

## **MORE ATTRACTIVE THAN WALL STREET?**

We have recently seen the fifth anniversary of the Sarbanes-Oxley Act come and go, prompting reflection on five years of enhanced regulatory scrutiny. A vital area of concern is the question whether the additional time, energy, money and risk of being a U.S. public company is driving issuers to take their business overseas, particularly to the London Stock Exchange's Alternative Investment Market, or "AIM".

While there is no clear consensus on how best to answer this question, the following factors are worth noting. Since Sarbanes-Oxley (SOX):

- Audit fees for public companies have dramatically increased;
- Obtaining qualified directors to serve on public boards has become more difficult and more expensive;
- "Going-private" is an option many public companies are considering and implementing; and
- More U.S. companies are listing on the AIM.

An AIM listing has the potential benefit of taking less time, involving less money, and avoiding some of the continuing corporate governance restrictions found on the U.S. exchanges. These factors are leading many boards to consider the AIM an attractive alternative to a traditional U.S. initial public offering.

However, there are drawbacks. If an AIM listed issuer exceeds certain revenue and shareholder thresholds, they may end up having to comply with U.S. reporting obligations, including SOX.

An AIM listed company is considered a private company under U.S. federal securities laws. This means that equity transactions in the U.S. will continue to be subject to the limitations imposed on private placements of securities, and privately placed securities in the U.S. will continue to be subject to significant resale restrictions.

Even under an AIM listing, one year mandatory lockups are standard after a small business obtains an AIM listing. This period could be extended further by the issuer's Nominated Advisor or its AIM Broker.

The greater concern for many policy makers is whether the current U.S. regulatory climate is pushing desirable capital market transactions away from the U.S. and into the arms of foreign exchanges, such as the AIM. Some commentators view the drift of smaller companies to foreign exchanges as a positive effect of SOX, sending less prepared issuers representing riskier investments away from Wall Street, while others see this as lost revenue for the U.S. capital markets industry.

Two recent events underscore how seriously policy makers are taking this potential threat:

- Eliot Spitzer, Governor of New York and former attorney general of that state, has assembled a blue ribbon panel to consider and propose steps to ensure that the U.S. retains its position as a leader in the financial world; and
- The SEC is considering the benefits of allowing foreign exchanges with substantially similar regulatory schemes to have direct access to the U.S. capital markets.

Only time will tell what future legislation may come from these discussions, but one thing is clear — the U.S. has a vested interest in both pursuing quality regulation of listed issuers and staying competitive in an increasingly global capital market