



ר ש ו ת נ י י ר ו ת ע ר ך
ISRAEL SECURITIES AUTHORITY

CHAIRWOMAN

יושבת ראש

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22 Tevet, 5779 / December 27, 2018

Our ref: an0000110

Conditions of a general permit under Section 49A to the Securities Law

Explanatory Note

The Securities Law (Amendment No. 63) 5777-2017 concerning a structural reform of the stock exchange, prohibits the opening and managing of a stock exchange in Israel (using the words of the law, “a securities trading system”) unless by a company holding a stock exchange license.

Furthermore, Section 49A was added to the Securities Law 5728-1968 (hereinafter, “the Law”), which determined an additional prohibition on offering securities trading services through a securities trading system that is not managed by a stock exchange licensed in Israel, as follows:

- (a) No person may make an offer to provide trading services in securities using a system for trading in securities unless the system is managed by a Stock Exchange.*



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(b) Notwithstanding the provisions of subsection (a), the Authority chairman may allow a person to make an offer to provide trading services in securities using a system for trading in securities managed by a stock exchange outside Israel as defined in section 35DD, on set conditions, if he has found that this will not damage the interests of the investing public in Israel.

This section, which is drafted broadly, prohibits the offering of securities trading services through a system that does not operate under a stock exchange license, and therefore applies to offers of trading in securities that are not traded on a stock exchange in Israel, such as brokerage services for the purchase of securities on stock exchanges outside Israel.

This section determines a permit regime for entities seeking to engage in the aforesaid operations, rather than a supervisory regime. The section cannot be a substitute for planned comprehensive regulation in the area of broker-dealers, which is designed to bring the entities engaged in brokerage activities within a supervisory regime. Nonetheless, the Israel Securities Authority (hereinafter, “the ISA”) believes that recent events involving the collapse of unregulated brokerage firms and the consequent harm to the investor public demonstrate the need to define a controlled permit policy, as proposed below, in order to reduce these and other risks to the investor public until the broker-dealer regulation will commence.

In the absence of supervision, the conditions of the general permit, listed below, define minimum requirements for entities wishing to engage in such activities, with the aim of protecting the investor public in Israel.



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The conditions of the permit refer separately to stock exchanges and to other entities that wish to engage in said activities. With respect to marketing activities by a foreign stock exchange itself, the prohibition defined in Section 49A applies in addition to the prohibition defined in Section 45(a) to the Law on operating a securities trading system in Israel without a license. The ISA staff previously clarified that in general, solicitation of Israeli investors by a securities trading system or its representative may create a linkage between the system and Israel such that it is required to be licensed as a stock exchange in Israel. In recent years, responses were given to pre-ruling requests concerning the circumstances in which such systems may solicit investors in Israel without requiring a license under Section 45(a) to the Law. The format of the proposed permit, with respect to stock exchanges, reflects the conditions that were defined in the responses to those preliminary inquiries in the context of Section 45(a).

With respect to entities that are not stock exchanges or their representatives, yet wish to engage in said activities, the permit refers both to entities that wish to solicit only qualified investors and entities that wish to solicit the general public.

Regarding entities that wish to make offers to the general public, in contrast to offers that target qualified investors, the general permit is based on the assumed reliability and skills of the entities named in the permit, based on their status as banking corporations, non-bank stock exchange members, or entities that are subject to specific and appropriate regulation in the United States or the European Union.

An entity that seeks to obtain a permit pursuant to the general permit is required to contact the ISA and declare that the relevant conditions listed in the conditions of the general permit hereunder obtain. In general, the ISA's review is limited to whether the entity complies with the conditions of the general permit.

It should be noted that the general permit does not prevent entities that do not comply with its conditions to submit a reasoned request for a specific and unique permit that fits its circumstances, and such request will be considered on its merits. Similarly, entities that are subject to specific supervision in foreign jurisdictions that are not included in the general conditions of the permit may submit a reasoned request to the ISA referring to the adequacy of the regulatory regime that applies to them, and their obligations toward their clients even when such clients are in Israel.



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To create transparency for the investor public regarding the identity of the entities that have a permit under Section 49A to the Law, the list of said entities will be published on the ISA website. At the same time, entities that were issued a permit by the ISA under Section 49A to the Law are required to provide a disclosure to their clients, about the meaning of the permit, using the format that appears below in the conditions of the general permit.

For the sake of clarification, it should be noted that the permit requirement adds to and does not replace other lawful requirements. For example, it does not replace the need for an investment advisor license when investment advising activities are performed, or the need for a permit to publish a prospectus when securities are being offered to the public.

Applications for a general permit must be submitted to the ISA within four months of the publication date of the permit format, and the prohibition on operating without a permit will come into effect six months after the publication date of the permit format. If the applying entity receives no response to its application by the end of that six-month period, it may continue to operate until a decision on its applications is issued. Entities that did not submit an application within the four-month period following the publication date of the permit format may not continue to operate without a permit, and the ISA's letter dated November 8, 2017, which stated that the ISA staff will refrain from enforcement procedures concerning the implementation of Section 49A(a) to the Securities Law, will not apply to them.

For the sake of clarification, it should be noted that, according to her powers under Section 49A to the Law, the ISA Chairperson may modify the conditions of the permit from time to time.



