Israel Securities Authority
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Corporate Finance Department
Plenary Decision

Corporate Finance Decision No. 2013-1: Modification of Model for Handling and Issuing Exemptions to Dual Listed Companies that Issue Bonds Exclusively in Israel

5 Tishrei, 5774 / September 9, 2013

Background: Issuing bonds in Israel under the dual listing arrangement

1. The dual listing arrangement came into effect in Israel upon legislation of Chapter E3 of the Securities Law 1968 (hereinafter, "the Law) in 2000. Fundamentally, the arrangement permits listing for trade in Israel of securities that are listed on specific foreign stock exchanges (NASDAQ, NYSE, London (Main Market)). In such cases, the arrangement exempts companies listed for trade in Israel from reporting requirements under the Israeli Securities Law, and permits them to continue to report exclusively pursuant to the foreign law that applies to them (US or UK securities law, including the directives of the relevant stock exchanges), based on reliance on the supervision of the foreign regulator (SEC or FSA) in these countries.
2. Underlying the development of Chapter E3 of the Law was the assessment that the foreign law affords proper protection to investors as a result of multiple "circles" of protection, mainly the quality of disclosure requirements, the quality of the foreign regulator, and market discipline.1
3. The legislator envisioned the dual listing of a security rather than the dual listing of a company. In other words, it was the intention that a company would benefit from the dual listing arrangement with respect to its securities only in the event that such securities are listed for trade simultaneous on two stock exchanges (countries). At the enactment of the dual listing arrangement, it was designed to apply to shares listed for trade on two stock exchanges.
4. Furthermore, the arrangement was also designed to address, in principle, the listing for trade on the Tel Aviv Stock Exchange of securities listed for trade on a foreign stock exchange, in distinction from a public issue of securities in Israel. In other words, the arrangement distinguishes between listing for trade and between raising capital by issuing securities in Israel. Regarding the option of issuing in Israel, Section 35[CC] of the Law, which grants authority to the Israeli Securities Authority (hereinafter, "the ISA") to grant general exemptions, provides as follows:

(a) The ISA may exempt a corporation incorporated in Israel, the securities

of which are being offered to the public in Israel, from any or all of the provisions relating to the information to be contained in a prospectus, [or to] its structure and its form, if the securities of the said corporation are listed for trade on a foreign stock exchange or shall be listed thereupon immediately following the publication of the prospectus, so long as the ISA is satisfied that it is correct to grant such an exemption under the circumstances, and it may subject the exemption to any conditions, including regarding the matter specified in subsection (b).
(b) A corporation that has published a prospectus as stated in subsection (a), and which prior to such publication was not subject to the reporting obligations under this Law, shall submit reports in accordance with this Chapter or with Chapter 6, for as long as its securities are listed for trade on a foreign stock exchange.
(c) In this section – the term —an offer to the public‖ will exclude the listing of securities for trade in accordance with this Chapter.

5. The provisions of Section 35CC were first implemented on the occasion of an issue performed by Tower Semiconductor Ltd. Tower was the first dual listed company that applied to make a public offer of its securities only in Israel, in 2001. The ISA acceded to Tower's application to offer its securities to the public in Israel without it being obligated by the disclosure requirements that apply to prospectuses in Israel, subject to several conditions including the company's obligation to publish a prospectus and immediate reports in the exact same format as US companies rather than foreign companies,[2] and the company's obligation to furnish details required by the Barnea Committee that are not required under US law. The requirements imposed in the Tower case constituted a heavy burden for the company, and also hindered underwriters' efforts to obtain confirmation that the prospectus meets the disclosure requirements since no attorney would provide such affirmation in the absence of clear rules on this point.
6. In 2004, in the matter of Sapiens, the ISA reconsidered its position. In this case it was decided that is was not advisable to impose heavy demands on dual listed companies simply because they selected to issue their securities to the public in Israel rather than overseas. It was stated that such imposition undermines the original purpose for which the Securities Law was amended, which is to attract additional corporations to participate in the Israeli financial market. This would be the case s companies would not be willing to issue their securities in Israel if such a step involves compliance with reporting requirements of two different regulatory regimes.
7. Sapiens' prospectus constituted the first time that a dual listed company made a public offer of bonds alone. Until then, dual listed companies had only made public offers of shares in Israel.
8. An issue of bonds alone in Israel by a dual listed company is not to be treated as an issue of shares traded in Israel and on a foreign stock exchange. Since the bonds are not traded in the US, they are not subject to any regulation by the SEC or by the market. It should be noted that in a meeting held by the Prospectus Committee on the matter of Sapiens, this fact was not emphasized, because when the Committee discussed the

Sapiens prospectus, the accepted approach (which also is applied in the case of local non-dual-listed companies) was that the disclosure required when bonds are issued is identical to the disclosure required when shares are issued.

