The Teva Case: A Tale of a Race to the Bottom in Global Securities Regulation

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Keywords: Securities Regulation, Regulatory Competition, Race to the Bottom, Crosslisting

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The *Teva* Case: A Tale of a Race to the Bottom in Global Securities Regulation

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Introduction

This article tells the story of our class action against Teva Pharmaceutical Industries as an illustration of the global race to laxity in the regulation of capital markets.

Teva is an Israeli company traded in Israel and the United States. It is the largest generic drug maker in the world. Its market value at the end of 2012 was 37 billion dollars—higher than, say, Deutsche Bank's. This was the time at which we filed a shareholder class action in the Tel Aviv District Court to compel Teva to disclose executive pay on an individual basis, as required under Israeli law and US law. Teva settled the case with us by agreeing to disclose this information. To ensure other companies did the same, Israel adopted a rule affirmatively requiring this disclosure of all Israeli companies traded abroad. These companies comprise Israel's entire technology sector and half of all public firms by market value.

Teva's failure to disclose compensation individually was not the result of oversight. Rather, Teva told us, its practice was legitimate under provisions in the Israeli securities statute that allow companies listed on a national exchange in the United States or the United Kingdom to file in Israel the reports they file abroad.

To us, the claim that Teva could disclose only aggregate pay figures—making it impossible to know, for instance, how much it paid its chief executive—was illogical. Both Israel and the United States require public companies to disclose executive compensation on an individual basis, and each country recognizes the other's requirements. How could a company traded in both countries be exempt?

That Teva took this position was not surprising, however. Companies frequently prefer to withhold sensitive information if possible. Somewhat more surprising was that the Israel Securities Authority (ISA) never questioned this practice—and ultimately backed it. When Teva chose not to file an answer and settle, the ISA intervened anyway. It advised the court that, though it welcomed the disclosure Teva would make under the settlement, the suit was without merit.

In retrospect, the motivation behind this position is easy to grasp. It was a manifestation of a global trend of watering down local securities regulation to attract listings. The crosslisting laws in Israel and the United States that gave rise to the suit are part of this trend. Their goal is to attract listings. The ISA, in our view, simply went beyond the scope of these laws to advance this goal.

The story had a happy ending. The new rule adopted in the wake of the suit offered something for everyone: It achieved our goal of bringing pay disclosure by Israeli companies listed abroad up to the standard in Israel, it addressed the ISA's concern of company delisting, and it reassured companies they would not face suits for their failure to disclose this information in the past. It also vindicated the ISA.

Today, all these companies must report executive pay on an individual basis. However, the race to laxity persists on other fronts. Foreign issuers in the United States, for example, continue to disclose less information than do US issuers even if their stock trades only in the United States. Law in the US allows them to file abbreviated annual reports and exempts them from the duty to file quarterly and current reports, insider trading reports, and proxy statements. If they crosslist in Israel, they can file the same reports in Israel as well. Although their stock trades in both countries, they are less transparent than either country normally requires. Their foreign listing thus wins them regulatory concessions both domestically and overseas. We do not argue that regulatory laxity is always bad. However, when it comes to the disclosure of executive pay, we believe it is. There are clear indicators that shareholders want this disclosure and benefit from it.

In section 2 we review the theory of the race to laxity between countries competing over securities listings and show that legislation and enforcement in Israel and the United States are products of this race. In section 3, we describe our case against Teva. We show how Teva ceased to report executive pay on an individual basis following the enactment of the crosslisting legislation in Israel. We next explain how Teva succeeded in avoiding disclosure for more than a decade. We describe, among other things, the preceding events, the filing of the class action, and the settlement. Thereafter we discuss the intervention by the ISA while the settlement was pending court approval, and the decision of the court. In section 4 we present the changes in Israeli law that followed the suit. We then conclude.

