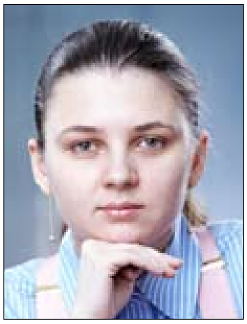
Standard Listing Regime

by Andrei G. LIAKHOV



by Alina I. PLYUSHCH

Andrei G. LIAKHOV
is a partner with Sayenko Kharenko

Alina I. PLYUSHCH
is a counsel with Sayenko Kharenko

The UK listing regime was restructured from 6 April 2010 into premium and standard listings. Before 6 April 2010, a company incorporated in the UK which was considering an admission of its equity shares for trading on a public market primarily had two options available to it.

The first option was to have its shares listed on the Official List of the UK Listing Authority (UKLA) and admitted to trading by London Stock Exchange PLC. This would have involved obtaining a primary listing, which was seen as the gold standard of the company listing regime in London.

The second option was to seek a quotation on the Alternative Investment Market of London Stock Exchange plc (AIM). AIM was launched in 1995 and is a market, and regulatory framework, specifically designed for smaller and growing companies.

Other options, such as the Plus Markets regime, were and still are available, although these tended to focus on niche areas, or the microcap sector, of the securities market, and were not used by UK issuers as frequently as the primary listing or AIM.

Now, UK issuers have a third option: to list their securities on the standard segment (previously, apart from a brief transitional period, the old secondary listing regime was only available to overseas companies).

The standard listing regime has attracted very little comment from market participants and, since 6 April 2010, few UK incorporated issuers have availed themselves of the opportunity to take up this alternative route to securing a stock market quotation in London.

This article examines the standard listing regime and compares it to a premium listing or an admission to trading on AIM. A standard listing may be suitable for issuers looking for a flexible regulatory regime in which to carry out transactional activity, as well as for large capitalisation issuers that do not comply, for whatever technical reason, with the eligibility requirements of the premium listing regime. A standard listing may be a transient forum for issuers, before moving to a premium listing, once the acquisitions have been made, or the eligibility requirements fulfilled.

For some companies, a standard listing may be a suitable alternative to an admission to trading on AIM since, in certain respects, the standard listing regime is less onerous than the AIM regulatory regime (with a notable exception of mineral companies). It will typically suit smaller capitalisation issuers that are looking to increase their profile and enhance valuations and liquidity. The standard segment is not so likely to be a transient forum for this group of companies.

Trading record and control

One of the most important points to note is the requirement for a trading record and control of the issuer's business interests. An issuer seeking a premium listing needs to have 75% of its business supported by a three-year revenue earning record. Such an applicant also needs to have both control of the majority of its assets and to be carrying on an independent business as its main activity for that three-year period. It will also need to produce audited accounts for those three financial years.

By contrast, none of these requirements apply to an issuer that will admit its shares using a standard listing, or to an admission to trading on AIM. These requirements may well mean that for many prospective issuers, the choice of available trading regimes is immediately limited to two. This could be particularly useful for emerging markets companies, where trading periods for mid-cap issuers rarely exceed 3-5 years at present.

Document content

The AIM regime requires the publication of an AIM admission document. Both listing regimes require the publication of a prospectus in accordance with the Prospectus Directive (2003/71/EC). In the UK, these requirements have been transposed into the Prospectus Rules, which are published by the FSA.

An applicant seeking premium listing also needs to comply with certain additional requirements set out in the Listing Rules that do not apply to standard listing applicants (known as super-equivalent requirements because they go beyond the minimum requirements set out in EU Directives).

Working capital statement

One super-equivalent requirement is the requirement for a "clean" working capital statement for a 12-month period for the issuer and its subsidiary undertakings.

For an applicant seeking standard listing (SL issuer), the working capital statement is made by the issuer itself and is referenced to the issuer only and "for its present requirements" rather than for a specific time period, although the Committee of European Securities Regulators (CESR) has suggested that "present requirements" should be interpreted to mean the ensuing 12 months.

In addition, it is acceptable for the working capital statement to be a qualified statement as long as the SL issuer states how it proposes to deal with any shortfall in its current working capital position.

This distinction is likely to be of academic importance in the context of an IPO, since it is difficult to envisage a situation where an SL issuer that cannot make a clean working capital statement would seek an IPO. However, it is a potentially useful feature in the context of a secondary fundraising where a financially distressed company may need the extra flexibility afforded by standard listing requirements.

For an applicant seeking a premium listing (PL issuer), the UKLA has the ability to waive the requirement for a "clean" working capital statement in relation to the admission of further shares.

