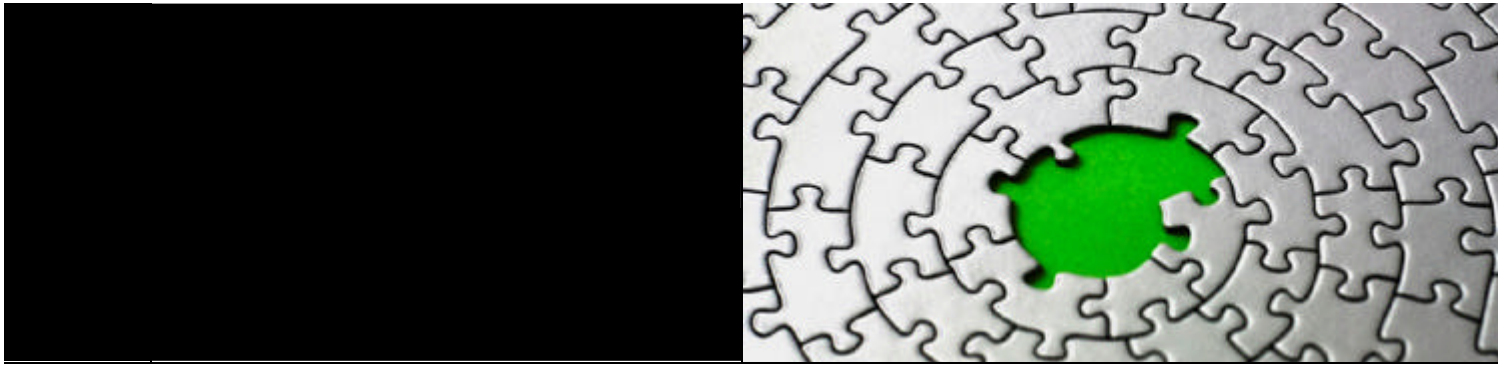


# Equity Capital Markets Update

## Q3 2009

OLSWANG





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"There is a realisation throughout the TMT sectors that convergence is upon us and that requires some key decisions to be made very quickly." (see page 7)

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# Recent Legal Developments

In this edition, we look at the impact of a two-tier Official List, an update on the opportunity to reclaim Stamp Duty Reserve Tax, the introduction of anti-avoidance tax legislation relating to buying back discounted debt and, of particular interest to those involved in the technology, media and telecoms sectors, we have the results of Olswang's latest media convergence survey.

"Only time will tell how a UK issuer with a Standard Listing comes to be perceived by the market."

## Premium vs. Standard Listing

When seeking admission of their securities to the Official List, UK trading companies now have the ability to choose one of two categories of listing – a Primary Listing (to be known as a Premium Listing from 6 April 2010) or a Secondary Listing (to be known as a Standard Listing from 6 April 2010). Historically, a Secondary Listing has only been available to overseas companies; however, in order to ensure compliance with market-harmonisation requirements of European law, the FSA has recently published amendments to the Listing Rules allowing UK companies to have a Secondary Listing.

### Primary/Premium Listing

An issuer with a Primary Listing is required to meet the UK's super-equivalent listing regime which imposes requirements which are over and above the EU minimum (as prescribed by the European Prospectus, Market Abuse and Transparency Directives). An issuer (whether a domestic company or an overseas company) with a Primary Listing also has to meet higher standards of regulation and corporate governance and it may therefore enjoy greater liquidity and a lower cost of capital through greater transparency and increased investor confidence. A Primary Listing is therefore seen as the "gold standard".

### Secondary/Standard Listing

A Standard Listing allows issuers access to the main market by meeting harmonised European standards rather than the UK's super-equivalent requirements. An issuer with its equity carrying a Secondary Listing is **not** obliged to:

1. provide pre-emption rights for shareholders (although statutory pre-emption rights under the Companies Act 2006 will continue to apply to UK incorporated companies);
2. adhere to the Combined Code (although the issuer would have to make corporate governance statements in compliance with DTR 7.2 instead);
3. have a sponsor;

4. have a three year trading record; and
5. comply with certain Listing Rules, including those relating to Continuing Obligations (LR 9), Significant Transactions (LR 10) and Related Party Transactions (LR 11).

