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The revised Athens Stock Exchange Regulation: to list or to delist?

Elena Papachristou and Maria-Roxani Karydi of Papapolitis & Papapolitis say increased activity can be expected in the Greek capital market as certain companies consider how to address new free float requirements, among other regulatory changes

Market overview

After Greece's recent return to investment grade status, the Greek capital market has witnessed remarkable interest from institutional and retail investors. Before the end of the first half of 2024, two IPOs, those of Athens International Airport and Noval REIC, as well as several private placements (including those of Piraeus Bank for HFSF's shares, Austriacard, Jumbo, and Mytilineos), have been successfully concluded, while other IPOs and dual listings are coming up.

In view of the benchmarks set by the major international index providers, such as MSCI and FTSE, in order for the Athens Exchange (ATHEX) to be upgraded to a developed market, the need for increased market depth/liquidity, improved marketability, and enhanced stock valuations became more pressing. Towards this direction, the Hellenic Capital Market Commission (HCMC) has just approved the long-awaited amendments proposed by ATHEX to the Athens Stock Exchange Regulation (the ATHEX Regulation) and the ATHEX board of directors has issued relevant implementing decisions.

The new ATHEX Regulation and other Greek legislative initiatives – such as the recent reduction of the sales tax applicable to exchange and off-exchange transactions on listed stock from 0.2% to 0.1%, the abolition

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of stamp duty on off-exchange listed stock lending transactions, and a tax exemption for interest income from derivatives lending transactions – are part of a greater plan to make the Greek capital market more robust and attractive for foreign and local investors, and enhance the tradability of Greek stocks.

The latest amendments to the ATHEX Regulation and implementing ATHEX decisions 17, 20, 22, 24, 25, 27, and 28 on stock lending, technical matters for trading on ATHEX markets, ATHEX markets fees, primary listing documentation, and issuers' disclosure obligations have been introduced following long and intense discussions between ATHEX and the HCMC, as well as market participants.

In summary, the backbone of the salient changes aspires to strike a balance between:

- The need for stricter free float requirements to deepen the main market and increase the liquidity and stock valuations so as to regain, on a long-term basis, developed market status; and
- The need to open the regulated market to more companies, based on their growth potential and promising business plan, by removing certain listing requirements that created an unnecessary burden (e.g., removal of the absolute requirement for a tax certificate for an initial listing).

The specifics of these points are as follows.

Listing requirements

A minimum capitalisation threshold of at least €40 million is introduced for the commencement of trading on ATHEX. On the other hand, initial own funds should be at least €1 million at the time of the listing application instead of €3 million previously.

As regards profitability of the last three years before listing, this is no longer a requirement, since EBITDA thresholds have been replaced with operating profits (EBIT) to welcome growth-driven companies with a solid business plan that may not have been able to demonstrate meaningful profits at the time of admission to trading. This amendment likely opens the market to less mature companies with growth potential and is likely to diversify the shareholder base, attract risk capital, and achieve more competitive valuations.

Moreover, the own funds-related criterion for entry into the Surveillance Segment is upheld but is not only triggered in the case of negative own funds, but also if own funds fall below specific thresholds. More specifically, if own funds fall below the threshold of €1 million without the issuer committing to take reasonable steps (e.g., through a decision of the general meeting resolving on an appropriate share capital increase) to restore them before the end of the forthcoming financial year, the stock enters the Surveillance Segment.

Apart from the standalone own funds requirements, the revised ATHEX Regulation instils more clarity as to the scrutiny of the debt levels of the issuers, notably by introducing a concrete cap on unsettled, due, and payable debt expressed as a percentage of their own funds (50%), above which a stock may be placed into the Surveillance Segment.

Stricter free float requirements

The margin of discretion as to what previously constituted sufficient free float over the life of a listed company has led to a significant uptick in the number of illiquid stocks displaying infrequent trading and low

valuations due to low marketability. Such a situation has degraded the main market. This is the reason why the new ATHEX Regulation introduces solid minimum free float thresholds (upon listing/admission to trading and on an ongoing basis), depending on market capitalisation, in order for the market to gain in depth, liquidity, and marketability.

