



AIM Listing vs a Secondary Listing – Which market best achieves your business aspirations?

The Financial Services Authority (FSA) has recently issued amendments to the Listing Rules following a review of the structure of the UK listing regime and a period of consultation which began in January 2008. These amendments principally aim to transform the UK listing regime into a transparent market offering 'equal treatment' and 'a level playing field' for listed companies within any one UK trading market.

This update considers the FSA amendments to the Listing Rules and the opportunities presented by these amendments for existing listed companies as well as UK or overseas companies looking to list on the London Stock Exchange (LSE), and the possible impact of the amended Listing Rules in relation to the AIM market.

Amendments to the Listing Rules

The amendments to the Listing Rules will not come into force until 6 April 2010. However, the amendments to the Listing Rules allowing UK companies to apply for a secondary listing under Listing Rule 14 (which was previously only available to overseas companies) has been brought into force with effect from 6 October 2009.

The amendments introduced by the FSA to the UK listing regime coming into force on 6 April 2010 will include the following:

- retaining the current two-tier listing on the Official List, currently known as primary and secondary listings, but re-naming the markets as "premium" and "standard" respectively. The premium listing will continue to be governed by the UK 'super-equivalent' standards whilst the standard listing will continue to comply with the EU minimum requirements for listing and disclosure;
- imposing a requirement on non-UK premium listed companies to adhere to the UK super-equivalent standards relating to corporate governance and pre-emption rights, obligations in respect of which overseas companies are currently excluded.



Source: fotolia

This means essentially that overseas companies will be required to 'comply or explain' against the Combined Code on Corporate Governance, as well as offer pre-emption rights to existing shareholders in the same way as UK companies unless shareholders agree to exclude pre-emption rights;

- prohibiting standard listed companies from misrepresenting to the public the type of listing they hold; and
- allowing companies listed on the Official List to transfer from one segment of the Official List to another without being required to delist (although prior shareholder approval will be required for companies wishing to move from a premium listing to a standard listing).

A comparison between AIM and Secondary Listings

Since opening the secondary listing to UK companies, UK companies now have an alternative attractive listing venue on the Official List. Existing AIM companies and other companies looking to list on the LSE (whether UK or overseas) are now able to consider instead a transfer to or listing on the secondary segment of the Official List.

So why consider a secondary listing rather than an AIM listing? A secondary listing will not allow a company to gain entry to the FTSE UK Index Series, since being listed on the primary market is

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a pre-requisite for qualification to the FTSE indices. However, a secondary listing will nonetheless award a company the higher status attributed to a listing on the Official List without having to comply with the more onerous obligations of the UK 'super-equivalent' standards imposed on primary listed companies or incur the associated expenses.

A secondary listing is only available to UK companies with at least 25% of their shares in public hands and where the aggregate market value of all securities (excluding treasury shares) to be listed is at least £700,000. Furthermore, companies applying for a secondary listing must comply, among other things, with the following requirements:

- the relevant provisions of the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules (**DTRs**) contained in the FSA's Handbook and the LSE's Admission and Disclosure Standards;
- preparation of a prospectus prior to listing on the secondary market (which is a 'regulated market' and therefore subject to the Prospectus Rules);
- compliance with DTR 7 in respect of corporate governance; and
- preparation of a prospectus in the event of further share issues.

AIM, on the other hand, has no minimum free-float or market capitalisation requirements and is therefore available to all companies subject to satisfaction of the admission requirements (and, once traded, continuing obligations) set out in the AIM Rules which include, among other things, the following:

- the preparation of an admission document which need not be pre-approved by the LSE or the UK Listing Authority, and need not comply with the Prospectus Rules (AIM not being a 'regulated market') unless a prospectus is required by reason of there being an offer to the public;
- the requirement for a 12 month working capital statement as part of an application for admission to AIM; and
- the requirement for a nominated adviser (**Nomad**).

In addition to the AIM Rules, AIM applies a system of 'self regulation' whereby the Nomad is required to assess, and confirm to the LSE, the suitability of a company for an AIM listing. A Nomad is required to be appointed by each AIM company to advise and guide the company on the responsibilities and obligations set out

in the AIM Rules. There is no such requirement (or need for a sponsor) for a secondary listing.

It is also worth noting that the AIM Rules impose more onerous obligations relating to reporting and disclosure requirements than those applicable to companies with a secondary listing, including the need for shareholder approval for certain substantial transactions.

Conclusion

The likely impact of the amendments to the Listing Rules on the LSE markets remains to be seen. Whilst a primary (soon to be premium) listing is required for inclusion in the FTSE UK Index Series, we anticipate that the greatest impact will be borne by the Official List, and not AIM, where companies will more likely seek to transfer from the premium segment to the standard segment of the Official List taking advantage of the simplified rules governing transfers between the two-tier segments of the Official List which will come into force in April 2010 and the lesser standards of regulation applicable to companies with a standard listing.

We do not envisage any immediate impact on the AIM market, which continues to fulfil an important role in attracting smaller but growing companies wanting to raise capital to develop their business whilst institutional investors in AIM companies will, in comparison to companies with a secondary (or standard) listing, continue to derive comfort from the higher standards of reporting and disclosure requirements in the AIM Rules and the Nomad's role in guiding AIM companies through their responsibilities and obligations.

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