

## The London Stock Exchange Introduces New Rules to Allow Foreign Corporations Fast-Track Entrance to its Alternative Investment Market

By Keith Ott and Kevin Evans

The London Stock Exchange has recently introduced new rules that allow overseas companies that are already quoted on other major international markets to apply to join its junior market, AIM, without the need to issue a full prospectus or repeat the original initial public offering exercise in the United Kingdom. The changes offer the possibility of a secondary trading facility with a pragmatic regulatory environment at a fraction of the previous expense and time. To view the new rules in detail please visit:

[www.londonstockexchange.com/aim.rules](http://www.londonstockexchange.com/aim.rules).

### Background

The Alternative Investment Market ("AIM") of the London Stock Exchange ("LSE") is London's junior equity market. It was established in 1995 and has been a big success attracting institutional and private funds into small and medium sized, often high growth, companies. By March 2003, more than 700 companies were quoted on AIM – more than are quoted on all the remaining European second-tier markets – and more than £8 billion in funds has been raised. In the last two years, 337 companies were admitted to trading on AIM.<sup>1</sup> This number is set to rise as a consequence of the Deutsche Börse's decision to wind up the Neuer Markt, AIM's principal European rival during the late 1990s.

By contrast, there are approximately 3,750 Nasdaq-quoted companies down from a peak of approximately 5,500 in 1996. In the last two years, 670 companies were delisted from Nasdaq, and only 118 began trading on Nasdaq.<sup>2</sup>

To further promote the international potential of AIM, the LSE on 18 March 2003 published a consultation document setting out proposed changes to the AIM Rules.<sup>3</sup> These proposed changes, which entered into force on 28 May 2003, give overseas companies that are quoted on another major international market designated by the LSE the ability to join AIM without the need to issue a full prospectus or repeat the expensive and time consuming due diligence process undertaken for the initial public offering in their home market. The new rules are expected to dramatically reduce the cost and time currently involved in securing a secondary trading facility.

In addition, the LSE is encouraging investment banks and other market practitioners in overseas markets to apply to AIM to be recognised as a "nominated adviser." Once granted, this should enable the process of admission to AIM to be handled entirely from an applicant's local jurisdiction without the need to appoint an agent sponsor in the United Kingdom – again potentially saving on costs and inconvenience.

### Joining AIM

#### *Nominated Adviser*

Each company has to appoint a nominated adviser, who could potentially be the applicant's existing adviser in its local jurisdiction. The LSE publishes eligibility criteria for advisers looking to obtain LSE approval as nominated advisers.<sup>4</sup> Typically, the large accounting firms and investment banks make up a large proportion of those on the register. As the criteria is based predominantly on relevant corporate finance experience, many US broker-dealer firms should be eligible to register as nominated advisers.

The nominated adviser will effectively be the market regulator. The LSE relies on the nominated adviser's judgment as to the suitability of a company wishing to have its shares traded on AIM, and it is the responsibility of the nominated adviser to prepare or approve submissions to the LSE to join AIM and ensure that the company continues to act in an appropriate manner after its admission. The nominated adviser must be independent of the issuer.

#### *Previous Admission Requirements for Overseas Companies*

Prior to the introduction of the new rules, all new applicants, whether local or overseas, were required to publish an admission document complying with the contents requirements of the Public Offers of Securities Regulations 1995 (the "POS

Regulations”) and with the LSE’s AIM Rules, whether or not the application involved any marketing of securities.<sup>5</sup>

The admission document is considered an essential document to allow potential investors to make informed decisions about a company’s shares. Even if use is made of the exemptions available under the POS Regulations, for example where there is no “offer to the public in the United Kingdom”, the document must still contain all those matters prescribed in Schedule 1 of the POS Regulations. Unless an exemption is used the document is referred to as a “prospectus”; otherwise, it is an “admission document.” In practical terms it is a distinction without a difference: whether a “prospectus” or an “admission document,” the content requirement is virtually identical.

Any prospectus/admission document must contain all such information as investors would reasonably require, and would expect to find, in order to make an informed assessment of assets and liabilities, financial position, profit and losses and the prospects of the issuer of the securities and the rights attaching to those securities. It is not uncommon to see AIM admission documents in excess of 100 pages in length.

The accuracy of the information will be the sole responsibility of the directors of the company. The LSE will not officially engage in a substantive review of the document, although the LSE will act as the competent authority for authorising omissions from a prospectus or admission document otherwise required by the POS Regulations. For example, a derogation from the strict disclosure requirements can be requested when a company wishes to avoid revealing confidential business information which could have an adverse impact if made public.

Each director will be asked to sign a responsibility statement authorising

the issue of the document. This responsibility statement will be addressed not only to such director’s fellow directors, but also to the company’s nominated advisers.

