer to the public when it joins AIM and therefore in the majority of cases a simple admission document is the only requirement. It will therefore be down to the company and its various advisers to ensure that the document complies with the rules of the AIM market. This is seen as one of the main contributory factors for a shorter timetable for admission.

Another advantage of AIM, and perhaps the most significant one, is the simplified regulation AIM offers. Although AIM is operated by the LSE the responsibility for compliance with the rules of AIM are delegated by the LSE to a special type of adviser known as the "Nominated Adviser" or "Nomad". Nomads include Deutsche Bank, Goldman Sachs, JP Morgan, Merrill Lynch, Piper Jaffrey, RBC Capital Markets and Morgan Stanley. As we noted above the LSE does not vet applications for admission unless a public offer of security is made and the onus is therefore put on the Nomad to ensure that the admission document contains all information required by the AIM rules. As part of the admission process the Nomad will be required to make a declaration to the LSE that the company and its shares are suitable for admission. The role of the Nomad is unique to AIM and the practical advice and guidance provided by the Nomad can greatly assist companies in making the difficult transition from private to public. Whilst the Nomad can't bring direct sanctions against a client company the LSE views them as very instrumental in ensuring continued suitability of companies to be listed on AIM. In circumstances where a company loses its Nomad then the LSE will suspend trading in its shares until another Nomad is appointed. This is a powerful weapon for the nomad.

In addition to a simplified admission process the regulation and reporting that AIM companies are subject to are much lighter than that on the main market. There is no quarterly reporting obligations and companies are only required to produce annual audited accounts and a short form half yearly interim statement. Whilst companies are required to keep the market fully apprised of specific matters in relation to their performance and financial position, the rules do give companies much more flexibility in terms of carrying out their business. A substantial transaction for a company quoted on AIM is a transaction which exceeds 10% of a certain test (based on assets, profits, turnover, consideration and growth capital). However, unlike companies on the main market such substantial transactions do not require prior shareholder approval and the only obligation on the company is to make a public announcement and to keep the market updated on such significant developments. On AIM the only time shareholder approval is required is for a reverse takeover (an acquisition exceeding 100% of any such test) and disposals resulting in a fundamental change of business (a disposal exceeding 75% of such test).

ATTRACTING OVERSEAS COMPANIES TO AIM

Flexibility and light regulation on AIM compared to certain other more senior markets such as the New York Stock Exchange and NASDAQ have attracted many overseas companies to AIM. Since its launch in 1995, AIM has attracted over 250 international

companies who have between then raised over £2.2 billion on AIM. Statistics published by the LSE in November last year showed that of the total number of companies admitted to AIM (1,580) 70 of those were from the US. In 2008 alone, 6 out of the 40 new companies listed were from the US. The cost of going public in the US, the ongoing cost of complying with Sarbanes Oxley and lack of an IPO market for small to mid-cap companies have provided incentives for growing companies in the US to look to AIM.

In response to the significant increase in the number of overseas companies wishing to be admitted to AIM over recent years, AIM has introduced a new streamlined admission process for companies that have already been admitted to certain other larger exchanges. Companies who have their securities traded upon AIM designated markets can take advantage of this fast track process. Companies who are eligible to use this fast track process simply need to make a detailed pre-admission announcement and are not required to produce an admission document. AIM designated markets include the New York Stock Exchange and NASDAQ.

CONCLUSION

Whilst perceived "over regulation" in other markets has provided a differentiator opportunity for AIM, AIM is not without its critics.

The "light touch" regulation for AIM companies is seen by many as a significant risk factor compared to more senior markets. In particular the lack of regulatory vetting by the LSE before a company is admitted to AIM has been heavily criticised by commentators. The LSE continues to defend its position but have responded to these concerns over the past couple of years by tightening controls over Nomads to ensure they take the role of vetting and testing suitability seriously. A London based firm of Nomads were fined £250,000 and publicly censored recently for breaches of the AIM rules, including a failure to undertake the necessary level of due diligence to assess appropriateness of one of their clients for admission to AIM. Another criticism often made of AIM is lack of liquidity. This will of course depend on how much free float the company is giving and what growth story there is.

AIM offers small to mid-size companies access to a recognised market and potential sources of funding in a regulatory framework which offers more flexibility than more senior markets. Like any market it is not however without risks and a company, whether UK or US based, should consult their advisers and carefully evaluate their suitability for a listing on AIM before embarking on the admission process.

Robin Johnson is a corporate partner at Eversheds, he can be found at:
Eversheds LLP
Wood Street
London
EC2V 7WS

email: robinjohnson@eversheds.com
Tel: 0845 498 4860

International: + 44 113 200 4860
Mobile: +44 (0) 783 141 4079

Wyn Jones is a corporate associate at Eversheds, and her contact details are:

email: wynjones@eversheds.com
Tel: 0845 498 4760
International: + 44 113 200 4760
Mobile: +44 (0) 799 053 2677