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NEXIA INTERNATIONAL

quoted business

A briefing for quoted companies

Spring 2010

Aim and the US

A tough nut to crack?

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Why haven’t more US companies been attracted by the obvious charms of Aim?

There are tens of thousands of private companies operating in the US and numerous reasons why a US company would want to be listed in the UK: access to international capital; a market designed to serve the genuine mid-market; a springboard into Europe; and a set of rules designed specifically to remove a lot of the red tape surrounding corporate transactions. Add to that a simplified mechanism for raising secondary funds and the absence of costly Sarbanes-Oxley (SOX) compliance and it should be clear why any right-minded, ambitious US growth company might look to Aim for its capital requirements. Yet there remain a mere 55 US companies on Aim. Those 55 companies have a combined market capitalisation of £2.9bn.

Aim has never had an easy ride in the US. Often misunderstood, sometimes criticised as poorly regulated and occasionally unfairly condemned for failing to deliver – when the truth is that Aim companies have failed no more frequently than those on larger, longer-established markets.

Furthermore, Aim has been hugely successful in raising money for the mid-market. Fortunately, some US corporations have seen through the negative press.

International reach

Aim is, by any measure, a truly international market: out of a whisker under 1,300 companies, 499 operate outside the UK – that’s four in ten. Given that market capitalisation of overseas companies tends to be larger, the aggregate capitalisation of those 499 companies is £33.3bn, representing 60% of the total market capitalisation of Aim. Big initial public offerings (IPOs) were few and far between last year, but those sectors that attracted money were those that one would traditionally associate with overseas business – oil and gas, basic materials and mining and property and real estate funds. Of the £4.8bn raised on Aim in secondary issues in 2009, £1.2bn went into property and real estate funds, £1.1bn into oil and gas, and £1bn into mining.

This clearly illustrates that 2009 was a very risk averse year, where funding existing Aim-listed companies with ‘hard assets’, as opposed to intellectual property-based businesses in, say, computing, biotech or ‘cleantech’, was seen as the safest bet, since there is typically a balance sheet floor for the former, whereas if the latter fail, all that’s typically left is a patent library of questionable value.

Future growth

Of all the overseas territories represented on Aim, with nearly 60 companies, the US is in fact the single largest, followed closely by China (51 companies with a combined market capitalisation of £4bn). If we look to the future, growth on Aim is likely to come from businesses exhibiting some or all of the following three attributes. First, businesses that are larger than those with which Aim has traditionally been associated. Long gone are the days of the small local business looking to raise a few hundred thousand pounds by way of an offer for subscription on Aim. Second, over the short to medium-term, businesses in certain sectors: oil and gas, mining, minerals, renewable energy, technology to name a few. And third, overseas businesses.

Aim’s shareholder base (largely institutional these days) comprises all the international names one would expect of a market which has demonstrated its growth potential – Fidelity, Merrill Lynch, Blackstone and others. If those people are investing, international companies can expect a knowledgeable and enthusiastic audience – and one with deep pockets.

In this issue, we look in detail at the US influence on and interest in Aim. Mark McGowan of AIM Advisers, Inc. gives us an entertaining insight into his current road trip around the US to promote Aim, we examine local US attitudes to Aim from the advisory perspective and we explore some of the hurdles facing US corporates which might believe that Aim would suit them, but haven’t quite yet made the leap.

US perspectives on Aim

Craig Arends

Craig Arends, principal at US accounting firm LarsonAllen LLP, gives his view on the benefits and risks for US companies considering listing on Aim.

Raising debt or equity is not an easy endeavour in the current US business climate. Traditionally, companies in the US have looked towards banks, private equity groups, and the costly IPO route. Fortunately, there are alternatives. While US capital markets are large and robust, the challenge of entry presented by complying with SOX has rendered US public offerings virtually unattainable for micro cap companies. Additionally, the current banking environment has made it very difficult to obtain debt financing. The answer, though, may be overseas.

