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Dual Listing Opportunities In The US And Israel

Law360, New York (April 16, 2012, 12:28 PM ET) -- In an effort to broaden their investor base and increase trading volume, a growing number of Israeli corporations currently listed in the U.S. are also dual listing their securities back home on the Tel Aviv Stock Exchange (TASE). Thanks to Israel's Dual Listing Law (DLL), enacted in October 2000, listing on the TASE is cheap, simple and painless for Israeli companies already listed on a U.S. exchange, imposing almost no additional regulatory or disclosure requirements.

By listing both in the U.S. and Israel, more than 45 corporations currently taking advantage of the DLL enjoy greater liquidity, more investors across the globe, increased trading volume, extended trading hours, and the opportunity to stand out as big fish in the relatively small pond of the TASE.

Eligibility Requirements To Dual List In Israel

Israeli corporations that have been listed for at least one year on the NYSE, NASDAQ Global Select Market or NASDAQ Global Market are automatically eligible to dual list their securities on the TASE under the DLL.[1] If an Israeli corporation has been listed on one of these exchanges for less than a year, it may nevertheless qualify to list under the DLL if the value of its listed shares exceeds \$150 million.[2] Israeli corporations listed on the NASDAQ Capital Market may qualify if they have been listed for one year and have a market capitalization greater than \$30 million.[3]

Non-Israeli corporations may also qualify to dual list on the TASE. However, they will need special approval from the Israeli Securities Authority (ISA).[4]

Procedure for Initiating a Dual Listing in Israel

Initiating a dual listing on the TASE is relatively simple. A corporation must first submit a "listing document" to the TASE and ISA containing basic information about the corporation, its current exchange listing and its securities.[5]

Along with the listing document, the corporation must enclose its most recent annual report, if any, as well as any prospectus filed with the Securities and Exchange Commission in the U.S. since the end of the latest year covered by the annual report, or filed in the year prior to the latest year covered by the annual report.[6]

It must also enclose any other reports or news releases it has published pursuant to U.S. securities law since the filing of its annual report or most recent prospectus.[7] Trading of the corporation's securities on the TASE can then commence as soon as three business days from the submission of the listing document.[8]

Continued Reporting Obligations of Dual-Listed Corporations

Dual listing on the TASE will generally not subject a U.S.-listed corporation to any additional reporting or disclosure obligations.[9] To maintain its dual listing, a corporation is merely required to submit to the ISA and TASE any periodic reports, news releases, prospectuses or other documents it publishes in the U.S. pursuant to U.S. securities law [10], in English (there is no requirement to translate those documents into Hebrew).

This includes all reports filed by the corporation's stockholders regarding their holdings. [11] All periodic reports may be filed according to the U.S. time schedule.[12] However, any material information which a corporation is obliged to report immediately under the U.S. securities law must be published in Israel according to the timetable provided by Israeli law.[13]

Israeli Corporations Listing in the US

While the DLL makes it easy for U.S.-listed corporations to list in Israel, there is no equivalent law for Israeli-listed corporations hoping to list in the U.S. However, Israeli corporations qualifying as a foreign private issuer (FPI)[14] can enjoy other, more limited, accommodations under U.S. securities law and under the rules promulgated by the U.S. securities exchanges.

For example, FPIs may register their securities on Forms F-1, F-3, and F-4. These forms are tailored for the needs of foreign issuers, and contain less detailed disclosure requirements than their domestic equivalents — Forms S-1, S-3 and S-4. In addition, FPIs may file periodic reports to the SEC on Forms 20-F and 6-K, rather than on Forms 10-K, 10-Q, and 8-K for domestic issuers.

Again, the forms available to FPIs are simpler and contain less detailed disclosure requirements. FPIs may comply with their home country's proxy rules in lieu of the requirements of Section 14(a) of the Exchange Act, with the exception of the provision relating to tender offers[15], and FPIs are not subject to the insider reporting requirements of Section 16 of the Exchange Act.[16]

Furthermore, FPIs can take advantage of alternative securities listing standards and exemption from many of the corporate governance obligations the securities exchanges impose on domestic issuers.

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[1] Securities Regulations (Determining Listing Period on Foreign Stock Exchange), 2000, at ¶ 2, as Amended, at ¶ 2, available (in Hebrew) at http://www.isa.gov.il/Download/IsaFile_4445.pdf. See also Securities Law, 1968, Chapter 5C, § 35Q. Note that in order to dual list in accordance with the DLL, the corporation must have only one class of outstanding shares.

[2] Id.

[3] TASE, Dual Listing, <http://www.tase.co.il/TASEEng/Listings/DualListing/>.

[4] Securities Law, 1968, Chapter 5C, § 35DD.

[5] Securities Law, 1968, Chapter 5C, §§ 35T-35V. Further details regarding the form and contents of a proper listing document may be found in the Securities Regulations (Details, Structure, and Forms of Listing Documents), 2000, available at http://www.isa.gov.il/Download/IsaFile_933.pdf.

[6] Securities Regulations (Details, Structure, and Forms of Listing Documents), 2000, at ¶ 3(2).

[7] Id.

[8] Securities Law, 1968, Chapter 5C, Section 35W.

[9] Securities Law, 1968, Chapter 5C, § 35EE(b).

[10] Securities Regulations (Periodic and Immediate Reports of Foreign Corporation), 2000, at ¶ 3, available at http://www.isa.gov.il/Download/IsaFile_902.pdf.

[11] Id. at ¶ 5.

[12] Id. at ¶ 3(b).

[13] Id. at ¶ 4. For timing of immediate reports under Israeli law, see Securities Regulations (Periodic and Immediate Reports), 1970, at ¶ 30, available at http://www.isa.gov.il/Download/IsaFile_6155.pdf.

[14] A foreign private issuer is defined by U.S. securities law as any issuer (other than a foreign government) incorporated or organized under the laws of a jurisdiction outside the U.S., unless (1) more than 50 percent of its outstanding voting securities are directly or indirectly held by U.S. residents and (2) either (a) the majority of its executive officers or directors are U.S. citizens or residents, (b) more than 50 percent of its assets are located in the U.S., or (c) its business is administered principally in the U.S. See 17 C.F.R. 240.3b-4(c).

[15] 17 C.F.R. § 240.3a12-3(b).

[16] Id.

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