

A Primer on the London Alternative Investment Market

ACG member Norman Bernstein details the good and bad of listing on London's AIM market

By Norman W. Bernstein

Twelve years ago, the London Stock Exchange created AIM for companies smaller than those normally listed on the London Exchange that wanted to go public. AIM features simplified regulatory procedures and the U.K. government provides tax benefits to its taxpayers that invest in certain AIM-listed stock thereby helping to attract investment capital to the market.

AIM has been extraordinarily successful. According to the London Stock Exchange, as of June 2007, over 2,800 companies had raised approximately £49 billion (roughly \$98 billion) through AIM listings—most of it in the last several years. Notwithstanding some of the turmoil in other markets, in the first six months of 2007 alone, the exchange indicates that a total of 138 companies raised £9.8 billion in flotations on AIM. Ninety-nine of the companies raising money on the exchange this year were U.K. companies, while 39 were classified as international.

According to information made available by the exchange, individual flotations ranged in size from under £2 million to over £100 million, and most of the flotations were in the range of £5 million to £50 million. About 18% of the listings were for £5 million or less, approximately 8% were under £2 million, and about 15% were over £100 million. Meanwhile, of the non-U.K. companies raising money on AIM, the distribution through June of this year has been about: 13% from the U.S., 14.5% from Australia, 14.5% from Canada, 13.5% from Ireland, 16% from the Cayman Islands and other British Virgin Islands, 7.5% from Bermuda and 6% from Israel, with the balance,

representing over 15%, being only identified as "other." Industries covered included mining, oil and gas, real estate, industrial metals, electronic and electrical equipment, general financial, equity investment instruments, travel and leisure.

AIM listings are known for their simple efficiency, as there are no governmental reviews of a company's listing documents. The determination as to whether a company is suitable to be listed, and the due diligence associated with the admission process, are overseen by a London Exchange approved

Nominated Adviser ("Nomad") that is paid by the company. Nomads include accounting firms, investment banks, corporate finance firms and stockbrokers. The Nomad owes a duty of care to the London Exchange to assure that the admission and conduct of a company do not adversely affect the reputation and integrity of the London Exchange.

There are no formal minimum financial requirements, except that in regard to working capital, the directors of the company must state in the listing document that in their opinion the company has sufficient working capital for at least twelve months of operation from the date of admission. The accountants must state whether in their view the statement as to working capital has been made after "due and careful enquiry." There are also common sense obligations including keeping stockholders informed of material developments and not trading on inside information. Reports on the financial performance of the business need to be provided, typically annually, with a semi-annual update.

In most cases it is not necessary to obtain public shareholder approval for acquisitions by an AIM listed company, thereby facilitating expansion through acquisitions.

While the ease of the AIM has attracted a number of companies in recent years, there are also burdens that come with listing. In addition to the initial cost (discussed below), these include: a need to conform accounting to U.S. or U.K. GAAP or IAS; a need to assure that the business is run for the benefit of all of the stockholders; and greater openness as to the company's financial condition, plans and developments than would apply to a private company.

Additionally, general economic and market conditions independent of the company's performance may affect the price of the company's stock, and the listed company must at all times maintain a Nomad — otherwise it would be es-

"While the ease of the AIM has attracted a number of companies in recent years, there are also burdens that come with listing."

Benefits of Listing on AIM

- Access to a deep pool of capital for internal expansion, acquisitions and research and development that, properly managed, should not result in a loss of control to existing principals;
- Non-cash currency in the form of publicly listed stock that can be used to facilitate acquisitions;
- A powerful recruiting tool because AIM listed stock can be offered as an option to prospective and existing employees; and
- A public market by which the value of a company's stock can be objectively and simply determined.

essentially unregulated. Therefore, if a Nomad resigns or is terminated, a replacement Nomad must be immediately obtained, otherwise trading in the company's shares will be suspended. The initial distribution of shares is handled by a brokerage firm that is a London Exchange member and which may (or may not) be affiliated with the Nomad. A "Chinese wall" is also required between the Nomad function and the brokerage function, if carried out by the same firm.

The main costs associated with going public through AIM include the initial accounting fees, additional fees related to the preparation of audited historical financial information covering the latest three financial years and respective audit reports, prospectus preparation costs and due diligence. Although these costs can vary widely depending on the history and complexity of the company, a principal variable is the cost of producing financial records that conform to U.S. or U.K. GAAP or IAS. (If a company has been operating three years or longer, the financial statements contained in the admission document or prospectus must go back three years.) Depending on how they were kept, historic financial records will need to be reviewed and may need to be revised to conform to U.S. or U.K. GAAP, or IAS.

The fees and costs of an initial public offering on AIM have been discussed with London counsel. Based on those discussions, it appears that the cost would, in part, be affected by the extent of the accounting issues. For example, a company with several years operating (and therefore accounting) history that did not completely conform to GAAP or IAS, would need to restate its financials. The costs in that example may be roughly in the \$600,000-to-\$800,000 range depending on the accounting issues, plus the broker's commission of 4% to 6% of the price of the initially offered stock. The extent of other due diligence needed may also affect the fees and costs. However, the fees and costs of an initial public offering on AIM for a company that has little or no operating history (or had been careful to conform its bookkeeping to U.S. or U.K. GAAP or IAS from the beginning) should be less, although the same broker's commission would apply.

AIM listing may be financially efficient for a range of companies including an entrepreneur-

ial affiliate or newly formed subsidiary of an existing company; a business that is sound and wants to reduce its reliance on the volatile credit market; or a company emerging from venture capital financing. Although in theory a complete start-up could also list (and in the past some have), over the last year or so investors have tended to look for quality. Thus, as a practical matter, what is likely to be needed under current market conditions is either some track record of success, or an acceptable affiliation with an existing company with a similar track record.

With respect to timing, an offering (for a company that does not have complicated accounting problems) may be completed in as little as roughly four to six months from the time a Nomad is retained. Since a newer entity would not have the track record of a more established company and would pose inherently more investment risk (as well as the potential for gain), the pricing of the

stock of a newer entity would likely be different than the pricing of a company with an established track record of growth and profitability.

Another benefit of the AIM, is that unlike the London Exchange (and many others), AIM does not require that any specific percentage of the company's shares be in public hands. Thus, it should be possible to maintain continuity of control by limiting the amount of stock sold to the public compared to the amount of stock held by existing principals.

Norman Bernstein is a member of law firm N.W. Bernstein & Associates. This article is for general information purposes, it is not intended to provide legal advice and may be considered Attorney Advertising under New York State ethical rules. Prior results do not guarantee a similar outcome. Copyright ©2007 by N.W. Bernstein & Associates, LLC, all rights reserved.