

Companyupdate

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The AiM phenomenon – a real alternative for US issuers

The Alternative Investment Market (“AiM”) is the world’s leading market for smaller home-grown and international companies. AiM was established in 1995 as the junior market of the London Stock Exchange. Since then, over 1400 companies have been admitted and £24 billion has been raised on AiM. Recently, AiM has enjoyed growing interest from US companies, partly because of the burdens of compliance with the Sarbanes-Oxley Act. AiM’s success has been built on a simplified regulatory regime which has been specifically designed for smaller companies.

The tightened corporate reporting and governance requirements mean that some US companies are shying away from the American capital markets. In 2005, 19 US companies joined AiM - around three times the number in 2004. These include Clipper Windpower, a California-based renewable energy group, DIC Entertainment which



owns a library of children’s characters and Consentino Signature Wines. In 2004, AiM outperformed every other stock market for the volume of initial public offerings (IPOs) completed. AiM provides a wide range of companies with higher visibility, liquidity and increased access to the capital they need to fund their growth and realise their aspirations. AiM has attracted young venture-capital backed companies, as well as more established companies seeking to increase their international exposure. In recent years, trading volumes have been increasing with a rise in the

value of shares traded, supported by the introduction in May 2005 of a new FTSE AiM Index series, for the purpose of attracting additional investment in AiM securities.

The growing stature of AiM is evidenced by the growing number of blue chip names joining the list of nominated advisers, including Goldman Sachs, JP Morgan, Merrill Lynch and Morgan Stanley.

Why choose to join a public market in London?

A Company may choose to join a public market for a range of reasons, including access to capital, to create a market for its shares, to obtain an objective benchmark of the value of its business, to raise profile internationally and to enable paper-based acquisitions. Many overseas companies are now looking to the London markets to access European capital through the UK's membership of the European Union ("EU"), seeing the UK as the ideal launch pad for their operations in the EU. The London markets can boast an extremely sophisticated investment community and capital markets and the UK economy generally has a reputation for innovation, technological expertise and excellent research and development facilities. It

also benefits from English being the main language of the business world and a business friendly tax environment, with one of the lowest corporation tax rates of the major industrialised countries.

Often for smaller companies, the benefits of seeking a listing on the main market of the London Stock Exchange ("Main Market") are outweighed by the upfront and ongoing costs involved and AiM provides a real alternative to both the Main Market and the US capital markets in terms of cost and speed of entry. These factors in part explain the AiM success story as against the comparative failure of other new exchanges, such as the "pan-European" exchange EASDAQ.

Why join AiM?

Apart from the normal reasons why a US company might seek a public listing, the specific advantages to joining AiM are:

- No minimum criteria as to size, track-record or number of shares to be held publicly. Each applicant is assessed and monitored by a nominated advisor ("NOMAD") whose responsibility it is to ensure suitability for listing at the time of admission and on an ongoing basis.
- An admission process eased by the role of the NOMAD who co-ordinates admission along with the applicant's other advisers. Provided the admission document involves an offering to fewer than 100 investors, the UKLA (UK regulator) does not scrutinise the AiM admission document, in contrast to the US where the SEC and exchanges are directly involved in the offering process and review and approve the issue document. In addition:
 - In May 2003, AiM also introduced a simplified "fast-track" admission process for international companies which have been traded on certain major markets (including NYSE and NASDAQ) for at least 18 months called the "*AiM Designated Markets Route*".
- A typical AiM listed IPO requires three to four months preparation in comparison to six months or longer for a US IPO.
- The admission document itself is less comprehensive than an SEC registration statement although the issuer should be aware that it will be required to make substantive disclosures about its business, shares and shareholders, directors and financial position, after a process of adequate due diligence and verification. Audited financial statements are required (in accordance with UK or US GAAP or International Accounting Standards) for the three years preceding admission or such shorter period as the issuer has been in existence.
- Once admitted, ongoing disclosure requirements are less stringent than on the Main Market or in the US. AiM companies are required to disclose any developments which might have an impact on the company's future performance and/or share price on an ongoing basis, but there is no requirement to make disclosures or obtain shareholder approval in advance of corporate transactions except in the case of reverse takeovers or disposals that would result in fundamental changes in the company's

business. AiM companies are therefore able to expand through acquisition or change direction quickly.

- There are a number of tax breaks available for AiM companies and also to UK institutional investors in relation to AiM-listed securities which may make investment in AiM companies more attractive to those investors than comparable US companies.
- A properly structured AiM listing and capital raising by a US domestic issuer will avoid the following US federal and state securities regulatory requirements:
 - filing of a registration statement with the US Securities and Exchange Commission (“SEC”) under the Securities Act of 1933 (usually under the Regulation S exemption);
 - SEC periodic filings such as form 10-K, 10-Q and 8-K. AiM companies are required to make semi-annual filings which are generally less rigorous than the US counterparts;
 - accounting and other certification requirements of the Sarbanes-Oxley Act;
 - US state “blue-sky” securities laws governing the offer, sale and resale of securities in each state.



How can Fox Williams help?

In addition to a NOMAD, broker and reporting accountants, a company seeking to join AiM will need a legal adviser with experience of AiM admissions and ongoing requirements, who can work seamlessly with the panel of other advisers. Fox Williams can fulfil this role and would advise on issues such as due diligence, directors’ employment contracts, verification of the admission document and advice to the board on its continuing legal and regulatory obligations.

The Fox Williams corporate team has a broad range of experience in these areas, as well as a depth of contacts amongst NOMADs and other professional advisers. We have successfully guided clients through IPOs, rights issues, open offers and placings on AiM and the London Stock Exchange.

If you have a client who is considering a listing in London on any of the markets mentioned above and would like to discuss the options with us, please contact us.

Doing great deals

Fox Williams' corporate team has specialist knowledge and expertise to handle complex corporate and corporate finance transactions.

ACQUISITION IN THE METROLOGY APPLICATIONS SECTOR

Acquisitions by Metris International Holding N.V. of LK Group Limited and 3D Scanners Limited

FW acted for Metris

ACQUISITION OF MOBILE TECHNOLOGY PLATFORM

Acquisition by AiM listed Stream Group plc of Mobileworkflow Limited

FW acted for Stream Group

SALE OF FOOTFALL LIMITED TO EXPERIAN

Sale of Footfall Limited to Experian

FW acted for the management shareholders of Footfall

SALE OF CURRENT MEDICINE GROUP

Sale of the entire share capital of Current Medicine Group to Springer Science + Business Media

FW acted for Current Medicine

AiM

AiM admission of Palandri Limited

FW acted for Nabarro Wells (nominated advisor to Palandri)

SALE OF EUROPROSPECTUS.COM LIMITED

Sale of the entire share capital of europrospectus.com to FactSet Research Systems Inc.

FW acted for HAL Investments BV and other majority shareholders

For the best legal advice on corporate transactions, **talk to** Fox Williams.

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