In the 1990s, the London Stock Exchange (LSE) launched Aim for the small cap and micro cap space as the second tier alternative for public companies that do not need the full complement of LSE large cap company services. Aim has lower entry and maintenance requirements for listed companies, making it a viable alternative to the LSE. Also, listing on Aim can help US-based companies bypass SOX requirements. The result is that US micro caps can access a robust capital market without the larger compliance investment mandated by SOX in the US.

Listing requirements for Aim

As we all know, Aim’s listing requirements are quite liberal, even by pre-SOX standards in the US. However, it’s worth reiterating its advantages when compared to the LSE (and the New York Stock Exchange). They include the following.

- No minimum shares to be in public hands.
- No trading record requirement.
- No prior shareholder approval for transactions.
- Admission documents not pre-vetted by LSE nor by the UK Listing Authority (UKLA) in most circumstances. The UKLA will only vet an Aim admission document where it is also a prospectus under the Prospectus Directive.
- Nominated adviser required at all times.
- No minimum market capitalisation.

As readers will no doubt be aware, the requirement for a nominated adviser widely known as a Nomad (a corporate finance firm, accountant, or broker), who warrants the suitability of the company for listing and trading on Aim, contrasts sharply with even second tier and over-the-counter requirements in the US. The latter require compliance with the US SEC regulatory regime and (for listing) minimum capital requirements.

It is Aim’s less onerous requirements that make it attractive to US companies pursuing a listing.

Risks and potential drawbacks

Notwithstanding its attractiveness from a regulatory and access to capital standpoint, US companies considering an Aim listing should keep the following risks in mind.

Exchange Act compliance

Under Section 12(g) of the Securities Exchange Act of 1934 (the Exchange Act), US companies that have more than US$10m in assets will become subject to the provisions of the Exchange Act if they have 500 or more stockholders of record. While most Aim offerings are structured as private placements to fewer than 100 institutional investors, over time, liquidity from follow-on offerings, or secondary trading in a company’s securities, can increase the number of stockholders of record. Upon exceeding 499 stockholders of record, a US company

Continued...

would be required to file timely Exchange Act periodic reports with Securities and Exchange Commission (SEC) and comply with US securities regulations, including SOX. Once shares are issued, a company may have difficulty controlling the number of stockholders of record who eventually own its stock.

Regulation S

Most Aim offerings are conducted by relying upon the exemption from registration under the Securities Act 1933 (the Securities Act) provided by Regulation S. For more on Regulation S, see the article by US law firm Kaye Scholer LLP on the next page.

Management commitment

Due to the nature of Aim and its large base of institutions that purchase shares initially and in the secondary market, it is important for company management to develop relationships with the institutions selling the company's shares. This often requires management to invest significant time in cultivating these relationships. Due to the time required to travel to interact with and update UK investors, time zone differences and other factors, the commitment required from management of a US company (particularly one without any UK operations) may be greater than initially anticipated.

Liquidity

Aim has a reputation for being illiquid, and, as a result, investors may have difficulty disposing of their securities. A listing on Aim also has the potential to provide reduced liquidity for substantial shareholders, directors and certain employees due to non-standardised 'lock-in' agreements that prohibit secondary sales for a period of time following the placing on Aim. Lock-in agreements of one year are mandatory for a business that has not been independent and earning revenue for at least two years, and a Nomad and/or broker may require further lock-ins to protect prospective investors and maintain an orderly market.

Acquisitions restrictions

One of the potential benefits of an IPO is the ability to use the company's stock as currency for an acquisition. If a US company lists on Aim, it remains a private company for US federal and state securities law purposes, and any issuance of securities to US residents must meet the requirements of an exempt transaction (including applicable resale restrictions for restricted securities). Unless the stock is registered in the US, US persons who are not affiliates of the issuer would need to wait at least one year after the closing of the acquisition before they could sell their company stock on Aim without restriction.

IFRS

To be more competitive on Aim, US companies should consider conversion to International Financial Reporting Standards (IFRS) and the associated costs and complexities of the transition. For more on IFRS, see the article by William Kowals later in this newsletter.

