

# Dual Listing ★ IN THE ★ European Union

- By Edward J. Lukins & Joseph R. Magnas

**O**n March 23, 2011, the European Securities Market Authority (ESMA) announced that a prospectus drawn up according to Israeli laws and regulations, together with a wrap containing certain specified information, can constitute a valid prospectus under the Prospectus Directive [2003/71/EC] for purposes of the approval of the prospectus by the home competent authority of a member state. This announcement was made as the ESMA declared that it had adopted a framework designed to ensure a uniform application of the Prospectus Directive that provides a way whereby a third country issuer that has drawn up a prospectus in accordance with the country's legislation can meet the requirements of the Prospectus Directive for an offer to the public or for admission to trade on a regulated market. An independent authority within the EU, the ESMA helps safeguard the stability of the EU's financial system by ensuring its integrity, transparency, efficiency and orderly functions of securities markets, as well as enhancing investor protections.

This development is designed to facilitate the listing by Tel Aviv Stock Exchange listed companies on EU markets. Listing on an EU market will expose Israeli issuers to a broader set of investors and therefore increase the liquidity of their shares. In addition, under the directive Israeli issuers listed on one EU market will be able to passport that listing to other exchanges in the EU in a more efficient manner without any additional disclosure requirements being imposed by local regulators in those other markets.



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The wrap will be a separate document attached to an Israeli prospectus. The disclosure items required in a wrap are only a portion of the hundreds of items required by the EU's Prospectus Regulation. These include statements accepting responsibility



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for information; a summary of the Israeli prospectus; historical and pro forma financial information; assumptions for forecasts; significant changes; legal and governmental proceedings and arbitrations; changes in control protections; risk factors; confirmation of the sufficiency of working capital and funds available to the company; details of major shareholdings; any lock-up arrangements with major shareholders; and a summary of the key factors about the company and the securities being offered. In addition, there must be an explanation of the offer of securities, including details of any conditions to the offer, the circumstances in which it can be revoked, when it will close and its earliest closing date, as well as details of any stabilization provisions and information concerning the non-applicability of any pre-emption rights attaching to the issuer's existing securities.

The ESMA does not regulate the offering and listing of securities on any individual market. Rather, issuers are required to submit a prospectus to the specific national regulator in the EU member state that is responsible for the national market where the issuer intends to offer or list its shares. The regulators of the applicable member state will make the final decision regarding the listing after giving effect to the standardized EU regulations.

This is just the first step. The Israeli Securities Authority (ISA) must negotiate bilateral agreements with national regulators in the EU to establish the procedural aspects of listing on the individual exchanges. The ISA has announced that negotiating such agreements is a priority.

## DUAL LISTING

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Issuers listed on an EU exchange on the basis of an Israeli prospectus with a wrap will be subject to the EU periodic and ongoing disclosure requirements. Periodic and ongoing disclosure obligations in the EU differ in each member state. However, the Transparency Directive adopted by the member states of the EU in 2007 established certain minimum disclosure obligations required for trading on a regulated market. The Transparency Directive requires that publicly traded issues by the member disclose audited annual financial reports, semi-annual financial reports and certain quarterly reports. Issuers are also required to provide information regarding major shareholders and changes in their holdings. The directive also requires the disclosure of certain information to facilitate shareholder participation in general meetings.

From time to time under the directive, an issuer is required to disclose information provided by its shareholders. This includes changes in the rights attached to the issuer's shares, changes in the rights, terms and conditions of other securities of the issuer and the details of any new loan issues and of any guarantee or security in respect thereof. Disclosures made to a host member state market may be in the language of the issuer's host member state and a language customary in the international sphere of finance.

Approval of the use of prospectuses prepared under Israeli laws and regulations introduces a dynamic development in the increased global visibility of Israeli companies. However, the administration of dual-listing efforts remains a matter of negotiation between the securities markets and regulators. It will be interesting to watch how the EU markets open themselves for dual listings by Israeli companies. **I**