

Selecting a Securities  
Exchange: NYSE,  
NASDAQ  
and Key European  
Exchange Listing  
Requirements for  
Equities

# Selecting a Securities Exchange: NYSE, NASDAQ, and Key European Exchange Listing Requirements for Equities

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# Selecting a Securities Exchange: NYSE, NASDAQ and Key European Exchange Listing Requirements for Equities

## I. Introduction

In order to list equity securities on a stock exchange, or to maintain a listing once admitted to trading, an issuer must meet certain criteria. These requirements vary from exchange to exchange, and are often detailed and complex.

In this *Client Alert*, we summarize the key listing and maintenance standards for equity securities on the New York Stock Exchange (**NYSE**), the NASDAQ Stock Market (**NASDAQ**) and the following European exchanges: London Stock Exchange Official List, Alternative Investment Market (**AIM**) (London) and EuroMTF (Luxembourg).

## II. NYSE

The NYSE's requirements for initial listing and listing maintenance are set forth below. Note that foreign private issuers may satisfy either the general NYSE listing standards applicable to US domestic issuers or the NYSE's Alternate Listing Standards for foreign private issuers,<sup>1</sup> which are specifically designed for foreign private issuers with a broad, liquid market for their securities in their country of origin.<sup>2</sup>

### A. NYSE Quantitative Listing and Maintenance Standards

#### 1. Quantitative Initial Listing Standards<sup>3</sup>

Under the NYSE's initial listing standards, an issuer typically must meet the following minimum distribution and market value criteria and must meet one of the two financial standards described below.<sup>4</sup>

##### a) Minimum Distribution and Market Value Criteria<sup>5</sup> (must satisfy each of the following requirements)

- Minimum Distribution Requirements:
  - *IPOs*: An IPO issuer must have 400 holders of 100 shares or more<sup>6</sup> and 1.1 million publicly held shares.<sup>7</sup>
  - *Transfer or Quotation*: An issuer seeking to transfer to the NYSE or list its existing securities must have either:
    - 400 holders of 100 shares or more and 1.1 million publicly held shares;<sup>8</sup> or
    - 2,200 total stockholders, an average monthly trading volume of 100,000 shares for the most recent six months and 1.1 million publicly held shares; or
    - 500 total stockholders, an average monthly trading volume of 1 million shares for the most recent 12 months and 1.1 million publicly held shares.<sup>9</sup>

- *Market Value of Publicly Held Shares:* The aggregate market value of publicly held shares must be at least \$60 million for IPO issuers<sup>10</sup> or \$100 million for issuers seeking to transfer to the NYSE or list their existing securities.<sup>11</sup>
- b) Financial Standards (must satisfy one of the following requirements)**
  - *Earnings Test:*<sup>12</sup> An issuer's pre-tax earnings (from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, subject to certain adjustments) must total:
    - at least \$10 million in the aggregate for the last three fiscal years including a minimum of \$2 million in each of the two most recent fiscal years and positive amounts in all three years; or
    - at least \$12 million in the aggregate for the last three fiscal years including a minimum of \$5 million in the most recent fiscal year and \$2 million in the next most recent fiscal year; or
  - Valuation/Revenue Test:<sup>13</sup> An issuer must have:
    - *Valuation/Revenue with Cash Flow Test:* At least \$500 million in global market capitalization, at least \$100 million in revenues during the most recent 12-month period, and at least \$25 million aggregate cash flows for the last three fiscal years and with positive cash flows in all three fiscal years (subject to certain adjustments); or
    - *Pure Valuation/Revenue Test:* At least \$750 million in global market capitalization, and at least \$75 million in revenues during the most recent fiscal year.

## 2. Initial Alternate Listing Standards for Foreign Private Issuers

Under the NYSE's initial Alternate Listing Standards, a foreign private issuer typically must meet the following minimum distribution and market value criteria and must meet one of the two financial standards described below.<sup>14</sup>

- a) Minimum Distribution and Market Value Criteria<sup>15</sup> (must satisfy each of the following requirements)**
  - *Minimum Distribution Requirements:* A foreign private issuer must have:
    - 5,000 worldwide holders of 100 shares or more; and
    - 2.5 million shares held publicly worldwide.<sup>16</sup>
  - *Market Value of Publicly Held Shares:*<sup>17</sup> The aggregate worldwide market value of publicly held shares of the foreign private issuer must be at least \$100 million.
- b) Financial Standards (must satisfy one of the following requirements)**
  - *Earnings Test:*<sup>18</sup> The pre-tax earnings (from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, subject to certain adjustments) of the foreign private issuer must be at least \$100 million in the aggregate for the last three fiscal years, including a minimum of \$25 million in each of the most recent two fiscal years; or

- *Valuation/Revenue Test:*<sup>19</sup> A foreign private issuer must have:
  - *Valuation/Revenue with Cash Flow Test:* At least \$500 million in global market capitalization, at least \$100 million in revenues during the most recent 12-month period, and \$100 million in the aggregate cash flows for the last three fiscal years including \$25 million in each of the two most recent fiscal years (subject to certain adjustments); or
  - *Pure Valuation/Revenue Test:* At least \$750 million in global market capitalization and \$75 million in revenues during the most recent fiscal year.

### 3. Quantitative Maintenance Requirements

In order to maintain its listing on the NYSE, a US domestic issuer or a foreign private issuer must meet certain quantitative maintenance standards which are summarized below.

#### a) Minimum Distribution and Financial Standards

- *Minimum Distribution Requirements:*<sup>20</sup> The NYSE may promptly initiate suspension and delisting procedures against an issuer if:
  - the total number of stockholders is less than 400;
  - the total number of stockholders is less than 1,200 and the average monthly trading volume for the most recent 12 months is less than 100,000 shares; or
  - the number of publicly held shares is less than 600,000.<sup>21</sup>
- *Minimum Financial Standards:*<sup>22</sup> The NYSE will consider an issuer to be below compliance (and thus eligible for suspension and delisting) if:
  - an issuer qualified to list under the Earnings Test, and its average global market capitalization over a consecutive 30 trading-day period is less than \$75 million and, at the same time, total stockholders' equity is less than \$75 million;
  - an issuer qualified to list under the Valuation/Revenue with Cash Flow Test and:
    - average global market capitalization over a consecutive 30 trading-day period is less than \$250 million and, at the same time, total revenues are less than \$20 million over the last 12 months (unless the issuer qualifies as an original listing under one of the other original listing standards); or
    - average global market capitalization over a consecutive 30 trading-day period is less than \$75 million; and
  - an issuer qualified to list under the Pure Valuation/Revenue Test and:
    - its average global market capitalization over a consecutive 30 trading-day period is less than \$375 million and, at the same time, its total revenues are less than \$15 million over the last 12 months (unless the issuer qualifies as an original listing under one of the other original listing standards); or

- its average global market capitalization over a consecutive 30 trading-day period is less than \$100 million.

When applying the market capitalization test in any of the financial standard tests above, the NYSE will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock issuable upon conversion of another outstanding equity security. The NYSE deems these securities to be reflected in market value to such an extent that the security is the "substantial equivalent" of common stock. In this regard, the NYSE will only consider securities that are (i) publicly traded (or quoted), or (ii) convertible into a publicly traded (or quoted) security.

Notwithstanding the financial standard maintenance tests above, and regardless of the original financial standards under which an issuer listed, the NYSE will promptly initiate (rather than consider initiating) suspension and delisting procedures against an issuer if the issuer is determined to have an average global market capitalization of less than \$25 million throughout a consecutive 30 trading-day period. Additionally, the NYSE will promptly initiate suspensions and delisting procedures against an issuer if an issuer was originally listed based on financial statements covering a period of nine to 12 months and the issuer does not qualify under the regular standard at the end of such fiscal year or qualify at such time for original listing under another standard.

#### **b) Price Criteria<sup>23</sup>**

An issuer will be considered to be below compliance standards and accordingly may be subject to suspension and delisting if the average closing price of its listed security is less than \$1.00 over a consecutive 30 trading-day period. Once notified that the issuer is below compliance, the issuer has six months to bring its share price and average share price back above \$1.00. The issuer must, however, notify the NYSE, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. A failure to satisfy the minimum price requirement will be deemed cured if the price promptly exceeds \$1.00 per share, and the price remains above \$1.00 per share for at least the following 30 trading days.<sup>24</sup>

#### **4. Other Maintenance Requirements<sup>25</sup>**

The NYSE may in its sole discretion subject an issuer to suspension and delisting on a number of additional grounds, including:<sup>26</sup>

- a substantial reduction in operating assets and/or scope of operations;
- the failure of an issuer to make timely, adequate and accurate disclosures of information to its shareholders and the investing public; and
- the failure to observe good accounting practices in reporting of earnings and financial position.

#### **B. NYSE Corporate Governance Requirements**

In addition to the quantitative listing and maintenance standards detailed above, an issuer must meet certain corporate governance standards for initial listing and maintenance of listing. As described below, foreign private issuers are permitted to follow home country practice in lieu of most of the NYSE corporate governance requirements.

## 1. Majority of Independent Directors<sup>27</sup>

A majority of the issuer's board of directors must consist of independent directors. A director will qualify as "independent" only if the board affirmatively determines that the director has no material relationship with the company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).<sup>28</sup> Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships.

However, ownership of even a significant amount of stock (*i.e.*, 10 percent), by itself, is not a bar to an independence finding.

A company must disclose these determinations in its annual proxy statement or, if the company does not file an annual proxy statement, in its annual report filed with the SEC. A board may adopt and disclose categorical standards to assist it in making determinations of independence and may make only general disclosure if a director meets these standards.

In addition, a director cannot be independent unless at least three years (except as provided in the transition rule below) have passed since:

- the director (or an immediate family member) was an employee or executive officer of the company;
- the director (or an immediate family member) received more than \$100,000 per year in direct compensation from the company, other than director and committee fees and pension or other forms of deferred compensation for prior service not contingent on continued service;
- the director was affiliated with or employed by (or any immediate family member was affiliated with or employed in a professional capacity by) a present or former external auditor;
- the director (or any immediate family member) was employed as an executive officer of another company whose compensation committee includes an executive of the company; and
- any single fiscal year when a company of which the director is an executive officer or an employee (or of which the director's immediate family member is an executive officer) made payments to, or received payments from, the listed company for property or services in an amount exceeding the greater of \$1 million or two percent of such other company's consolidated gross revenues.

An "immediate family member" is defined to include a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than a domestic employee) who shares such person's home. References to the "company" would include any parent or subsidiary in a consolidated group with the company.

## 2. Executive Session<sup>29</sup>

Non-management directors must meet at regularly scheduled executive sessions without management and, if any such directors are not independent under the standards described above, an executive session of solely independent directors must be scheduled at least once a year.

### 3. Nominating/Corporate Governance Committee<sup>30</sup>

Companies must have a nominating/corporate governance committee composed entirely of independent directors. That committee must have a written charter that:

- addresses the committee's purpose and responsibilities, which must include identifying and selecting or recommending director nominees, developing and recommending corporate governance principles and overseeing the evaluation of the board and management; and
- provides for an annual performance evaluation of the committee.

The nominating/corporate governance committee charter should also address:

- committee member qualifications;
- committee member appointment and removal;
- committee structure and operations (including the authority to delegate to subcommittees); and
- committee reporting to the board.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors, the selection and nomination of such directors need not be subject to the nominating committee process.

### 4. Compensation Committee<sup>31</sup>

Companies must have a compensation committee composed entirely of independent directors. That committee must have a written charter that:

- addresses the committee's purpose and responsibilities, which at a minimum must include the direct responsibility to:
  - review and approve corporate goals and objectives relevant to CEO compensation; evaluate the CEO's performance; and to determine and approve (either as a committee or together with other independent directors) the CEO's compensation level based on this evaluation;
  - make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans that are subject to board approval; and
  - produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or annual report filed with the SEC; and
- provides for an annual performance evaluation of the compensation committee.

The compensation committee charter should also address committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees) and committee reporting to the board.



## 5. Audit Committee

### a) Sarbanes-Oxley<sup>32</sup>

Companies must have an audit committee that satisfies the independence and other requirements of Exchange Act Rule 10A-3 (implementing Section 301 of Sarbanes-Oxley, including the duties and responsibilities of the audit committee described in part (b) of this section and the requirements for independence of the audit committee members described in part (c) of this section).

### b) Charter<sup>33</sup>

The audit committee must have a written charter that addresses:

- the committee's purpose, which at a minimum must be to:
  - assist board with oversight of (i) the integrity of the company's financial statements, (ii) the company's compliance with legal and regulatory requirements, (iii) the independent auditor's qualifications and independence, and (iv) the performance of the company's internal audit function and independent auditors; and
  - prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement;
- an annual performance evaluation of the audit committee; and
- the duties and responsibilities of the audit committee, which at a minimum must include those set out in Exchange Act Rule 10A-3(b)(2), (3), (4) and (5) (concerning responsibilities relating to (i) registered public accounting firms; (ii) complaints relating to accounting, internal accounting controls or auditing matters; (iii) authority to engage advisors; and (iv) funding as determined by the audit committee),<sup>34</sup> as well as to:
  - at least annually, obtain and review a report by the independent auditor describing (i) the firm's internal quality-control procedures; (ii) any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional bodies, within the preceding five years respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (iii) all relationships between the independent auditor and the company (to assess the auditor's independence);
  - discuss the company's:
  - annual audited financial statements and quarterly unaudited financial statements with management and the independent auditor, including the company's MD&A disclosures;
  - earnings press releases;
  - financial information and earnings guidance provided to analysts and rating agencies;
  - policies with respect to risk assessment and risk management;

- meet separately, periodically, with management, with internal auditors and with independent auditors;
- review with the independent auditors any audit problems or difficulties and management's response;
- set clear hiring policies for employees or former employees of the independent auditors; and
- report regularly to the board.

