Floating on the IEX

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A company can raise capital in a number of ways; for example, by private offers of shares for subscription, by borrowing or by using retained profits. Another way a company can raise capital is by way of public offers of shares on a stock exchange. Floating enables a company to maximise its exposure to prospective investors in national and international markets.

The Irish Stock Exchange launched the Irish Enterprise Exchange (the "IEX") on 12 April 2005. The IEX is an exchange facility designed primarily for small to medium-sized companies. The exchange is a vehicle whereby businesses, and particularly relatively new companies, can raise finance. One could be looking to raise anything from as little as €2 million to as much as €100 million from a flotation.

The IEX is classified as a *Multilateral Trading Facility* under the Markets in Financial Instruments Directive (Directive 2004/39/EC) ("MiFID"). By contrast, the main market (the "Official List") of the Irish Stock Exchange is classified as a *Regulated Market* under MiFID. The most significant difference between a Multilateral Trading Facility and a Regulated Market is that in the case of a Multilateral Trading Facility, there are less specific requirements with regard to the issue of the prospectus, the publication of the interim and annual figures and the publication of price-sensitive information.

A higher degree of investment risk tends to be attached to small to medium-sized companies in comparison with larger more established ones. Despite this, however, securities admitted to the IEX are subject to the IEX Rules for Companies (the "IEX Rules") which provide a less onerous regulatory environment for companies to operate in when compared with the listing rules for officially listed companies. Having said that, floating and operating on the IEX still requires strict compliance with the provisions of MiFID and the Prospectus Directive (Directive 2003/71) (as amended).

When it launched the IEX, the Irish Stock Exchange was attempting, firstly, to mirror the success of the London Stock Exchange's Alternative Investments Market ("AIM") as a trading platform for small and medium companies and, secondly, to stem the flow of small and medium sized Irish companies to the UK in search of listing on AIM. The IEX's attempts here have met with limited success. While some companies may for a variety of reasons (relating to the nature of the product or service on offer or the perceived target market for that product or service) make a conscious decision to remain loyal to, and, indeed, to exploit, the Irish market through the vehicle of the IEX, the fact remains that in international markets whose delineations are ever diminishing and growing more vague, the priority of raising substantial capital will usually result in an initial flotation on London's AIM or, perhaps, at least a dual listing on AIM and IEX.

Advantages of the IEX

The IEX offers small to medium-sized companies a number of advantages:

1. Access to investment capital;
2. Companies who are listed on the IEX are attractive to investors for many reasons including the opportunity to improve the liquidity of shares and enable shareholders (particularly existing institutional investors) to realise part of their investment;
3. An IEX listing enhances the status, corporate profile and capital base of the company;
4. Shares can be used as a form of currency, therefore avoiding the need to resort to working capital or additional debt finance;
5. IEX combines the benefits of a public quotation with a more flexible and less stringent regulatory environment. Companies trading on the IEX follow the IEX Rules as opposed to the extensive regulatory regime in place for companies trading on the main market of the ISE; and
6. The IEX Rules have been designed specifically for smaller companies and are complementary to the AIM admission rules in the UK, thereby allowing Irish companies the option of coordinating admission to both markets using the same timetable and essentially the same admission document therefore reducing the time and costs involved in listing on both exchanges.

Irish companies considering applying to the AIM should consider a dual listing on the IEX for many reasons including gaining 'home market advantage' and increasing the company's visibility to institutional and retail investors.

Steps Involved in Floating on the IEX

It can often take up to two years for a company to fully prepare itself for flotation. However, the flotation process itself generally starts more than a year before the expected date of admission to the IEX. A very rough and ready timeline to the key steps involved in the admission process are as follows.

Step 1: Twelve months and more before admission

- Appoint advisers (for example an IEX adviser (see below), solicitors, corporate financiers, etc.) and issue with detailed instructions;
- Prepare and agree a detailed timetable;
- Determine that the company will have a market capitalisation of at least €5 million on admission;
- Identify and review problem areas.

Step 2: Three to nine months and more before admission

- Draft admission document and other necessary documentation for admission;
- Consider pricing issues;
- Prepare PR presentations (including, for example, an information memorandum);
- Prepare and host analysts' presentation.

Step 3: One to three months and more before admission

- Continue the documentation drafting process;
- Verify contents of documents with the company and appropriate advisers;
- Hold PR meetings and investor road shows;
- Submit pre-admission announcement (see below) to the exchange.

Step 4: Up to one month prior to admission

- Finalise all necessary documentation for admission;
- Finalise pricing and allocation of the offer;
- Submit the documents to the exchange.