### **Migrating from a Premium Listing to a Standard Listing**

From 6 April 2010, subject to meeting certain conditions, companies which then have a Premium Listing will be able to migrate to a Standard Listing with relative ease in accordance with changes to the Listing Rules which come into effect at that time. The procedure required to migrate to a Standard Listing will involve:

1. giving notification to the FSA;
2. issuing a circular to the issuer's shareholders;
3. receiving approval from 75% of the issuer's shareholders for the migration; and
4. an application to the FSA to transfer the shares from one regime to the other.

### **Comments**

It is important for a company wishing to have its shares traded on a London market to consider the differences between them. In summary (and for these purposes, ignoring PLUS markets), the main differences are:

<b>CRITERIA</b>	<b>LISTING/QUOTATION</b>		
	<b>PREMIUM</b>	<b>STANDARD</b>	<b>AIM</b>
<b>Minimum Market Cap</b>	£700k (LR 2)	£700k (LR 2)	None
<b>Minimum free-float</b>	25% (LR 6)	25% (LR 14)	NOMAD assesses suitability
<b>Sponsor</b>	FSA sponsor required	FSA sponsor optional	NOMAD supervises and regulates

CRITERIA	LISTING/QUOTATION		
	PREMIUM	STANDARD	AIM
<b>Regulation</b>	"Super-equivalent" rules  Listing Rules, Prospectus Rules and the Disclosure and Transparency Rules all applicable	EU minimum standard  Prospectus Rules and Disclosure and Transparency Rules are both applicable, some Listing Rules applicable	Comparatively fewer and less stringent rules  Based on a "comply or explain" model with the NOMAD playing a key regulatory role
<b>Corporate Governance Regime</b>	Combined Code on Corporate Governance (LR 9)	Corporate Governance Statements (DTR 7.2)	None specified, although the Quoted Companies Alliance Guidelines are generally followed.
<b>FTSE UK Index Series</b>	Eligible	Ineligible	AIM series
<b>Trading History</b>	At least 75% of the business must be supported by 3 year financial history	No minimum	No minimum
<b>Shareholders' approval for transactions</b>	Required for major transactions and reverse takeovers	None, unless voluntarily adopted	Required for fundamental disposals and reverse takeovers

To those familiar with the London markets, it might be somewhat surprising that the Listing Rules which apply to a Standard Listing for equity shares have no requirements as to Continuing Obligations, Substantial Transactions or Related Party Transactions. It seems unusual that a "reverse" (that is to say a transaction where the relative class tests exceed 100%) will not be regulated as that has always been treated as, in effect, a new listing/readmission. There has been no comment from the FSA in relation to this, although a Feedback and Policy Statement is expected shortly which may address it.

It has been suggested that smaller unlisted companies or companies admitted to trading on AIM may use a Standard Listing as a stepping stone to a Premium Listing. However, the requirements of a Standard Listing will, in some respects, continue to be stricter than those applicable to AIM (for example the need to comply with the Disclosure and Transparency Rules and to issue a Prospectus in circumstances where an AIM company might not need to do so), and may result in the Standard Listing being less attractive than AIM. Nevertheless, a Standard Listing will be a listing on the "Official List" in London and, as such, may be regarded as more prestigious than a quotation on AIM but without the ongoing cost implications associated

with a Premium Listing (e.g. corporate governance, retaining a sponsor etc). Only time will tell how a UK issuer with a Standard Listing comes to be perceived by the market.

For more detail on matters covered in this article please contact David Davies on 020 7067 3197 ([david.davies@olswang.com](mailto:david.davies@olswang.com)).

"Businesses should take advice on whether they have a potential [tax] claim."

### **Stamp Duty Reserve Tax - Illegal under EU law (an update)**

By way of an update to the article entitled "*Stamp Duty Reserve Tax - Potentially Illegal under EU law*" in the [last edition](#), last edition of the Equity Capital Markets Update (see we can confirm that the European Court of Justice has now released its judgment, holding that the UK's Stamp Duty Reserve Tax ("**SDRT**") is unlawful as a matter of European law as it breaches Article 11 of the Capital Duty Directive.

Under s.96, Finance Act 1986, the entry of shares into a clearance system gives rise to a charge to SDRT of 1.5%. Businesses which have paid the 1.5% charge should take advice at the earliest opportunity on whether they have a potential claim.

Please click [here](#) for more information.

"Anti-avoidance legislation introduced to stop a perceived abuse whereby healthy companies have been able to avoid tax by taking advantage of an exemption intended to facilitate the rescue of distressed companies by unconnected parties."

