

## **SECURITIES & PUBLIC MARKETS BULLETIN**

*November 2006*

### **THE AIM MARKET OF THE LONDON STOCK EXCHANGE**

#### **INTRODUCTION**

The Alternative Investment Market (“AIM”) is a second tier market regulated by the London Stock Exchange (“LSX”), which is focussed on smaller growth issuers from all over the world. In June 1995, the LSX opened AIM as a market for companies who would not be eligible for admission to the main market of the LSX to access the substantial capital and investor base in London. Since then, AIM has experienced exponential growth, becoming the world’s leading capital market for aspiring international companies. During the last decade more than 2,400 companies, 326 of which were incorporated outside of the United Kingdom (“UK”), have been admitted to AIM, raising over £31 billion collectively. For the past three years, AIM has multiplied its success by increasing the number of listed companies, from 754 in 2003 to 1,528 by May 31, 2006, and the amount of capital raised, from £2 billion in 2003, to £4.6 billion in 2004 and £8.9 billion in 2005. Also growing is the number of institutional investors in AIM, controlling 35.3%, 38.3% and 40.9% of the market in 2003, 2004 and 2005 respectively. Such growth is a strong indication of the increasing willingness of institutional investors in the UK and abroad to invest in AIM companies.

The purpose of this article is to provide an overview of AIM for Canadian companies who are interested in admission to AIM.

#### **REGULATORY STANDARDS**

AIM has become an attractive alternative for many companies because of its relaxed listing and compliance requirements. AIM offers a simplified and flexible regulatory regime, which incorporates the unique role of nominated advisers (“NOMADs”) for companies to raise equity funds in Europe’s capital markets.

The AIM admission procedure is simple, requiring only admission documents or a prospectus. The AIM Rules offer a “fast track” route for companies listed in certain recognized markets internationally. This route can significantly reduce related costs, fees and time. The AIM regulatory regime is flexible and streamlined. The AIM Rules demand minimum on-going obligations of both the company and its directors. The rules governing listings on AIM have no minimum requirements regarding duration of trading record or public distribution of shares and there are minimal disclosure requirements and reporting requirements following admission. The admission document required in connection with a listing on AIM has a lower disclosure standard than for Canadian exchanges. There are no specific eligibility criteria for a company to qualify for AIM, except that an AIM admission is subject to the AIM Rules and the satisfaction of a NOMAD. Although the AIM Rules specify the types of information to be disclosed prior to an AIM admission, they do not require minimum market capitalization, minimum public shares, trading records, prior shareholder approval for transactions (except for reverse takeovers), or UK incorporations. The only requirements in the Rules are that the company’s shares be freely transferable with no restrictions and that it be registered as a public limited company (“plc”) in the UK or a plc equivalent under the laws of its country of origin.

To satisfy a NOMAD, a company must either have a history of growing profits or be able to demonstrate the potential of becoming profitable within a reasonable timeframe. Once the NOMAD considers that an AIM listing is in the best interest of and appropriate for the company, admission to AIM becomes a matter of time and preparation.

#### **PRE-ADMISSION PREPARATION: PROFESSIONAL ADVISERS**

To prepare for an AIM admission, a company is required to appoint certain professional advisers including a NOMAD, a broker, a lawyer, and a reporting accountant. These advisers will assist the company before and after admission to ensure regulatory compliance.

## NOMAD

To apply for an AIM admission and to remain on AIM, a company must have a NOMAD. A NOMAD is a firm of experienced corporate finance professionals, an accountant or a broker, approved by the LSX and proficient at public company management and the AIM Rules. A company will not be admitted to AIM without endorsement of a NOMAD. An AIM company's shares will be suspended from trading as soon as the company ceases to have a NOMAD for any reason.

Although retained by the company, a NOMAD owes its primary responsibility and duty of care to the LSX. A NOMAD's pre-admission roles and responsibilities are akin to those of a gatekeeper and liaison for AIM. The NOMAD's primary task is to ensure that the company and its securities are suitable and ready to be admitted to AIM. To assess suitability and readiness, the NOMAD goes through an extensive due diligence process with respect to the company's business and management. The NOMAD also offers guidance to the directors of its client AIM company as to the nature of their obligations under AIM Rules. The NOMAD also acts as a general corporate finance adviser and ensures that an AIM flotation is in the best interests of the company and its existing shareholders.

The NOMAD assists the company with preparing an AIM admission document and manages the admission process. In addition a NOMAD submits a declaration along with the company's admission document and provides the LSX with other information upon request.

Once a company is admitted into AIM the NOMAD continues to provide guidance and advice on AIM regulatory matters and general corporate governance. The NOMAD maintains close contact with its client AIM company to ensure that the market receives all information that should be in the public domain.

## BROKER

According to the AIM Rules, an AIM company must retain a broker at all times. A broker is a securities house and member of the LSX. A professional adviser can be both a NOMAD and a broker at the same time.