In summary, using Aim for an IPO of a US company provides certain advantages due to Aim's less prescriptive regulatory approach, lower costs and streamlined admissions process. It may be the best available financing option for certain US companies. Historically, demand on Aim has been strongest for energy or mining firms, real estate funds and businesses offering financial services. However, of the 60 or so US companies on Aim, approximately 75% are, broadly speaking, technology companies, covering IT, biotech and 'cleantech'.

US companies are advised to recognise a number of other factors that can contribute to their success on Aim over the long term. As with any business decision, the choice to list or raise equity on Aim should be made only after diligently studying the rewards and potential long-term risks of an Aim listing and the other available alternatives, including a registered IPO and listing on a US exchange.

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Safe harbour for US securities? Regulation S explained

David Rivera

Stuart Fleet

David Rivera and Stuart Fleet of US law firm Kaye Scholer LLP explain the legal issues for US companies seeking admission to Aim.

Aim provides US companies with an attractive alternative market for capital without the costly and burdensome compliance associated with the Sarbanes-Oxley Act, which applies to companies accessing the public capital markets in the US. Seeking admission to Aim by way of a securities offering, which has been permitted since 2006, requires a US company to comply with the requirements of the safe harbour under the Securities Act of 1933 provided by Regulation S.

A US issuer wishing to offer its shares for subscription on Aim must observe a number of requirements under Regulation S. Offers to sell Aim securities under Regulation S cannot be made to US persons in the US. At the time a buy order is originated for such securities, both the seller (including for this purpose the issuer), and any person acting on its behalf, must reasonably believe that the buyer is outside of the US. The trade cannot be pre-arranged with a buyer in the US.

"Offshore transactions"

Thus, offers of Aim securities by a US issuer must be made in "offshore transactions" with no element of the offer and sale happening within the US or involving US persons. Furthermore, there can be no "directed selling efforts" with respect to the Aim securities in the US. The issuer cannot be seen by its actions to be conditioning the markets in the US for its Aim securities.

The issuer must also implement certain offering restrictions prescribed by Regulation S that prevent its Aim securities from being transferred to US persons in the US. To further the aim of the offering restrictions, such securities must be legended accordingly and the issuer will be required to refuse to register any transfer of such securities that is not made in accordance with Regulation S and US securities laws.

Prospectus rules

The prospectus or Aim admission document published by the US issuer must include language warning investors that US persons generally cannot purchase the securities. Each purchaser of the Aim securities during a one-year distribution compliance period will be required to certify that it is not a US person and is not acquiring the securities for the account or benefit of any US person. Equally, the purchaser will also be expected to agree that any resale of those securities prior to the expiration of the one-year distribution compliance period will be made only in accordance with the provisions of Regulation S (to non-US persons in offshore transactions), pursuant to registration under the Securities Act, or pursuant to an available exemption from registration. Additionally, the purchaser must agree not to engage in hedging transactions with regard to such securities unless in compliance with the Securities Act.

Restricted securities

Securities offered and sold outside of the US under Regulation S are not registered under the Securities Act. As such, these securities are considered "restricted" and cannot be offered or sold in the US unless registered under the Securities Act or an exemption from such registration is available. A US issuer should also note that if it has 500 or more shareholders worldwide and 300 or more shareholders resident in the US, it will be required to register its shares with the US Securities and Exchange Commission in accordance with the Securities Exchange Act 1934 (as amended).

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See back page for further information on Regulation S and US investors

The US market for Aim

Target rich, knowledge poor – can the US market reboot Aim?

Mark McGowan

Mark McGowan, managing director of AIM Advisers, Inc., reflects on his tour around the US promoting Aim.

It is an indisputable fact that there is no place on the planet with more small and medium-sized, growth-oriented companies than the US. In and of itself, this does not mean that, properly educated about Aim, those companies for which there is a strong rationale to seek a public listing should flock to London. The other key ingredients are a dysfunctional domestic public market (think SEC and SOX) and a mountainous backlog of venture capital (VC) and private equity (PE) portfolio company investments with few credible exit paths to return capital to the limited partners of what are often closed-end funds where the clock is ticking ever more loudly.