Differences between IEX and the Official List

The main points of difference between the Rules and the rules of the Official List are (NB: the information on the following table originated from the Irish Stock Exchange's official website www.ise.ie):

IEX	Official List
No specific admission criteria other than the requirement for a company to have a minimum market capitalisation of €5 million.	Detailed conditions for listing required. (See Chpt 3 of the Listing Rules of the Irish Stock Exchange)
No trading record required (however, see section entitled 'Special conditions for certain companies' below)	Normally, a 3 year trading record is required. (See Rule 3.4.2(1) of the Listing Rules)
No pre-vetting of IEX admission documents by the ISE.	Pre-vetting of listing particulars by the ISE prior to circulation. (See Rule 3.2.11 of the Listing Rules)
In most instances, no prior shareholder approval of substantial acquisitions and disposals.	Prior shareholder approval required for substantial acquisitions and disposals. (See Rule 7.5.1 of the Listing Rules)
No minimum number of shares to be held in public hands.	Minimum of 25% of shares to be held in public hands. (Rule 3.3.19 of the Listing Rules)

PROCEDURES INVOLVED IN FLOATING ON THE IEX: THE IEX RULES – AN OVERVIEW

Retention and Role of an IEX Adviser

In order to be eligible for the IEX, a company must appoint an IEX adviser. The IEX adviser is responsible to the Irish Stock Exchange for assessing the appropriateness of the company for the IEX and for advising and guiding the company on its responsibilities under the Rules. The responsibilities of IEX advisers are set out in detail in the Rules for IEX advisers. Broadly speaking, IEX advisers:

- Act as the principal point of contact between the company and the Irish Stock Exchange;
- Assess the company's suitability for the market;
- Draw up a detailed timetable and co-ordinate the activities of other professionals who are involved in bringing the company to the market;
- Assist in the preparation of the IEX admission document (see below); and
- Are available at all times to advise and guide the directors of a company with regard to their obligations to ensure compliance by the company with the Rules. According to the Rules, if a company ceases to have an IEX adviser the Irish Stock Exchange will suspend trading in its IEX securities. If within one month of that suspension the company has failed to appoint a replacement IEX adviser, the admission of its IEX securities will be cancelled.

IEX advisers must be approved by the Irish Stock Exchange. A copy of the register of approved IEX advisers is available on the Irish Stock Exchange's website, www.ise.ie.

Applicants for the IEX

i. Pre-admission announcement

A company must provide the Irish Stock Exchange, at least ten business days before the expected date of admission to IEX, with certain information including, *inter alia*, the name of the company, its country of incorporation, registered office, website address, business description, the number and type of securities and capital to be raised on admission (See Schedule One of the IEX Rules for a full list). If there are any changes to such information prior to admission, the company must advise the Exchange immediately by supplying details of such changes. Where, in the opinion of the Exchange, such changes result in the information being significantly different from that originally provided, the Exchange may delay the expected date of admission for a further ten business days (twenty business days in the case of a quoted company).

ii. Admission document

A company must produce an admission document disclosing certain specified information. (See Schedule Two of the IEX Rules). This document must be available publicly, free of charge, for at least one month from the admission of the company's securities to the IEX. A quoted company is not required to produce an admission document unless otherwise required by Irish prospectus law. The Irish Stock Exchange may authorise the omission of information from an admission document (other than a prospectus) of a company under certain circumstances.

iii. Application documents

At least three business days before the expected date of admission, a company must pay the IEX fee and submit to the Exchange a completed application form and its admission document (the latest report and accounts and completed application form in the case of a quoted company). These must be accompanied by the IEX adviser's declaration required by the Rules for IEX advisers. Admission to the IEX becomes effective only when the Exchange issues a dealing notice to that effect.

iv. Special conditions for certain companies

(a) Lock-ins for new businesses

Where a company'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.

This rule will not apply in the event of an intervening court order, the death of a party who has been subject to this rule or in respect of an acceptance of a take-over offer for the company which is open to all shareholders or in respect of a take-over of the company effected by means of a scheme of arrangement.

(b) Investing companies

Where the company is an investing company, a condition of its admission is that it raises a minimum of €5 million in cash via an equity fundraising on, or immediately before, admission.

(c) Other conditions

The Irish Stock Exchange may make the admission of a company subject to a special condition. Except where securities of the same class are already admitted, the expected aggregate market value of all securities (excluding treasury shares) to be admitted must be at least €5,000,000. However, the Exchange may admit securities of lower value if satisfied that there will be an adequate market for the securities concerned.

Where matters are brought to the attention of the Exchange which could affect a company's appropriateness for the IEX, it may delay an admission. The Irish Stock Exchange will inform the company's IEX adviser and request its IEX adviser to undertake further due diligence.