2. The Global Race to Laxity in Securities Regulation

The race to laxity is well known in corporate law scholarship. For many years, commentators argued that American states compete to attract incorporations (Bebchuk 1992; Cary 1974). Recent commentary, however, maintains that Delaware is the only state so motivated (Kahan and Kamar 2002; Bebchuk and Hamdani 2002; Roe 2003). Either way, the theory of the race to laxity is that this dynamic produces permissive rules because managers favor them.[1]

A similar dynamic characterizes the competition between countries to attract securities listings. The desire to attract listings drives countries to lower disclosure standards because managers consider these standards when

[1] Justice Louis Brandeis famously described this in Louis K. Liggett Co. v. Lee, 288 U.S. 517, 557–60 (1933): "Lesser States, eager for the revenue derived from the traffic in charters, had removed safeguards from their own incorporation laws . . . The race was one not of diligence but of laxity . . . and the great industrial States yielded in order not to lose wholly the prospect of the revenue and the control incident to domestic incorporation."

deciding where to list securities for trade. If possible, for example, managers prefer to disclose less about the terms of their employment or about related party transactions (Licht 2000).

Licht (2001) argues that this dynamic mostly affects the laws of countries with small capital markets. To overcome their disadvantage, stock exchanges in these countries lobby lawmakers to exempt foreign issuers from local disclosure requirements. However, competition affects countries with large capital markets too. Even the United States, which has the largest capital markets in the world, makes concessions to foreign issuers. We discuss this further presently.

2.1 The Crosslisting Legislation in the United States

Modernday regulation of foreign private issuers in the United States grew out of the integrated disclosure system adopted by the Securities and Exchange Commission (SEC) in 1979.[2] Before this reform, foreign issuers and US issuers had had to disclose similar information (Edwards 1993). The reform began a long and steady deregulation process geared at attracting foreign issuers.

Initially, the SEC resisted the pressure to ease the disclosure requirements of foreign issuers, maintaining it was 'difficult to justify one level of disclosure for domestic securities and another for foreign securities when the standard for both is the protection of United States investors.'[3] In the 1980s and 1990s, however, its view began to shift (Fanto and Karmel 1997). During that period, the New York Stock Exchange pushed for lighter regulation of

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[2] *See* Rules, Registration and Annual Report Form for Foreign Private Issuers, 44 Fed. Reg. 70,132 (29 November 1979).

[3] Foreign Private Issuers, 42 Fed. Reg. 58,684, 58,685 (2 November 1977).

foreign issuers. As a result, the SEC agreed to exempt foreign issuers from major requirements, including the proxy rules, the duty to file quarterly reports, the duty to file current reports, and the ban on short swing profits by corporate insiders (Davidoff 2010).

In the new millennium, the discourse about foreign issuers focused on the need to keep US capital markets competitive. This was partly in response to the success of the United Kingdom in attracting foreign issuers (Romano 2005). The SEC thus took additional steps to facilitate listing by foreign issuers, including relaxing the rules governing crossborder transactions, facilitating deregistration by foreign issuers, and allowing reporting according to international accounting standards (Davidoff 2010). The departure from the principle of a level playing field for foreign issuers and US issuers was complete.

2.2 The Crosslisting Legislation in Israel

Crosslisted companies constitute a large share of the Israeli securities market. According to the website of the Tel Aviv Stock Exchange, 70 of the 454 companies traded on the exchange at the end of March 2017—accounting for 52.6 percent of the market value of companies traded on the exchange—are crosslisted. Of these, 56—accounting for 44.7 percent of the market value of companies traded on the exchange—filed foreign reports in Israel, typically under US law.

Their regulation dates back four decades. In 1983, the Israeli securities market experienced a severe crisis. After a brief recovery, in 1994, another crisis took place. Stock prices plummeted and initial public offerings dwindled. During these years, the technology sector developed rapidly and scores of Israeli technology companies went public on NASDAQ. They favored NASDAQ due to its size, depth and proximity to customers (Yehezkel 2006). As an added bonus, they faced light disclosure requirements as foreign issuers. More than a hundred companies followed this path. It was a large number even by international standards (Licht 2001).

In 1996, the Tel Aviv Stock Exchange lobbied for an exemption of companies traded both in Israel and in the United States from Israeli securities regulation. The ISA rejected the idea. However, the exchange did not give up and, in 1998, the ISA appointed a committee to consider the proposal.