When SOX was enacted during the early part of the last decade, commentators and professional advisers alike foresaw a wave of small and medium-sized US companies listing on Aim and there was even talk of erecting statues of Paul Sarbanes and Michael Oxley in London. From the perspective of those in London, there may have been a wave of US companies listing on Aim, but from a US perspective, five dozen companies dipping their toes across 'The Pond' hardly scratches the surface and amounts to nothing more than a rounding error at the Bureau of Labor and Statistics.

Finding your perfect match

There are 41,300 privately held companies in the US which operate in sectors that are common on Aim and generate annual revenues ranging from $5m to $250m. VC and PE portfolios are stuffed with 20,000 companies. While there is some crossover between the two, logic dictates that there must be several hundred companies for which 1) an Aim listing would make sense, 2) the Nomads and brokers would accept appointment, and 3) institutional and other investors would invest. Obviously, this three-way match must be made for a transaction to take place, but how will it ever happen on a consistent basis or, given the size and diversity of the US and the complexity of a cross-border listing, must it be left to random chance?

Can progress be made from well-appointed offices in London or Santa Monica by filling up the inboxes of US-based professional advisers and VC/PE types or by holding endless conference calls with people who can't understand the accents or by conducting webinars where most people's attention is focused on their BlackBerrys or iPhones? Pretty unlikely, but it sure can keep people busy and, I suppose, at least for a while, gainfully employed.

Promoting Aim around the US

This is why I set out on a 13-week, 12-city tour last fall to market Aim across the US. The four-day, 2,100-mile drive from Santa Monica to Indianapolis, Indiana (the nation's 13th largest city), where the tour began, was a bit painful but from then on it was smooth sailing until I drove back to California from Florida in December for the holidays.

One of the lawyers I met with in Indianapolis said "wow, you're like a rock star", to which my response was "yeah, minus the private jet, the drugs, the alcohol and all the other trappings of the rock 'n' roll lifestyle". I quickly learned that this type of humour doesn't play well in the Midwest so when an accountant in Louisville, Kentucky, made a similar comment, my response was "well, I feel like Muhammad Ali's punching bag". Now that was funny because Ali's hometown is Louisville. At least I caught on in city 2 of 12.

Now back to the main story of how to identify and introduce US companies to Aim.

Wedging oneself into a stranger's office in a 'foreign city' is not easy. Through a combination of leveraging relationships built in London since launching AIM Advisers, Inc. on 15 November 2008 and referencing the 'soft marketing' they have been exposed to via bespoke e-mail newsletters about Aim, and the 60 US companies that are currently listed on Aim, the meeting acceptance rate has been about 25%.

The unfortunate reality in today's world is that most people, even high-level professionals, have short attention spans, particularly when it comes to something they know virtually nothing about and have no idea how, or even if, it may benefit them. The ability to answer, in great detail, the often unasked question of "what's in it for me?" is critical; the short answer is "a lot".

What's in it for the VC/PE types is obvious, but many professional advisers believe they will lose clients if they suggest Aim. While it is unlikely that their clients will discover Aim on their own, by suggesting a sensible avenue for them to raise capital and be able to use public shares to effect acquisitions to grow their businesses, these professional advisers will have stronger clients, which in turn will benefit them. In terms of the transactional and on-going work, an Aim IPO is a significant transaction (think fees) that requires extensive legal, financial and operational due diligence; at least half of which is typically carried out by the company's incumbent US advisers for the obvious reasons of historic knowledge and proximity.

The secret to getting the message across

Face-to-face meetings for an hour across the conference room table where questions can be answered and objections can be overcome in real-time where you have someone's undivided attention is 'the secret'. Being able to convey the essential facts about Aim, the rationale for Aim from a US company's perspective and some guidance as to what a suitable company would look like in the current economic environment arms them with the knowledge to better serve their existing clients, win new clients and/or identify suitable exits and/or growth financing opportunities for their portfolio companies. Building relationships with the companies' most trusted advisers and investors and letting them pre-vet the companies for our mutual benefit, eliminates having to deal with most of the 99% of the 41,300 companies that are unlikely matches for one reason or another.

