

**EASDAQ: THE PAN-EUROPEAN STOCK
MARKET FOR GROWTH COMPANIES**

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The European Association of Securities Dealers Automated Quotation, or EASDAQ, was officially launched on September 30, 1996. It is a pan-European screen-based stock market inspired by the European Commission's concern that smaller European companies seeking long-term equity capital were handicapped by the absence of a suitable European capital market. NASDAQ was seen as an ideal model because it allows companies otherwise ineligible for a listing on the primary markets — largely because they are not yet sufficiently mature — to raise capital. Indeed, the Commission noted in 1995 that 20 percent of NASDAQ initial public offerings were high-technology-related compared to only 10 percent on Europe's six main national stock exchanges. More importantly, at a time of high unemployment in Europe, the Commission referred to a study showing that although firms listed on NASDAQ accounted for only 0.04 percent of all U.S. companies, they created 16 percent of all new jobs from 1990 through 1994.

In addition to the obvious similarity in name, EASDAQ's inspiration from NASDAQ is also apparent in the market's operation (based on market makers), its technology (screen-based quotations), its orientation (fast-growing companies), surveillance methods and information disclosure requirements. Companies already listed on either of the two exchanges are normally granted easy access to the other market with few additional obligations. EASDAQ is, however, unrelated to NASDAQ, and it is an entirely private initiative, distinct from the European Community.

The Regulatory Framework

EASDAQ, based in Brussels, is established under Belgian law and qualifies as a "regulated market" under the EU Investment Services Directive (ISD Directive). Provided an investment services business is authorized to do business in its home Member State, it will be authorized to do business in other Member States. This authorization, the so-called "European passport," permits EASDAQ members (investment firms and credit institutions) to have direct access to the market without the need to establish themselves in Belgium once they have the approval of another European regulatory authority. Non-EU investment firms and credit institutions may

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become members of EASDAQ if they fall under the jurisdiction of the countries indicated on a list drawn up by EASDAQ's Board of Directors.

Belgium was chosen as the site for EASDAQ because it was one of the first Member States to implement the ISD Directive, and its supervising authority, the Belgian Banking and Finance Commission (BFC), which accepts prospectuses in English, French, Dutch and German, is highly regarded. Brussels is also perceived as a neutral jurisdiction by the main European financial centers.

Listing Requirements

In order to be listed on EASDAQ, a prospective issuer's total assets must be at least ECU 3.5 million (about \$4 million), with ECU 2 million (about \$2.2 million) on an ongoing basis; capital and revenues must together total at least ECU 2 million at introduction and ECU 1 million (about \$1.1 million) thereafter. Revenues may be zero if the capital is sufficiently high.

The issuer must be incorporated at the time of admission and offer freely transferable securities (essentially shares and similar financial instruments as well as convertible instruments and warrants) within the European Union (EASDAQ has been recognized by the SEC as a "designated offshore securities market", enabling U.S. companies to offer and sell financial instruments on EASDAQ under Regulation S without registering such financial instruments with the SEC). The issuer must have at least 100 shareholders immediately after admission, although some flexibility may be accorded in this regard. There should, at any one time, be an adequate free float of 20 percent of the total value of the securities.

At the time of application for admission, the Market Authority will also qualitatively review the proposed issue, focusing on the good standing, integrity and experience of the management team, the adequacy of financial information, the company's prospective development plans, and the intended use of the proceeds from the sale of the securities.

Additionally, the application must be supported by an EASDAQ member, which acts as an intermediary between the Market Authority, the issuer and the market. The issuer is required to have at least two registered and active market makers in its stock; for companies that fail to meet this ongoing obligation, an EASDAQ auction market allows investors to continue to trade the securities in a public market.

After admission, directors and significant shareholders of companies coming to a public market for the first time (i.e., that are not already listed elsewhere) may not dispose of their shares for six months except by means of a public offering. Shareholders holding more than 10 percent of the shares prior to flotation may

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not dispose of more than 20 percent of their stake for periods specified in the prospectus.

Prospectus Requirements

Applicants for an EASDAQ listing with their registered office located in an EU Member State must prepare a prospectus that is approved by the authority of their home state. The approved prospectus must then be accepted by the appropriate authority in the Member States where the initial public offering is contemplated, under the mutual recognition procedure set forth in the EU Prospectus Directive (in practice, the country-specific information that may be requested includes a translation of the prospectus in an official language of the member state, as well as additional local information concerning the income tax system, the financial institutions retained to act as local paying agents and the way in which notices to investors are to be published). The prospectus must also be approved by the Belgian BFC, subject to mutual recognition procedures.

Should no prior approval of a prospectus be necessary under applicable home country law (such as in The Netherlands and Germany), the applicant must still submit the prospectus to the appropriate authority of at least one Member State. The same applies if no public offering is made in the issuer's home state. In those cases, the issuer will be free to file the prospectus with any of the authorities of the Member States where the initial public offering is to be launched. It is generally expected that issuers will prefer to file their prospectuses with the Belgian BFC, if only for its ease and convenience, given that the EASDAQ is also in Belgium and its approval will also be required.

Non-EU issuers must also obtain the approval of the Belgian Minister of Finance, which in the past has largely been a formality. October 1998 amendments to the EASDAQ Rule Book enable companies listed on the New York Stock Exchange, NASDAQ or the American Stock Exchange to use the same prospectus as filed with the SEC, with some additional minimum information provided in an annex.

Information Disclosure and Corporate Governance

Because of the risky nature of investments in emerging companies, regulators established stringent qualifications to ensure the disclosure of information to investors:

- An annual report (based on SEC Forms 10-K and 10-Q), including audited financial statements must be published within three months of the financial year-end, and unaudited quarterly reports must be provided within two months of the end of each quarter.

- Financial information must, in principle, be presented in accordance with international accounting standards. U.S. GAAP will be accepted if a U.S. offering is contemplated.
- Listed companies must make prompt disclosure to the public of any material information that would reasonably be expected to affect the value of securities or influence investors' decisions with prior disclosure to EASDAQ itself.

Insider trading rules forbid directors, executives and managers of significant business units of an issuer to sell or buy shares during certain periods (15 days before disclosure of information which could affect the value of securities, one month before the quarterly financial report and two months before the publication of the annual report). These same persons may not intervene on the market in the short-term (a purchase followed by a sale within a six-month period is considered a short-term transaction).

Certain minimum corporate governance requirements are also established:

- The issuer's board must have at least two independent directors not entrusted with the daily management.
- A compensation committee and an audit committee (each with a majority of independent directors) must be established.
- Details of any transactions with related parties must be published if the transaction involves the purchase or sale of an asset when the value exceeds 5 percent of either the company's market capitalization or net assets.

Trading

EASDAQ is a quote-driven market, based on competing market makers. As with NASDAQ, EASDAQ is entirely screen-based, without a physical trading floor. Trades can only be executed by market makers and members using proprietary systems and software.

Conclusion

EASDAQ is an innovative response to the lack of available funds for fast-growing high-tech companies in Europe, taking advantage of the latest European directives to allow for a truly pan-European market.

Admittedly, EASDAQ has a long way to go before it truly succeeds. U.S.-style research and investment banking expertise is scarce in Europe. EASDAQ also faces a shortage of market makers, lower valuations of companies than in the United States and continued delays by some Member States to fully or properly

implement the ISD Directive. The creation of EASDAQ nonetheless represents one of the most important capital markets initiatives in Europe since the foundation of the Eurobond market in the early 1960s, and will be closely followed by all interested in raising equity capital in Europe.

Howard M. Liebman
Stephen M. Goodman
Marcello Hallake