The committee concluded that, while the disclosure required of foreign issuers in the United States was lacking, the disclosure required of US issuers was similar to the required disclosure in Israel. The committee accordingly recommended granting relief only to crosslisted companies meeting the disclosure requirements of US issuers (Report of the Committee on Cross Listing of Securities 1998). The ISA endorsed the committee's recommendation. However, the Israeli Association of Publicly Traded Companies and the Tel Aviv Stock Exchange pressured the Israeli government to extend the relief to issuers that meet the lighter disclosure requirements of foreign issuers in the United States. They warned that companies would leave the Israeli market otherwise.

The pressure worked. In 2000, the Knesset enacted the so-called Cross Listing Law, which added to Israel's securities statute a chapter that allows companies traded on a national exchange in the United States or the United Kingdom to list their securities in Israel while filing the same reports they file abroad.[4]

[4] *See* Securities Law (Amendment No 21), 2000 (adding Part E3 to the Securities Law, 1968).

2.3 The Weak Enforcement of the Law on Crosslisted Companies

Commentary on regulatory competition customarily focuses on content. By this measure, a race to laxity is one that produces permissive rules. In the area of securities regulation, however, a race to laxity can also produce weak public enforcement.[5] Demanding less of foreign issuers and monitoring their compliance less closely have similar effects and, between the two, the latter is cheaper both financially and politically. This explains why both the ISA and the SEC show little interest in monitoring compliance by crosslisted companies.

Many regard the SEC as an effective enforcer of securities law (Eckstein 2015). However, this perception reflects only its enforcement of the law regarding US issuers. Foreign issuers get much less attention.

Siegel (2005) studies the public enforcement efforts toward Mexican companies traded in the United States that experienced a crisis and reportedly committed fraud. He finds no criminal proceedings against these executives and only a single civil proceeding. In fact, he reports, since its establishment in 1933 the SEC took meaningful steps against foreign issuers only 15 times. Moreover, the chance that executives of these companies will be involved in appropriation of company assets is 37.4 per cent higher than that of Mexican companies not listed in the United States and therefore not subject to SEC supervision.

Other studies concur. Shnitser (2010) reports that the enforcement of US law on foreign issuers is lacking. Silvers (2015) reports that, while SEC monitoring of foreign issuers increased after 2002, the stock market still exhibits surprise at any enforcement event.

[5] Private enforcement of securities law is only indirectly controlled by regulators and is otherwise less effective than public enforcement (Jackson and Roe, 2009; Licht et al, 2018).

Naughton et al (2018) report more nuanced findings. They too find that foreign issuers face less SEC enforcement than do US issuers. However, they find a negative relation between the level of SEC enforcement and the enforcement level in the foreign issuer's home country. Additionally, they find that foreign issuers face a higher level of SEC enforcement when they are more important to American investors in terms of market value and trading volume in the United States.

The ISA does even less than the SEC. As a matter of policy, it leaves the supervision of companies reporting under foreign law—including ones incorporated and headquartered in Israel—to the foreign regulator, typically the SEC.[6]

Reliance on public enforcement of securities law on Israeli issuers traded in the United States thus raises a concern. One simply cannot assume that either national regulator will do the work. The Teva case illustrated the problem. The ISA decided not to monitor disclosure by issuers reporting under SEC rules and the SEC was unfamiliar with the disclosure requirements

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[6] *See* ISA Assembly Resolution in the Corporations Area No 2015–1, Recommendation to Include the London Stock Exchange's Main Market, High Growth Segment in the Third Supplement to the Securities Law (31 March 2015) (in Hebrew), www.isa.gov.il/%D7%92%D7%95%D7%A4%D7%99%D7%9D%20%D7%9E%D7%A4%D7%95%D7%A7%D7%97%D7%99%D7%9D/Corporations/Staf_Positions/Plenary_Decisions/Documents/14 2015.pdf: 'The policy of supervising Cross Listing companies is a policy of reliance on the foreign regulator, that is, the Authority does not examine Cross Listing companies at all in its routine examinations . . . [S]upervision by the Authority would require an enormous investment in learning foreign laws, and even then it is doubtful that the Authority's staff could examine interpretive questions of foreign laws, as the authorized body for this is the foreign regulator. Furthermore, it is reasonable to assume that, if Cross Listing companies were to be supervised by two regulators in relation to the same reporting requirements, they would not list [in Israel].' Section 35(34)(b) of the Securities Law, 1968, added by the Cross Listing Law, only provides that the ISA may consult the foreign regulator before taking an enforcement action against a crosslisted company.

in Israel referenced by SEC rules and did not inquire what the requirements were. Teva was a regulatory orphan.