*The New Rules for Overseas Companies Already Listed on a Designated Market*

In circumstances where a company is looking to achieve a secondary listing and not seeking to market further securities, the new rules do away with the need for an admission document.<sup>6</sup>

Overseas companies seeking to be admitted to trading on AIM are now required to provide two pre-admission announcements. The “10 Day Announcement,” which is required for both overseas and domestic AIM applicants, is delivered to the LSE at least 10 business days before the expected date of admission to AIM and contains the information on the applicant listed below.

The “10 Day Announcement”

- its name;
- its country of incorporation;
- its address;
- a brief description of its business;
- the number and type of securities in respect of which it seeks admission;
- an indication of whether it will be raising capital on admission;
- the full names and functions of its directors and proposed directors;
- the name of any person who is interested in 3% or more of its securities;
- details of non-trade related payments or benefits above £10,000 not otherwise disclosed;
- its anticipated accounting reference date;
- its expected admission date;
- name and address of nominated adviser and broker.

In addition, and replacing the previous requirement to produce a lengthy admission document, quoted overseas applicants need to submit a “20 Day Announcement” which is delivered 20 business days before the expected date of admission to AIM, and which contains the information on the applicant listed below.

The “20 Day Announcement”

- the name of the designated market upon which its securities have been marketed;
- the date from which its securities have been traded;
- confirmation that it has adhered to the legal and regulatory requirements of the designated market;
- details of intended strategy following admission;
- description of any significant change in the financial or trading position which has occurred since the end of the last financial period for which audited annual report and accounts have been published;
- a statement that its directors have no reason to believe that its working capital will be insufficient for at least 12 months;
- details of any lock-in arrangements;
- brief description for settling transactions in its securities;
- the rights attaching to its securities;
- information equivalent to that required for an admission document that is not currently public;
- a website of a page containing its latest published annual report and accounts (prepared in accordance with UK or US GAAP or IAS) and which must not have been signed off more than nine months before the date of admission.

Both pre-admission announcements are short and simple documents prepared by the nominated adviser in a standard format; such documents tend to run to no more than 2 or 3 pages.

The simplified admission procedure will only be available to companies that are already quoted, and have been quoted for a minimum of 18 months, on other major international markets which are “designated” by the LSE. The following markets have been “designated”:

- Australian Stock Exchange
- Euronext
- Deutsche Börse
- Johannesburg Stock Exchange
- Nasdaq
- New York Stock Exchange
- Stockholmbörsen
- Swiss Exchange
- Toronto Stock Exchange
- UK Listing Authority Official List (“Official List”)

If a successful applicant subsequently ceases to retain its original listing then

this would not affect its ongoing AIM quotation. For a company which may be faced with the prospect of de-listing where, for instance, its share price falls below a regulatory minimum (such as “penny stock” companies on Nasdaq), the proposed simplified admission procedure would enable a share trading facility to be preserved on a recognised international market and at a relatively low cost.

#### *Continuing Obligations*

The continuing obligations with which an AIM company is required to comply are similar to those of a company with a listing on the Official List. In addition to the overriding requirement to notify the LSE immediately of any developments which could have an impact on the share price, there are some more specific obligations, these include:

- publishing unaudited half-yearly financial statements or reports;
- publishing annual audited accounts prepared in accordance with United Kingdom or United States GAAP or International Accounting Standards;

- notifying the LSE of details of changes in the shareholdings of directors and individuals connected with the company or significant shareholders; directors joining or leaving the board; further issues of shares of a class already admitted to AIM; and information on dividends or other distributions;

- notifying the LSE of the resignation, dismissal or appointment of a nominated adviser or nominated broker;

- notifying the LSE of certain acquisitions, although shareholder consent is only required in the event of a reverse takeover.

*Our UK qualified corporate lawyers in our London office have considerable experience with AIM admissions. If you have any questions regarding the content of this Alert, please feel free to contact one of the attorneys listed below:*

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<sup>1</sup> AIM Market Statistics April 2003, <http://www.londonstockexchange.com>.

<sup>2</sup> Nasdaq Market Data May 2003, <http://www.marketdata.nasdaq.com>.

<sup>3</sup> Details of the proposed changes can be found at <http://www.londonstockexchange.com/aim/rules>.

<sup>4</sup> Details of the nominated adviser criteria can be found at [http://www.londonstockexchange.com/aim/advisers/nom\\_adv\\_reg.asp](http://www.londonstockexchange.com/aim/advisers/nom_adv_reg.asp).

<sup>5</sup> A copy of the LSE’s AIM Rules (revised on 28 May 2003) can be found at <http://www.londonstockexchange.com/aim/rules>. A copy of the Public Offers of Securities Regulations 1995 (SI 1995 No.1537) can be found at <http://www.bmso.gov.uk>.

<sup>6</sup> The new rules now treat overseas quoted companies in the same way that companies already quoted on the UK Listing Authority’s Official List are treated.