9. Since then, dual listed companies have made dozens of public offers of bonds, most characterized by the fact that the issues were made only in Israel. The scope of these issues also became increasingly significant. There are currently 11 dual listed companies that have outstanding bond issues.
10. However, two significant developments have occurred since the exemption was granted to bond issues of dual listed companies, which, according to the ISA's position, have an extremely significant impact on this model. First, the Israeli financial market has become an accessible and convenient venue for corporate bond issues. Consequently, dual listed companies have made increasing use of the option of issuing bonds solely in Israel. Concurrently, in recent years, the world has come under the influence of an extremely severe financial crisis. This global crisis raised questions, including questions concerning the quality of disclosure in foreign markets, and even more significantly, reduced the liquidity of a considerable number of companies, including dual listed companies.
11. This latter issue led the ISA to define specific disclosure requirements for companies that issue bonds, and the purpose of these requirements is to highlight issues primarily related to financing and liquidity.

    The ISA also increased the overall supervision of the quality of disclosure of companies that were identified as at-risk companies, including quite a few companies that had issued bonds to the public.

    The ISA also became intensely involved in the investigation of failures to comply with disclosure requirements and issued instructions to provide additional disclosure where no such disclosure had been made in violation of the law, especially with respect to settlements in the event of a company's default or partial default.

    The need for additional disclosures concerning financing and liquidity and to disclose important information to bond holders when the latter face a settlement agreement, also emerges when the company is a dual listed company, but in the case of dual listed companies, the ISA had had limited authority to demand disclosures, according both to Chapter E3 of the Law, and to the exemption that these companies had from the statutory requirements that applied to ordinary companies.
12. We reiterate that the dual listed companies issues bonds only in Israel. Had these companies issued their bonds to the public in the US as well, and had these bonds been traded on the major US stock exchanges there, they would have been subject to a higher level of regulation and market disciple.

The disclosure model presented for public comments in the matter of bonds issued in Israel by dual listed companies

13. On April 2, 2012, the ISA published a draft for public comments in the matter of modifications to the model for handling and granting exemptions to dual listed companies that issue bonds only in Israel. According to the model introduced in this draft, dual listed companies that wish to issue bonds in Israel will not be exempt from the provisions of Chapter F, and they will be subject to the complete disclosure requirements under Israeli law, in addition to the disclosure requirement to which they are subject under US law. The model proposes to exempt, during a two-year interim period, dual listed companies that previous issued bonds that are listed on the TASE, and such companies would be subject to more limited disclosure requirements, which include several provisions that

have greater significance for bondholders. The proposed model was not a retroactive model, but was designed to be implemented from this point in time forward. After considering the public comments, the ISA believed that the original model that it proposed, which only emphasized the information given to investors, should be balanced with the unique features of the dual list arrangement, and especially the dual listed companies' subordination to a foreign regulator and foreign law, and with the enormous economic significance of the dual listing arrangement and the need for the Israeli financial market and investor public for the diversity and scope of trading that the arrangement has introduced to the market. (For public comments and ISA staff responses, see Appendix A attached herein).

In view of the above considerations, after discussions by the ISA on this issue, the ISA staff recommended a change in the current situation, in order to create a balance of interests between protecting the public investing in bonds using the format that is accepted according to Israeli law, and between considerations of the existing regulation of companies (in contrast to regulation of issued bonds) according to US law and the implementation format of the dual listing arrangement with regard to bond issues in Israel to date. This model, described in detail in paragraph 16 hereinafter (hereinafter, "the Hybrid Disclosure Model"), which will apply from now on to future bond issues, will include additional disclosure requirements that provide material information that meets the need to protect the interests of bondholders. Nonetheless, in order to maintain the aforementioned balance, it was decided that these requirements would apply only if warning signs are indicated in the financial statements (or in published quarterly financial information). From this date, the additional requirement information has even greater significance, in view of the intensification of potential conflicts of interests between shareholders and bondholders, among other things, which explains why the differences between the information required by shareholders and bondholders have increased.