The Exchange may refuse an admission to IEX if it considers that (a) the company does not or will not comply with any special condition which the ISE considers appropriate and of which the ISE has informed the company's IEX adviser or (b) the company's situation is such that admission may be detrimental to the orderly operation or reputation of IEX.

v. IEX Designated Markets and the Fast-Track Route to the IEX

Companies who have had their securities traded upon an IEX Designated Market for at least 18 months (or such shorter period as the Exchange agrees) prior to the date of admission to the IEX can apply to be admitted without having to publish an admission document. Companies using this 'fast track' route to IEX must make a detailed pre-admission announcement in accordance with the requirements set out below.

The current IEX Designated Markets are the main markets of:
-Official List of the Irish Stock Exchange
-Official List of the FSA
-Alternative Investment Market of the London Stock Exchange
-Euronext
-Deutsche Borse
-NASDAQ
-NYSE

-Stockholmsbörsen
-Toronto Stock Exchange

The Irish Stock Exchange may also, at its sole discretion, deem other markets, in addition to those above, to be IEX Designated Markets. The Irish Stock Exchange should be consulted in advance by the IEX adviser if an additional market is to be considered.

vi. Fees for IEX Companies

(a) Admission fees

An admission fee of €4,000 is payable by all companies seeking admission of securities to the IEX. The fee must be paid at least 3 days before the expected date of admission. No admission fee is payable by IEX-listed companies for further issues of a class of securities already admitted. No admission fee is payable by companies transferring from the Official List to IEX.

(b) Annual fees

An annual fee of €4,000 is payable by all IEX-listed companies.

• Annual fees are billed in the first week of April for the 12 months commencing 1 April and must be paid within 30 days of the invoice date.

• A pro-rata annual fee is payable by new companies. To calculate the fee, take the number of calendar days, including the date of admission to trading up to and including 31 March, divide this number by 365 and multiply the result by the annual fee.

• For companies transferring to IEX from the Official List:

(a) where a company has paid an Official List annual fee and has not requested a refund in accordance with the ISE’s fee schedule, the ISE will not charge a pro-rata first annual fee;

(b) where a company has paid an Official List annual fee and has been refunded a portion of that annual fee in accordance with the Exchange’s fee schedule, the Exchange will charge a pro-rata first annual fee.

vii. Sanctions and appeals

If the Exchange considers that an IEX Company has contravened the IEX Rules and considers it appropriate to impose any sanction (as set out in Rules 43 and 44 of the IEX Rules) it will refer the matter to the Equity Listing and IEX Committee, except where the IEX Company or director concerned agrees to a private censure by the Exchange and the Exchange considers that to be the appropriate sanction.

If the Equity Listing and IEX Committee finds that the IEX Rules have been contravened by the IEX-listed company it may do one or more of the following:

(a) censure the IEX-listed company and, in addition, it may publish such censure; or

(b) suspend or cancel the admission of the IEX-listed company's securities, or any class thereof.

If the Equity Listing and IEX Committee finds that any contravention of the Rules is due to a failure of all or any of the IEX-listed company's directors to discharge their responsibilities under the IEX Rules it may censure the relevant director and, in addition, it may publish such censure. Further in the case of wilful or persistent failure by a director to discharge his responsibilities following such a censure, the Equity Listing and IEX Committee may state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investors and if the director remains in office following such a statement the Equity Listing and IEX Committee may suspend or cancel the listing of the IEX Company's securities, or any class of its securities.

Where the Equity Listing and IEX Committee proposes to take any of the steps described in Rules 43 and 44 of the Rules it will follow the disciplinary procedures set out in the document 'Disciplinary Cases: Hearings and Appeals Procedures'. Any decision of the Equity Listing and IEX Committee emanating from the disciplinary procedures may be appealed to the Board of the Exchange in accordance with the appeals procedures as laid down by the Exchange.

Recent Developments

In December of 2007 Merrion Pharmaceuticals, the specialist pharmaceuticals company with operations in Ireland and the United States, began trading on the IEX. It was the first company to seek an IEX only listing and brought the number of companies on the IEX to 30. The €8 million raised by Merrion followed on the heels of the €100 million raised earlier last year by Origin Enterprises, the €50 million raised by TVC Holdings and the €25 million raised by Boundary Capital.

The first half of 2008 saw another addition to the IEX with Worldspreads Group Plc being admitted to trading on 15th May. The IEX marked its third anniversary during the first quarter of 2008. In total, 31 companies are now listed on IEX, compared to an initial membership of eight listed companies. The capitalisation of the market has also more than trebled to €3 billion since its launch in 2005. The IEX is now firmly established as an attractive and important source of funding for Irish growth companies.

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