**c) Composition<sup>35</sup>**

The audit committee must have a minimum of three members, each of whom is "independent" and "financially literate" and at least one of whom has accounting or financial management expertise. Such qualifications are left to the company's board to determine based on its business judgment.<sup>36</sup> If an audit committee member simultaneously serves on the audit committees of more than three public companies, and the company does not limit the number of audit committees on which its audit committee members serve, then in each case the board must determine that such simultaneous service would not impair the ability of such member to serve effectively on its audit committee. The company must also disclose that determination in the company's annual proxy statement or, if the company does not file an annual proxy statement, in its annual report filed with the SEC.

In addition to meeting the NYSE's independence rules applicable to directors, audit committee members must meet the independence requirements of Exchange Act Rule 10A-3 that, subject to certain limited exceptions, (i) such member be a member of the board of directors of the issuer, (ii) such member not (other than in his or her capacity as a member of the board of directors, the audit committee or another board committee) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof and (iii) such member not be an affiliated person<sup>37</sup> of the issuer or any subsidiary thereof<sup>38</sup>.

**6. Internal Audit<sup>39</sup>**

Companies must have an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. This function may be outsourced to a third-party service provider other than the company's independent auditor.

**7. Shareholder Approval of Certain Transactions**

Shareholder approval is required for each of the following material transactions, with certain exceptions:<sup>40</sup>

- the implementation of equity-compensation plans and material revisions thereto;<sup>41</sup>
- an issuance of more than 1 percent of the outstanding common stock of the issuer (measured either by amount of shares or voting power) to a related party (directors, officers or substantial security holders of the issuer) or to a subsidiary, affiliate or company owned by such related party;

- an issuance of more than 20 percent of the outstanding common stock of the issuer (measured either by amount of shares or voting power); and<sup>42</sup>
- an issuance that will result in a change of control of the issuer.

#### **8. Corporate Governance Guidelines<sup>43</sup>**

Companies must adopt and disclose corporate governance guidelines. Key areas that must be addressed include:

- director qualification standards;
- director responsibilities;
- director access to management and, as necessary and appropriate, independent advisors;
- director compensation;
- director orientation and continuing education;
- management succession; and
- annual performance evaluation of the board.

The company must state in its annual proxy statement or, if the company does not file an annual proxy statement, in its annual report filed with the SEC that the foregoing information is available on its Web site, and is available in print to any shareholder who requests it.

#### **9. Code of Business Conduct and Ethics<sup>44</sup>**

Companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees and promptly disclose any waivers of the code for directors or executive officers. This code should address, among other things:

- conflicts of interest;
- corporate opportunities;
- confidentiality;
- fair dealing;
- protection and use of company assets;
- compliance with laws, rules and regulations (including insider trading laws); and
- encouraging the reporting of illegal or unethical behavior.

The code must contain compliance standards and procedures to facilitate its effective operation and must require that any waiver of the code for executive officers or directors be made only by the board or a board committee and must be promptly disclosed to shareholders.

The company must state in its annual proxy statement or, if the company does not file an annual proxy statement, in its annual report filed with the SEC that the foregoing information is available on its Web site, and is available in print to any shareholder who requests it.

#### **10. Certification Requirements<sup>45</sup>**

Each year the CEO must certify to the NYSE that he or she is not aware of any violation by the company of NYSE corporate governance listing standards. In addition, the CEO must promptly notify the NYSE in writing after any executive officer of the company becomes aware of any material non-compliance with any NYSE corporate governance listing standard.

#### **11. Written Affirmation<sup>46</sup>**

In addition to the CEO certification mentioned above, an officer of the company must provide to the NYSE, within approximately 30 days after the annual shareholders' meeting, a wide-ranging "written affirmation" with exhibits that describes the company's compliance or non-compliance with the NYSE's corporate governance requirements. Besides the annual written affirmation, an interim written affirmation will be required:

- each time a director is added to or removed from the board;
- if any change is made to the composition of the audit, nominating or compensation committee; and
- if the required responsibilities of the nominating/corporate governance committee and/or the compensation committee have been reallocated to any other board committees, and any changes to the composition of those committees occurs.

### **C. NYSE Communication and Notification Requirements**

The NYSE expects any listed company to release quickly any information which might reasonably be expected materially to affect the market for its securities.<sup>47</sup> In addition, a listed company should act promptly to dispel any unfounded rumors that produce unusual market activity or price variations.<sup>48</sup>

When announcement of a material event or a statement dealing with a rumor is made shortly before or during market hours (9:30 a.m. to 5:00 p.m., Eastern Standard Time), the issuer's NYSE representative should be notified by telephone at least 10 minutes prior to the release of the announcement to the news media.<sup>49</sup> This will allow the NYSE to determine if a trading halt should be imposed.

### **D. Corporate Governance Requirements for Foreign Private Issuers**

Foreign private issuers are permitted to follow home country practice in lieu of the NYSE's corporate governance standards, other than the NYSE's requirements that it must: (i) have an audit committee that meets the requirements of Exchange Act Rule 10A-3 and (ii) provide prompt notification from its CEO of material non-compliance with the applicable provisions of the NYSE's corporate governance rules.<sup>50</sup> A foreign private issuer must also provide an annual written affirmation to the NYSE.<sup>51</sup>

Whether a listed foreign private issuer follows the NYSE corporate governance standards or its home country practice, it must disclose any significant ways in which its corporate governance

practices differ from those followed by US domestic companies under NYSE listing standards.<sup>52</sup> A detailed and cumbersome analysis is not required, and instead a brief, general summary of significant differences is sufficient. An issuer may provide this disclosure either on its Web site (provided it is in English and accessible from the United States) and/or in its annual report distributed to shareholders in the United States. If the disclosure is only made available on the company's Web site, its annual report must state this fact and must provide the Web address at which the information can be obtained.

### III. NASDAQ

There are three distinct markets within NASDAQ: the NASDAQ Global Market (**NGM**), the newly-created NASDAQ Global Select Market (**NGSM**)<sup>53</sup> and the NASDAQ Capital Market (**NCM**). The NGSM mandates the highest initial listing requirements of any market in the world, while its maintenance requirements are identical to those of the NGM. The NGM, in turn, has more stringent quantitative listing and maintenance requirements than does the NCM. Except as noted below, the quantitative listing and maintenance criteria applicable to non-Canadian foreign private issuers for the NGM, NGSM and NCM are identical to those of US domestic and Canadian issuers. Foreign private issuers (including Canadian issuers) may, however, elect to follow home country practice in lieu of compliance with the NASDAQ corporate governance requirements (other than as described below).

#### A. NGM Quantitative Listing and Maintenance Standards

##### 1. Quantitative Initial Listing Standards

An issuer, whether a US domestic issuer or a foreign private issuer, generally must meet the following standards to be listed on the NGM.

###### a) Entry Standard 1

An issuer must have:

- annual pre-tax income from continuing operations of at least \$1 million in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;<sup>54</sup>
- at least 1.1 million publicly held shares;<sup>55</sup>
- market value of publicly held shares (*i.e.*, excluding shares held by directors, officers and 10 percent shareholders)<sup>56</sup> of at least \$8 million;<sup>57</sup>
- bid price per share of \$5 or more;<sup>58</sup>
- stockholders' equity of at least \$15 million;<sup>59</sup>
- at least 400 round lot shareholders (*i.e.*, a holder of a normal unit of trading);<sup>60</sup> and
- at least three registered and active market makers with respect to the security.<sup>61</sup>

###### b) Entry Standard 2

An issuer must have:

- stockholders' equity of at least \$30 million;<sup>62</sup>

- at least 1.1 million publicly held shares;<sup>63</sup>
- market value of publicly held shares of at least \$18 million;<sup>64</sup>
- bid price per share of \$5 or more;<sup>65</sup>
- at least three registered and active market makers with respect to the security;<sup>66</sup>
- a two-year operating history;<sup>67</sup> and
- at least 400 round lot shareholders.<sup>68</sup>

**c) Entry Standard 3**

An issuer must have:

- at least 1.1 million publicly held shares;<sup>69</sup>
- market value of publicly held shares of at least \$20 million;<sup>70</sup>
- a bid price per share of \$5 or more;<sup>71</sup>
- at least four registered and active market makers with respect to the security;<sup>72</sup>
- at least 400 round lot shareholders;<sup>73</sup> and
- either a market capitalization of \$75 million<sup>74</sup> or total assets and total revenue of \$75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.<sup>75</sup>

**2. Quantitative Maintenance Requirements**

Once an issuer has been listed on the NGM, it must continue to satisfy one of the following maintenance standards.

**a) Maintenance Standard 1**

An issuer must maintain:

- at least 750,000 publicly held shares;<sup>76</sup>
- market value of publicly held shares of at least \$5 million;<sup>77</sup>
- stockholders' equity of at least \$10 million;<sup>78</sup>
- at least 400 round lot shareholders;<sup>79</sup>
- a bid price per share of \$1 or more;<sup>80</sup> and
- at least two registered and active market makers with respect to the security.<sup>81</sup>

**b) Maintenance Standard 2**

An issuer must maintain:

- at least 1.1 million publicly held shares;<sup>82</sup>
- market value of publicly held shares of at least \$15 million;<sup>83</sup>
- a bid price per share of \$1 or more;<sup>84</sup>
- at least 400 round lot shareholders;<sup>85</sup>
- at least four registered and active market makers with respect to the security;<sup>86</sup> and
- either a market value of listed securities of \$50 million<sup>87</sup> or total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.<sup>88</sup>

**c) Failure to Meet Maintenance Requirements**

A failure to meet the maintenance requirements will be determined to exist only if the deficiency continues for a period of either 10 or 30 consecutive business days (depending on the requirement with respect to which there is a deficiency), and an issuer will have a period after notification by NASDAQ of the failure in which to achieve compliance with the applicable requirement.<sup>89</sup>

**B. NGSM Quantitative Listing and Maintenance Standards**

**1. Quantitative Initial Listing Standards<sup>90</sup>**

An issuer that satisfies all of the requirements for listing on the NGM will be eligible for listing on the NGSM if it meets the additional liquidity and financial requirements described below. Each October, NASDAQ will review the qualifications of all securities listed on the NGM to determine if any security meets the initial listing requirements of the NGSM. Securities meeting the requirements of the NGSM at such time will be transferred to the NGSM in January of the following year.<sup>91</sup> In addition, an issuer of a security listed on either the NGM or NCM may, at any time, apply to transfer the respective security to the NGSM.<sup>92</sup>

**a) Liquidity Requirements**

- The security must demonstrate either:
  - a minimum of 550 beneficial shareholders and an average monthly trading volume during the prior 12 months of at least 1.1 million shares per month;<sup>93</sup> or
  - a minimum of 2,200 beneficial shareholders;<sup>94</sup> or
  - a minimum of 450 beneficial shareholders where the issuer lists in connection with a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws, or where the issuer is an affiliate of another company listed on the NGSM.<sup>95</sup>

In computing each of the above, the number of beneficial shareholders excludes shares held by an officer, director or 10 percent shareholder of the issuer.<sup>96</sup>

- The security must have 1.25 million publicly held shares;<sup>97</sup> and
- The publicly held shares must have either:
  - a market value of at least \$110 million;<sup>98</sup> or
  - a market value of at least \$100 million so long as the issuer has stockholders' equity of at least \$110 million;<sup>99</sup> or
  - a market value of at least \$70 million where the issuer is listing in connection with an initial public offering or where the issuer is an affiliate of, or a spin-off from, another company listed on the NGSM.<sup>100</sup>

**b) Financial Requirements**

The issuer must meet one of the following financial standards:

- Standard 1:
  - aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years;<sup>101</sup> and
  - positive income from continuing operations before income taxes in each of the prior three fiscal years;<sup>102</sup> and
  - at least \$2.2 million in income from continuing operations before income taxes in each of the two most recent fiscal years.<sup>103</sup>
- Standard 2
  - aggregate cash flows of at least \$27.5 million over the prior three fiscal years;<sup>104</sup> and
  - positive cash flows in each of the prior three fiscal years;<sup>105</sup> and
  - both average market capitalization of at least \$550 million over the prior 12 months and total revenue of at least \$110 million in the previous fiscal year.<sup>106</sup>
- Standard 3
  - average market capitalization of at least \$850 million over the prior 12 months;<sup>107</sup> and
  - total revenue of at least \$90 million in the previous fiscal year.<sup>108</sup>

In addition, other than an issuer listed on the NGM that transfers its listing to the NGSM, the issuer shall have a minimum bid price for the security of \$5 per share.<sup>109</sup>



## 2. Quantitative Maintenance Requirements

Once an issuer has been listed on the NGSM, it is subject to the same maintenance standards as issuers listed on the NGM, as described above.

### C. NCM Quantitative Listing and Maintenance Standards

#### 1. Quantitative Initial Listing Standards

For initial listing on NCM, an issuer must have:

- either:
  - stockholders' equity of at least \$5 million, a market value of publicly held shares of at least \$15 million and an operating history of at least two-years;<sup>110</sup> or
  - stockholders' equity of at least \$4 million, a market value of listed securities (*i.e.*, securities listed on NASDAQ or another national securities exchange<sup>111</sup>) of at least \$50 million and a market value of publicly held shares of at least \$15 million;<sup>112</sup> or
  - stockholders' equity of at least \$4 million, net income from continuing operations of at least \$750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years and a market value of publicly held shares of at least \$5 million;<sup>113</sup>
- at least 300 round lot shareholders;<sup>114</sup>
- at least 1 million publicly held shares;<sup>115</sup>
- a minimum bid price of \$4 per share;<sup>116</sup>
- at least three registered and active market makers;<sup>117</sup>
- in the case of ADRs, at least 400,000 issued.<sup>118</sup>

#### 2. Maintenance Requirements

For continued listing on NCM, an issuer must maintain:

- either (i) stockholders' equity of at least \$2.5 million, (ii) a market value of listed securities of at least \$35 million or (iii) net income from continuing operations of at least \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;<sup>119</sup>
- at least 300 round lot shareholders;<sup>120</sup>
- at least 500,000 publicly held shares;<sup>121</sup>
- a market value of publicly held shares of at least \$1 million;<sup>122</sup>
- a minimum bid price of \$1 per share;<sup>123</sup> and

- at least three registered and active market makers.<sup>124</sup>

As is the case for securities listed on the NNM, a failure to meet the continued listing requirements will be determined to exist only if the deficiency continues for a period of either 10 or 30 consecutive business days (depending on the requirement with respect to which there is a deficiency)<sup>125</sup> and in each case an issuer will have a period after notification by NASDAQ of the failure in which to achieve compliance with the applicable requirement.

