Equity capital market

Round up of the news in 2014 so far...

Whilst stamp duty on shares quoted on growth markets such as the Alternative Investment Market (AIM) and the ISDX Growth Market has recently been abolished with the view to put growth centre-stage and create an environment where businesses and foreign businesses can thrive, new versions of the AIM Rules and the Nomad Rules were made available to download in May 2014, the Institute of Chartered Secretaries and Administrators (ICSA) published in May 2014 a consultation paper on the contents list for the annual reports of companies, the ISDX Growth Market Rules for Issuers is likely to make it more difficult for ISDX Companies to stay on ISDX, and the Panel on Takeovers and Mergers has sought consultation on various aspect of the code including the famous "Whitewash" waiver under Rule 9 of City Code on Takeovers and Mergers (Takeover Code) .

As ever, we have tried to condense the most significant legal and regulatory changes from the last few months into short, concentrated articles that cover the key points.

AIM Rules

In May 2014, the London Stock Exchange (LSE) published the AIM Notice 39 which provides feedback on the previous notice in which the LSE consulted on proposed change to the AIM Rules for Companies (the AIM Rules) and the AIM Rules for Nominated Advisers (the Nomad Rules). Many of the proposed changes were administrative in nature, while others were aimed at clarifying existing practice.

Regarding the AIM Rules for Companies, the changes that we consider of interest to companies, are as follows:-

1. Restrictions on dealing by directors and applicable employees during a close period are set out in the Guidance note to AIM Rule 21. The main change is that there would no longer be a need for the Nomad to ask AIM Regulation for a derogation from AIM Rule 21 where directors are participating in a fundraising on the terms set out in the rules. However, it does not apply to those additional circumstances which are set out in *Inside AIM (Issue 5)* where AIM Regulation is said to routinely grant derogations and Nomads should continue to approach AIM Regulation for derogations in respect of any situations not within the new guidance. This area remains under scrutiny by the regulator so as to establish whether or not further restriction on dealings are required to reflect other aspects of the Model Code amongst other things.

2. The clarification made regarding the type of disclosure of price sensitive information that would be likely to lead to a significant movement in the price of the AIM securities of an issuer. The Guidance note to AIM Rule 11, has been amended so that the information includes amongst other things that information which a reasonable investor would be likely to use as part of their investment, the reasonable investor test of the Financial Services and Markets Act 2000.

3. AIM companies' website should now make available details of the corporate governance code that the AIM Company has decided to apply and how that company complies with

the code. Where a code is not adopted, an explanation of the company's corporate governance arrangements should be provided (AIM Rule 26).

4. New guidance has also been provided to AIM Rule 26 which reminds AIM companies that Euroclear UK & Ireland Limited requires AIM companies to inform it of changes in stamp duty status, when the AIM Company lists or ceases to be listed on a Recognised Stock Exchange.

5. Investment companies listed on AIM are now to show that they have invested in a range of investments that is not concentrated into only one or a very small selection of securities, businesses or assets. The guidance on AIM eligibility has been amended to provide that a fund must be closed-ended in order to be eligible and must not be complex.

6. It has now been made clear that the LSE has jurisdiction over AIM companies no longer admitted to the market where they may have breached the AIM Rules while their securities were admitted to the AIM. In such case, the power of the LSE to seek information (and in some cases publish that information) in such form and within such limit as the LSE considers appropriate will continue to apply to that company, as if it were an AIM company. This provision addresses some of the concerns of Nomads when they are required to act as a liaison contact between a cancelled company and the LSE, in respect of an LSE investigation.

Annual reports of companies

We are awaiting the result of the consultation paper from the Institute of Chartered Secretaries and Administrators (ICSA) which published in May 2014 a paper on the contents list for the annual reports of companies. The list aims to assist those preparing reports for UK listed companies, although it may also be of wider use. The list is intended to be a helpful starting point for companies to adapt to suit their specific circumstances. It is not intended to be prescriptive, nor is it intended to be a comprehensive list of all legal and regulatory requirements. It also excludes a list of contents for the financial statements. ICSA notes that the placement of information in annual reports is, to a significant extent, at the company's discretion to explain to shareholders and other investors how the company has performed over the past year and how it creates long-term value. The consultation is available here.

ISDX Growth Market

On 10 September 2014 the ISDX announced that it is in the process of conducting a review of its entry requirements and the ISDX Growth Market Rules for Issuers, and that the review will affect its implementation of Guidance Notes 4.7 and 5.2 of the rules (under which issuers admitted to the market on 9 July 2013 will be assessed from 9 January 2015 and will be withdrawn from the market if they did not comply with Rules 4 and 5, which set out certain criteria for admission, at the time of admission). It states that, although the assessment of issuers' compliance with existing Rules 4 and 5 will proceed as planned, non-compliant issuers will not be withdrawn from trading while the review is in progress. The results of the assessment will be taken into account during the review, and it will issue a public consultation on any future rule changes.

Contract law

Meanwhile, two recent cases in the High Court will be of interest to companies wishing to narrow the scope of the corporate advisory services provided by corporate advisers under their engagement letters.

In both cases, the corporate advisers were looking to obtain a success fee on (1) the sale of a subsidiary of an AIM company after one year of the termination of the engagement of the corporate adviser with the AIM company provided that the sale had been “consummated” during before the end of that period (Case no. 1) or (2) the proposed exit of a minority shareholder where the wording of the engagement letter specifically stated that the fee would be payable even if the corporate adviser had no part in the to play in the decision of the minority shareholder to sell (Case no. 2). The judges granted the success fee in the Case no. 2 mainly on the basis that the corporate adviser did not have to show that this result was achieved as a result of its efforts and that the fact only that the minority shareholder had decided to sell was sufficient to entitle it to its success fee. In the Case no. 2, the issue revolved on the meaning of “consummated within one year of termination of the engagement”. In this case, it was held that “consummation" occurred when agreement was reached on the transaction, whether or not the agreement was made conditional. Engagement letters for corporate advisory services remain material contracts to companies and these two cases illustrate the need for careful consideration negotiating and drafting them.

Takeover Code

Under the Takeover Code, a shareholder (together with its concert parties) who acquires an interest in 30% or more of the target's securities (or increases such interest between 30% and 50%) would ordinarily be required to make a mandatory bid for the target. However, a Rule 9 whitewash (under which shareholder approval is given to the proposed acquisition of shares) may be sought which obviates the need for a mandatory bid. The Panel is proposing that the circular to shareholders seeking approval should specifically note that the potential new controller will not be restricted from making an offer for the target company following approval of the Rule 9 whitewash (unless it has entered into a standstill agreement with the company or has made a statement that it does not intend to make an offer, in which case full details of the agreement or statement should be disclosed).

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