The Decision of the ISA

14. The ISA has resolved that as long as the following two conditions are NOT met:

(a) The company issues bonds that are identical to those issued in Israel, based on a prospectus for an offer to the public in a country in which the foreign stock exchange operates, and -

(b) The bonds so issued are listed for trade on the foreign stock exchange,

The following rules shall apply:

15. Dual listed companies may also issue new bonds in the future under the exemption granted to them pursuant to the provisions of Section 35CC, but this exemption is subject to the requirements of the Hybrid Disclosure Model.
16. The disclosure requirements described hereinafter constitute the Hybrid Disclosure Model, and this model applies to companies as a condition of an exemption under Section 35CC of the Law:

(a) Regulation 10(b)(14) of the Securities Regulations (Periodic and Immediate Reports) 1970 (hereinafter, "the Reporting Regulations") disclosure of warning signs in a corporation and attachment of projected cash flow statement in the cases required by the Regulation; Warning systems will be assessed according to the company's consolidated financial statements (or according to its published quarterly financial data):

(b) Regulation 10(b)(1)(d) of the Reporting Regulations – disclosure of the examination conducted by the BOD regarding the company's liquidity in the event that one of the warning signals obtains, and the reasons for the decision;

(c) Regulation 35a of the Reporting Regulations – immediate reports in the interests of the holders of outstanding debt certificates;

(d) Regulation 37(a)(1) of the Reporting Regulations – details of dividend distributions;

(e) Regulation 37(a)(5) of the Reporting Regulations – early repayment of bonds;

(f) Regulation 31(h) of the Reporting Regulations – compromise or settlement;

(g) Regulations 37T and 37Y of the Reporting Regulations – disclosure on the event of debt settlements.

17. The ISA may use its authority to demand information, details, and documents related to information that is required under the Hybrid Disclosure Model; and its authority in the matter of a demand to publish an immediate report and/or corrective report and/or supplementary report, and its authority in the matter of a demand to add such disclosures or information to the company's filings, insofar as such are necessary to protect the public investing in bonds pursuant to the Hybrid Disclosure Model.
18. The disclosure requirements pursuant to the Hybrid Disclosure Model shall apply only to dual listed companies that issue bonds, from the date on which warning signs obtain, as defined in section 10(b)(14) of the Reporting Regulations, and as long as such warning signs obtain.[3] We stress that the relevant warning signs are examined on the basis of the consolidated statements (or on the basis of a publication of quarterly financial data).
19. The Hybrid Disclosure Model combines regulation by two regulators – the ISA and the SEC or the FSA. Nonetheless, the model shall be applied only from the date on which warning signs obtain for the company. Even then, it is not the ISA's intention to apply full supervision of the corporations subject to the Hybrid Disclosure Model, but rather to use its regulatory authority with great restraint. The ISA will take action only in those cases where a tangible concern arises concerning the bondholders' interests (in distinction from the shareholders' interests) that are not addressed by the foreign agency or law.
20. Under section 35CC of the Law, the ISA has the authority to exempt companies from the provisions concerning the structure, form and details in the prospectus, and may define conditions for such an exemption. Beginning on this date, the exemptions granted to dual listed companies that seek to issue bonds in Israel will be contingent upon the company, which issues bonds to the public after that date, being subject to the reporting requirements of the Hybrid Disclosure Model, beginning from the date on which warning

signs obtain for the company pursuant to the provisions of paragraph 18 hereinabove. Said exemption shall be described in the company's prospectus. A company may continue to furnish disclosures in English and on the dates defined in the Securities Regulations (Periodic and Immediate Reports of Foreign Corporations) 2000.