As one example, a meeting with a law firm led to a four-hour meeting three days later with the founder, president and chief executive of a cleantech company in the same building, which has UK-based assets that may be suitable for an Aim listing. The referring lawyer had received a dozen pieces of my 'soft marketing' over a period of 11 months, but we had had no personal contact until meeting at his office.

In terms of sector focus, it's all things technology, since that's the nature of the economy and IP-based businesses tick the 'growth' and 'international' boxes. In terms of geography, it's greenfield, so any of the top 100 metro areas should be ripe with targets. It's a big country. It can't be covered quickly enough.

Mark McGowan is the founder of AIM Advisers, Inc., a California-based business that helps small and medium-sized, growth-oriented US companies complete IPOs on Aim. Mark was formerly the chief financial officer of DDD Group plc, an Aim-listed company with its corporate headquarters in the US. Mark is a qualified accountant, having previously worked for Grant Thornton in Los Angeles, Hong Kong and throughout the Asia-Pacific region.

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Taxing matters

Jim Wall

Rajesh Sharma

Jim Wall of JH Cohn and Smith & Williamson's Rajesh Sharma advise US companies seeking an Aim listing to be mindful of a number of tax matters.

Raising equity capital on Aim is generally thought to be less costly than on one of the US exchanges, due, among other things, to different regulatory requirements. US companies considering listing on Aim should keep the following tax issues in mind.

Dual resident corporations

In the US, domestic corporations are generally taxed on all income, whether derived inside or outside the US. For US federal income tax purposes, a corporation is treated as domestic if it is incorporated under the laws of the US or of any state. In cases where a domestic corporation is also considered to be tax resident in another jurisdiction (a so-called dual resident corporation or DRC), it will continue to be subject to US federal income tax on its worldwide income. For example, if a domestic corporation becomes tax resident in the UK as a result of being managed and controlled in the UK, the domestic corporation will be fully subject to US federal income tax on its worldwide income. But such DRCs should be able to avoid double tax on their earnings by taking a foreign tax credit for any UK income tax being imposed on non-US source income, subject to the normal foreign tax credit limitations.

US treaty benefits

As a domestic corporation, entitlement to US treaty benefits generally means a company will have to qualify under one of the tests set forth in the applicable limitations on benefits (LOB) clause in the treaty to which the US is party. Most of the LOB tests will allow a domestic corporation to qualify for treaty benefits if its shares are substantially and regularly traded on an established securities market. While the LSE is generally considered to be an established securities market under these tests, there is no clear guidance on whether Aim also conforms.

US taxation on foreign corporations

The US taxes foreign corporations under one of two principal regimes.

1. A net basis tax imposed on income effectively connected with the conduct of a US trade or business (ECI).

2. A gross basis tax (collected via withholding) imposed on certain fixed determinable, annual or period income from US sources that is not ECI. This typically applies to interest, dividends, rents and royalties from US sources. Subject to limited exceptions, dividends paid by domestic corporations will be considered to be from US sources. Therefore, domestic corporations listing shares on Aim should be prepared to withhold US gross basis tax on any dividend payments made to non-US investors. In many cases, the rate of withholding tax will be reduced by applicable treaties. However, there are procedural requirements that must be complied with for the lower treaty rate to apply, which certain Aim investors may not be familiar with. Further, on the basis that the exemption for listed companies (as described above) is not available, the exposure to US withholding taxes on dividends may apply where less than 80% of the shareholders of the Aim company are resident in the UK.

US property assets

Special considerations will apply for domestic corporations whose assets consist primarily of US real property interests. Such corporations may constitute a United States Real Property Holding Corporation (USRPHC). Generally, any gain derived by a non-US shareholder from the disposition of shares in a USRPHC is treated as ECI and subject to a net basis US federal income tax. The buyer is also generally required to withhold 10% of the gross sales proceeds from any sale of the shares of a USRPHC. A principal exception applies for shareholders that hold 5% or less of the outstanding value of a class of shares that is regularly traded on an established securities market. It is likely that Aim would constitute an 'established securities market' assuming it would be considered a 'foreign national securities exchange'. However, there are additional reporting requirements for domestic corporations whose shares are traded on non-US exchanges (as opposed to a US exchange) in order for the shares to be considered regularly traded.