### **Debt Buy-Backs - Anti-Avoidance Tax Legislation**

HM Treasury has recently announced immediately effective amendments to the tax rules, targeted at healthy companies buying back debt at a discount. This is of particular relevance to debtors who have issued debt that is trading at a discount and who would consider buying it back.

Normally, where a debtor company buys back its debt at a discount it is taxed on the difference between the amount of the debt in its accounts and the buy back price. Anti-avoidance legislation was introduced with effect from 14 October 2009 to stop a perceived abuse whereby healthy companies have been able to avoid this tax charge by taking advantage of an exemption to this rule intended to facilitate the rescue of distressed companies by unconnected parties. The rules have been tightened so that the exemption will be subject to new conditions, including a requirement that the debtor company must have been suffering severe financial problems.

Debt for equity swaps and genuine corporate rescues should generally be unaffected although, under the new rules, where debt is bought at a discount and the exemption applies, any subsequent release of the debt by the new creditor will be taxable.

Although HM Revenue & Customs have released some guidance as to the likely form of the legislation, the exact details of the amendments are not yet available. The draft legislation will be included in the next Finance Bill.

If you would like to discuss these changes and how they may affect you, please contact **Natasha Kaye** on 020 7067 3389 ([natasha.kaye@olswang.com](mailto:natasha.kaye@olswang.com)).

"There is a realisation throughout the TMT sectors that convergence is upon us and that requires some key decisions to be made very quickly."

## **The Penny Drops – Olswang Convergence Survey 2009**

For the fifth consecutive year, Olswang has carried out research into consumers' attitudes to convergence. The survey was responded to by 25 executives from a full range of industries impacted by convergence - music, free and pay-TV, films, newspaper, book and magazine publishing, advertising and marketing services and network operators. In addition, Olswang commissioned YouGov to conduct a poll online of 1,013 UK adults aged 18-65 and 536 13-17 year olds.

**What is convergence?** For the purposes of the survey, it is best defined as the effects of technological developments which result in the end-user having much greater choice and control over his or her consumption of media content in the home and/or on the move, such that he or she decides what to watch, when to watch it, and on what devices, rather than this being determined by technological constraints.

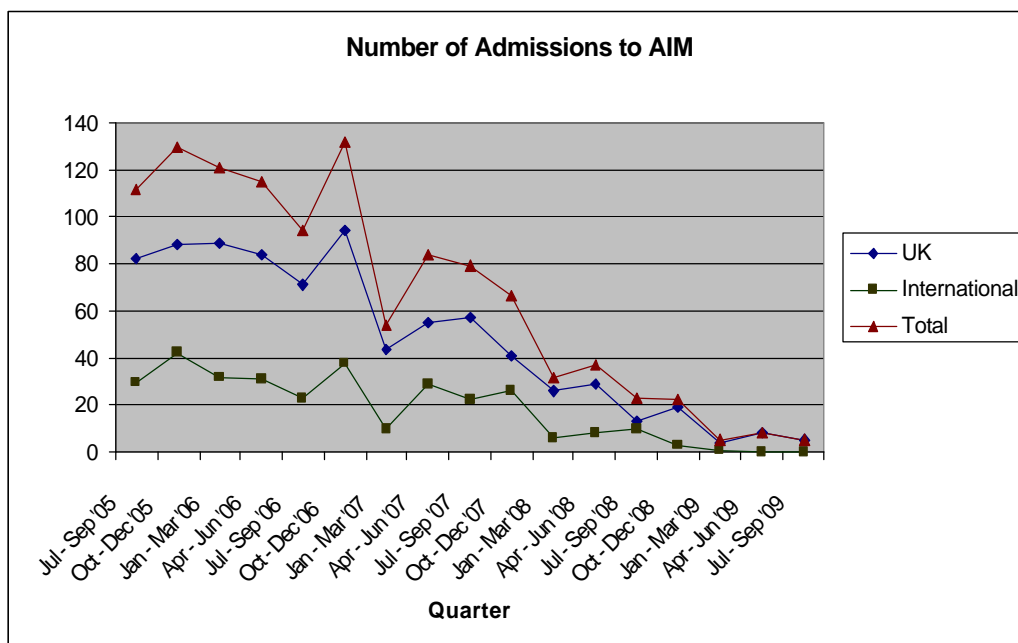
Topics in the report include the role of aggregators, how to make money, use of search and recommendation tools and business opportunities and challenges in following customers as they move from device to device accessing various different types of content and services.