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By the powers vested in me under Section 49A to the Securities Law 5728-1968 (hereinafter, “the Law”), permits will be issued to individuals for offering securities trading services using a securities trading system operating outside Israel and is not a licensed stock exchange in Israel (hereinafter, “a foreign exchange”), subject to the following conditions:

1. Permit to foreign stock exchanges or their representatives

Foreign exchanges that meet the following conditions:

- a. The operations of the foreign stock exchange in Israel will be limited to the investors listed in the First Addendum to the Law, not including individuals listed in paragraph (12) to the First Addendum to the Law (hereinafter, “Qualified Corporations”). These Qualified Corporations may not trade on the foreign stock exchange for others or offer others to trade through them on the foreign stock exchange.
- b. Marketing activities will not include contacts to or solicitation of investors who are not listed in paragraph (a) above. Marketing activities will be directed exclusively to the investors listed in paragraph (a) above, after having been identified as such, and will not include any public marketing activity including, among other things, advertisements related to the foreign stock exchange published in the media.
- c. The services to be offered to investors in Israel will include trading in financial instruments that have been offered and are traded outside Israel, and will not include securities that are traded on the stock exchange in Israel or derivatives of such securities, with the exception of the securities of dual-listed Israeli corporations that are traded in Israel and in a stock exchange outside Israel;
- d. Activity in Israel will constitute a very small portion of the foreign exchange’s overall activity. Activities that are not regulated by the regulatory authorities in the country in which the foreign exchange is regulated will not be offered to investors in Israel, and the foreign exchange will have no activities that specifically directed or fitted to Israeli investors;



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- e. All orders issued in Israel will be matched cleared and settled in the foreign exchange's systems outside Israel. Trades between clients located in Israel will not be netted inside Israel.

2. Permits to other entities

Alternative A: Offers to qualified investors only

Entities that make offers only to those entities listed in the First Addendum to the Law – individuals or corporations (hereinafter, “Qualified Investors”), provided that any such contact or advertisement made by it or on its behalf includes a clarification that the service is designed exclusively for qualified investors.

Alternative B: Offers not limited to Qualified Investors

Entities that also make offers to entities that are not Qualified Investors, provided they meet all of the following conditions:

(1) The entity is one of the following:

- a. A banking corporation, as this term is defined in the Banking Law – Licensing 5741-1981;
- b. A member of the Tel Aviv Stock Exchange that is not a banking corporation (“non-banking TASE member,” as defined in the TASE Articles of Association);
- c. An entity that is subject to supervision and regulation as a broker-dealer in the United States, or subject to supervision and regulation as an investment firm or a credit institution that may provide investment services in any EU country under the MiFID Directive, and, according to the law according to which said entity is subject to regulation and supervision, the fact that the client is in Israel will not detract from the entity's obligations toward its client.
- d. A corporation that has an investment advisor license or an investment marketing license, as these terms are defined in the Regulation of Investment Advice, Investment Marketing, and Investment Portfolio Management Law 5755-1995 (hereinafter, “the Advising Law”), provided that the offered securities trading services will be performed through an entity listed in (a) through (c) to sub-paragraph (1).



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- (2) The entity is not acting on behalf of the foreign stock exchange in which the securities transactions will be performed;
- (3) The entity will not market a specific foreign stock exchange or specific market.

Disclosure regarding the nature of the permit

A permit holder who informs any individual that he received an ISA permit according to Section 49A to the Law is required to submit a disclosure in the following format:

Permit according to Alternative A:

“The permit holder’s operations are not subject to the supervision of the Israel Securities Authority. This permit does not constitute an opinion regarding the quality of the services rendered by the permit holder or the risks that such services entail.”

Permit according to Alternative B:

“The Israel Securities Authorities permit under Section 49A to the Securities Law was issued on the basis of the permit holder’s declaration that it is subject to the supervision of _____. Said entity’s activity is not subject to the supervision of the Israel Securities Authority. This permit does not constitute an opinion regarding the quality of the services rendered by the permit holder or the risks that such services entail.”

In the case of a corporation that holds an investment advisor or investment marketer license:

“The Israel Securities Authorities permit under Section 49A to the Securities Law was issued on the basis of the permit holder’s declaration that trading services will be rendered by an entity that is subject to the supervision of _____. Said entity is not subject to the supervision of the Israel Securities Authorities. This permit does not constitute an opinion regarding the quality of the services rendered by the permit holder or the risks that such services entail.”

Failure to provide said disclosure constitutes a violation of the conditions of the general permit and may lead to the revocation thereof.



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Contacting the ISA to receive and maintain a permit

An entity that wishes to obtain a permit under Section 49A to the Law is required to contact the ISA and declare that the relevant conditions listed in the conditions for the general permit obtain.

The declaration must be signed by the permit applicant's authorized signatory and attached by an attorney's affirmation that the authorized signatory is authorized to make the declaration.

After the ISA confirms that the permit applicant meets the conditions of the general permit according to its own declaration, the permit holder must submit a similar declaration of compliance with the conditions of the permit once every three years.

For the sake of clarification, it should be noted that issue of the permit does not detract from the application of any other provision of law, and specifically does not replace the requirement to obtain other permits or licenses required by any other law.

Informing the ISA of a change permit holder's status

If any of the conditions of the permit no longer obtain with respect to a permit holder, the permit holder will report the change to the ISA immediately.

Validity of the general permit

The ISA Chair may modify the conditions of the permit from time to time.

Announcements of such modifications are published on the ISA website and will come into effect 60 days after the publication date thereof.



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Commencement and transition provisions

Applications for a general permit must be submitted to the ISA within four months of the publication date of the permit format, and the prohibition on operating without a permit will come into effect six months after the publication date of the permit format. If the applicant does not receive a response to its application by the end of said six-month period, the applicant may continue to operate until a response to its application is received. An entity that does not submit an application for a permit within the four-month period following the publication date of the permit format may not continue to operate without a permit, and the ISA letter dated November 8, 2017, which states that the ISA staff will refrain from taking any steps to enforce Section 49A(a) to the Securities Law, will not apply to said entity.

Anat Guetta
ISA Chair