2.4 Can Laxity Be Good?

In theory, permissive rules and weak enforcement can be just what shareholders want and need. It is possible in corporate law (Romano 1993; Daines 2001; Fischel 1982; Winter 1977) as it is in securities law (Romano 2001; Fox 1997). Examining this possibility in general is beyond the scope of this article. Suffice to say that it is hard to see how allowing executives to conceal their pay can serve shareholders. Here, a race to laxity is clearly a race to the bottom.

For one thing, shareholders show intense interest in executive pay and penalize executives they consider overpaid (Brav et al 2009). For another, empirical studies find that disclosing this information benefits shareholders (Lo 2003; Laksmana et al 2012; Robinson et al 2011; Vafeas and Afxentiou 1998; Craighead et al 2004; Park et al 2001). Moreover, regulators both in Israel and in the United States require domestic issuers to disclose executive pay, and consider the exemption of crosslisted issuers from this duty a concession to attract listings. Regulators in other countries agree. They require both disclosure and shareholder approval (Thomas and Van der Elst 2015). This consensus is telling.

3. Our Case Against Teva

Teva is the largest Israeli company by any measure. Since the 1950s its shares have been listed on the Tel Aviv Stock Exchange, and since 1982 they have been listed also in the United States—first on NASDAQ, and from 2012 on the New York Stock Exchange. At the end of 2012, the year in which we sued

Teva, its market value was 22 percent of the market value of all companies on the Tel Aviv Stock Exchange (Tsuk 2013).

3.1 Teva Stops Reporting Individual Executive Pay

Before 2000, Teva had disclosed the compensation of each of its five highest paid executives in annual reports in Israel and the United States.[7] In Israel, it filed a standard report under Israeli law, which required this disclosure.[8] In the United States, it filed an abbreviated report as a foreign issuer under US law, which required this disclosure because it was required in Israel.[9]

That practice changed with the enactment of the Cross Listing Law, which allowed Teva to file in Israel the reports it filed in the United States.[10] Although individual compensation disclosure was the standard in both countries, Teva decided the countries' mutual deference somehow allowed it

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[7] *See Teva Pharmaceutical Industries Limited, Board of Directors Report for the Year and Quarter Ended December 31, 1999*, Rule 21, at 100 (in Hebrew) (on file with authors) (disclosing the individual compensation of each of the five highest paid officers); *Teva Pharmaceutical Industries Limited, Annual Report for the Fiscal Year Ended December 31, 1999*, Item 11, at 80 (on file with authors) (disclosing the aggregate compensation of 42 directors and officers and the individual compensation of each of the five highest paid officers).

[8] The requirement was in Section 21 of the Securities Regulations (Periodic and Immediate Reports), 1970. It is still the requirement for companies that are not crosslisted.

[9] The requirement was in Item 11 of Form 20–F under the Securities Exchange Act of 1934. *See* Adoption of Foreign Issuer Integrated Disclosure System, 47 Fed. Reg. 54,764–02 (6 December 1982). Effective September 30, 2000, the requirement is in Item 6.B of Form 20–F: "Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company." *See* International Disclosure Standards, 64 Fed. Reg. 53,900 (5 October 1999).

[10] *See Teva Pharmaceutical Industries Limited, Annual Report for the Fiscal Year Ended December 31, 2000*, Item 6, at 56 (on file with authors) (disclosing the aggregate compensation of 42 directors and officers).

to disclose only aggregate compensation. It obtained shareholder approval for filing US reports in Israel without informing shareholders of its plan and stopped disclosing individual compensation in both countries. Other companies followed Teva. It became impossible to know how much any executive earned.

The outcome was peculiar. At a time when executive pay preoccupied the public in Israel no less than in the United States, a large fraction of the public companies in Israel were hiding it. In 2012, for example, only 74 of the 100 largest issuers in Israel reported individual pay (Gur-Gershgoren et al 2016). The rest were crosslisted companies and a handful of limited partnerships.

