

Inside AIM

AIM Company Disclosures relating to Equity Financing Products

Introduction

This Inside AIM article relates to AIM company disclosures arising from equity financing products that involve AIM securities and in which AIM companies or their directors may have an interest. By way of illustration only, these products include:

- equity financing facilities, which provide AIM companies with a line of funding in return for equity;
- equity swap facilities; and
- crowd funding type products targeted at non-institutional investors.

Given the importance of ensuring correct disclosures to the orderly operation of the market, it should be noted that London Stock Exchange has required correction of notifications that had incorrectly disclosed the terms of such equity financing arrangements.

Complexity and Non Standard Terms

Some of these equity financing products may, by their nature, be complex. AIM companies and their nominated advisers should carefully evaluate the structure of, and any non-standard terms contained within, such facilities when considering disclosure requirements to ensure that the information provided is sufficient to give a proper understanding to investors. This may involve

providing more detail than would ordinarily be the case for more commonly used forms of financing and in all cases should properly reflect the substance of the transaction.

As an example, depending on the nature of the product, the AIM company and its nominated adviser should consider whether in respect of company equity financing facilities, the circumstances of a draw-down request (and the notice of such) gives rise to an AIM Rules disclosure obligation in its own right, pursuant to AIM Rules 10 and 11 and not just the actual draw down itself. Matters which may be relevant to such consideration could include:

- the expectation the notification is likely to set regarding the company's funding requirements and its expected use of the facility;
- the size of the draw down; and
- the company's financial position at the time of draw down.

Disclosure of Directors Share Dealings

In addition to equity financing arrangements available to AIM companies, products are available to directors of public companies to enable them to use their own holding in the AIM company as a means of personal financing by way of, for example, share sale and repurchase agreements.

In order to comply with the AIM Rules, it is important that AIM companies carefully evaluate the consequences of these agreements, most particularly in relation to the requirements on the AIM company to correctly and fully disclose directors' dealings under the AIM Rules.

The definition of a "deal" under the AIM Rules is, of course, very broad and encompasses almost any action a director might take in relation to his interest in his holding of securities in that AIM company. Accordingly, the nature of any director's dealings arrangements should be clearly and fully disclosed, most usually at the time that a transfer of an interest in the shares becomes binding (whether that transfer occurs now or in the future).

Further, care should be taken when using terminology to describe the nature of the arrangement to ensure appropriate and sufficient disclosure. For example, share sale and repurchase agreements are distinct from secured loans/share pledges in a number of key areas (in particular, in relation to the point at which an interest in shares is transferred). The transfer of voting rights is also an important consideration that may require disclosure.

After the initial disclosure of any equity financing arrangements, AIM companies should make appropriate updates, for example, where there are changes to director's previously stated intentions or if a director does not meet a margin call that results in that director's holding in the AIM company changing including, for example, losing rights under the relevant agreement.

Systems and Controls for Disclosure

In respect of directors' personal deals, given that an AIM company is often not a party to these equity financing arrangements, an AIM company's agreements with its directors should ensure that it can obtain from directors all information that the AIM company will need in order to comply with its director dealing notification requirements under AIM Rule 17 where a director enters into arrangements

relating to his or her AIM company holding. This is an important element of the requirements of AIM Rule 31.

Consideration should also be given to who within the AIM company is best placed to be involved in the preparation of notifications to the market where key executive directors, or a number of directors, are involved in equity financing arrangements. London Stock Exchange would expect, as part of an AIM company's AIM Rule 31 processes, that appropriate independence is exercised in the preparation of a notification.

AIM companies are advised to consult with their nominated adviser at the earliest opportunity about the proper disclosure of these types of arrangements. Nominated advisers should consult with AIM Regulation if they are in any doubt as to the disclosure requirements.