Under the new ATHEX Regulation, the minimum free float requirement for listing amounts to 25% of the total number of stocks of the same segment and may be reduced to 15% solely for companies of larger capitalisation (at least €200 million). In both cases, upon initial admission, the free float should be dispersed to at least 500 persons, which may be reduced to 300 persons but with the obligation to appoint at least two market makers for at least one year. The above free float thresholds apply not only at the time of admission to trading but also on an ongoing basis.

The revised ATHEX Regulation clearly enforces the requirement to meet the minimum free float thresholds by implementing periodic stress tests of the average free float, which take place biannually (January and July), as further specified in implementing ATHEX decision 22. The measurement of the average free float during the entire period under review aims to address valid concerns raised by market participants around the risk of major shareholders triggering abrupt sell-offs around the test dates to increase the free float.

In addition, a uniform definition of 'major shareholders' is introduced, addressing a lack of clarity under the previous regime regarding the scope of persons who qualify as such and are therefore exempted from the calculation of the 15% minimum free float threshold.

Exemptions from the above free float thresholds are in place for stocks classed as having high trading activity; namely, those included in the FTSE/Athex Large Cap index, those listed on a secondary market, and those displaying an average daily velocity of at least 0.05% with more than 200 trades.

The new free float requirements do not leave much room for discretion depending on the orderly operation or the special conditions of the market, as was the case under the previous regime when assessing the lower listing threshold of 15% free float or the continuous minimum free float threshold.

Furthermore, the new provisions encourage dual listings by adding the possibility to accept a reduced free float to a (possibly lower) percentage determined by the market of the primary listing, subject to the free float not being lower than 10% (as calculated in aggregate across all trading venues).

Most importantly, unlike the previous regime – which allowed companies struggling with low free float to be left basically stagnating until their delisting, which was triggered when they fell below the 10% threshold dispersed among fewer than 30 shareholders – the revised ATHEX Regulation now provides for a detailed remedy process in case of free float reduction and a maximum four-year window before a delisting or transfer to the ATHEX alternative market (EN.A.) is possible.

Moreover, the appointment of at least two market makers within three months from the beginning of the remedy period is mandatory for at least one year and until the free float is restored. Otherwise, the stock is transferred to the Surveillance Segment.

The remedy process introduced is as follows:

- Stock not included in the high trading activity category enters into the Surveillance Segment if the free float falls below the prescribed thresholds (25% or 15%, as applicable, without falling below 10%) and the percentage is not restored by the end of the remedy period determined by ATHEX (six months, with the possibility of an extension for another six months).
- Stock may trade in the Surveillance Segment for up to two years, following which – if the free float has not been restored in the meantime – trading is suspended for six months (with the possibility of an extension for another six months), following which a delisting is possible (unless the free float is restored in the meantime and no other reason for delisting exists).
- As a general rule, whenever the free float falls below 10%, trading is suspended after the lapse of a six-month remedy period (with the possibility to extend for another six months) without effective remedy, with delisting to follow, or if the free float crosses the 10% threshold in the meantime but stays below 25% or, as applicable, 15%, the stock is transferred to the Surveillance Segment.
- As an alternative to delisting, ATHEX may, at its discretion and even before the end of the one-year suspension window, transfer suspended stock to EN.A., provided that the issuer has been in the Surveillance Segment without being able to restore its free float and that transition to a multilateral trading facility is in accordance with the applicable legal framework. The decision for a transition to EN.A. may also be taken immediately upon the free float falling below 10%, as an alternative to what has been described under point 3.

Professional segment

The new ATHEX Regulation introduces a professional segment exclusively dedicated to qualified investors; namely, per se professionals, eligible counterparties, and elected professionals, as well as retail investors eligible to invest in units of listed, open-ended alternative investment funds in accordance with the applicable laws. The introduction of a dedicated professional segment is a major step forward for the creation of a liquid market for units of listed alternative investment funds (AIFs). The entry ticket is set to at least €100,000 per investor/AIF/compartment.