3.2 Where Were the Regulators?

Thus for a dozen years, from the enactment of the Cross Listing Law until the signing of the settlement, Teva disclosed only the total amount it paid its directors and officers. Teva is so central a company in Israel that this practice must have drawn attention. It was no trifling matter. Pay practices in public companies and the efforts companies make to hide them have drawn much criticism (Bebchuk and Fried 2004). It is a sensitive subject, which, in the eyes of many, epitomizes the conflict of interest between shareholders and managers. Nevertheless, both the ISA and the SEC were silent.

3.3 How Did Teva Succeed in Avoiding Its Duty for So Long?

Teva avoided legal challenge partly by saying nothing in public about the change in its executive pay disclosure. Before suing Teva, we spent months familiarizing ourselves with the regulation of foreign issuers in the United States. We studied its history, read filings of foreign issuers from around the world, and pored over SEC releases and no-action letters. We assumed a company of Teva's stature would be sure to find authority before making such a risky move as stopping to report executive compensation. However, there was no authority. It is easy to see how other shareholders made the same mistake.

Furthermore, Teva never ran its self-serving interpretation of the law by regulators. With the disclosure of executive pay being an area of clear conflict between shareholders and managers, one would have expected Teva to ask the ISA and the SEC if they agreed with its legal interpretation. Teva preferred not to ask.

3.4 Why Did Neither the ISA Nor the SEC Ever Question Teva's Practice?

First, the overlapping jurisdiction of the two regulators made it easier for Teva to fall between the cracks. After the enactment of the Cross Listing Law the ISA quit monitoring crosslisted companies and let the SEC take the lead. However, the SEC, as noted previously, monitors foreign issuers with much less zeal than US issuers. The lethargy of both regulators is unsurprising given their avowed interest in attracting crosslistings.[11] Moreover, the relevant American law referenced Israeli law and the SEC was unfamiliar with Israeli law. Teva was thus left in a twilight zone between the two legal systems. Paradoxically, the SEC depended on Teva to educate it about the law it should enforce.

Second, executive compensation came to the forefront in Israel only near the end of the first decade of the millennium. The watershed event was the appointment of a government committee on the subject in 2010 (Licht et al

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[11] For example, the chairman of the SEC listed "encouraging companies to list on U.S. markets" as one of his "key successes" in the annual report for 2000. *See SEC 2000 Annual Report* x (1 January 2000), www.sec.gov/pdf/annrep00/ar00full.pdf.

2013; Filut 2010; Weissman 2012; Zrahiya 2011). By that time, everyone had grown used to crosslisted companies not revealing executive pay. Thus, the media, public figures, and the authorities chastised transparent companies that traded only in Israel for their pay practices, while sparing crosslisted companies that kept the information secret.

3.5 The Suit

Our interest in compensation disclosure by crosslisted Israeli companies grew out of our academic work. We noticed these companies did not disclose compensation on an individual basis like other issuers in Israel and like US issuers in the United States, and could not find any justification for this. We decided to challenge Teva about this practice. Teva was by far the largest company in Israel and we both held its shares. If Teva changed its practice, we believed, others would too.

In February 2012, as Teva shareholders, we faxed to Teva's Chief Financial Officer (CFO) a demand that the company disclose executive compensation on an individual basis. The CFO replied by phone that Teva rejected our demand, based on legal advice it had received. He added that the company had seen no need to seek SEC approval for its practice. A couple of weeks later Teva filed an annual report, again disclosing only an aggregate pay figure. A month later Teva's legal department rejected our demand in writing. It did not explain why.

In May 2012, we wrote to Teva again, noting it had not explained its practice and stating we intended to sue the company on behalf of all its shareholders. Our goal was to bring Teva to disclose individual executive compensation figures and thus set an example for other crosslisted companies. Teva did not reply.