#### D. NASDAQ Corporate Governance Requirements

In addition to the quantitative maintenance criteria set forth above, issuers of NASDAQ-listed securities (whether on the NCM or NNM) must comply with the NASDAQ rules relating to corporate governance described below.<sup>126</sup> As described below, a listed foreign private issuer is permitted to follow home country practice in lieu of most of NASDAQ's corporate governance standards.

##### 1. Majority of Independent Directors

A majority of the issuer's board of directors must consist of independent directors.<sup>127</sup> The board of directors must affirmatively determine that the director has no relationship with the issuer that would impair his or her independence,<sup>128</sup> and the issuer must disclose in its annual proxy (or, if it does not file a proxy, on its annual report on Form 10-K (or Form 20-F for foreign private issuers)) filed with the SEC those directors that the board of directors has determined to be independent.<sup>129</sup> Ownership of an issuer's stock, by itself, is not a bar to an independence finding.<sup>130</sup>

The NASDAQ rules define an independent director to mean a person other than an executive officer or employee of the issuer or its parent or subsidiaries or any other individual having a relationship, which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.<sup>131</sup>

A director cannot be independent who:<sup>132</sup>

- is, or at any time in the past three years was, employed by the issuer or any parent or subsidiary (as defined below) of the issuer,<sup>133</sup>
- has accepted, or who has a family member (as defined below) who has accepted, any compensation from the issuer or any parent or subsidiary of the issuer in excess of \$120,000 during the any period of 12 consecutive months within the preceding three fiscal years,<sup>134</sup> other than:
  - compensation for director or board committee service;
  - compensation paid to a family member who is an employee (other than an executive officer) of the issuer or a parent or subsidiary of the issuer; or
  - benefits under a tax-qualified retirement plan, or non-discretionary compensation.
- is a family member of an individual who is, or at any time during the past three years was, employed by the issuer or any parent or subsidiary of the issuer as an executive officer;

- is, or has a family member who is, a partner in, or controlling shareholder or executive officer of, any organization to which the issuer made, or from which the issuer received, payments for property or services in the current or any of the past three fiscal years that exceed 5 percent of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than:
  - payments arising solely from investments in the issuer's securities; or
  - payments under non-discretionary charitable contribution matching programs.
- is, or has a family member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the issuer serves on the compensation committee of such other entity; or
- is, or has a family member who is, a current partner of the issuer's outside auditor, or was a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during any of the past three years.

For these purposes, a "parent or subsidiary" covers entities that the issuer controls and consolidates with its financial statements as filed with the SEC (but not if the issuer reflects such entity solely as an investment in its financial statements).<sup>135</sup> A "family member" is defined to include a person's spouse, parents, children, siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.<sup>136</sup>

## 2. Meetings of Independent Directors

Independent directors must have regularly scheduled meetings at which only independent directors are present.<sup>137</sup> Those meetings should occur not less than twice per year.<sup>138</sup>

## 3. Director Nominees<sup>139</sup>

Director nominees must be selected, or recommended for the board of director's selection, either by a majority of the independent directors or by a nominations committee comprised solely of independent directors. Each issuer must certify that it has adopted a formal written charter or board resolution addressing the nominations process (and such related matters as may be required under the federal securities laws). Under certain circumstances a single non-independent director, who is not a current officer or employee (or family member of an officer or employee), may serve for up to two years on an independent nominations committee comprised of at least three members. Independent director oversight of director nominations does not apply in cases where the right to nominate a director belongs legally to a third party (although the requirement that the nominations committee be composed entirely of independent directors remains). This rule also does not apply if the issuer is subject to a binding obligation inconsistent with the rule, and such obligation predates November 2003.

## 4. Executive Compensation<sup>140</sup>

Compensation of the CEO and all other executive officers must be determined either by a majority of the independent directors or by a compensation committee comprised solely of independent directors. The CEO may not be present during voting or deliberations concerning his/her compensation. Under certain circumstances a single non-independent director, who is not a current officer or employee (or family member of an officer or

employee), may serve for up to two years on an independent compensation committee comprised of at least three members.

## 5. Audit Committees

### a) Sarbanes-Oxley<sup>141</sup>

An issuer's audit committee must satisfy the independence and other requirements of Exchange Act Rule 10A-3 (implementing Section 301 of Sarbanes-Oxley, including the responsibility and authority of the audit committee described in part (b) of this section and the requirements for independence of the audit committee members described in part (c) of this section).

### b) Charter<sup>142</sup>

Each issuer must certify that it has a written audit committee charter and that the audit committee has reviewed and assessed the adequacy of the audit committee charter on an annual basis. The charter must specify:

- the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
- the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the issuer, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;
- the committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer; and
- the specific audit committee responsibilities and authority necessary to comply with the audit committee requirements of Sarbanes-Oxley concerning responsibilities relating to: (i) registered public accounting firms; (ii) complaints relating to accounting, internal accounting controls or auditing matters; (iii) authority to engage advisors; and (iv) funding as determined by the audit committee.<sup>143</sup>

### c) Composition<sup>144</sup>

The issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must:

- be independent, within the meaning of the NASDAQ director independence rules discussed above;
- meet the requirements for audit committee independence, set out in Exchange Act Rule 10A-3(b)(1), that, subject to certain limited exceptions, (i) such member be a member of the board of directors of the issuer, (ii) such member not (other than in his or her capacity as a member of the board of directors, the audit committee or another board committee) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary

thereof and (iii) such member not be an affiliated person<sup>145</sup> of the issuer or any subsidiary thereof;

- not have participated in the preparation of the financial statements of the issuer or any current subsidiary of the issuer at any time during the past three years; and
- be able to read and understand fundamental financial statements, including an issuer's balance sheet, income statement and cash flow statement, at the time of appointment.

In addition, each issuer must certify that it has, and will continue to have, one member of the audit committee who has past employment experience in finance or accounting or other comparable experience or background which results in financial sophistication. (A director who qualifies as an audit committee financial expert under Item 401(h) of Regulation S-K or Item 401(e) of Regulation S-B will be deemed to meet this financial sophistication requirement.)<sup>146</sup> Under certain circumstances a single director who meets the independence requirements of Exchange Act Rule 10A-3(b)(1) but not the independence requirements of the NASDAQ rules, who is not a current officer or employee (or family member of an officer or employee), may serve for up to two years on an audit committee. Such a person may not, however, chair the audit committee.

#### **d) Cure Periods<sup>147</sup>**

The NASDAQ rules provide for certain cure periods if an audit committee member ceases to be independent for reasons outside the member's reasonable control, or if there is a vacancy on the audit committee.

### **6. Shareholder Meetings<sup>148</sup>**

An issuer must hold an annual meeting of shareholders within one year of the end of each fiscal year and provide notice of that meeting to NASDAQ.

### **7. Quorum<sup>149</sup>**

An issuer must provide for a quorum of at least 33 percent of the outstanding shares of the issuer's common voting stock, as specified in its by-laws for any meeting of the holders of its common stock.

### **8. Proxy Solicitation<sup>150</sup>**

An issuer must solicit proxies and provide proxy statements for all meetings of shareholders and must provide copies of such proxy solicitation to NASDAQ. Note, however, that foreign private issuers are not subject to the US proxy rules.

### **9. Conflicts of Interest<sup>151</sup>**

An issuer must conduct an appropriate review of all related party transactions for potential conflict of interest situations on an ongoing basis, and all such transactions must be approved by the audit committee or another independent committee of the board of directors. A "related-party transaction" for this purpose means those transactions required to be disclosed pursuant to Item 404 of Regulation S-K or Item 404 of Regulation S-B (and includes transactions and loans between management and the issuer for amounts of more than \$120,000) or, in the case of foreign private issuers, pursuant to Item 7.B of Form 20-F (and includes transactions and loans between the issuer and enterprises under common

control of the issuer, associates, individuals owning an interest in the voting power of the company that gives them significant influence or key management).

#### 10. Shareholder Approval of Certain Transactions<sup>152</sup>

An issuer must obtain shareholder approval prior to the issuance of securities:

- when a stock option or purchase plan is to be established or materially amended,<sup>153</sup> subject to limited exceptions;<sup>154</sup>
- when the issuance or potential issuance will result in a change of control of the issuer;
- in connection with the acquisition of the stock or assets of another company: (i) if any director, officer or substantial shareholder of the issuer has a 5 percent or greater interest (or such persons collectively have a 10 percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction, and the issuance of securities could result in a 5 percent or greater increase in outstanding common shares or voting power; or (ii) where, other than in a public offering for cash: (a) the common stock to be issued has or will have upon issuance voting power equal to 20 percent or more of the voting power outstanding before the issuance of the stock or convertible securities, or (b) the number of shares of common stock to be issued is or will be 20 percent or more of the number of shares of common stock outstanding before the issuance of the stock or convertible securities; and
- in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock): (i) at a price less than the greater of book or market value which together with sales by certain affiliates of the issuer equals 20 percent or more of the common stock or voting power outstanding before the issuance or (ii) equal to 20 percent or more of the common stock or voting power outstanding before the issuance for less than the greater of book or market value of the stock.

An exception may be made upon application to NASDAQ when a delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and the audit committee (or other comparable body) expressly approves reliance on this exception.

Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used for any calculation under the shareholder approval requirement. Shareholder approval must be obtained prior to the issuance of certain private financing instruments generally in the form of convertible securities under which the number of shares that will be issued is uncertain until the conversion occurs, unless the instrument contains certain features (potentially a cap on the number of shares that can be issued upon conversion or a floor on the conversion price) and the issuance will not result in a change of control.<sup>155</sup>

Shareholder approval is not required for a public offering. Generally, any securities offering registered with the SEC and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules.<sup>156</sup>

### **11. Listing Agreement<sup>157</sup>**

An issuer must execute a Listing Agreement in the form designated by NASDAQ.

### **12. Auditor Registration<sup>158</sup>**

An issuer must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley act of 2002.<sup>159</sup>

### **13. Code of Conduct<sup>160</sup>**

An issuer must adopt a code of conduct applicable to all directors, officers and employees and make it publicly available. A code of conduct satisfying this requirement must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder. Also, the code must provide for an enforcement mechanism. Any waivers of the code for directors or executive officers must be approved by the issuer's board and must be disclosed on a Form 8-K (or Form 6-K for foreign private issuers).

### **14. Notification of Non-Compliance<sup>161</sup>**

An issuer must provide NASDAQ with prompt notification after an executive officer of the issuer becomes aware of material noncompliance by the issuer of the corporate governance standards required by the NASDAQ rules.

### **15. Annual Corporate Governance Certification**

An issuer must make an annual certification regarding various aspects of corporate governance, in a form prescribed by NASDAQ.<sup>162</sup>

## **E. NASDAQ Communication and Notification Requirements**

Except in "unusual circumstances," NASDAQ requires an issuer to make prompt disclosure to the public through any Regulation FD-compliant method of disclosure of material information that would reasonably be expected to affect the value of its securities or influence investors' decisions.<sup>163</sup> The NASDAQ corporate governance rules specifically require a public announcement of the receipt of an audit opinion that contains a "going concern" qualification.<sup>164</sup>

The issuer must notify NASDAQ prior to the release of certain types of information (and should make that notification at least 10 minutes prior to the release), including:<sup>165</sup>

- financial-related disclosure (including earnings releases and restatements);
- corporate reorganizations and acquisitions;
- material senior management changes or a change in control;
- resignation or termination of independent auditors, or withdrawal of a previously issued audit report; and
- significant legal or regulatory developments.



In addition, whenever unusual market activity takes place in an issuer's securities, the issuer normally should determine whether there is material information or news which should be disclosed.<sup>166</sup>

An issuer (other than an issuer of ADRs) must notify NASDAQ on the appropriate form not later than 15 calendar days prior to certain events, including:<sup>167</sup>

- establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees or consultants without shareholder approval;
- issuing securities that may result in a change of control of the issuer;
- issuing any common stock (or security convertible into common stock) in connection with the acquisition of another company, if an officer, director or substantial shareholder of the issuer has a 5 percent or greater interest in the company to be acquired; or
- entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10 percent of either total shares outstanding or the voting power outstanding on a pre-transaction basis.

An issuer must also file a form prescribed by NASDAQ, within 10 days after any increase or decrease of any class of shares included in NASDAQ that exceeds 5 percent of the amount of securities of the class outstanding.<sup>168</sup>

#### F. Corporate Governance Requirement for Foreign Private Issuers.

Note that a listed foreign private issuer is permitted to follow home country practice in lieu of NASDAQ's corporate governance standards, other than the NASDAQ's requirements that it must:<sup>169</sup>

- make a public announcement of the receipt of an audit opinion that contains a "going concern" qualification;<sup>170</sup>
- execute a listing agreement in the form designated by NASDAQ;<sup>171</sup>
- provide NASDAQ with notification of material non-compliance by the issuer with its NASDAQ corporate governance requirements;<sup>172</sup> and
- have an audit committee that meets the requirements (including independence requirements) of Exchange Act Rule 10A-3.<sup>173</sup>

A listed foreign private issuer that follows home country practice in lieu of the NASDAQ corporate governance requirements must disclose in its annual report on Form 20-F each requirement which it does not follow and describe the home country practice followed by it in lieu of such requirements.<sup>174</sup> In addition, a foreign private issuer making its initial public offering or first listing on NASDAQ must make the same disclosure in its registration statement.<sup>175</sup>

#### IV. London Stock Exchange

The requirements for an initial listing on the Official List of the London Stock Exchange (*Exchange*) are set forth below. The Financial Services Authority (*FSA*) performs the functions as competent authority, although it may use the name "UK Listing Authority" in certain circumstances.



**A. Requirements for listing**<sup>176</sup>

**1. Incorporation**

An applicant must be:<sup>177</sup>

- duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and
- operating in conformity with such applicants constitution.