In the context of an AIM IPO, a statement is made by the directors of the issuer that, having made due and careful enquiry, the working capital available to the issuer and its group will be sufficient for its present requirements; that is, for at least a 12-month period from the date of admission. In practice, a significant amount of work is undertaken by the issuer's accountants to support that statement. There is, therefore, little practical difference between the analysis undertaken to support a working capital statement for a PL issuer or an AIM issuer.

UKLA pre-approval

One practical difference between the publication of a prospectus and an AIM admission document is that the prospectus is pre-approved by the UKLA. This is likely to involve UKLA personnel reviewing and commenting on several drafts over a number of weeks.

Under *the Financial Services and Markets Act 2000* (FSMA), an AIM issuer may also be required to publish a prospectus if the relevant issuer is making an offer to the public. In practice, this is relatively rare, since an offering of the AIM issuer's securities is often structured in such a way that it does not fall within the definition of an offer to the public for the purposes of section 85(1) of FSMA.

Transactions

This is an area in which the standard listing regime has been subject to a number of negative comments from various shareholder rights protection groups such as PIRC.

Shareholder approval

Transactions above a certain size require the prior approval of the issuer's shareholders under the premium listing regime. The size threshold is set at a relatively modest 25% and is referenced to what is defined as class tests. There is also an obligation to disclose all transactions that are above 5% under the class tests and to satisfy certain enhanced disclosure requirements in respect of those transactions.

The AIM Rules also require shareholder approval for significant acquisitions; however, the threshold is set at a much higher level: either 100% under the class tests or a transaction that would result in a fundamental change in business, board or voting control. In the case of disposals, the issuer would require shareholder consent for transactions that exceed 75% under the AIM class tests (which are different to those used in the Premium Listing regime). The AIM Rules also have an enhanced disclosure obligation regime for all transactions that exceed 10% under the class tests.

By contrast, the standard listing regime does not require shareholder approval for any transaction, regardless of its impact on the business or financial position of the issuer, or impose any specific disclosure requirements.

It is the UKLA's practice to suspend the shares of a SL issuer in the event that it announces a reverse takeover and it considers that there is insufficient information in the market about the impact of the transaction on the issuer's financial position.

Related party transactions

In broad terms, related party transactions are transactions between an issuer group company and any large shareholders of the issuer or the issuer group's directors. Again, there is no requirement for shareholder approval or disclosure under the standard listing regime.

Under the premium listing regime, related party transactions above a low size threshold require shareholder approval and a confirmation by the issuer's directors that the terms of the transaction are fair and reasonable so far as the shareholders are concerned and that the directors have been so advised by an independent financial adviser.

Under the AIM Rules, a related party transaction needs

COMMENTS

A STANDARD LISTING MAY BE a suitable ALTERNATIVE TO an ADMISSION to TRADING ON AIM

to be announced and the directors must make a statement that they consider, having consulted with the issuer's nominated adviser, that the terms of the transaction are fair and reasonable so far as the issuer's shareholders are concerned. In practice, this requirement means that, in most cases, a board of an AIM quoted issuer will seek a private opinion from a financial adviser that supports its public declaration.

Cancellation of quotation

Another point for potential investors to note is that a SL issuer does not need shareholder approval to cancel its listing. Both premium listing and AIM issuers need 75% shareholder approval before taking such a step.

Market practice

The issuers that have secured a standard listing to date have generally fallen into one of three broad categories:

— Acquisition vehicles that seek to use the flexibility of the standard listing to facilitate the process of making the relevant acquisition(s).

— Large capitalisation issuers that, for some technical reason, do not meet the eligibility requirements of a premium listing.

— Small capitalisation issuers that are looking to a standard listing to increase their profile and enhance valuations and liquidity.

In the first two categories, the standard listing is likely to be a transient regulatory regime. After the acquisitions have been made, or the eligibility requirements fulfilled, the relevant issuer is likely to move to a premium listing.

This is not the case for the third category, where the standard listing is being adopted as an alternative regulatory regime to AIM for smaller capitalisation companies.

Overall, despite the concerns set out above, by providing issuers and investors with an additional option in London, this novel regime helps to strike an appropriate balance between investor protection and maintaining the competitiveness of the UK stock market. It does so without significantly harming investor protection since the premium listing is left as the "gold standard" of the listing regime. The FSA has, therefore, successfully achieved its purpose when it was originally reviewing the UK's listing regime. It may also help to reverse the long-term decline in the number of companies applying to list on one of the UKLA-regulated trading platforms.

END