In October 2012, we filed a class action at the Tel Aviv District Court seeking an order to compel Teva to disclose the individual compensation of each of its directors and officers for the past seven years (due to Israel's statute of limitations) and in future annual reports. We claimed Teva had been violating its duty to disclose this information since 2000. Our complaint was supported by an affidavit of Professor Jesse Fried of Harvard Law School. Fried had authored a leading book on executive pay (see for example Bebchuk and Fried 2004) and a series of related articles (Bebchuk and Fried 2005; Fried 2006; Bebchuk and Fried 2010; Fried 2011).

Fried opined that Teva had to disclose executive compensation on an individual basis because the default rule for foreign issuers in the United States was individual disclosure and Israeli law merely allowed Teva to file the same reports in Israel. This conclusion, he explained, was consistent with the goal of the law governing foreign issuers in the United States: to spare foreign issuers the need to disclose *more* than they would if they traded only in their home country, rather than to enable them to disclose *less.* The suit received wide press coverage (Gabison 2012; Baum 2013a; Wainer 2013a).

Teva never filed an answer. After receiving several extensions from the court, it reached a settlement with us in which it committed to disclose executive pay individually in future annual reports. In return, we gave up our demand that Teva disclose this information for previous years. We signed the settlement agreement minutes before the first hearing, on June 19, 2013, and the court scheduled a settlement hearing for September 3, 2013.

The significance of the settlement was clear. It committed Teva to breaking with its longtime practice and disclosing executive compensation on an individual basis. We thought our work was done: Teva accepted our demands and other crosslisted companies were likely to mimic its new disclosure policy. Like the suit, the settlement received wide press coverage (Gabison 2013a; Wainer 2013b). Shortly after signing the settlement agreement, Teva revealed the compensation of its chief executive in a proxy statement related to his annual bonus. This too drew media attention (Gabison 2013b). However, at that stage the regulatory race to laxity heated up again.

3.6 Enter the ISA

Before filing the suit, we had asked the ISA for support under a law authorizing it to finance class actions in the public interest. The ISA fumbled. Its first reaction was that it had a policy of leaving the disclosures of companies filing US reports to the SEC. After a while, it wrote to us saying it wanted to read Teva's answer to the complaint. Nevertheless, when Teva chose to settle instead of filing an answer, the ISA entered the fray anyway—and vigorously opposed our no longer contested claims.

Its newly found interest in the suit reflected its fear of litigation targeting additional crosslisted companies. While the settlement released claims against Teva, similar claims could still be made against other companies, and while we sought only disclosure, shareholders of other companies could seek damages as well. The ISA worried that these companies would delist from the Tel Aviv Stock Exchange to protest and possibly reduce litigation exposure—delisting of crosslisted companies from the Tel Aviv Stock Exchange does not require shareholder approval.

Coincidentally, a major company, Mellanox Technologies, decided to delist shortly before the signing of the settlement, citing difficulties it faced as a crosslisted company. Mellanox had regularly disclosed executive compensation on an individual basis, and the reasons it gave for its delisting did not concern disclosure. Nevertheless, its delisting drew considerable attention (Nissan 2013; Raich 2013; Solomon and Picker 2013; Nissan 2013). The ISA was thus under pressure to reaffirm its liberal approach toward crosslisted companies (Baum 2013b).

Thus, two weeks before the settlement hearing, the ISA issued a statement.[12] Contrary to the shared view of the parties—Teva and ourselves—the ISA claimed that the case did not require an analysis of US law. Rather, the ISA argued, the intent of Israel's Cross Listing Law was enough, and it was to enable companies listed abroad to list their securities also in Israel without additional disclosure. Because Teva would not have had to disclose individual executive pay had it traded only in the United States—as Israeli securities law applies only to issuers traded in Israel and therefore would have required no disclosure—the ISA concluded that Teva did not have to disclose individual pay when traded also in Israel.

Shortly thereafter, the Attorney General of Israel filed an amicus brief with the court containing the ISA statement. The brief explained that the ISA worried the settlement would deter companies from crosslisting in Israel. The brief emphasized, however, that the ISA did not oppose the settlement, and indeed was considering new regulation to impose uniform compensation disclosure requirements on all Israeli companies traded abroad.