**2. Validity**

To be listed, securities must:<sup>178</sup>

- conform with the law of the applicant's place of incorporation;
- be duly authorized according to the requirements of the applicant's constitution; and
- have any necessary statutory or other consents.

**3. Admission to trading**<sup>179</sup>

Securities must also be admitted to trading on a Recognized Investment Exchange's (*RIE*) market for listed securities.

**4. Transferability**<sup>180</sup>

To be listed, shares must be fully paid and free from all liens and from any restriction on the right of transfer.

**5. Market Capitalization**<sup>181</sup>

The expected aggregate market value of all securities to be listed must be at least £700,000 for shares unless securities of the same class are already listed.

**6. Whole class to be listed**<sup>182</sup>

An application for listing of securities of any class must:

- relate to all securities of that class, issued or proposed to be issued, if no securities of that class are already listed; or
- relate to all further securities of that class, issued or proposed to be issued, if securities of that class are already listed.

**7. Prospectus**<sup>183</sup>

If under the Financial Services and Markets Act 2000 (*Act*) or under the law of another EEA State<sup>184</sup> a prospectus must be approved and published for the securities, or the applicant is permitted and elects to draw up a prospectus for the securities, then in order to be listed:

- a prospectus must have been approved by the FSA and published in relation to the securities; or
- if another EEA State is the Home Member State<sup>185</sup> for the securities, the relevant competent authority must have supplied the FSA with:
  - a certificate of approval;
  - a copy of the prospectus as approved; and
  - (if applicable) a translation of the summary of the prospectus.

#### **8. Listing Particulars<sup>186</sup>**

If under the rules published by the FSA which outline, amongst other things, the minimum requirements for the admission of securities to listing (**Listing Rules**), Listing Rule (**LR**) 4, listing particulars must be approved and published for securities, in order to be listed, the listing particulars for the securities must have been approved by the FSA and published in accordance with LR 4.

#### **9. Convertible securities<sup>187</sup>**

Convertible securities may be admitted to listing only if the securities into which they are convertible are already, or will become at the same time:

- listed securities; or
- securities listed on a regulated, regularly operating, recognized open market.

The FSA may dispense with the above requirement if it is satisfied that the holders of convertible securities have at their disposal all the information necessary to form an opinion about the value of the underlying securities.

### **B. Additional requirements for listing of equity securities<sup>188</sup>**

#### **1. Accounts<sup>189</sup>**

A new applicant for the admission of shares or securities convertible into its own shares must have published or filed audited accounts that:

- cover at least three years;
- are the latest accounts for a period ended not more than six months before the date of the prospectus or listing particulars for the relevant securities;
- are consolidated accounts for the applicant and all its subsidiary undertakings;
- have been independently audited, in accordance with the auditing standards applicable in an EEA State or an equivalent standard; and
- have been reported on by the auditors without modification.

A new applicant must also:

- take all reasonable steps to ensure that its auditors are independent of it; and
- obtain written confirmation from its auditors that they comply with guidelines on independence issued by their national accountancy and auditing bodies.

## **2. Nature and duration of business activities<sup>190</sup>**

A new applicant for the admission of shares or securities convertible into its own shares must demonstrate that:

- at least 75 percent of the applicant's business is supported by a historic revenue earning record which covers the period for which accounts are required under (1) above.
- it controls the majority of its assets and has done so for at least the period referred to in paragraph (1); and
- it will be carrying on an independent business as its main activity.

## **3. Working capital<sup>191</sup>**

An applicant for the admission of shares must satisfy the FSA that it and its subsidiary undertakings (if any) have sufficient working capital available for the group's requirements for at least the next 12 months from the date of publication of the prospectus or listing particulars (as the case may be) for the shares that are being admitted.

## **4. Shares in public hands<sup>192</sup>**

- If an application is made for the admission of a class of shares, a sufficient number of shares of that class must, no later than the time of admission, be distributed to the public in one or more EEA States.
- Account may also be taken of holders in one or more states that are not EEA States, if the shares are listed in the state or states.
- A sufficient number of shares will be taken to have been distributed to the public when 25 percent of the shares for which application for admission has been made are in public hands. Note, however, that treasury shares are not to be taken into consideration when calculating the number of shares of the class.
- Shares are not held in public hands if they are held, directly or indirectly by:
  - a director of the applicant or of any of its subsidiary undertakings; or
  - a person connected with the director of the applicant or of any of its subsidiary undertakings; or
  - the trustees of any employees' share scheme or pension fund established for the benefit of any directors and employees of the applicant and its subsidiary undertakings; or

- any person who under any agreement has a right to nominate a person to the board of directors of the applicant; or
- any person or persons in the same group who have an interest in 5 percent or more of the shares of the relevant class.

#### **5. Shares of a non-EEA company<sup>193</sup>**

The FSA will not admit shares of a company incorporated in a non-EEA State that are not listed either in its country of incorporation or in the country in which a majority of its shares are held, unless the FSA is satisfied that the absence of the listing is not due to the need to protect investors.

#### **6. Settlement<sup>194</sup>**

To be listed, securities must be eligible for electronic settlement.

#### **7. Continuing Obligations<sup>195</sup>**

A company that has a primary listing of equity shares must comply with all of the following requirements:<sup>196</sup>

- A listed company must have securities admitted to trading on an RIE market for listed securities at all times.<sup>197</sup>
- A listed company must inform the FSA in writing as soon as possible if it has:<sup>198</sup>
  - requested an RIE to admit or re-admit any of its listed equity securities or listed preference shares to trading; or
  - requested an RIE to cancel or suspend trading of any of its listed equity securities or listed preference shares; or
  - been informed by an RIE that trading of any of its listed equity securities or listed preference shares will be cancelled or suspended.
- A listed company's securities must remain eligible for electronic settlement at all times.<sup>199</sup>

#### **8. Registrar<sup>200</sup>**

A listed company must appoint a registrar in the United Kingdom unless it provides financial services and itself performs the functions of a registrar in the United Kingdom.

#### **9. Compliance with the Model Code<sup>201</sup> (see D. Corporate Governance).**

No dealings in any securities may be effected by or on behalf of a listed company or any other member in its group at a time when, under the provisions of the Model Code, a director of the company would be prohibited from dealing in its securities, unless such dealings are entered into in the ordinary course of business by a securities dealing business, or on behalf of third parties by the company or any other member of its group.

A listed company must require every person discharging managerial responsibilities, including directors, and every employee of the company or any group company with

access to inside information to comply with the Model Code and to take all proper and reasonable steps to secure their compliance.<sup>202</sup>

## 10. Contact details

A listed company must ensure that the FSA is provided with up to date contact details of at least one appropriate person nominated by it to act as the first point of contact with the FSA in relation to the company's compliance with the Listing Rules and the disclosure rules.<sup>203</sup>

## 11. Amendments to constitution

A listed company must lodge two copies of any proposed amendment to its constitution with the FSA by no later than when it sends the notice convening the meeting to decide on the amendment.<sup>204</sup>

A listed company must comply with "shares in public hands" requirements at all times, and must notify the FSA as soon as possible of its non-compliance.<sup>205</sup>

For any listed company that has published any unaudited financial information in a class 1 circular or a prospectus, or any profit forecast or profit estimate, the first time such a listed company publishes a preliminary statement of annual results and dividends, or an annual report and accounts, or a half yearly report (as required below), after such publication it must:<sup>206</sup>

- reproduce that financial information, profit forecast or profit estimate in its next annual report and accounts;
- produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced pursuant to the preceding bullet point; and
- provide an explanation of the difference, if there is a difference of 10 percent or more between the two.

## C. Continuing obligations – holders<sup>207</sup>

### 1. Equality of treatment<sup>208</sup>

A listed company must ensure equality of treatment for all holders of listed equity securities or listed preference shares who are in the same position.

### 2. Prescribed information to holders<sup>209</sup>

A listed company must ensure that at least in each EEA State in which its equity securities or preference shares are listed all the necessary facilities and information are available to enable holders to exercise their rights. In particular it must:

- inform holders of meetings which they are entitled to attend;
- enable them to exercise their vote, where applicable; and
- publish notices or distribute circulars giving information on:
  - the allocation and payment of dividends and/or interest;

- the issue of new securities, including arrangements for the allotment, subscription, conversion or exchange of such securities; and
- redemption or repayment of the securities.

### **3. Communications with holders of bearer shares<sup>210</sup>**

- A listed company required to communicate with holders of its listed bearer shares must publish an advertisement in at least one national newspaper referring to the communication and giving the address or addresses from which copies of the communication can be obtained.
- A listed company is not required to comply with the above paragraph if:
  - the listed bearer shares are in global form; and
  - the listed company can confirm that notices will be transmitted as soon as possible to all holders.

### **4. Notifications<sup>211</sup>**

A listed company must forward to the FSA for publication through the document viewing facility, two copies of all circulars, notices, reports or other documents to which the Listing Rules apply at the same time as they are issued.

A listed company must forward to the FSA, for publication through the document viewing facility, two copies of all resolutions passed by the listed company other than resolutions concerning ordinary business at an annual general meeting as soon as possible after the relevant general meeting.

A listed company must notify an RIS as soon as possible when a document has been forwarded to the FSA pursuant to the above two paragraphs, setting out where copies of the relevant document can be obtained, unless the full text of the document is provided to the RIS.

### **5. Pre-emption Rights<sup>212</sup>**

A listed company proposing to issue equity shares for cash or to sell treasury shares that are equity securities for cash must first offer those securities in proportion to their existing holdings to existing holders of the class of equity shares (other than the listed company itself by virtue of it holding treasury shares) and holders of equity shares of the listed company who are entitled to be offered them.

### **6. Documents requiring shareholder approval**

#### **a) Employees' share schemes and long term incentive plans**

A listed company must ensure that any employees' share scheme or long-term incentive scheme is approved by an ordinary resolution of the shareholders of the listed company in a general meeting before such scheme is adopted.<sup>213</sup>

This applies to the following schemes of a listed company incorporated in the United Kingdom and of any of its major subsidiary undertakings (even if that major subsidiary undertaking is incorporated or operates overseas):

- an employees' share scheme if the scheme involves or may involve the issue of new shares or the transfer of treasury shares; and
- a long-term incentive scheme in which one or more directors of the listed company is eligible to participate.

The above, however, does not apply to the following long-term incentive schemes:

- an arrangement where participation is offered on similar terms to all or substantially all employees of the listed company or any of its subsidiary undertakings whose employees are eligible to participate in the arrangement (provided that all or substantially all employees are not directors of the listed company); and
- an arrangement where the only participant is a director of the listed company (or an individual whose appointment as a director of the listed company is being contemplated) and the arrangement is established specifically to facilitate, in unusual circumstances, the recruitment or retention of the relevant individual.

**b) Discounted option arrangements**

A listed company must not, without the prior approval by an ordinary resolution of the shareholders of the listed company in a general meeting, grant the option, warrant or other right if the price per share payable on the exercise of the option, warrant or other similar right to subscribe is less than whichever of the following is used to calculate the exercise price:

- the market value of the share on the date when the exercise price is determined; or
- the market value of the share on the business day before that date; or
- the average of the market values for a number of dealing days within a period not exceeding 30 days immediately before that date.

This Listing Rule applies to the grant to a director or employee of a listed company or of any subsidiary undertaking of a listed company of an option to subscribe, warrant to subscribe or other similar right to subscribe for shares in the capital of the listed company or any of its subsidiary undertakings.<sup>214</sup>

However, it does not apply to the grant of an option to subscribe, warrant to subscribe or other similar right to subscribe for shares in the capital of a listed company or any of its subsidiary undertakings:

- (1) under an employees' share scheme if participation is offered on similar terms to all or substantially all employees of the listed company or any of its subsidiary undertakings whose employees are entitled to participate in the scheme; or
- (2) following a take-over or reconstruction, in replacement for and on comparable terms with options to subscribe, warrants to subscribe or other similar rights to subscribe held immediately before the take-over or reconstruction for shares in either a company of which the listed company thereby obtains control or in any of that company's subsidiary undertakings.<sup>215</sup>

## 7. Notifications relating to capital

A listed company must notify an RIS as soon as possible (unless otherwise indicated) of the following information relating to its capital:<sup>216</sup>

- any proposed change in its capital structure including the structure of its listed debt securities, save that an announcement of a new issue may be delayed while marketing or underwriting is in progress;
- any change in the rights attaching to any class of its listed shares or to any of its listed equity securities which are convertible into equity shares;
- any redemption of listed shares including details of the number of shares redeemed and the number of shares of that class outstanding following the redemption;
- any extension of time granted for the currency of temporary documents of title;
- the effect, if any, of any issue of further securities on the terms of exercise of rights under options, warrants and other securities convertible into equity shares; and
- the results of any new issue of equity securities or preference shares or of a public offering of existing shares or other equity securities.

A listed company must notify an RIS as soon as possible of the basis of equity securities offered:<sup>217</sup>

- generally to the public for cash; or
- by way of an open offer to shareholders.
  - Additional Notifications to be made: notification of major interests in shares,<sup>218</sup> notification of board changes and directors' details,<sup>219</sup> notification of lock-up arrangements,<sup>220</sup> notification of shareholder resolutions,<sup>221</sup> notification of change of name,<sup>222</sup> notification of change of accounting date.<sup>223</sup>

## 8. Preliminary statement of annual results and dividends<sup>224</sup>

- A listed company must publish its preliminary statement of annual results as soon as possible after it has been approved.
- A listed company must approve and publish its preliminary statement of annual results within 120 days of the end of the period to which it relates.<sup>225</sup>
- A listed company must notify an RIS as soon as possible after the board has approved a preliminary statement of the annual results, (which must, *inter alia*, be agreed with the company's auditors), and any decision to pay or make any dividend or other distribution on listed equity or to withhold any dividend or interest payment on listed securities.<sup>226</sup>



## 9. Annual report and accounts<sup>227</sup>

A listed company must publish its annual report and accounts as soon as possible after they have been approved and within six months of the end of the financial period to which they relate.<sup>228</sup>

The annual report and accounts must:<sup>229</sup>

- have been prepared in accordance with the listed company's national law and, in all material respects, with national accounting standards or IAS;
- have been independently audited and reported on, in accordance with:
  - the auditing standards applicable in the EEA State; or
  - an equivalent auditing standard;
- be in consolidated form if the company has subsidiary undertakings; and
- if they do not give a true and fair view of the state of affairs, profit or loss and cash flows of the group, provide more detailed and additional information.