Appendix A

5 Tishrei, 5774 / September 9, 2013

Change in reporting requirements of dual listed companies that issue bonds in Israel
Summary of public comments

No.	Comments made by[4]	Nature/topic	Comment	Proposed response
1	Law firm	Application of the provisions of Chapter F to the Securities law	Dual listed companies that issue bonds in Israel should not be obligated to report according to Chapter F, as this would require them to report according to two distinct reporting regimes.[5]	**Comment accepted** – After reexamining the model in entirety, the ISA believes that the requirement to report according to the rules of the [relevant] foreign law and several additional reporting requirements of the Israeli law (hereinafter, "Hybrid Reporting") is also appropriate as a permanent model that all dual listed companies are entitled to us. The provisions of Israeli shall apply beginning from the existence of warning signs.
2	Law firm	Obligation to publish quarterly statements	Many dual listed companies are not required to publish quarterly financial statements, and they publish only annual or semi-annual statements. Applying a requirement to publish quarterly financial statements as part of the Hybrid Disclosure Model,	**Comment accepted** - After studying the existing disclosure requirements in the Hybrid Disclosure Model, the ISA believes that this requirement should be waived in the interests of striking a proper balance between information available to investors and financial

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			would require that these companies change the structure of their financial function and would impose heavy costs upon them.	costs imposed on companies. This conclusion is based on, among other things, one of the key principles of the dual listing arrangement – the reliance on the requirements of foreign law; foreign law does not require companies that incorporated outside the US to publish quarterly statements.
3	Law firm	There is no market failure that justifies an amendment of the current disclosure requirements.	In recent years developments have occurred in the Israeli financial market, including the imposition of additional requirements on institutional investors that purchase the bonds.	**The comment is rejected** - The Hybrid Model was proposed because after the ISA examined the reporting of companies that issue only bonds, including the dual listed companies that issued bonds, and especially those companies that were in financial straits, the ISA found that such reports are inadequate and additional reporting requirements are necessary. The additional obligations imposed on institutional investors do not constitute a substitute for the lack of disclosure identified by the ISA.
4	Company	US law also provides protection for bondholders	US law is one of the most advanced laws in terms of the protection it affords to bondholders, and it includes many disclosure requirements that protect bondholders.	**The comment is rejected** – Following our response to comment 3 above, the Hybrid Model was proposed because the information required by US law is insufficient. Nonetheless, any

				information the disclosure of which was already made by the company pursuant to the disclosure requirements of the foreign law, will required no further disclosure. Furthermore, the totality of rings of protection in the US for bonds listed for trade there appear to be sufficient, and therefore, the Hybrid Model was intentionally proposed not to apply to companies whose bonds are also dual listed.
5	Company	The Hybrid Model should not be applied uniformly for all companies	Dual listed companies have different features and should not be treated as a uniform group. It is therefore warranted that the disclosure requirements of the Hybrid Disclosure Model be adapted to each company, according to its features. Specifically for the company, the cost of publishing solo financial statements is heavy as its subsidiaries are privately owned.	**Comment is partially accepted** - The Hybrid Disclosure Model is implemented to close disclosure gaps that are relevant for all companies. Therefore, establishing distinct disclosure requirements for each company might prevent some investors from having access to information that constitutes material information for bondholders. Furthermore, such adaptations would impair the potential to compare various companies. However, the company's comment is partially accepted regarding solo financial statements, for the considerations stated in our response to comment 2 above. Furthermore, according to the final wording, the

				additional disclosure requirements will apply only upon the appearance of warning signs.
6		There are not corresponding reporting requirements in the US.	Several of the reporting requirements that apply pursuant to the Hybrid Disclosure Model do not apply to companies that issue bonds in the US, and therefore the argument is unwarranted that additional disclosure requirements would not have applied had the bonds been listed concurrently in two countries.	**The comment is rejected** – Each law has checks and balances. It is not possible to examine the necessity of specific instructions in themselves, but only as part of the law in entirety. Therefore, a relative disadvantage is created when dual list companies that issue bonds only in Israel are required to follow the reporting requirements of the foreign law, without being subject to the remaining rings of control and market discipline that exist in the foreign market.
7		The change requires a legislative amendment	Modification of the reporting requirements that apply to dual listed companies that issue bonds to the public requires an amendment to the Securities Law.	The comment is rejected – Section 35CC of the Securities Law 1968 defines the ISA's authority in the matter of dual list companies' prospectuses. Sub-section (a) provides that the ISA may exempt a company from specific directives related to the prospectus, and to impose conditions on such exemption. The disclosure requirements of the Hybrid Disclosure Model will not have retroactive effect and they will apply only to companies that apply for a permit to issue or amend a

				prospectus. The authority to define conditions for the exemption already appears in the Law and therefore no amendment is necessary.