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Regulations for the Regulation of Investment Advice and Investment Portfolio Management (Equity and Insurance) 5760, 2000ⁱ

By virtue of my authority under Sections 7(a)(6), (b)(3), (c)(3) and (4), (e)(8)(a)(6), (b)(4) and (5), (d), 26(d), and 42 of the **Regulation of Investment Advice and Investment Portfolio Management** Law, 1995, (herein: "the Law"), in consultation with the Authority and the approval of the Knesset Finance Committee, I enact the following regulations:

Definitions

1. In these regulations -

"Index" – the Consumer Price Index published by the Central Bureau of Statistics;

"Overall value of assets" – the value of securities and financial assets managed by a portfolio manager, calculated as at 31 March, 30 June, 30 September and 31 December of each year as stipulated in Chapter 4 of Joint Investment Trust (purchase & sale prices of fund assets and value of fund assets) regulation 1994 and as stated in Section 42 of the Joint Investments Trust Law, 1994;

"Deposit" – a monetary deposit deposited with a Bank in Israel, in accordance with the conditions set out in Regulation 7.

"Deposit of Securities in custody" – Government issued bonds traded on the stock market and deposited with a Bank in Israel in custody, in accordance with the conditions set out in Regulation 7.

Equity

2. The equity of an investment advisory company and a portfolio management company shall not at any time be less than two hundred thousand New Shekels.

Insurance requirement for an investment advisor

3. (a) An investment advisor shall take out insurance to cover his liability for negligent actions or omissions in relation to its clients and the infidelity of employees in relation to its clients; the insurance shall be taken out with a holder of a license in accordance with the Insurance Business Supervision Law, 1981 (herein: "the Supervision Law"), such that it covers claims for events occurring during the period of the policy and which have been submitted within one year of the end of the policy period.

(b) Insurance pursuant to sub-regulation (a) to be taken out by an investment consultant -

(1) If an individual shall at no time be less than six hundred thousand new shekels.

- (2) If a partnership or a company shall at no time be less than a total amount of one million two hundred thousand new shekels.
- (c) The provisions of sub-regulations (a) and (b) shall not apply to an investment consultant who is -
 - (1) An employee of a bank or other banking corporation as stated in Section 9(b) of the Law;
 - (2) A partner in a partnership, where insurance has been taken out in accordance with these Regulations to cover the its liability and the liability of all its partners;
 - (3) An employee of a company which has taken out insurance to cover its liability in accordance with the Regulations.

Insurance requirement for a portfolio manager

4. (a) A portfolio manager shall take out insurance to cover his liability in respect of a negligent action or omission in respect of its clients and as a result of infidelity of its employees with respect to its client, the insurance shall be taken out a holder of a license in accordance with the Supervision Law such that it covers claims for events occurring during the period of the policy and submitted within one year of the end of the policy period.
- (b) Insurance covering all the liabilities detailed in sub-regulation (a) to be taken out by the portfolio manager at all times shall be not less than -
 - (1) Nine percent of the overall value of assets or one million shekels, the higher of the two, if the value of assets managed by him does not exceed seventy five million new shekels;
 - (2) Five percent of the overall value of assets, but in any case not less than six million seven hundred and fifty thousand new shekels, where the value of assets managed by him exceeds seventy five million shekels and is no more than three hundred million shekels;
 - (3) Four percent of the overall value of assets, but in any case not less than fifteen million new shekels, where the value of assets managed by him exceeds three hundred million shekels and is no more than six hundred million shekels;
 - (4) Three percent of the overall value of assets, but in any case not less than twenty four million new shekels, where the value of assets managed by him exceeds six hundred million shekels.

- (c) The provisions of this regulation shall not apply to an individual portfolio manager employed by a company which has taken out insurance to cover its liabilities in accordance with these regulations.