Inversion transactions

If a domestic corporation contemplates a so-called 'inversion transaction' in connection with an Aim listing, it would need to be mindful of section 7874 of the US Internal Revenue Code. This would apply where a non-US company is the holding company of the US group. Prior to the enactment of section 7874, most inversion transactions involved the former shareholders of the domestic corporation exchanging their shares of the domestic corporation for a new non-US parent corporation in a transaction that was taxable to the shareholders.

These transactions allowed newly formed non-US subsidiaries of the new foreign parent company to avoid the US anti-deferral rules that apply to controlled foreign corporations. Section 7874 covers two types of transaction. If, after the inversion, the former shareholders of the domestic corporation own 60% or more of the new foreign parent corporation but less than 80% of the shares of the new foreign parent, the use of certain tax attributes from offsetting the gain recognised in the inversion will be denied for ten years. If, after the inversion, the former shareholders of the domestic corporation own 80% or more of the shares of the new foreign parent corporation, the new foreign parent company will be treated as a domestic corporation.

Shares issued in connection with a public offering undertaken in connection with an inversion will not be counted for the 60% and 80% tests described above. There is an exception to section 7874 if the new foreign parent, along with all its subsidiaries, has substantial business activities in the jurisdiction where the new foreign entity is created or organised when compared with the total business activities of the group. Regulations that set forth standards for determining whether substantial business activities in the foreign parent company's jurisdiction of incorporation should be considered to exist were recently withdrawn. Therefore, careful consideration of the facts and circumstances would be required to determine if the exception to section 7874 may apply.

UK tax considerations

There are several UK tax compliance issues to consider before an Aim listing. The most immediate is the recovery of VAT incurred on costs in obtaining an Aim listing. In general, UK VAT (17.5% from 2010) will be incurred on all professional fees in relation to the listing.

The recovery of VAT can be quite complicated. The UK tax authorities accept that if a company issues new shares to raise capital for its business then the VAT incurred can be reclaimed. This is subject to the company becoming VAT registered, the nature of the business and whether the company makes taxable supplies.

If using a holding company that is not trading as the listing vehicle, a company will not be entitled to recover VAT incurred. Further, the EU Commission has recently launched infringement proceedings against the inclusion of pure holding companies within a VAT group to restrict such companies from recovering VAT incurred.

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Beware IFRS – wherever you are

William A. Kowals

William A. Kowals of JH Cohn discusses the global impact of US isolation on accounting standards.

Every major capital market is moving towards IFRS. Driven by the globalisation of the capital markets and the need for enhanced comparability of financial statements, IFRS is clearly here to stay. Although the US SEC has issued its proposed roadmap for the adoption of IFRS by US registrants, they have yet to fully commit to IFRS.

US-domiciled businesses do not function in a vacuum and the co-existence of different accounting platforms has far-reaching implications for thousands of businesses globally. It affects everything from business practices to valuations, IT and systems, internal controls, key performance indicators, reward structures, disclosures and investor relations – with major resource implications.

The divergence of IFRS and US accounting standards and its impact on business practices demand the attention not only of chief financial officers (CFOs) and finance teams in US-based entities with an international presence, but a whole range of other stakeholders around the world. Customers, vendors, employees, and sources of finance for these companies require greater insight into how these differences can impact business practices.

Divergence

IFRS as issued by the International Accounting Standards Board (IASB) has the momentum of worldwide adoption. In spite of the SEC's proposed roadmap, many reporting entities have chosen to ignore, at least for the present time, the differences between IFRS and US Generally Accepted Accounting Principles (GAAP).

These differences include, but are not limited to, revenue recognition, fair value accounting, accounting for leases, and share-based compensation, all of which can significantly impact business practices.

"The divergence of IFRS and US accounting standards and its impact on business practices demand the attention... of other stakeholders around the world."

The scale of the issue

According to the US Council Foundation, there are over 2,200 US multinational parent companies with a majority interest in a foreign entity. These companies have approximately 24,000 foreign affiliates, which have to report in their home country GAAP or, increasingly, in IFRS, with implications at the parent level. Further, there are approximately 11,000 US entities with a minority stake in one or more non-US entities.

