



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

CHAIRWOMAN

יושבת ראש

The following translation is intended solely for the convenience of the reader. This translation has no legal status and although every effort has been made to ensure its accuracy, the ISA does not assume any responsibility whatsoever as to its accuracy and is not bound by its contents. Only the original Hebrew text is binding and reader is advised to consult the authoritative Hebrew text in all matters which may affect them.

~~16 Tevet, 5781 / December 31, 2020~~

Our ref: an0000110

Draft amendment to the Conditions of a General Permit
under Section 49A to the Securities Law

~~New version (December 2020)~~

Version for Public Comments

Comments and responses due: .27.122022

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The proposed changes to the conditions for the general permit are marked on this file in tracked changes mode.

We direct your attention to the procedure published by the ISA on rule making. See: <http://www.isa.gov.il/Download/IsaFile7067.pdf>. According to this procedure, the main public comments, including the names of the public commenters, will be incorporated in the document that includes the proposed regulation. Also see Section 7 of said procedure on special requests to prevent publication of commenters' names.



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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:

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.

(a) 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.



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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.

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 by whoever operate on its behalf 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 operate on their behalf, 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.



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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, the European Union, the United Kingdom or Switzerland.

General permit is given without the need to submit an application to the ISA to entities which are not stock exchanges or operate on their behalf that make offers only to qualified investors. Any other entity that seek to obtain a permit pursuant to the general permit's conditions 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.

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. The list will not include entities that are acting according to alternative A of section 2 (entities which are not stock exchanges or operate on their behalf that Offer to qualified investors only). At the same time, all entities that inform any individual that they received an ISA permit according to 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.



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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 adviser 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.¹

In a Q&A page posted on the ISA website, ISA staff clarified that the prohibition against operating without a permit applies to any entity that makes an approach to offer the trading services described in the law, including entities that contact investors in Israel in order to market trading services to be rendered by another entity that holds a permit under Article 49A. Employees of an entity holding a permit under Article 49A are not required to hold their own permit, but external entities must be explicitly included in a permit in order to be able to make an approach to offer the trading services described in the law. A permit holder under Section 49A or an entity that applies for a permit and wishes to include in its application external entities that will make offers to investors on its behalf may submit a reasoned and detailed application and the application will be reviewed as an exceptional application that does not meet the conditions of a general permit.

In response to inquiries received by the ISA, it is proposed to make a general amendment to the conditions for a permit under Section 49A that applies to all permit holders that are not foreign exchanges or operate on their behalf, and that also make offers ~~also~~ to non-qualified investors through an entity that is external to the permit holder. The conditions ~~are~~ described below in the proposed version, which refer to conflicts of interest and disclosure, among other issues, are designed to ensure the quality of supervision over permit holders even when an external marketer is involved. These conditions will apply to all permit holders that enter into agreements with external entities to market the permit holder's trading services to investors in Israel, whether the permit holder submitted an application for a specific permit or not.



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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.

¹ The original version of the conditions for the permit clarified that an application for a permit must be submitted to the ISA within 4 months from the publication date of the version of the permit, and the prohibition against operating without a permit comes into effect 6 months after said publication date. If an applicant does not receive a response to their application within said six-month period, the applicant may continue to operate until a decision on the application is received. An entity that did not submit an application for a permit within 4 months from the publication of the version of the permit may not continue to operate without a permit, and the ISA letter dated November 8, 2017, which states that ISA staff will take no enforcement action with respect to implementation of Section 49A(a) to the Securities Law, will not apply.



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Conditions of a General Permit Under Section 49A to the Securities Law

By the powers vested in me under Section 49A to the Securities Law 5728-1968 (hereinafter, “the Law” or “the Securities 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 entities that operate on their behalf

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;



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- 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;
- 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);



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- 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 Directive²; or an investment firm or credit institution as defined in article 2(1) of Regulation No 600/2014, which has its head office in the United Kingdom and which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on in the United Kingdom regulated activities relating to the investment services and activities as defined in Regulation No 600/2014; or a bank licensed in Switzerland which is authorized as securities dealer under the Swiss law and regulation; and provided that 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. An investment adviser 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).
- (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.
- (4) As a permit holder, the entity will perform marketing activities independently through employees acting on its behalf, or will perform marketing activities through an external entity (hereinafter, "a marketer"), so that the marketer will offer trading services to be rendered by said permit holder, provided that the permit holder that will perform marketing activities through the marketer meets the following conditions:

² DIRECTIVE 2014/65/EU



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- a. The permit holder will oversee and verify that, within the communications that the marketer maintains with investors with respect to the permit holder's services, the marketer is not in violation of the Securities Law or the Regulation of Investment Advising, Investment Marketing, and Investment Portfolio Management 5755-1995. The permit holder will oversee and verify that the information given to investors by the marketer contains no misleading particular, within the meaning of the term in the Law.
- b. The permit holder will oversee all communications that the marketer maintains with investors with respect to the permit holder's services, and will monitor and review said communications.
- c. The marketer will be required to obtain the permit holder's advance consent in writing for all written information and marketing materials that the marketer uses with respect to the permit holder's services.
- d. The permit holder will maintain due diligence procedures in selecting new marketers and reviewing existing marketers, including reviews of the competency of the marketers and their employees to maintain communications with investors with respect to the permit holder's services.
- e. The permit holder will oversee and verify that the marketers are not providing investment services, such as execution of orders on behalf of clients or reception and transmission of orders in relation to securities, and are not involved in any manner in the transfer of the clients' buy and sell orders, and they do not hold in any manner nor are they involved in handling or transferring clients' money or assets.



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- f. The permit holder will submit to the ISA a list of the marketers who are acting on its behalf, which includes the marketers' full names, addresses, and ID numbers, or their incorporation numbers, before a permit applicant obtains a permit or before the marketers begin to work for a permit holder; In addition, it will submit to the ISA an updated list of marketers after any change in said list.
- g. The permit holder will publish, in a prominent place on the marketing website that targets investors in Israel, the names of the marketers that are included in the updated list noted in sub-paragraph (f) and their address, the name of the permit holder, and the terms of the permit as stated in the conditions of this general permit. In addition, it will include the language specified under the heading "Disclosure regarding the nature of the permit" shortly thereafter.
- h. The permit holder will take steps to identify potential conflicts of interest created by the marketers' activities and, in the list that is published according to sub-paragraph (g) above, it will note with respect to each marketer the circumstances that create a conflict of interest between the marketer and the investor and the restrictions that apply to the marketers as a result of such conflicts of interest.
- (5) The permit holder will oversee and take all reasonable measures to verify that no entities (other than its employees or employees of any entity that appears in the list of marketers that it submitted) are acting directly or indirectly on its behalf and making offers to investors in Israel with the aim of marketing the permit holder services.

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:



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“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.”



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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 adviser 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

The ISA Chair hereby grant general permit to entities which are not stock exchanges or operate on their behalf, that wish to act according to alternative A of section 2 (Offers to qualified investors only).

Any other entity that wishes to obtain a permit under Section 49A to the Law is required to submit a request for a permit to 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 holds 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

The general permit will come into effect in July 30, 2019 (hereinafter, “**commencement day**”), after that day the prohibition on operating without a permit will come into effect. An entity that acted in Israel and submitted application for a permit by the 30 May 2019, may continue to operate until a decision in its application is made, even if it did not receive a response to its application. An entity which was required to submit a request for a permit to the ISA and did not submit an application for a permit until 30 May 2019, may not continue to operate without a permit after the commencement day, 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.

~~The new version permit publication date in the ISA website is: December 31, 2020~~

Anat Guetta
ISA Chair