3.7 The Decision of the Court

On September 29, 2013, the court handed down its decision. It approved the settlement without addressing the merits of the case.[13] The court held, however, that the settlement was highly beneficial to the shareholders, noting that the ISA acknowledged this value and was considering new regulation

[12] ISA, Corporate Finance Department, Legal Position No 199–11: Reporting Requirements of Dual Listed Companies (18 August 2013), www.isa.gov.il/sites/ISAEng/Supervised%20Departments/Public%20Companies/Dual_Listing/Documents/IsaFile_1101154.pdf.

[13] *See* Class Action (Dist. Tel Aviv) 18040–11–12 *Hannes and Kamar v. Teva Pharmaceutical Industries Ltd.* (29 September 2013) (in Hebrew).

that would require all Israeli companies traded abroad to disclose executive pay.

4. The Aftermath

The new regulation mentioned by the ISA was our initiative. We had anticipated that the settlement with Teva would unnerve crosslisted companies, which would fear facing similar suits, and the ISA, which would fear losing listings. To stem these concerns, soon after signing the settlement agreement we proposed to the Ministry of Justice the adoption of a rule requiring all Israeli companies traded abroad, regardless of whether they are traded in Israel, to disclose executive compensation on an individual basis. A rule mandating individual disclosure, we reasoned, would end the practice of hiding executive pay and, by implying there had been no such requirement before, would deter litigation related to disclosure in the past.

The applicability of the rule also to Israeli companies listed only abroad was essential. Aside from being sensible—the United Kingdom has a similar rule[14]—this design ensured the rule would not encourage delisting from Israel, assuaging the fears of the ISA. The only way companies could avoid the rule was by *incorporating* in a country other than Israel or the United States that did not require disclosure. This is rarely a viable option. Young technology companies need to incorporate in Israel to obtain government funding, and reincorporating later abroad requires shareholder approval.

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[14] *See* Sections 385, 420, and 439 of the Companies Act 2006 (requiring UK companies listed in the United Kingdom, in a European Union member state, on the New York Stock Exchange or on NASDAQ to prepare a directors' remuneration report annually and present it for shareholder approval). The format of the report is set forth in the Directors' Remuneration Report Regulations 2002. The Unregistered Companies Regulations 2009 apply similar requirements to private UK companies if their principal place of business is in the United Kingdom.

The Ministry of Justice agreed with us and prepared the rule for approval by the Knesset's Constitution, Law and Justice Committee and the Minister of Justice. In June 2014, the final rule was published.[15] It requires any Israeli company listed abroad to disclose the compensation of its five highest paid officers on an individual basis in its annual proxy statement or in its annual report.

Conclusion

In 2012, the year we sued Teva, dozens of companies crosslisted in Israel and the United States disclosed only aggregate executive pay. Consequently, the pay practices of 26 of the 100 largest issuers in Israel were unknown (Gur-Gershgoren et al 2016).

In 2014, for the first time since 2000, Teva revealed this information under the terms of its settlement with us.[16] In 2015, more than 80 Israeli companies listed in the United States, including ones not listed in Israel, were required to do the same (Habib Waldhorn 2016).

Today this disclosure is standard. As of April 9, 2016, for example, 21 of the 100 highest paid executives on the Tel Aviv Stock Exchange were from crosslisted companies (Levy 2017). Teva executives, incidentally, occupied

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[15] *See* Companies Regulations (Announcement and Notice of a Shareholder Meeting and a Class Meeting in a Public Company and Addition of a Topic to the Agenda) (Amendment), 2014 (adding Section 4(d) to the Companies Regulations (Announcement and Notice of a Shareholder Meeting and a Class Meeting in a Public Company and Addition of a Topic to the Agenda), 2000).

[16] *See Teva Pharmaceutical Industries Limited, Annual Report for the Fiscal Year Ended December 31, 2013*, Item 6, at 97–106, http://mayafiles.tase.co.il/rpdf/877001-878000/P877919-00.pdf (Israel filing), www.sec.gov/Archives/edgar/data/818686/000119312514041871/d649790d20f.htm (US filing) (disclosing the aggregate compensation of the 15 officers, the individual compensation of each of the five highest paid officers, and the individual compensation of each of the 15 directors).

five of the top six places. It is hard to believe that, only three years earlier, none of this was known, all because of the global competition for securities listings.

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