A listed company must publish both own accounts and consolidated accounts if the own accounts contain additional significant information.<sup>230</sup> The Listing Rules provide the detailed information to be included in the annual report and accounts.<sup>231</sup>

## 10. Auditors report

A listed company must ensure that the auditors review, before the annual report is published, the statement by the directors that the business is a "going concern," and the parts that relate to the provisions of the key source of corporate governance recommendations for UK listed companies (*Combined Code*). It consists of principles of good governance, most of which have their own set of more detailed provisions which, in most cases, amplify the principles.<sup>232</sup>

## 11. Summary financial statements

Any summary financial statement issued by a listed company as permitted under the Companies Act 1985, must disclose:<sup>233</sup>

- earnings per share; and
- the information required for summary financial statements set out in the Companies Act 1985.

## 12. Half-yearly reports<sup>234</sup>

A listed company must prepare a report, on a group basis where relevant, on its activities and profit or loss for the first six months of each financial year, and<sup>235</sup> must notify an RIS of its publication as soon as possible after it is approved by the board.<sup>236</sup> The listed company must then either send the half-yearly report to holders of its listed securities, or insert the half-yearly report, as a paid advertisement, in at least one national newspaper.<sup>237</sup> Where the listed company's shares are listed in another EEA State, the company must simultaneously send the competent authority of each of those other member states a copy of the half-yearly report.<sup>238</sup>

#### D. Corporate Governance

Further to LR9.2.7 relating to compliance with the Model Code, the following provide an outline of the main principles of the Combined Code.<sup>239</sup>

- Every company should be headed by an effective board, which is collectively responsible for the success of the company.
- There should be a clear division between the responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.
- The board should include a balance of executive and non-executive directors such that no individual or small group of individuals can dominate the board's decision making.
- There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.
- The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive induction on joining the board and should regularly update and refresh their skills.
- The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.
- All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The board should ensure planned and progressive refreshing of the board.
- Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive director's remuneration should be structured so as to link rewards to corporate and individual performance.
- There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.
- The board should present a balanced and understandable assessment of the company's position and prospects.
- The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.
- The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

- There should be a dialogue with shareholders based on a mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.
- The board should use the company's Annual General Meeting (AGM) to communicate with investors and to encourage their participation. The AGM is a meeting of shareholders and directors held by a company each calendar year within 15 months of the previous AGM. Usually the meeting is used for matters which must be dealt with each financial year, such as the re-election of directors, fixing the remuneration of auditors and consideration of the annual account and the directors' report and auditors' report.
- Institutional shareholders should enter into dialogue with companies based on the mutual understanding of objectives.
- Institutional shareholders have a responsibility to make considered use of their votes.

## V. Alternative Investment Market (AIM) (London)

AIM is the secondary market of the London Stock Exchange (*Exchange*). AIM is a securities market established by the Exchange to meet the needs of smaller, growing companies which might not meet the full criteria for a listing on the Official List or for whom a more flexible regulatory environment is more appropriate. AIM operates, and is regulated, separately from the Official List for listed companies and is deemed to be an unregulated market under the terms of the European Prospectus Directive. AIM companies benefit from a more flexible regulatory environment that can act as a stepping stone for those that may aspire to the Official List using a simplified admission process, and is, in comparison to the Official List of the London Stock Exchange, a less regulated market with its own rules and regulations, which are set out below.

### A. Eligibility requirements

#### 1. Retention and role of a nominated advisor (Nomad)

In order to be eligible for AIM, an applicant must appoint a nominated adviser and an AIM company must retain a nominated adviser at all times.

The nominated adviser is responsible to the Exchange for assessing the appropriateness of an applicant for AIM, or an existing AIM company when appointed its nominated adviser, and for advising and guiding an AIM company on its responsibilities under these rules.

The responsibilities of nominated advisers are set out in the rules of the Exchange governing admission to and the operation of AIM for AIM companies and their Nominated Advisers (*AIM Rules*).

If an AIM company ceases to have a nominated adviser the Exchange will suspend trading in its AIM securities. If within one month of that suspension the AIM company has failed to appoint a replacement nominated adviser, the admission of its AIM securities will be cancelled.

#### 2. Disclosure

An applicant must provide the Exchange with the following information<sup>240</sup> at least 10 business days<sup>241</sup> before the expected date of admission to AIM:

- its name;
- its country of incorporation;
- its registered office address and, if different, its trading address;
- the Web site address at which the information required by Rule 26 of the AIM Rules will be available:
- a brief description of its business (including its main country of operation) and in the case of an investing company, details of its investing strategy. If the admission is being sought as a result of a reverse take-over under Rule 14, this should be stated;
- the number and type of securities in respect of which it seeks admission and detailing the number and type of securities to be held as treasury shares, including details of any restrictions as to transfer of the securities;
- the capital to be raised on admission, if applicable, and its anticipated market capitalisation on admission;
- the percentage of AIM securities not in public hands at admission (insofar as it is aware) and details of any other exchange or trading platform on which the AIM securities (or any other securities of the company) are or will be admitted or traded as a result of an application or agreement of the applicant;
- the full names and functions of its directors and proposed directors (underlining the first name by which each is known or including any other name by which each is known);
- insofar as is known to it, the full name of any significant shareholder before and after admission, together with the percentage of each such person's interest (underlining the first name by which each is known or including any other name by which each is known in the case of individuals);
- the names of any persons who will be disclosed in the admission document under Schedule Two, paragraph (h) of the Aim Rules;
- its anticipated accounting reference date, the date to which it has prepared the main financial information in its admission document and the dates by which it must publish its first three reports as required by Rules 18 and 19;
- its expected admission date;
- the name and address of its nominated adviser and broker; and
- (other than in the case of a quoted applicant) 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.

### 3. Admission Document

An applicant<sup>242</sup> must produce an admission document<sup>243</sup> which must be available publicly, free of charge, for at least one month from the admission of the applicant's securities to AIM.<sup>244</sup>

All admission documents, any documents sent to shareholders and any information required by the AIM Rules must be in English.<sup>245</sup>

### 4. Lock-ins for new businesses<sup>246</sup>

Where an applicant's main activity is a business which has not been independent and earning revenue for at least two years, it must ensure that all 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 admission of its securities.

## B. Continuing Obligations

An AIM company must issue notification without delay of any new developments which are not public knowledge concerning a change in:<sup>247</sup>

- its financial condition;
- its sphere of activity;
- the performance of its business; or
- its expectation of its performance,

which, if made public, would be likely to lead to a substantial movement in the price of its AIM securities.

### 1. Website Disclosure

Each AIM company must from admission maintain a Web site on which the following information should be available, free of charge:

- a description of its business and, if it is an investing company, details of its investing strategy;
- the names of its directors and brief biographical details of each, as would normally be included in an admission document;
- a description of the responsibilities of the members of the board of directors and details of any committees of the board of directors and their responsibilities;
- its country of incorporation and main country of operation;
- where the AIM company is not incorporated in the UK, a statement that the rights of shareholders may be different from the rights of shareholders in a UK incorporated company;
- its current constitutional documents (e.g. its articles of association);

- details of any other exchanges or trading platforms on which the AIM company has applied or agreed to have any of its securities (including its AIM securities) admitted or traded;
- the number of AIM securities in issue (noting any held as treasury shares) and, insofar as it is aware, the percentage of AIM securities that are not in public hands together with the identity and percentage holdings of its significant shareholders. This information should be updated at least every six months.
- details of any restrictions on the transfer of its AIM securities;
- its most recent annual report published pursuant to Rule 19 (see paragraph 4 below) and all half-yearly, quarterly or similar reports published since the last annual report pursuant to Rule 18 (see paragraph 3 below);
- all notifications the AIM company has made in the past 12 months;
- its most recent admission document together with any circulars or similar publications sent to shareholders within the past 12 months; and
- details of its nominated adviser and other key advisers (as might normally be found in an admission document).<sup>248</sup>

## 2. Disclosure of corporate transactions

An AIM company must issue notification without delay of any of the following:<sup>249</sup>

- substantial transactions – ones which exceeds 10 percent in any of the class tests;<sup>250</sup>
- related party transactions – any transaction whatsoever with a related party which exceeds 5 percent in any of the class tests;<sup>251</sup>
- reverse takeovers;
- disposals resulting in a fundamental change of business;
- the aggregation of transactions over the preceding twelve month period;
- any deals by directors disclosing, insofar as it has such information, the information specified by Schedule Five;
- any relevant changes to any significant shareholders, disclosing, insofar as it has such information, the information specified by Schedule Five;
- the resignation, dismissal or appointment of any director, and any shareholding in the company;
- any change in its accounting reference date;
- any change in its registered office address;
- any change in its legal name;

- any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in the admission document or otherwise made public on its behalf;
- any decision to make any payment with respect to its AIM securities specifying the net amount payable per security, the payment date and the record date;
- the reason for the application for admission or cancellation of any AIM securities;
- the occurrence and number of shares taken into and out of treasury;
- the resignation, dismissal or appointment of its nominated adviser or broker;
- any change in the Web site address of the AIM company and the information required by Rule 26;
- any subsequent change to specific details relating to directors including details of bankruptcies of any director, or receiverships of any company where such director was a director at the time of or within 12 months preceding such events;<sup>252</sup> and
- the admission to trading (or cancellation from trading) of the AIM company's securities on any other exchange or trading platform where such admission or cancellation is at the application or agreement of the AIM company.

This information must also be submitted separately to the Exchange.

### **3. Half-yearly reports**

An AIM company must prepare a half-yearly report with respect to the six month period from the end of the financial period for which financial information has been disclosed in its admission document and at least every subsequent six months thereafter. All such reports must be notified without delay and in any event not later than three months after the end of the relevant period.<sup>253</sup>

The information contained in a half-yearly report must include at least a balance sheet, an income statement, a cash flow statement and must contain comparative figures for the corresponding period in the preceding financial year. Additionally, the half-yearly report must be presented and prepared in a form consistent with that which will be adopted in the AIM company's annual accounts with regard to the accounting standards applicable to such annual accounts.

### **4. Annual accounts**

An AIM company must publish annual audited accounts which must be sent to its shareholders without delay and in any event being not later than six months after the end of the financial year to which they relate.

An AIM company incorporated in an EEA country must prepare and present these accounts in accordance with International Accounting Standards. Where, at the end of the relevant financial period, such AIM company is not a parent company, it may prepare and present such financial information either in accordance with International Accounting Standards or in accordance with the accounting and company legislation and regulations that are applicable to that AIM company due to its country of incorporation.

An AIM company incorporated in a non-EEA country must prepare and present these accounts in accordance with either:

- International Accounting Standards;
- US Generally Accepted Accounting Principles;
- Canadian Generally Accepted Accounting Principles;
- Australian International Financial Reporting Standards (as issued by the Australian Accounting Standards Board); or
- Japanese Generally Accepted Accounting Principles.<sup>254</sup>

#### **5. Publication of documents sent to shareholders**

Any document provided by an AIM company to its shareholders, must be made available on its Web site pursuant to Rule 26 and its provision must be notified to a regulatory information service approved by the Exchange. An electronic copy must be sent to the Exchange.<sup>255</sup>

#### **6. AIM company and directors' responsibility for compliance<sup>256</sup>**

An AIM company must:

- have in place sufficient procedures, resources and controls to enable it to comply with these rules;
- seek advice from its nominated adviser regarding its compliance with these rules whenever appropriate and take that advice into account;
- provide its nominated adviser with any information it reasonably requests or requires in order for that nominated adviser to carry out its responsibilities under these rules and the AIM Rules for Nominated Advisers, including any proposed changes to the board of directors and provision of draft notifications in advance;
- ensure that each of its directors accepts full responsibility, collectively and individually, for its compliance with these rules; and
- ensure that each director discloses to the AIM company without delay all information which the AIM company needs in order to comply with Rule 17 insofar as that information is known to the director or could with reasonable diligence be ascertained by the director.

#### **7. Ongoing eligibility requirements**

##### **a) Transferability of shares**

- An AIM company must ensure that its AIM securities are freely transferable except where:<sup>257</sup>
  - in any jurisdiction, a statute or regulation places restrictions upon transferability; or



- the AIM company is seeking to limit the number of shareholders domiciled in a particular country to ensure that it does not become subject to a statute or regulation.
- Only securities which have been unconditionally allotted can be admitted as AIM securities.<sup>258</sup>
- An AIM company must retain a nominated adviser at all times. If an AIM company ceases to have a nominated adviser, the Exchange will suspend trading in its AIM securities.<sup>259</sup>
- An AIM company must retain a broker at all times.<sup>260</sup>
- AIM securities must be eligible for electronic settlement unless the Exchange otherwise agrees.<sup>261</sup>
- An AIM company must pay AIM fees set by the Exchange as soon as such payment becomes due.<sup>262</sup>

### C. Corporate Governance

An AIM company must ensure that its directors and applicable employees do not deal in any of its AIM securities during a close period. In addition, the purchase or early redemption by an AIM company of its AIM securities or sale of any AIM securities held as treasury shares must not be made during a close period.<sup>263</sup>

This rule will not apply where such individuals have entered into a binding commitment prior to the AIM company being in such a close period where it was not reasonably foreseeable at the time such commitment was made that a close period was likely and provided that the commitment was notified at the time it was made.

