CHANGES TO MARKET STATUS OFFER LISTING ALTERNATIVES

When the Alternative Investment Market gives up its EU-regulated market status in October 2004, it will mean that AIM will operate as an exchange-regulated market, enabling it to maintain its light-touch regulatory approach. But it will result in the loss of the fast-track step-up mechanism for companies moving from AIM to the main market.

The change will enable AIM to avoid becoming subjected to the full rigours of various EU directives which form part of the Financial Services Action Plan. These include:

- Investment Services Directive
- Prospectus Directive
- Transparency Obligations Directive
- Market Abuse Directive

Investment Services Directive

The Investment Services Directive (ISD) revises the existing 1993 directive and is a key element of the EU Financial Services Action Plan. The ISD regulates the conduct, authorisation and behaviour of business of securities firms and markets. It will support an integrated securities market in the EU.

"By becoming exchange-regulated, the worst excesses of the Investment Services Directive for AIM companies can be side-stepped," says Alex Tamlyn, head of corporate finance at international law firm DLA. "However, AIM is saying it will voluntarily adopt some of the provisions of the ISD so that it keeps the best of the new regulation, to maintain and reinforce the reputation the market has, while not incurring the excessive regulation that doesn't add anything to the type of company which AIM specialises in presenting to the public."

Consultation on the new regulatory approach has been taking place, and details of the opt-ins are anticipated later this year. "It seems likely that AIM will put in, as a requirement of admission, that IAS is adopted, even if stepping out of the ISD means that this wouldn't be required," Tamlyn says. "This is a mature, responsible approach by AIM. Otherwise, it would make it difficult for international investors to compare like with like."

Prospectus Directive

Compliance with the Prospectus Directive would have been damaging for AIM. The directive will require companies to issue a prospectus for every transaction undertaken, and the prospectus will have to be approved by the UK Listing Authority (UKLA).

One of the great advantages of AIM, compared with the main market, is the lesser regulation applied to acquisitions and lesser need to produce prospectuses. "At the moment, companies on AIM don't need to go to shareholders for prior approval for anything other than a reverse takeover," Tamlyn says. "That's a big advantage because it gives boards the flexibility to be acquisitive. For most AIM companies, their growth by acquisition after their float is the way they reach critical mass."

Similarly, any prospectus issued by a main market company must be signed off by the UKLA, but a prospectus issued by an AIM company is simply signed off by the nominated adviser. This is a far quicker process than going to the UKLA, as would be required if AIM companies had to comply with the Prospectus Directive. The ability to achieve accelerated IPOs and quick secondary transactions would be vastly reduced.

"There will still be a requirement for public offers; ie, offers to more than 100 people raising more than €2.5m to be the subject of a prospectus," Tamlyn says. "But there will be a lot of transactions that AIM companies undertake which don't meet that threshold, or come anywhere near it."

Transparency Obligations

By becoming exchange-regulated, AIM companies will be able to avoid compliance with the Transparency Obligations Directive (TOD). This directive will require the disclosure of half-yearly, condensed financial reports based on international accounting standards, together with an update of the last annual management report, within 60 days after the end of a financial period. This would have been an unwelcome burden on AIM companies.

Market Abuse

The Market Abuse Directive (MAD) addresses the disclosure of price sensitive information and potential distortion of the market. By avoiding having to comply with this directive, AIM itself and not the Financial Services Authority as envisaged by the MAD will continue to police the regular disclosure of price sensitive information by AIM companies.

Fast-track loss

After 1 July 2005, when the Prospectus Directive becomes effective, AIM companies will lose the ability to step up to the main market using the simplified fast-track procedure. At present, a company listed on AIM for two years can gain admission to the main market without having to produce listing particulars. It is not possible to gain admission for new shares – only shares traded on AIM – so the process cannot be used to raise funds. Nevertheless, the documentation when simply stepping up to the main market can be completed in weeks rather than months, as would otherwise be the case.

This simplified procedure will be lost once the Prospectus Directive comes into force. "The directive provides for an expedited registration process, but only for companies on a regulated market. AIM will no longer be a regulated market, it will be an exchange-regulated market. So once the Prospectus Directive is implemented, it won't be possible for AIM companies to take advantage of the expedited step-up," Tamlyn says.

According to Tamlyn, this is a loss to AIM companies, but one worth suffering in order to avoid too much extra regulation. "The reality is that more companies are stepping down from the main market to AIM than are stepping up," Tamlyn says.

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