For the executive summary and the ability to download the full report, click [here](#).

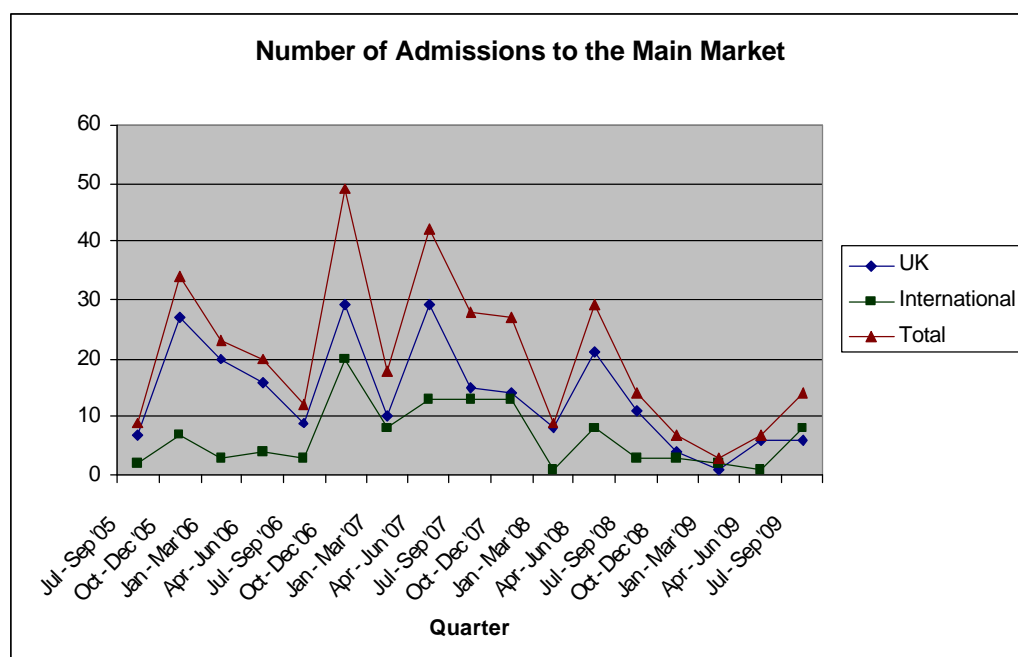
# Market Overview

## Number of Admissions to AIM and the Main Market

The number of companies admitted to both AIM and the Main Market during Q3 2009 continued to reflect the low figures of recent quarters, although a significant rise in the number of admissions to the Main Market from overseas companies is considered noteworthy.