## VI. EUROMTF (Luxembourg)

An application for admission to trading on a market operated by the Luxembourg Stock Exchange Company (*LuxSE Co.*)<sup>264</sup> is simultaneously deemed to constitute application for admission for an official stock exchange listing. The requirements for admission and the rules governing the admission to trading are binding on either the issuer or the person asking for admission to trading on a market operated by the LuxSE Co.<sup>265</sup>

### A. Conditions for the admission of financial assets to official stock exchange listing.<sup>266</sup>

The admission of financial assets to official stock exchange listing and the cancellation of their listing shall be decided by the Board of the Luxembourg Stock Exchange Company (*Board*).<sup>267</sup> The Board may delegate all or part of the powers it holds under Article 27 of this Grand-Ducal Regulation to the Stock Exchange Committee,<sup>268</sup> to members of the Stock Exchange Committee or to senior managers of the LuxSE Co., under the terms and conditions which it determines. In this case, the body the Board has delegated shall decide upon the application. To obtain the admission of a financial asset to an official stock exchange listing, the applicants must submit a written application supported by the documents detailed below in section B. At least one of the applicants shall be a person authorized to act to this end by the LuxSE Co.<sup>269</sup>

In order to be admitted to official stock exchange listing, the shares shall meet the following conditions:<sup>270</sup>

- Conditions relating to the company and to other issuers for the shares of which admission to official stock exchange is applied for.

- Legal position of the company.

The legal position of the company must conform to the laws and regulations to which it is subject, in regards to both its incorporation and its operation under its articles.

- Minimum size of the company.

The foreseeable market capitalization of the shares for which admission to official stock exchange is sought or, if this cannot be assessed, the company's capital and reserves, including the profit or loss for the last financial year, must be at least €1 million or the equivalent in any other currency.<sup>271</sup>

However, admission to official stock exchange listing may be granted, even though this condition is not fulfilled, provided that the LuxSE Co. is satisfied that there will be an adequate market for the shares concerned.

- Period of existence of the company.

The company must have published or filed, in accordance with national law, its annual accounts for the three financial years preceding the application for official stock exchange listing. By way of exception, the LuxSE Co. may derogate from this requirement when such a derogation is desirable in the company's or investors' interests and when the LuxSE Co. is satisfied that investors have the necessary information available to be able to make a grounded opinion of the company and the shares for which admission to official stock exchange listing is applied for.<sup>272</sup>

**B. Conditions relating to the shares for which admission to official stock exchange listing is applied for.**

**1. Legal position of the shares.**

The legal position of the shares shall conform to the laws and regulations to which they are subject.

**2. Negotiability of the shares.**

The shares shall be freely transferable.<sup>273</sup>

**3. Public issue preceding admission to official stock exchange listing.**

When a public issue precedes the admission to official stock exchange listing, the end of the period during which subscription applications may be submitted shall precede the beginning of trading on a market operated by the LuxSE Co.

**4. Distribution of shares.**

A sufficient number of shares must be distributed to the public in one or several Member States of the European Union at the latest at the time trading on a market operated by the LuxSE Co. begins.<sup>274</sup>

If admission to official stock exchange listing is applied for a further block of shares of the same category, the LuxSE Co. may assess whether a sufficient number of shares have been distributed to the public in relation to all the shares issued and not only in relation to this further block.<sup>275</sup>

#### **5. Listing of shares of the same category.**

The application for admission to official stock exchange listing must cover all the shares of the same category already issued.<sup>276</sup>

#### **6. Physical form of the shares.**

For the admission to official stock exchange listing of shares which are issued by companies based in another Member State of the European Union and which have a physical form, it is necessary and sufficient that their physical form complies with the standards established in that other Member State. When the physical form does not conform to the standards in force in Luxembourg, the LuxSE Co. shall make that fact known to the public.

The physical form of shares issued by companies based in a non-Member State of the European Union must offer sufficient safeguard for the investors' protection.

#### **7. Shares issued by companies based in a non-Member State of the European Union.**

Where the shares issued by a company based in a non-Member State of the European Union are not listed in the country of origin or of the principal market, they can only be admitted to official stock exchange listing if the LuxSE Co. is satisfied that the absence of listing in the country of origin or of the principal market is not due to the necessity of protecting investors.

The application for admission to official stock exchange listing shall concern the maximum number or an unlimited number of financial assets which may be admitted to official stock exchange listing at any time under a program.<sup>277</sup>

In the event that the application for admission of the program is approved, all the financial assets which may be issued under the program within 12 months shall be admitted to official stock exchange listing.

- The application for admission to official stock exchange listing<sup>278</sup> shall be supported in particular by the following documents:
  - one copy of the conventions or of any other document governing the representation of the securities holders; the Board shall determine which other types of conventions are to be provided;
  - the articles of incorporation of the issuing company, and where applicable, of the guarantor as well as their annual reports of the last three financial years, where applicable;
  - furthermore, the application for admission of shares to official stock exchange listing shall be supported by:
  - a certified true copy or a copy of the official publication of the deed of incorporation of the company and, if the Board deems it appropriate, a

certificate stating that the company has been incorporated according to the legislation in force in its country of origin;

- a certified true copy of the minutes relating to the decision authorizing the issue of these shares by the company.<sup>279</sup>
- The issuer whose financial assets are admitted to official stock exchange listing shall provide the LuxSE Co. with all of the information which the LuxSE Co. considers appropriate in order to protect investors or ensure the proper operation of the market.<sup>280</sup>

Where the protection of investors or the smooth operation of the market so requires, the issuer may be required by the LuxSE Co. to publish certain information in such a form and within such time limits as it considers appropriate. Should the issuer fail to comply with such requirement, the LuxSE Co. may, after having heard the issuer, itself publish such information at the expense of the issuer.

Each issuer whose financial assets are also officially listed on one or several other stock exchanges situated or operating in different Member States of the European Union, shall ensure that information equivalent to the information made available to the market of the other stock exchange(s) is made available to the Luxembourg market.<sup>281</sup>

If the issue of a financial asset is not fully offered for public subscription and if part of the issue is placed outside the subscription, the prospectus shall state the partial amount placed outside of the public subscription and the conditions according to which this amount has been placed.<sup>282</sup>

Where a financial asset is offered for subscription by tranches at several places, the LuxSE Co. shall state this fact and shall state the amounts offered for subscription at such places; if a financial asset has already been admitted to one or several foreign exchanges, the prospectus published for the purpose of its admission to the LuxSE Co. shall state that fact.

The application for admission of financial assets to trading on a market regulated by the LuxSE Co. shall be addressed to the LuxSE Co. by the issuer. One of the persons signing the application shall be a person authorized to act to this end by the LuxSE Co. The application shall in particular be supported by the following documents:<sup>283</sup>

- a sufficient number of issuing prospectuses or prospectus supplements approved for the purpose of publication or availability to the public, drawn up in accordance with the legal and regulatory provisions in force,
- where applicable a statement that to the best of the knowledge of the applicants no significant fact, which may impact the valuation of the financial assets, has occurred since the approval of the prospectus.<sup>284</sup>

Furthermore, the application for admission to trading of financial assets other than debt securities on the market regulated by the LuxSE Co. shall be supported by a statement on the part of the issuer of the financial assets and by which it undertakes:<sup>285</sup>

- to provide for the financial service of the financial assets to be admitted through a credit institution located in Luxembourg;
- to make it possible for the holders to obtain in Luxembourg final financial assets against temporary certificates, to obtain new financial assets, and where applicable, full or partial payment of the financial assets, and to enable them to

have effected all the operations in respect of the same and in particular to obtain new coupon sheets free of charge;

- to publish promptly in Luxembourg all announcements necessary to the financial assets holders and in particular those relating to dividend payments and bonuses, operations of new share issues as well as operations concerning bonus shares, subscription, renunciation and conversion;
- to ensure equal treatment to all of the shareholders subject to identical conditions;
- to inform the shareholders of the date of the general meetings and to enable them to exercise their rights;
- to submit to the LuxSE Co., at the latest at the time of their publication, all notices of general meetings held to deliberate on a projected amendment to the articles of incorporation;
- to enable holders to obtain in Luxembourg duplicates of financial assets which have become undeliverable or which are declared undeliverable by a decision of the Stock Exchange Committee;
- where applicable, to apply subsequently for admission to trading with the LuxSE Co. of all financial assets of the same category, either not more than one year after their issue or when they become freely transferable; and
- to make available to the public, in Luxembourg, as soon as possible, its latest annual accounts and its latest annual report.<sup>286</sup>

### C. Continuing Obligations

#### 1. Each issuer of shares which are admitted to trading on a market regulated by the LuxSE Co. shall inform the public of the facts and events listed below:<sup>287</sup>

- promptly publish information on any major new developments within its sphere of activity which are not of public knowledge and which may, by their impact on its assets, financial position or the general course of its business lead to substantial movements in its share price;<sup>288</sup>
- promptly publicize any amendments to the rights attached to the different categories of shares;
- inform the public, as soon as it comes to its notice, of changes to the structure (holders and breakdown of holdings) of the major holdings of its capital as compared with the information previously made public in this respect; if the companies concerned are foreign companies governed by the legislation of a Member State of the European Union, publicize in Luxembourg any changes regarding the structure of the major holdings within their capital which shall be publicized in the State of their governing legislation.<sup>289</sup>

The information which issuers of financial assets admitted to trading on the market regulated by the LuxSE Co. are required to make available to the public<sup>290</sup> shall be published in one or several newspapers circulated throughout Luxembourg or widely circulated therein, or on the Web site of the LuxSE Co.<sup>291</sup>

This information may also be made available to the public either in written form at places indicated by announcements to be published in one or several newspapers circulated throughout Luxembourg or widely circulated therein, or on the Web site of the LuxSE Co., or by other means considered equivalent by the LuxSE Co.

The issuers shall send such information simultaneously to the LuxSE Co. Such information must be given in French, German or English.

**2. Periodic information to be published by companies the shares of which are admitted to official stock exchange listing.**<sup>292</sup>

- Such companies must publish a half-yearly report on their activities and profits and losses for the six months of each financial year.<sup>293</sup>
- The half-yearly report must be published within four months of the end of the relevant half-year period. In exceptional, duly substantiated cases, the Stock Exchange Committee may extend the time limit for publication.<sup>294</sup>
- The half-yearly report must include figures and an explanatory statement relating to the activity and profits and losses of the company during the relevant half-year. The figures, presented in table form, must at least indicate:<sup>295</sup>
  - the net turnover amount, and
  - the profit or loss before or after tax deduction.<sup>296</sup>
- The half-yearly report shall be published in one or several newspapers circulated throughout Luxembourg or widely circulated therein, or be made available to the public either in written form at places in Luxembourg indicated by announcements to be published in one or several newspapers circulated throughout Luxembourg or widely circulated therein, or by other equivalent means approved by the Stock Exchange Committee.<sup>297</sup>
- The half-yearly report shall be drawn up in French, German or English. The company shall send a copy of its half-yearly report simultaneously to the LuxSE Co. and to the competent authorities of each Member State in which its shares are admitted to official stock exchange listing. It shall do so at the latest when the half-yearly report is published for the first time in Luxembourg.
- Where the accounting information has been audited by the official auditor of the company's accounts, that auditor's report and any qualifications he may have, shall be reproduced in full.<sup>298</sup>
- The Stock Exchange Committee may authorize the omission from the half yearly report of certain information<sup>299</sup> if, in its opinion, the disclosure of such information would be contrary to the public interest or seriously detrimental to the company, provided that, in the latter case, such omission would not be likely to mislead the public with regard to facts and circumstances, the knowledge of which is essential for the assessment of the shares in question.<sup>300</sup>

The company or its representatives shall be responsible for the correctness and relevance of the facts on which the application for such exemption is based.

Where a company governed by the law of a non-Member State of the European Union publishes a half-yearly report in such a non-Member State, the Stock Exchange Committee may authorize it to publish that report instead of the half-yearly report.<sup>301</sup>

#### **D. Corporate Governance**

The following 10 new corporate governance principles have come into effect as of January 1, 2007.<sup>302</sup>

##### **Principle 1 – Corporate governance framework**

The company will adopt a clear and transparent corporate governance framework for which it will provide adequate disclosure.

##### **Principle 2 – Duties of the board**

The board will be responsible for the management of the company. It will act in the best interests of the company and will protect the general interests of the shareholders by ensuring the sustainable development of the company. It will function in a well-informed manner as a collective body.

##### **Principle 3 – Composition of the board and the special committees**

The composition of the board will be balanced so as to enable it to take well-informed decisions. It will ensure that any special committees necessary for it to properly fulfil its duties are set up.

##### **Principle 4 – Appointment of directors and executive managers**

The company will establish a formal procedure for the appointment of directors and executive managers.

##### **Principle 5 – Conflicts of interest**

The directors will take decisions in the best interests of the company and will refrain from taking part in any deliberation or decision that creates a conflict between their personal interests and those of the company or any subsidiary controlled by the company.

##### **Principle 6 – Evaluation of the performance of the board**

The board will regularly evaluate its performance and its relationship with the executive management

##### **Principle 7 – Management structure**

The board will set up an effective structure of executive management. It will clearly define the duties of executive management and delegate to it the necessary powers for the proper discharge of these duties

##### **Principle 8 – Remuneration policy**

The company will secure the services of good quality directors and executive managers by means of a suitable remuneration policy that is compatible with the long-term interests of the company.

##### **Principle 9 – Financial reporting, internal control and risk management**

The board will establish strict rules, designed to protect the company's interests, in the areas of financial reporting, internal control and risk management

##### **Principle 10 – Shareholders**

The company will respect the rights of its shareholders and ensure they receive equitable treatment. The company will establish a policy of active communication with the shareholders.



