

## M&amp;A Monitor

**Piper Jaffray M&A Monitor**

Analyzing M&amp;A Activity—October 4, 2006

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**Feature Article****Some M&A Implications for U.S. Companies Listing in the UK**by Matthew Flower, 44 (0) 20 7743-8702, [matthew.j.flower@pjc.com](mailto:matthew.j.flower@pjc.com)

In the past 12 months there has been an increase in the number of U.S. companies listing on the London Stock Exchange's AIM stock market. Sarbanes-Oxley compliance costs and an increasing market capitalization hurdle level for a NASDAQ listing have led venture capitalists and company management to look at alternative listing options.

There are some direct consequences, however, for any U.S. company listing on AIM in terms of its ability to undertake acquisitions or to deal with potential offerors. For example, under AIM rules, only those transactions that would constitute a reverse takeover—in broad terms, where the target represents more than 100 percent of the listed company's size as measured by assets, profits, turnover, market capitalization or gross capital—require approval of the listed company's shareholders. This allows the AIM-listed company to move quickly in the pursuit of acquisition opportunities relative to any competitor on the Full List in London and is one of the key advantages of listing on AIM.

But more important, perhaps, is that any U.S. company listing on AIM, or indeed the Full List in London, will not fall under the jurisdiction of the UK Takeover Code (the "Code") if, as happens in the majority of cases, it retains its U.S. incorporation status. This can have advantages and disadvantages. It may allow greater flexibility in the structure of any offer for the listed U.S. entity, but this may come at the expense of fewer protections for shareholders. For example, many of the protections offered to shareholders by the Code will not be required, including:

- requirement for competent independent advice (Code Rule 3)
- minimum level of consideration to be offered (Rule 6)
- mandatory offer requirements (Rule 9)
- requirements for a cash offer (Rule 11)
- conduct during an offer (Rule 19, 20 and 21)
- timetable for the offer (Rule 31)

There may also be provisions within individual state laws for U.S.-listed companies, including the Bylaws and Articles of Incorporation, which acts as a deterrent to potential offerors in such a way that would be unavailable under the Code. It is possible for the listed company to introduce code-like provisions to its Articles of Incorporation, but it seems that when this happens, it is only to a limited extent.

There has been a recent example of a U.S. AIM-listed company being subject to an offer. Peach Holdings, Inc. ("Peach"), the parent company of Peachtree Settlement Company, a U.S. specialty finance group, has been the subject of an offer by Orchard Acquisition Company, a consortium of private equity groups and management. Peach is incorporated under the laws of the State of Florida and therefore the company and transactions in its shares are not subject to the Code.

Peach entered into a definitive merger agreement, which was recommended by the independent directors of Peach, with Orchard Acquisition Company on Sept. 12. The offer is subject to receipt of debt financing, the approval of Peach shareholders and "other closing conditions."

This transaction highlighted some differences for the process under which an offer can be made for a U.S. company listed in London. For instance, if Peach was subject to the Code, then any offer would have to be announced with a confirmation from the offeror's adviser that "resources are available to the offeror sufficient to satisfy full acceptance of the offer" (Rule 2.5 (c)), i.e., financing should already be in place, rather than in this case where it is conditional upon debt financing.

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**Feature Article, Cont.**

**Some M&A Implications for U.S. Companies Listing in the UK**

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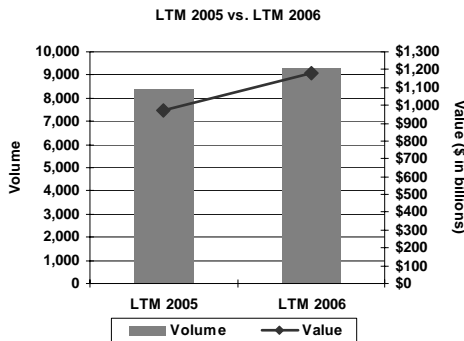
Additionally, Peach has agreed to pay the offeror a break-up fee of \$21.5 million in the event the merger agreement is terminated in certain circumstances. This amount is in excess of 2 percent of the consideration, whereas under the Code, the maximum allowable amount for any inducement fee is 1 percent of the consideration (Rule 21.2). This could be construed as a form of poison pill for any potential competing offeror for Peach.

Peach shareholders have the ability to form a view on the offer upon receipt of a proxy statement, so they will ultimately decide whether the offer is attractive. There is arguably a degree of uncertainty until the proxy statement is issued.

It is likely that as more U.S. companies list in London, the number of potential discrepancies between the Code and the combination of state legislation and the Bylaws and Articles of Incorporation of individual companies will become apparent and may lead to a review of how such transactions are governed.

**Domestic Transactions**

(\$ in billions)	Value*	Volume
LTM: 2005	\$968.0	8,401
LTM: 2006	\$1,178.7	9,282



\*Total value based on deals with reported values

Source: Thomson Financial Securities Data Corporation

LTM median deal value for 2006 is \$32.0 million compared to \$28.8 million for 2005.

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### LTM Transaction Multiples

By Size (\$ in millions)	EBIT	EBITDA
Less than \$25	NM	NM
\$25 to \$100	10.8x	6.8x
\$100 to \$250	14.6x	9.0x
\$250 to \$1,000	15.4x	7.5x
Over \$1,000	14.6x	9.2x

Current data as of October 2, 2006

Source: Thomson Financial Securities Data Corporation

Based on multiples between 0x and 25x; excluding media and telecom.

### Public Company Premiums

1 week prior to announcement	23.4%
4 weeks prior to announcement	26.0%

Current data as of October 2, 2006

Source: Thomson Financial Securities Data Corporation

### Deal Financing

	Current	1 Year Ago
Leveraged Bank Loan	7.98%	6.26%
High Yield Bond Rate	8.16%	7.90%
Senior Debt/EBITDA*	4.2x	3.9x
Total Debt/EBITDA*	4.8x	4.5x

Current data as of October 2, 2006

Source: Portfolio Management Data, The Wall Street Journal and LCD Comps

\*Represents leverage statistics for middle market LBOs (less than \$50 million of EBITDA)

### Buyout Fund Market

(\$ in billions)	2005	2004	2003
Funds Raised	\$173.5	\$42.2	\$24.0
Deals Completed	\$198.0	\$136.5	\$94.8

Data as of October 2, 2006

Source: Buyouts

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