Additionally, with respect to bonds dedicated to qualified investors investing at least €100,000, the professional segment finally activates in Greece an option already available under **the Prospectus Regulation**; that is, to benefit from an alleviated prospectus and be exempt from the requirement to include a summary without the need to issue in high denominations.

Such targeted amendments hold the potential for deeper and more liquid bond markets by issuing in denomination sizes attractive to a wider investor base and apt to circulate more efficiently. Issuers may only make use of such alleviated prospectus treatment for bonds if on-sale to retail investors is excluded. For the avoidance of any doubt, ATHEX will not verify whether investors are qualified, with market participants remaining obliged to run the prescribed suitability and appropriateness tests.

Transition period

The revised ATHEX Regulation took effect on May 21 2024, subject to grandfathering provisions warranting a smooth transition for entities already listed at the time of entry into force. In fact, the new ongoing free

float, suspension, and delisting framework applies to existing listed issuers as of July 1 2025, subject to the issuance of the expected ATHEX announcement regarding the tests to be carried out to calculate average capitalisation and free float of the first half of the year.

The new provisions governing the Surveillance Segment (maximum two-year period, new suspension trigger) will come into force on January 1 2025 and will be implemented on the date of the periodic ATHEX review, taking into account the time an entity has spent in the Surveillance Segment before the entry into force of the new relevant provisions.

Looking ahead

There are more than 18 companies listed on ATHEX that do not meet the free float and minimum capitalisation requirements and their position in the main market is now at risk. In general, many of the Greek listed entities (approximately 44% in 2022) are family businesses and therefore largely concentrated. Moreover, there are 10 real estate investment companies (REICs) among the companies listed on the ATHEX that also have limited free float but were leniently treated under the previous framework by the competent authorities, taking into account that their listing on a regulated market is mandatory under the legislation applicable to REICs.

It seems that the new ATHEX Regulation does not leave much room for tolerance of the competent authorities in any of the above cases. Practically, this means that many of the companies that do not meet the free float requirements will imminently seek to expand their shareholder base through private placements, whereas others will inadvertently go for delisting.

Therefore, increased activity is expected in the Greek capital markets, taking into account also the mandatory appointment of market makers to help issuers to restore the free float to the desired levels. Furthermore, there is an opportunity for large-ticket investments in units of AIFs and bonds to be marketed more easily now through the dedicated professional segment, thereby likely building incentives for more solid markets. Last but not least, the discretion of ATHEX to 'transfer' issuers to the EN.A. instead of delisting is likely to upgrade that trading venue and bring it out as a hub attracting not only SMEs and startups but also a handful of companies that do not meet the increased free float requirements of the main market.

Certain concerns raised regarding the stricter free float requirements are that they may be abused by majority shareholders to circumvent existing provisions for the protection of minority shareholders and, mainly, over the obligation to previously launch a mandatory tender offer (MTO) before proceeding to a delisting. Such concerns are valid and are not sufficiently dealt with, in the authors' opinion, by the new framework.

The shift from the ATHEX main market to the EN.A., which is offered as a possibility, offers a fair compromise to issuers, with reduced compliance and other costs, but still does not sufficiently cover minority shareholders, since the MTO rules apply only to issuers listed on the regulated market. Consequently, minority shareholders will end up being deprived of their fair share in the premium of an acquisition unless the EN.A. regulation is also amended to provide protection to shareholders similar to that set forth under the MTO regime.

Overall, the changes introduced by the new ATHEX Regulation are expected to have a positive impact on the Greek capital market and pave the way for an upgrade of the ATHEX into a developed market.

The hope is that the increased capital inflows and higher valuations expected in the event of such a status upgrade of the ATHEX will balance out the significant outflows that will likely result from the increased delisting activity. However, certain market participants have raised concerns that the higher valuations expected if the market enters the ranks of developed markets will not be necessarily positive; i.e., the Greek listed corporates will be left with less room to beat the global competition through generous discounts. Consequently, the end balance remains to be seen.