## Endnotes

- <sup>1</sup> A foreign private issuer is any issuer (other than a foreign government) incorporated or organized under the laws of a jurisdiction outside the United States, unless (1) more than 50 percent of its outstanding voting securities are directly or indirectly owned by US residents and (2) either (A) the majority of its executive officers or directors are US citizens or residents, (B) more than 50 percent of its assets are located in the United States or (C) its business is principally administered in the United States.
- <sup>2</sup> New York Stock Exchange Listed Company Manual, Section 103.00 hereinafter *NYSE Manual*.
- <sup>3</sup> Affiliated companies and companies listing following emergence from bankruptcy have different listing standards which are not covered by this *Client Alert*.
- <sup>4</sup> In addition, under certain circumstances, the NYSE will take into account certain other qualitative factors, including the following: the company must be a going concern or a successor to a "going concern," the degree of national interest in the company, the character of the markets for its products, its relative stability and position in its industry, and whether it is engaged in an expanding industry with prospects for maintaining its position. Accordingly, higher minimum distribution standards may apply if there is a lack of public interest in the securities of a company as evidenced, for example, by low trading volume on another exchange, lack of dealer interest in the over-the-counter market, unusual geographic concentration of holders of shares, slow growth in the number of shareholders and a low rate of transfers. NYSE Manual Section 102.01.C.
- <sup>5</sup> NYSE Manual Section 102.01.A. When considering a listing application from a company organized under the laws of Canada, Mexico or the United States (*North America*), the NYSE will include all North American holders and trading volume in applying the minimum stockholder and trading volume requirements. For securities that trade in the format of American Depositary Receipts (*ADRs*), volume in the ordinary shares will be adjusted on an ADR equivalent basis. NYSE Manual Section 102.01.B. The distribution of shares held out of North America does not count towards the domestic listing requirements. NYSE Manual Section 103.00.
- <sup>6</sup> If the issuer has less than 100 shares, the issuer must have 400 holders of a unit of trading. NYSE Manual Section 1.02.01.A.
- <sup>7</sup> If the unit of trading is less than 100 shares, the requirement relating to number of publicly held shares shall be reduced proportionately. Shares held by directors, officers, or other immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly held shares. NYSE Manual Section 1.02.01A.
- <sup>8</sup> If the issuer has less than 100 shares, the issuer must have 400 holders of a unit of trading. NYSE Manual Section 1.02.01.A.
- <sup>9</sup> If the unit of trading is less than 100 shares, the requirement relating to number of publicly held shares shall be reduced proportionately. Shares held by directors, officers, or other immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly held shares. NYSE Manual Section 1.02.01.A.
- <sup>10</sup> NYSE Manual Section 102.01.B. For IPOs, the NYSE will rely on a written commitment from the underwriter regarding the anticipated value of the offering.
- <sup>11</sup> NYSE Manual Section 102.01.B.
- <sup>12</sup> NYSE Manual Section 102.01.C.I.
- <sup>13</sup> NYSE Manual Section 102.01.C.II. For IPOs, the company's underwriters must provide a written representation that demonstrates the company's ability to meet the global market capitalization requirement based upon the completion of the offering.
- <sup>14</sup> In addition, a foreign private issuer listing its equity securities in the form of ADRs must sponsor its ADRs and enter into a depository agreement with a US depository bank to provide such services as cash and stock dividend payments, transfer of ownership, and distribution of company financial statements and notices, such as shareholder meeting material. NYSE Manual Section 103.04.
- <sup>15</sup> NYSE Manual Section 103.01.A.



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- <sup>16</sup> Shares held by directors, officers, or other immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly held shares. NYSE Manual Section 1.03.01.A.
- <sup>17</sup> NYSE Manual 103.01.A. The Alternative Listing Standards do not have a separate distribution criteria for a foreign private issuer seeking to list an IPO and a foreign private issuer seeking to transfer to the NYSE or list its existing securities. For IPOs, the NYSE will rely on a written commitment from the underwriter regarding the anticipated value of the offering.
- <sup>18</sup> NYSE Manual Section 103.01.B.I.
- <sup>19</sup> NYSE Manual Section 103.01.B.II. For IPOs, the company's underwriters must provide a written representation that demonstrates the company's ability to meet the global market capitalization requirement based upon the completion of the offering.
- <sup>20</sup> NYSE Manual Section 802.01.A.
- <sup>21</sup> If the unit of trading is less than 100 shares, then the requirement relating to the number of shares publicly held shall be reduced proportionately. NYSE Manual Section 802.01.A.
- <sup>22</sup> NYSE Manual Section 802.01.B.
- <sup>23</sup> NYSE Manual Section 802.01.C.
- <sup>24</sup> Notwithstanding this, if the subject security is not the primary trading common stock of the issuer (*e.g.*, a tracking stock or a preferred class) the NYSE may determine whether to apply these criteria to such security after evaluating the financial status of the issuer.
- <sup>25</sup> NYSE Manual Section 8.02.01.D.
- <sup>26</sup> Other factors that the NYSE may consider include: either an intent to file or a filing for bankruptcy and/or liquidation; however, the NYSE may exercise its discretion if the issuer is seeking relief for reorganization, has positive cash flow, or is demonstrably in sound financial health; authoritative advice has been received that the security is without value; the registration or exemption from registration pursuant to the Securities Exchange Act of 1934 (the Exchange Act or 1934 Act) is no longer effective for any reason; proxies are not solicited for all meetings of stockholders; the issuer, its transfer agent or registrar, violates any of its, or their, listing or other agreements with the NYSE; whenever the entire outstanding amount of a listed class, issue or series is to be retired through payment at maturity, or through redemption, reclassification or otherwise; if the issuer or its management shall engage in operations which, in the opinion of the NYSE, are contrary to the public interest; an audit committee in conformity with NYSE requirements is not maintained; other conduct not in keeping with sound public policy; unsatisfactory financial conditions and/or operating results; the most recent independent public accountant's opinion on the financial statements contains: (i) a qualified opinion, (ii) an adverse opinion, (iii) a disclaimer opinion, or (iv) an unqualified opinion with a "going concern" emphasis; the inability to meet current debt obligations or to finance operations adequately; abnormally low selling price or volume of trading; and unwarranted use of company funds for the repurchase of its equity securities. NYSE Manual Section 8.02.01.D.
- <sup>27</sup> NYSE Manual Section 303A.01.
- <sup>28</sup> NYSE Manual Section 303A.02.
- <sup>29</sup> NYSE Manual Section 303A.03.
- <sup>30</sup> NYSE Manual Section 303A.04.
- <sup>31</sup> NYSE Manual Section 303A.05.
- <sup>32</sup> NYSE Manual Sections 303A.06, 303A.07(b).
- <sup>33</sup> NYSE Manual, Section 303A.07(c).

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- <sup>34</sup> See also NYSE Manual Section 303A.06.
- <sup>35</sup> NYSE Manual Section 303A.07(a).
- <sup>36</sup> While the NYSE does not require that an audit committee include a person who satisfies the definition of audit committee financial expert as set out in Item 401(h) of Regulation S-K, a board may presume that such a person has accounting or related financial management expertise. NYSE Manual Section 303A.07(a).
- <sup>37</sup> In the case of investment company issuers, "affiliated person" is replaced with "interested person," as defined in section 2(a)(19) of the Investment Company Act of 1940.
- <sup>38</sup> See also NYSE Manual Section 303A.06.
- <sup>39</sup> NYSE Manual Section 303A.07(d).
- <sup>40</sup> NYSE Manual Section 312.03.
- <sup>41</sup> NYSE Manual Section 303A.08.
- <sup>42</sup> Such shareholder approval will not be required for any issuance involving (a) any public offering for cash; (b) any bona fide private financing, if such financing involves a sale of common stock, for cash, at a price at least as great as each of the book and market value of the issuer's common stock; or (c) securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as each of the book and market value of the issuer's common stock. NYSE Manual Section 312.03.
- <sup>43</sup> NYSE Manual Section 303A.09.
- <sup>44</sup> NYSE Manual Section 303A.10.
- <sup>45</sup> NYSE Manual Section 303A.12.
- <sup>46</sup> NYSE Manual Section 303A.12, Corporate Governance Listing Standards, Frequently Asked Questions, Question B.4.
- <sup>47</sup> NYSE Manual Section 202.05.
- <sup>48</sup> NYSE Manual Section 202.05.
- <sup>49</sup> NYSE Manual Section 202.06(B).
- <sup>50</sup> NYSE Manual Section 303A.00.
- <sup>51</sup> See NYSE Manual Section 303A.00, Corporate Governance Listing Standards, Frequently Asked Questions, Question B.7.
- <sup>52</sup> NYSE Manual Section 303A.11.
- <sup>53</sup> Note the NGSM was implemented on July 1, 2006.
- <sup>54</sup> NASDAQ Rule 4420(a)(1).
- <sup>55</sup> NASDAQ Rule 4420(a)(2).
- <sup>56</sup> NASDAQ Rule 4310(c)(7)(C).
- <sup>57</sup> NASDAQ Rule 4420(a)(3).

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- 58 NASDAQ Rule 4420(a)(4).
- 59 NASDAQ Rule 4420(a)(5).
- 60 NASDAQ Rule 4420(a)(6). Note a normal unit of trading is defined as 100 shares of a security. *See id.* at Rule 4200(a)(31).
- 61 NASDAQ Rule 4420(a)(7).
- 62 NASDAQ Rule 4420(b)(1).
- 63 NASDAQ Rule 4420(b)(2).
- 64 NASDAQ Rule 4420(b)(3).
- 65 NASDAQ Rule 4420(b)(4).
- 66 NASDAQ Rule 4420(b)(5).
- 67 NASDAQ Rule 4420(b)(6).
- 68 NASDAQ Rule 4420(b)(7).
- 69 NASDAQ Rule 4420(c)(1).
- 70 NASDAQ Rule 4420(c)(2).
- 71 NASDAQ Rule 4420(c)(3).
- 72 NASDAQ Rule 4420(c)(4).
- 73 NASDAQ Rule 4420(c)(5).
- 74 NASDAQ Rule 4420(c)(6)(A).
- 75 NASDAQ Rule 4420(c)(6)(B).
- 76 NASDAQ Rule 4450(a)(1).
- 77 NASDAQ Rule 4450(a)(2).
- 78 NASDAQ Rule 4450(a)(3).
- 79 NASDAQ Rule 4450(a)(4).
- 80 NASDAQ Rule 4450(a)(5).
- 81 NASDAQ Rule 4450(a)(6).
- 82 NASDAQ Rule 4450(b)(2).
- 83 NASDAQ Rule 4450(b)(3).

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- 84 NASDAQ Rule 4450(b)(4).
- 85 NASDAQ Rule 4450(b)(5).
- 86 NASDAQ Rule 4450(b)(6).
- 87 NASDAQ Rule 4450(b)(1)(A).
- 88 NASDAQ Rule 4450(b)(1)(B).
- 89 NASDAQ Rule 4450(e).
- 90 The NGSM listing standards for closed end management investment companies differ in certain respects from those described in this *Client Alert*. See generally NASDAQ Rule 4426(a), (b), (d) and (e).
- 91 NASDAQ Rule 4425(b).
- 92 NASDAQ Rules 4425(c), 4425(d).
- 93 NASDAQ Rule 4426(b)(1)(A).
- 94 NASDAQ Rule 4426(b)(1)(B).
- 95 NASDAQ Rule 4426(b)(1)(C).
- 96 NASDAQ Rule 4427(a).
- 97 NASDAQ Rule 4426(b)(2).
- 98 NASDAQ Rule 4426(b)(3)(A).
- 99 NASDAQ Rule 4426(b)(3)(B).
- 100 NASDAQ Rule 4426(b)(3)(C).
- 101 NASDAQ Rule 4426(c)(1)(A).
- 102 NASDAQ Rule 4426(c)(1)(B).
- 103 NASDAQ Rule 4426(c)(1)(C).
- 104 NASDAQ Rule 4426(c)(2)(A).
- 105 NASDAQ Rule 4426(c)(2)(B).
- 106 NASDAQ Rule 4426(c)(2)(C).
- 107 NASDAQ Rule 4426(c)(3)(A).
- 108 NASDAQ Rule 4426(c)(3)(B).
- 109 NASDAQ Rule 4426(d).

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- <sup>110</sup> NASDAQ Rules 4310(c)(2)(A), 4320(e)(2)(A), 4320 (e)(5).
- <sup>111</sup> NASDAQ Rule 4200(a)(20).
- <sup>112</sup> NASDAQ Rules 4310(c)(2)(B), 4320(e)(2)(A), 4320(e)(5).
- <sup>113</sup> NASDAQ Rules 4310(c)(2)(C), 4320(e)(2)(A).
- <sup>114</sup> NASDAQ Rules 4310(c)(6), 4320(e)(4).
- <sup>115</sup> NASDAQ Rules 4310(c)(7), 4320(e)(5).
- <sup>116</sup> NASDAQ Rules 4310(c)(4), 4320(e)(2)(E).
- <sup>117</sup> NASDAQ Rules 4310(c)(1), 4320(e)(1).
- <sup>118</sup> NASDAQ Rule 4320(e)(6).
- <sup>119</sup> NASDAQ Rules 4310(c)(3), 4320(e)(2)(B), 4320(e)(5).
- <sup>120</sup> NASDAQ Rules 4310(c)(6), 4320(e)(4).
- <sup>121</sup> NASDAQ Rules 4310(c)(7), 4320(e)(5).
- <sup>122</sup> NASDAQ Rules 4310(c)(7), 4320(e)(5).
- <sup>123</sup> NASDAQ Rules 4310(c)(4), 4320(e)(2)(E).
- <sup>124</sup> NASDAQ Rules 4310(c)(1), 4320(e)(1).
- <sup>125</sup> NASDAQ Rule 4450(e).
- <sup>126</sup> Note that "Controlled Companies," which are companies of which more than 50 percent of the voting power is held by an individual, a group or another company, are exempt from the requirements relating to having a majority of independent directors, executive compensation and director nominees. NASDAQ Rule 4350(c)(5).
- <sup>127</sup> NASDAQ Rule 4350(c).
- <sup>128</sup> NASDAQ IM-4200.
- <sup>129</sup> NASDAQ Rule 4350(c).
- <sup>130</sup> NASDAQ IM-4200.
- <sup>131</sup> NASDAQ Rule 4200(a)(15).
- <sup>132</sup> NASDAQ Rule 4200(a)(15).
- <sup>133</sup> Other than employment as an executive officer on an interim basis for less than one year, where such employment has terminated. NASDAQ IM-4200.
- <sup>134</sup> Other than compensation for former service as an interim executive officer, provided that such employment did not last more than one year. Nonetheless, the issuer's board of directors must still consider whether such former employment

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and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. NASDAQ IM-4200.