Deductible

(Amendment 5764)

- 5. (a) The deductible amount for insurance in accordance with regulations 3 and 4 shall not exceed the lower of, five per cent of the minimum insurance amount set out in Regulations 3 and 4 (herein in this regulation – the minimum insurance amount) or five hundred thousand new shekels.
- (b) Notwithstanding the aforementioned in sub-regulation (a), the deductible amount for a portfolio manager whose equity exceeds ten million new shekels but is not more than twenty five million new shekels shall not exceed the lower of five percent of the minimum insurance amount or seven hundred thousand new shekels.
- (c) Notwithstanding the aforementioned in sub-regulation (a), the deductible amount for a portfolio manager whose equity exceeds twenty five million new shekels shall not exceed the lower of, five percent of the minimum insurance amount or one million new shekels.
- (d) Notwithstanding the aforementioned in sub-regulations (a) to (c), where the deductible amount, in accordance with the insurance contract is higher than the maximum deductible amount in accordance with these regulations, the license holder is permitted to substitute the difference between them with a bank guarantee in favor of clients, or a deposit, or deposit of securities in custody, in the amount of the difference between deductible amount in accordance with the insurance contract and the maximum allowed deductible amount.

Replacing insurance with a bank guarantee, a deposit or a deposit of securities in custody

(Amendment 5764)

- 6. (a) An investment consultant which is a company is permitted to replace up to two thirds of the insurance amount pursuant to Regulation 3 with a bank guarantee in favor of clients (herein – bank guarantee) or with a deposit or with a deposit of securities in custody in an amount equal to one third of the insurance amount being replaced by them.
- (b) A portfolio manager which is -
 - (1) A company with a value of assets under management not exceeding three hundred million new shekels is permitted to replace up two thirds of the insurance amount pursuant to

Regulation 4(b)(1) or (2) with a bank guarantee in favor of clients (herein – bank guarantee) or with a deposit or with a deposit of securities in custody, in an amount equal to one third of the insurance amount being replaced by them.

- (2) A company with a value of assets under management which exceeds three hundred million new shekels but not more than six hundred million new shekels is permitted to replace up to two thirds of the insurance amount pursuant to Regulation 4(b)(3) such that each shekel insured will be replaced by 0.6 new shekels as a bank guarantee or a deposit or a deposit of securities in custody.
- (3) A company with a value of assets under management which exceeds six hundred million new shekels is permitted to exchange up to two thirds of the insurance amount pursuant to Regulation 4(b)(4) such that each shekel insured will be replaced by 0.9 new shekels as a bank guarantee or with a deposit or with a deposit of securities in custody.

Conditions for realization of a deposit, bank guarantee and deposit of securities for safe-keeping

(Amendment 5764)

- 7. (a) A deposit or deposit of securities in custody as stated in Regulation 5 or 6 shall be deposited in a trust account with an attorney or a certified public accountant in favor of the company's clients and shall not be subject to a lien or be subject to withdrawal unless in accordance with sub-regulations (c) or (e) below; the deposit or deposit of securities in custody in the trust account shall be managed in accordance with the company's instructions; a bank guarantee shall be in the name of an attorney or a certified public accountant and shall be activated by him in favor of the company's clients in accordance with sub-regulations (c) or (e) below; the bank guarantee shall be unconditional, to the satisfaction of the attorney or certified public accountant, and shall not be subject to cancellation or foreclosure except in accordance with sub-regulations (c) or (e).
- (b) A foreclosure having been imposed on the custody account, the company shall act immediately to remove the foreclosure; if unable so to do within 7 days, a deposit shall be deposited in a new custody account or the insurance amount shall be increased in accordance with Regulation 4.
- (c) A deposit or deposit of securities in custody deposited in a trust account, or a bank guarantee held by an attorney or a certified public accountant, shall be realized within seven days of one of the following having been presented before them:

- (1) A court judgment in a suit brought by a client against the company;
- (2) A compromise agreement between the company and a client suing the company which has been given the status of a court judgment;
- (3) A decision by an arbitrator between the suing client and the company, which has been confirmed by a court.
- (d) "A court judgment", "compromise agreement", or "arbitrator's decision" in accordance with sub-regulation (c) – shall include, *inter alia* details of those entitled to payment and the amounts to which they are entitled.
- (e) Notwithstanding the aforementioned in sub-regulation (a), a bank guarantee can be cancelled, the deposit amount or the amount of securities deposited in custody can be reduced or withdrawn where the company has proved to the attorney's or the certified public accountant's satisfaction that following the cancellation or reduction the company fulfills the insurance requirement, including with respect to the discovery period for submission of claims, resulting from the provisions of Regulation 4 and including the subject of the deductible amount pursuant to Regulation 5.

