

Un-sponsored American Depositary Receipts (ADRs)

Since 1927, U.S. investors have utilized ADRs as a means to invest globally in an efficient and cost-effective manner. In October 2008, an SEC rule change enabled depositary banks, such as Citibank, to create a wide array of new un-sponsored ADR programs, augmenting the universe of global securities available to U.S. investors and intermediaries.

Background

ADR Basics

An ADR is a negotiable instrument issued by a depositary bank that evidences ownership of shares in a corporation organized outside the U.S. Each ADR represents a specific number of underlying ordinary shares in the non-U.S. company, on deposit with a custodian in the applicable home market.

ADRs are treated as U.S. domestic securities and are quoted and traded in USD.

Sponsored ADRs vs. Un-sponsored ADRs

All ADR programs are either “sponsored” or “un-sponsored.” Sponsored ADRs are implemented by a depositary bank in collaboration with the issuing company. Non-U.S. companies have used sponsored ADR programs for a variety of reasons, including raising capital in the U.S., building visibility within the U.S., and broadening and diversifying their shareholder base. Sponsored program ADRs trade on either a U.S. stock exchange or in the U.S. OTC (over-the-counter) market.

Un-sponsored ADRs are also implemented by a depositary bank, but with no direct involvement of the non-U.S. company. As a result, the determining factor for the establishment of un-sponsored ADR programs is investor demand. Un-sponsored ADRs trade in the U.S. OTC market only.

Change in Regulatory Environment for Un-sponsored ADR Programs

Rule 12g3-2(b)

In order for a depositary bank to establish an OTC-traded un-sponsored ADR program, the respective non-U.S. company must either have its securities registered with the SEC under the Securities and Exchange Act of 1934 (“Exchange Act”) or qualify for what is commonly known as a “Rule 12g3-2(b) exemption.” When a non-U.S. company initially qualifies for and maintains this exemption, it is not required to register its securities with the SEC.

An October 2008 SEC rule change liberalized the eligibility criteria and reporting requirements for obtaining the Rule 12g3-2(b) exemption, permitting the exemption to be automatically granted to certain non-U.S. companies. Prior to this rule change, non-U.S. companies had to formally apply to the SEC for exemption and also adhere to specific documentation requirements.

Today’s Eligibility and Reporting Criteria

The general terms of the qualification criteria are as follows:

- The company’s equity securities must be listed on one or more stock exchanges outside the U.S., constituting its “primary trading market.”

Benefits at a Glance

Investors

- Access a wide array of new ADR programs
- Invest globally according to U.S. market conventions, including USD

Intermediaries

- Enhance product offering to USD-focused investors •
- Leverage Citi’s “issuance and cancellation” capabilities to optimize flexibility



- Generally, at least 55% of the global trading volume of the applicable equity security during the company's most recently completed fiscal year must have taken place in no more than two foreign jurisdictions. If the primary trading market consists of two non-U.S. markets, the trading volume of the security on one of those exchanges must be greater than the trading volume in the U.S.
- The company has not otherwise triggered an Exchange Act registration or reporting obligation (e.g., by conducting a registered securities offering). If such an obligation is triggered, the Rule 12g3-2(b) exemption would be available immediately upon effectiveness of Exchange Act deregistration or suspension of Exchange Act reporting obligations.
- The company must publish its non-U.S. disclosure documents on its website or another electronic medium that is generally available to the public in its primary trading market.
- The electronic publication requirement must be applied to all non-U.S. disclosure and other documents made public, filed and distributed to shareholders from the first day of the company's most recently completed fiscal year. Most importantly, all of these documents must be made available in English.

Resulting Opportunity

Since the rule change, more non-U.S. companies qualify for the Rule 12g3-2(b) exemption. Therefore, depositary banks have been able to establish a variety of new ADR programs on the securities of non-U.S. companies that were previously unavailable to U.S. investors. As a result, intermediaries can enhance their global product offering to U.S. dollar-focused investors.

The Citi Advantage

Expertise and Insight

As a leader in depositary receipt services, Citi has extensive experience in establishing and supporting both sponsored and unsponsored ADR programs. We have positioned ourselves at the forefront of this opportunity with unsponsored ADRs by leveraging Citi's unparalleled access to investors, intermediaries, and issuers in order to capture demand and source liquidity.

Our Role as Depositary Bank

Issuance and Cancellation

The central function performed by a depositary bank when supporting an unsponsored ADR program is the "issuance and cancellation" of ADRs. When an investor elects to acquire ADRs, their broker can either purchase existing ADRs (subject to availability and market conditions) or purchase ordinary shares in the respective non-U.S. company and then deposit the shares in custody with the depositary bank for the creation of the ADR instrument. The latter transaction constitutes "issuance." Conversely, if an investor elects to sell ADRs, their broker can either do so in the applicable U.S. market (subject to demand and market conditions) or engage the depositary bank to exchange the ADRs for the underlying ordinary shares held in custody, and then proceed to sell these shares in the home market. The depositary bank's role in this transaction constitutes "cancellation."

As a result of an investor's ability to issue and cancel ADRs, the liquidity of the ADRs is typically equal to that of the underlying ordinary shares.

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