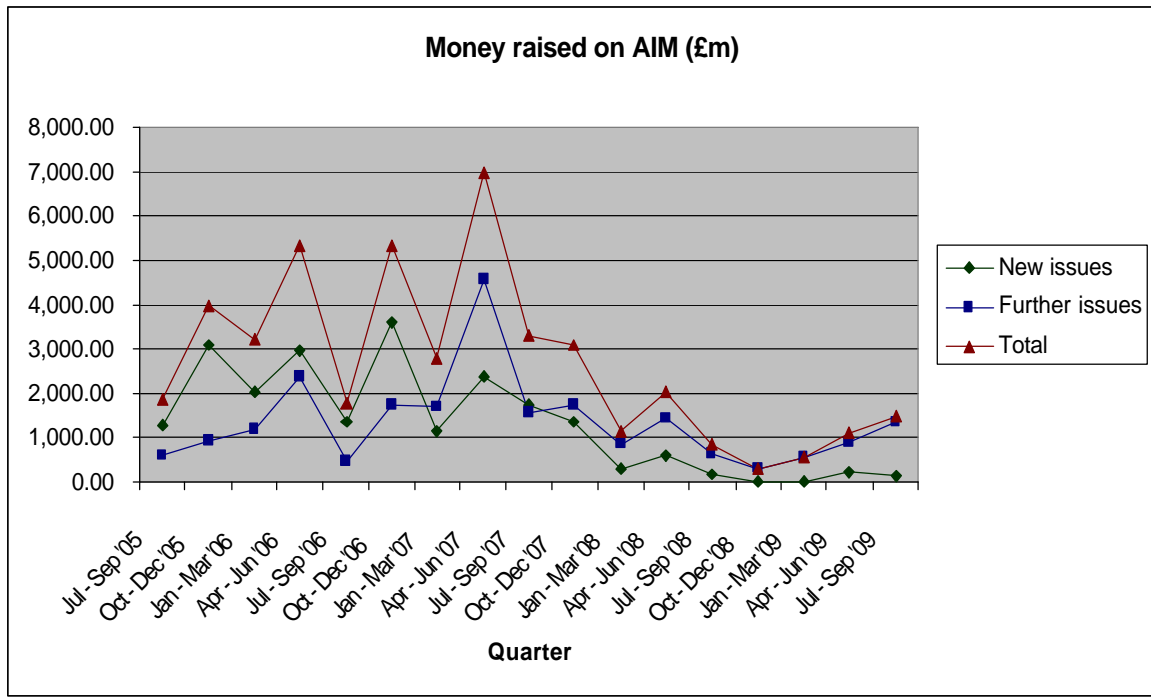
Source of data: London Stock Exchange



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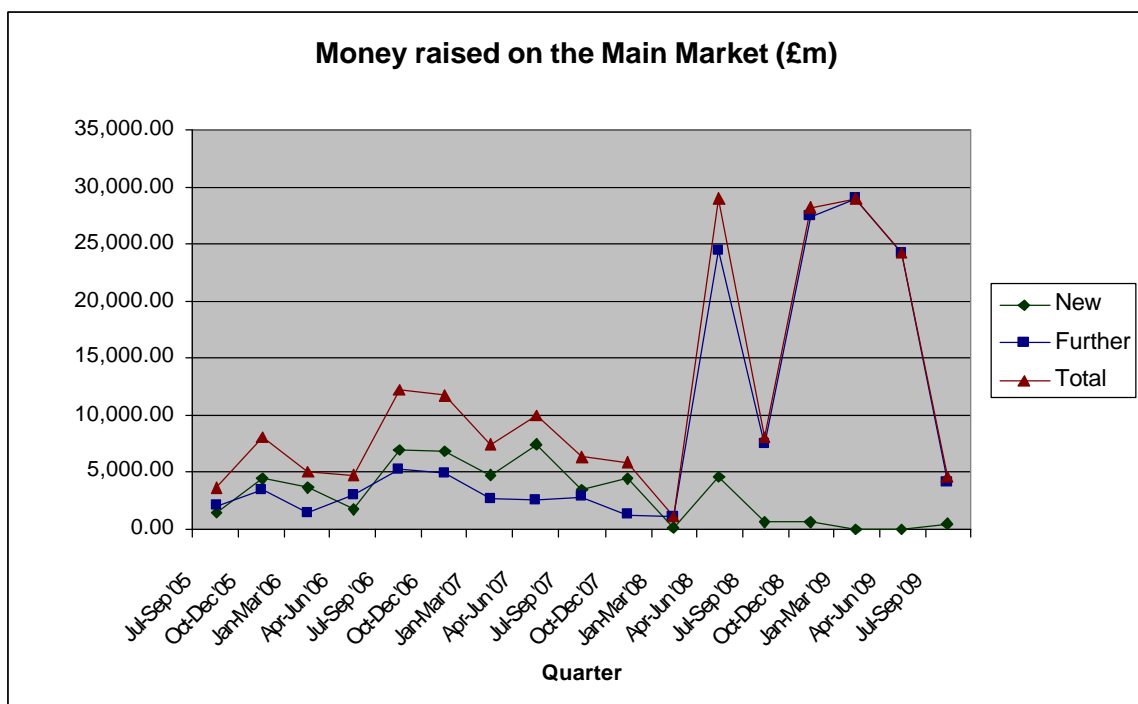
## Fundraising Activity on AIM and the Main Market

The rising trend in the amount raised on the AIM market continued through Q3 2009, mainly by virtue of secondary issues. It appears that confidence is returning to the market, albeit slowly.



Source of data: London Stock Exchange

A significant fall in the amount raised through secondary issues has led to a significant decline in overall funds raised on the Main Market in the last quarter. This mirrors a similar fall in Q3 2008 but it is likely to rebound again in Q4 2009 due to a few large secondary issues which have been announced recently.



Source of data: London Stock Exchange

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