The AIM Rules requires that a broker use its best endeavours to find a matching business if the company has no registered market maker. The role of a broker differs before and after an AIM admission. Prior to admission the role of the broker is to fairly value the securities of the issuer, generate investor interests, and assist in drafting of the admission document or prospectus. Following admission the broker acts as a liaison between the company and the investor community, provides research reports on the company, and keeps the company informed of pertinent market movements.

## REPORTING ACCOUNTANTS

Prior to admission an AIM company must retain a reporting accountant who conducts an independent review of the historical financial statements of the company and its subsidiaries, if any. Such review will generally yield a long-form report providing an internal view on the issues that the company should address in preparation for an AIM admission.

The accountant will also assist in preparing financial information to be included in the AIM admission document as required by Schedule II of the AIM Rules, such as operating and financial review, profit forecasts or estimates, and pro forma financial information. If the company is already listed on an AIM designated market and opts into the fast-track admission process, the AIM Rules further require a directors' statement with respect to the adequacy of the company's working capital for at least twelve months from the date of the AIM admission. Accordingly, an accountant would generally provide working capital forecasts to the directors in support of their "due and careful enquiry" obligations under the AIM Rules in making this declaration.

After admission an AIM company is obligated to prepare half-yearly reports and annual accounts. It must also issue notification, without delay, of any price sensitive information including any new developments concerning a change in its financial condition, the performance of its business, or its expectations of its performance. Therefore, it is essential that an AIM company continue to engage the service of the reporting accountant in order to satisfy the company's on-going financial disclosure obligations under the AIM Rules.

## **PRE-ADMISSION ANNOUNCEMENT**

The AIM Rules require a pre-admission announcement. The content of the pre-admission announcement depends on whether the company has been an issuer with securities traded upon an AIM designated market for at least 18 months.

If the company does not meet this requirement it must provide the LSX, at least ten business days before the expected date of admission to AIM, the following information:

- The company's name, country of incorporation, address, and a brief description of its business, or in the case of an investing company, details of its investment strategy;
- The number and type of securities in respect of which it seeks admission, detailing the number and type of securities to be held as treasury shares;
- 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 directly or indirectly in 3% or more of its securities, together with the percentage of each such person's interest;
- The names and addresses of any persons – other than professional advisers - who have received, or will receive on or after admission, £10,000 from the company;
- Its anticipated accounting reference date;
- Its expected admission date;
- The name and address of its NOMAD and broker; and
- Details of where any admission document will be available with a statement that this will contain full details about the applicant and the admission of its securities.

A company which has had its shares traded on an AIM designated market for at least 18 months shall also disclose additional information including:

- The name of the AIM designated market upon which its shares are traded;
- The date from which its securities have been so traded;
- Confirmation of legal and regulatory compliances following due and careful enquiry;
- Details of its intended strategy following admission;
- A description of any significant change in financial or trading position since its last audited statements;
- A statement that its directors have no reason to believe that the working capital will be insufficient for at least twelve months from the date of its admission; and
- A brief description of the arrangements for settling transactions in its securities.

## **ADMISSION PROCEDURES TO AIM: STANDARD-TRACK AND FAST-TRACK**

AIM has two types of admission processes: the standard-track and the fast-track. Generally, companies must comply with the AIM Rules for standard-track admission, which involves either an AIM Admission Document or a Prospectus. The fast-track process requires only a pre-admission press announcement.

### STANDARD-TRACK

Standard-track admission will involve either a Prospectus or an AIM Admission Document. A prospectus is required if the company wishes to make a public offer that exceeds £2.5 million and is issued to more than 100 legal persons. The Prospectus will be vetted by the UK Listing Authorities ("UKLA"). However if the company plans to issue its offer to less than 100 people, only an AIM Admission Document is necessary. Admission documents are not pre-vetted by the LSX nor by the UKLA in most circumstances.

A company which is required to produce an Admission Document must disclose the following information:

- The company's directors, promoters, and business activities;
- Detailed financial information; and
- Any other information which it reasonably considers necessary to enable investors to form a full understanding of its financial position and share performance and the rights attaching to its securities.

## FAST-TRACK

Fast-track admission is a streamlined process available only to quoted companies ("Quoted Companies"). By definition, a Quoted Company is one whose shares have been listed in an AIM designated market for at least 18 months prior to the date of admission.

There are currently nine designated markets recognized by AIM: Australian Stock Exchange, Deutsche Börse, Euronext, Johannesburg Stock Exchange, NASDAQ, New York Stock Exchange, Stockholmbörsen, Swiss Exchange and Toronto Stock Exchange, in addition to any UK Official List as issued by the UK Listing Authority.

If a Quoted Company is not required by any other legal or regulatory rules to produce prospectus for an AIM admission, the company simply needs to make a pre-admission press announcement twenty days prior to its expected date of admission.