Reports

8. (a) If a bank, at the request of the company, has issued a bank guarantee in the name of an attorney or a certified public accountant in favor of its clients as stated in Regulation 7(a), the company shall submit a report to the Authority in which will be detailed the name of the guarantor and the amount of the guarantee, and shall regard the report as being a notice to creditors creating a guarantee in favor of clients from time to time, pursuant to Section 3 of the Guarantee Law, 1967.
- (b) A report in accordance with sub-regulation (a) shall be submitted no later than seven days after the bank guarantee was issued.
- (c) A company shall submit to the Authority, no later than 31 March of each year a report on the following:
 - (1) Name of the insurer as at 31 March, 30 June, 30 September, 31 December of each year;
 - (2) The amount and period of insurance taken out for the dates in paragraph (1);
 - (3) The deductible amount according to the policy for the dates in paragraph (1);

- (4) The amount of equity for the 31st December preceding the report date;
 - (5) The amount of the bank guarantee taken out and its validity period and the value of the deposit of securities in custody for the dates detailed in paragraph (1);
 - (6) Amount of the deposit deposited for the dates in paragraph (1);
 - (7) The name and details of the attorney or certified public accountant as stated in Regulation 7.
- (d) A portfolio management company shall submit to the Authority together with the report pursuant to sub-regulation (c), a report of the overall value of assets for the dates set in sub-regulation (c)(1);
 - (e) An investment consultant who is an individual or a partnership, required to take out insurance pursuant to Regulation 3 shall submit a report to the Authority no later than 31 January of each year as to the insurance amount and the name of the insurer.
 - (f) The reports pursuant to sub-regulations (c), (d) and (e) shall have attached to them a report signed by a certified public accountant, and in the case of a company the company's auditor, as to their properness or details contained in them, as applicable.
 - (g) The report pursuant to sub-regulation (c) shall have attached to it the report of the auditor of the company on the financial statements as at the 31 December preceding the date of the said report in sub-regulation (c), if the certified public accountant's report deviates from the standard format, including a deviation by the drawing of attention to certain facts or by emphasis.

Reporting to clients

- 9. A report to clients pursuant to Section 26 of the Law shall also include if relevant, the following details:
 - (1) Name of the insurer
 - (2) Insurance period
 - (3) Details of the bank giving the bank guarantee and its period of validity
 - (4) Existence of a deposit or deposit of securities for safe-keeping replacing insurance as per Regulation 6;
 - (5) Name and details of the attorney or certified public accountant as per Regulation 7.

Adjustment

10. The amounts pursuant to Regulations 2, 3, 4, and 5 shall be adjusted every 1st of January in accordance with the rate of change between the index published for the month of November preceding the date of update and the index published for the month of November 1998, rounded to the nearest multiple of one thousand new shekels.

Cancellation

11. The Regulations for the **Regulation of Investment Advice and Investment Portfolio Management** Regulations (Equity and Insurance) 5757, 1997 – are hereby cancelled.

Commencement

12. The commencement date for these Regulations shall be the date of publication in the Official Gazette; however where insurance had been taken out pursuant to the previous Regulations, the taking out of insurance pursuant to Regulations 3 or 4 of these Regulations shall take place no later than 1 February 2000 on condition that the insurance taken out pursuant to the previous regulations remains in effect at least until that date.

26 Teveth 5760 (4th January 2000)

Avraham (Beiga) Shochat

Minister of Finance

ⁱ RC 6016, 5760 (20.1.2000), Page 266
Amendment: RC 6298, 5764 (11.3.2004) page 311
ⁱⁱ Originally written, "in a company"