Additionally, there are more than 9,000 entities around the world which own close to 12,000 US entities. Again, all of these entities have to report GAAP and/or IFRS in their home country, and this can have a significant impact at the US entity level.

Furthermore, there are over 800 foreign companies listed on US exchanges and more than 200 US entities listed on foreign exchanges.

IFRS is also highly relevant to US domiciled businesses seeking capital or targeting foreign acquisitions, or those that are targets for acquisition by foreign domiciled businesses.

Who is affected?

CFOs and finance teams, together with their advisers, will shoulder the largest burden in determining how IFRS might impact accounting and reporting systems, debt covenants, budgeting, acquisitions and contingent consideration (i.e. earn-outs), leases, and tax planning. The basis of accounting that will be employed will be critical when negotiating agreements that give consideration to future financial results, eg. debt covenants, contingent rentals, contingent consideration in an acquisition, and employee incentive compensation. Management needs to be aware that existing agreements may need renegotiation, which may require the attention of legal advisers.

But the ramifications go far beyond finance departments and the need for training and new systems to capture the necessary financial accounting and information for reporting under IFRS. Owners and boards of directors should be aware that the basis of accounting used in financial statements could have an impact on business valuations. Significant differences in reported revenues, net income, net assets, and net worth can arise, potentially impacting a valuation.

Audit committees need to be aware that an orderly transition to IFRS will require modifications to accounting policies, IT systems, business processes, and internal controls. They should be discussing the implementation plans for adopting IFRS, if and when required, with their CEOs and CFOs. They should also be aware of any local statutory IFRS financial reporting requirements and related costs.

CEOs and strategic management teams may need to rethink key performance indicators, such as those which may affect loan covenants or employee compensation, if a different basis of accounting is contemplated for use. Further, these stakeholders may need to consider certain commercially sensitive disclosures that may be required by IFRS.

Companies may also need to consider that standard revenue arrangements created to allow for revenue recognition under US GAAP could significantly impact the way an entity goes to market. They may also need to rethink compensation arrangements, both cash incentive compensation and share-based compensation arrangements.

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Last word...

Beating Regulation S

Mark McGowan, AIM Advisers Inc.

There is a popular misconception that US investors cannot participate in Aim IPOs because of the restrictions under Regulation S of the US Securities Act. In reality, 20-25% of the Aim IPO funds raised by US companies have come from US investors where the securities have been issued in accordance with Rule 144A, i.e. sold to ‘qualified institutional buyers’, or in accordance with Reg. D, i.e. sold to ‘accredited investors’ – generally high-net-worth individuals.

Regulation S is by no means insurmountable. Existing investors who don’t want to retain their holdings should exit at the time of the IPO as selling shareholders. In addition, the type of investor the IPO candidate should be looking to attract, who will acquire shares under Regulation S, should not be those looking to sell within the first year.

The company should set up two lines of trading: one for the Reg. S shares and one for the shares that have been in issue for more than a year and are not held by affiliates, i.e. unrestricted shares, so that the IPO investors can add to their positions easily through the market’s electronic trading system, CREST.

For further details on Regulation S, see the article by David Rivera and Stuart Fleet in this issue.

Trans-Atlantic expertise and advice

We are very grateful to our colleagues from fellow Nexia International member firms, JH Cohn LLP and LarsonAllen LLP for their contribution to this edition of *Quoted Business*.

Nexia International is a leading worldwide network of independent accounting and consulting firms. Member firms work closely together to help organisations with an international outlook to maximize and sustain their potential. In all, Nexia International comprises 500 offices in over 100 countries, providing a comprehensive range of accounting, consulting and tax advisory services.

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For further information, visit: www.nexia.com

Forthcoming events

Finance director briefings

London
Thursday 7 October

Bristol
Thursday 20 May
Thursday 21 October

Midlands
Wednesday 26 May

IFRS updates

London
Wednesday 17 March
Wednesday 3 November

Bristol
Thursday 16 September

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10/068 exp: 31/12/2010