135 NASDAQ IM-4200.

136 NASDAQ Rule 4200(a)(14).

137 NASDAQ Rule 4350(c)(2).

138 NASDAQ IM-4350-4.

139 NASDAQ Rule 4350(c)(4).

140 NASDAQ Rule 4350(c)(3).

141 NASDAQ IM-4350-4.

142 NASDAQ Rule 4350(d)(1).

143 NASDAQ Rule 4350(d)(3).

144 NASDAQ Rule 4350(d)(2).

145 In the case of investment company issuers, "affiliated person" is replaced with "interested person," as defined in section 2(a)(19) of the Investment Company Act of 1940.

146 NASDAQ IM-4350-4.

147 NASDAQ Rule 4350(d)(4).

148 NASDAQ Rule 4350(e).

149 NASDAQ Rule 4350(f).

150 NASDAQ Rule 4350(g).

151 NASDAQ Rule 4350(h).

152 NASDAQ Rule 4350(i).

153 "Material amendments" to an equity compensation arrangement include any material increase in the number of shares to be issued under the plan (other to reflect a reorganization, stock split, merger, spinoff or similar transaction) and any material increase in benefits to participants. NASD IM-4350-5.

154 The exceptions include: (i) warrants or rights issued generally to all security holders of the issuer or stock purchase plans available on equal terms to all security holders, (ii) certain tax-qualified non-discriminatory employee benefit and parallel nonqualified excess plans, (iii) plans or arrangements involving mergers or acquisitions, either when conversions, replacements or adjustments of outstanding options or other equity compensation awards are necessary to reflect the transaction, or when shares available under certain plans acquired in acquisitions or mergers are to be used for certain post-transaction grants, and (iv) employment inducements to new employees. The items described under (ii) and (iv) above must be approved by the issuer's independent compensation committee or a majority of independent directors. NASD Rule 4350(i)(A).

155 NASDAQ IM-4350-1.

- 156 NASDAQ IM-4350-3.
- 157 NASDAQ Rule 4350(j).
- 158 NASDAQ Rule 4350(k).
- 159 15 USC. § 7212.
- 160 NASDAQ Rule 4350(n).
- 161 NASDAQ Rule 4350(m).
- 162 NASDAQ Rule 4350.
- 163 NASDAQ Rules 4310(c)(16), 4320(e)(14).
- 164 NASDAQ Rule 4350(b)(1)(B).
- 165 NASDAQ IM-4120-1.
- 166 NASDAQ IM-4120-1.
- 167 NASDAQ Rules 4310(c)(17), 4320(e)(15).
- 168 NASDAQ Rules 4310(c)(24), 4320(e)(20).
- 169 NASDAQ Rule 4350(a)(1).
- 170 NASDAQ Rule 4350(b)(1)(B).
- 171 NASDAQ Rule 4350(j).
- 172 NASDAQ Rule 4350(m).
- 173 NASDAQ Rules 4350(d)(3), 4350(d)(2)(A)(ii).
- 174 NASDAQ Rule 4350(a)(1).
- 175 NASDAQ Rule 4350(a)(1).
- 176 FSA Listing Rule ("LR") 2.
- 177 LR2.2.1.
- 178 LR2.2.2.
- 179 LR2.2.3.
- 180 LR2.2.4.
- 181 LR2.2.7.
- 182 LR2.2.9.

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183 LR2.2.10.

184 Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

185 The home Member State in accordance with Article 2.1(m) of the Prospectus Directive.

186 LR2.2.11. Listing particulars contain information issued by companies which are seeking admission of new securities to the Official List in circumstances where a prospectus is not required under the European Prospectus Directive. They contain detailed information about the securities and the issuing company. The information required to be set out in listing particulars is determined by the Listing Rules and the Act.

187 LR2.2.12.

188 LR6.

189 LR6.1.3.

190 LR6.1.4.

191 LR6.1.16.

192 LR6.1.19.

193 LR6.1.21.

194 LR6.1.23.

195 LR9.

196 LR9.1.1.

197 LR9.2.

198 LR9.2.2.

199 LR9.2.3.

200 LR9.2.4.

201 LR9.2.7.

202 LR9.2.8.

203 LR9.2.11.

204 LR9.2.14.

205 LR9.2.15. "Shares being held in public hands" means that, at the time of admission to listing, at least 25 percent of each class of shares being listed must be in the hands of the public in one or more EEA States. Shares are not regarded as being held in public hands where they are held directly or indirectly by, for example, the directors of the company or any of its subsidiaries or by a person connected with such a director or by a person holding 5 percent or more of the shares. A percentage lower than 25 percent may be acceptable if the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public.



206 LR9.2.18.

207 LR9.3.

208 LR9.3.1.

209 LR9.3.3.

210 LR9.3.8.

211 LR9.6.

212 LR9.3.11.

213 LR9.4.1.

214 LR9.4.4.

215 LR9.4.5.

216 LR9.6.4.

217 LR9.6.5.

218 LR9.6.7.

219 LR9.6.11.

220 LR9.6.16.

221 LR9.6.18.

222 LR9.6.19.

223 LR9.6.20.

224 LR9.7.

225 LR9.7.1.

226 LR9.7.2.

227 LR9.8.

228 LR9.8.1.

229 LR9.8.2.

230 LR9.8.3.

231 LR9.8.4, 9.8.6 , 9.8.7 and 9.8.8.

232 LR9.8.10.

233 LR9.8.13.

234 LR9.9.

235 LR9.9.4.

236 LR9.9.5.

237 LR9.9.6.

238 LR9.9.4.

239 The Combined Code of Corporate Governance, July 2003.

240 Aim Listing Rule (LR) 1-2.

241 A quoted applicant must provide the Exchange, at least 20 business days before the expected date of admission to AIM, with the information specified in Schedule One and its supplement.

242 LR1-3.

243 Disclosing the information contained in Schedule 2 to the AIM Rules.

244 A quoted applicant is not required to produce an admission document unless otherwise required by the Prospectus Rules.

245 LR1-30.

246 LR1-7.

247 LR1.11.

248 LR 1-26.

249 LR 1-12 to 1-17.

250 As per Schedule 3 of the AIM Rules.

251 As per Schedule 3 of the AIM Rules.

252 LR1-17.

253 LR1-18.

254 LR1-19.

255 LR1-20.

256 LR1-31.

257 LR1-32.

258 LR1-33.

259 LR1-1.

260 LR1-35.

261 LR1-36.

262 LR1-37.

263 LR1-21.

264 Chapter XII.

265 Article 1, Chapter XII.

266 Subchapter 1, Chapter XII .

267 Article 6, Chapter XII: The Board may:

- make the admission of financial assets to official stock exchange listing subject to more stringent conditions than those set out in Section I of Chapter XII or to additional requirements, provided that these more stringent and additional requirements apply generally to all issuers or by class of issuer and that they have been published before the applications for admission are made;
- make issuers of financial assets admitted to official stock exchange listing subject to additional requirements, provided these apply generally to all issuers or by class of issuer;
- make admission of a financial asset to official stock exchange listing subject to particular requirements which it deems appropriate and which it would have explicitly notified to the applicant. Such requirement may only be imposed for the purpose of investor protection;
- grant waivers for the requirements laid down in these rules and regulations, provided that the waivers apply generally to all the issuers, when the justifying circumstances are similar;
- reject at any time an application for admission to official stock exchange listing, if in its opinion, the situation of the issuer is such that the admission would be detrimental to the investors' interests;
- refuse to admit to official stock exchange listing a financial asset already admitted to official stock exchange listing in another Member State of the European Union, when the issuer does not meet the obligations resulting from the admission in that Member State;
- make public the fact that the issuer does not meet the obligations which it has to fulfill in connection with the admission to official stock exchange listing.

268 In accordance with Article 20(1) of Grand-Ducal Regulation dated March 31, 1996.

269 Article 2, Chapter XII.

270 Article 3 , Chapter XII.

271 The condition set out in the first paragraph shall not be applicable for the admission to official stock exchange listing of a further block of shares of the same category as those already listed.

272 In the event that a derogation is granted, the company shall, apart from meeting the general listing requirements laid down in Chapters XII and XIII of these rules and regulations, conform to the requirements of Article 8.3.D of Chapter XII and Article 2 of Chapter XIII of these rules and regulations.

<sup>273</sup> The LuxSE Co. may consider shares which are not fully paid up as freely transferable, if arrangements have been made to ensure that the negotiability of these shares is not restricted and that trading is made open and proper by providing the public with all appropriate information.

The LuxSE Co. may, in case of admission to official stock exchange listing of shares which may be acquired only subject to approval, derogate from the first paragraph only if the use of the clause of approval is not likely to disturb the market.

<sup>274</sup> This condition shall not apply when the shares are distributed to the public through the Stock Exchange. In this case, admission to official stock exchange listing may be granted only if the LuxSE Co. is satisfied that a sufficient number of shares will be distributed through the LuxSE Co. within a short period of time.

<sup>275</sup> However, if the shares are admitted to official stock exchange listing in one or several non-Member States of the European Union, the LuxSE Co. may, by way of derogation from the first paragraph, provide for their admission to official stock exchange listing, if a sufficient number of shares is distributed to the public in the non-Member State(s) where they are listed.

A sufficient number of shares shall be deemed to have been distributed either when the shares in respect of which application for admission has been made are in the hands of the public to an extent of at least 25 percent of the subscribed capital represented by the category of shares concerned or when, in view of the large number of shares of the same category and the extent of their distribution to the public, the market will operate properly with a lower percentage.

<sup>276</sup> However, this condition shall not apply to applications for admission which do not cover all the shares of a same category already issued, if the shares of that category for which admission is not applied for belong to blocks used to keep control of the company or are not negotiable for a certain period of time under agreements, provided that the public is informed of such situations and that there is no danger of such situations being detrimental to the interests of the holders of the shares for which admission to official stock exchange listing is sought.

<sup>277</sup> Article 5, Chapter XII.

<sup>278</sup> Article 8 – as per Article 2 of Chapter XII.

<sup>279</sup> In the case of shares of a company which is not in a position to have published or registered, in accordance with the relevant laws and regulations to which it is subject, its annual accounts for the three financial years preceding the application or admission to official stock exchange listing:

a) the following documents:

- a detailed and up-to-date curriculum vitae, evidencing the professional experience and the knowledge necessary to the performance of the company's activity;
  - an extract of the judicial record or a document which is equivalent thereto;
  - banking references concerning the persons sitting on the administrative, management and supervisory bodies and who may have a significant influence on the performance of the company's business, or, where applicable, concerning the persons responsible for the company's management and who are actually entitled to define the guidelines for the company's operation;
- b) three-year estimates, including in particular financial estimates for the development of the planned activities, which shall be established or approved by one or several independent and specialized experts or organizations.

<sup>280</sup> Article 9, Chapter XII.

<sup>281</sup> Article 10, Chapter XII.

The same applies to each issuer whose financial assets are also official listed on one or several stock exchanges situated or operating in one or several non-Member States of the European Union. In that case, the issuer has only to make available to the Luxembourg market information which is equivalent to the information made available to the market of the State(s) concerned, provided that such information may be of importance for the evaluation of the financial assets in question.

282 Article 11, Chapter XII.

283 Article 27, Chapter XII.

284 The LuxSE Co. may require the issuer to provide any information which it considers necessary for the examination of the application to trading.

285 Article 28, Chapter XII

286 The annual accounts of the issuer whose shares are admitted to trading on the market regulated by the Stock Exchange shall be verified by one or several auditors (réviseurs d'entreprises) members of the Institut des Réviseurs d'Entreprises or the equivalent organization in the country of origin of the issuer.

If the company concerned prepares both consolidated and non-consolidated annual accounts, it shall make them available to the public.

In this case, the Board may authorize the company to make available to the public either only the non-consolidated accounts or the consolidated accounts, provided that the accounts which are not made available to the public do not provide significant additional information.

If the annual accounts and the annual report do not comply with the legal provisions relating to the accounts of companies and if they do not give a true and fair view of the company's assets and liabilities, financial position and profits and losses, more detailed or additional information shall be provided.

287 Article 29, Chapter XII.

288 The Board may exempt a company from this requirement if the disclosure of particular information is such as to prejudice the legitimate interests of the company.

289 The foreign companies which are not governed by the legislation of a Member State of the European Union shall inform the public in Luxembourg within nine calendar days at the latest, whenever it comes to their notice, of the acquisition or disposal by a natural or legal person of a number of shares such that the holding of this person becomes higher or lower than 10 percent, 20 percent, one third, 50 percent and two thirds of the total of the voting rights.

290 In accordance with the provisions of Articles 9, 10, 28 and 29 of Chapter XII.

291 Article 30, Chapter XII.

292 Chapter XIII.

293 Article 2, Chapter XIII – The companies referred to in Article 3 A.3 of Chapter XII of these rules and regulations shall furthermore publish during the period for which the derogation is granted an interim report covering the first and the third quarters of the current financial year. The interim reports shall be made available to the public, in Luxembourg, within three months following the period in question. The same time limit shall also apply to the half-yearly report to be published by these companies during the period for which the derogation is granted.

294 Article 4, Chapter XIII.

295 Article 5, Chapter XIII.

296 Where the company has paid or proposes to pay an interim dividend, the figures must indicate the profit or loss after tax for the relevant half-year and the interim dividend paid or proposed. The figure for the corresponding period in the preceding financial year shall be shown against each figure.

The explanatory statement shall include any significant information enabling investors to make an informed assessment on the trend of the company's activities and profits and losses, together with an indication on any special factor which has influenced those activities and those profits or losses during the relevant period, and enable a comparison to be made with the corresponding period of the preceding financial year. It shall also, as far as possible, refer to the company's likely future development in the current financial year.

<sup>297</sup> Article 7, Chapter XIII.

<sup>298</sup> Article 8, Chapter XIII.

<sup>299</sup> Required by Chapter XIII.

<sup>300</sup> Article 10, Chapter XIII.

<sup>301</sup> Article 12 - as provided for in Chapter XIII, (provided that the information given is equivalent to that which would result from the application of such Chapter).

<sup>302</sup> For more detail, see the Luxembourg Stock Exchange home page (<http://www.bourse.lu>), click on the "News" link and then click on the link "The Ten Principles of Corporate Governance."

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