## **LOCK-IN CONDITIONS FOR NEW BUSINESSES**

Where a potential AIM company's main activity is a business that has not been independent and has been earning revenue for at least two years, it must ensure that its related parties and applicable employees, as at the date of admission, agree not to dispose of any interest in its securities for one year from the date of admission. A related party is any existing or former director or a substantial shareholder of the company. An applicable employee is one who directly or indirectly owns 0.5% or more of the AIM company's securities, excluding treasury shares, or who is likely to be in possession of unpublished, price-sensitive information. The company shall provide the details of such agreements to AIM.

## **TIME FACTOR OF THE ADMISSION PROCESS**

The following timetable is based on a guideline provided by AIM for the general steps taken during the periods of pre-flotation preparation, the listing process, and admission week.

### PRE-FLOTATION PREPARATION:

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|-------------------------------|--|
| 24-36 months before admission | – Conduct self-examination of the business and management to determine whether the company is ready for a public listing   |
| 12-24 months before admission | – Become familiarized with the AIM Rules<br>– Complete any strategic initiatives<br>– Adopt appropriate corporate governance practice  |
| 6-12 months before admission  | – Ensure independent audited financial accounts, if application<br>– Make necessary changes to the board of directors<br>– Ensure the company is properly incorporated<br>– Solicit proposals from various professional advisers |

### The listing process:

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|------------------------------|--|
| 12-24 weeks before admission | <ul style="list-style-type: none"><li>- Appoint professional advisers</li><li>- Agree on admission timetable</li><li>- Conduct necessary due diligence</li></ul>   |
| 6-12 weeks before admission  | <ul style="list-style-type: none"><li>- Produce requisite documents in first draft</li><li>- Conduct initial review of pricing issues</li><li>- Host analyst presentations</li></ul>   |
| 1-6 weeks before admission   | <ul style="list-style-type: none"><li>- Revise draft documents</li><li>- Hold public relations meetings and road show</li><li>- Submit 10 day pre-admission announcement to AIM of intention to join AIM</li></ul>                             |
| 1 week before admission      | <ul style="list-style-type: none"><li>- All documents completed and approved</li><li>- Pricing and allocation of the offer</li><li>- Register prospectus</li><li>- Sign subscription agreement</li><li>- Bulk print final prospectus</li></ul> |

### Admission week

- Pay exchange fees
- Admission to AIM granted

### **AIM FEES AND COSTS**

All companies seeking admission to AIM must pay a one-time admission fee of £4,340 (subject to change). The fee is payable no later than three business days prior to admission to trading. After admission, all AIM companies are subject to an annual fee of £4,340 (subject to change), or a pro-rata amount for new AIM companies.

Costs associated with professionals including NOMADs, lawyers, accountants, and brokers average approximately ten per cent of the amount of capital raised in AIM.

### **POST-ADMISSION PERIOD**

Once a company has joined AIM, it is obligated to keep shareholders fully informed of the company's progress and changes, financial position and prospects on an ongoing basis. An AIM company is obligated to continuously comply with the AIM Rules that include the following:

- **Retention of a NOMAD** - An AIM company must have a NOMAD at all times. If an AIM company ceases to have a NOMAD the trading of its securities will be suspended. If within one month of that suspension, the AIM company fails to appoint a replacement NOMAD, its AIM securities will be cancelled. The NOMAD is expected to review all notifications made by its client AIM company.
- **Retention of a broker** - An AIM company must retain a broker at all times.
- **Retention of a Regulatory Information Service Provider** – An AIM company must retain a Regulatory Information Service Provider to ensure that requisite information can be provided as and when required.
- **General disclosure of price sensitive information** - An AIM company has ongoing obligations to issue notifications without delay of any new developments which are not public knowledge concerning a change that, if made public, would likely lead to a substantial change the price of its AIM shares. Such changes include those with respect to its financial condition, substantial transactions, related party transactions and reverse takeovers.
- **Accounting practice** - An AIM company must maintain an accounting practice conforming to International Accounting Standards, UK GAAP or US GAAP;

- **Half-yearly reports and annual accounts** – An AIM company must publish un-audited interim accounts within three months of the end of the half-year, and audited annual accounts within six months of the financial year-end; and
- **Transferability of shares** - An AIM company must ensure that its AIM securities are freely transferable, subject to some exceptions.
- **Directors' responsibilities** – All directors must accept full responsibility, collectively and individually, for the AIM Rules.

#### **CANADIAN PRESENCE IN AIM**

Canadian presence in AIM is demonstrated by the listings of Canadian companies and the certifications of some Canada-based professional advisers. Next to Australia, Canada is the second major source of international issuers for the AIM market. As of January 31, 2006, there were 33 Canadian companies listed in AIM, more than 60% of which were admitted in the last two years and almost all of which (with the exception of 2 companies) were already listed in the TSX/TSX-V at the time of their AIM admissions.

The Canadian AIM companies come from a wide range of industries including natural resources, investment services, biotechnology, specialty financing and industrial machinery. Their market capitalizations also vary significantly, ranging from £4 million to £1.2 billion.

Many Canadian businesses and several Canada-based professional advisers such as NOMADs and legal counsel have traveled the path to AIM. As such, Canadian companies ready to grow their international businesses should consider the benefits that AIM has to offer.

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