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## REGULATION OF INVESTMENT ADVICE, INVESTMENT MARKETING AND PORTFOLIO MANAGEMENT LAW 5755-1995

### CHAPTER ONE: INTERPRETATION

#### Definitions

1. In this Law –

**"Stock Exchange abroad"** – a Stock Exchange approved by whoever, in the country in which it operates, is lawfully entitled to give that approval;

**"bank abroad"** – a body corporate, incorporated in a foreign country, for which all the following hold true:

- (1) it engages in activities, which in Israel require a bank license under the Banking (Licensing) Law;
- (2) it obtained permission from whoever is entitled to give it lawfully in that foreign country to engage in the activities said in paragraph (1), and it is under the supervision of whoever is authorized therefor in that country;

**"licensee"** – whoever holds an advising license, a marketing license or a portfolio management license that was given him under this Law;

**"institutional body"** – a management company, a Fund Manager and an insurer;

**"offense"** – an offense under one of the Laws specified hereafter, other than an offense for which the penalty is only a fine: this Law; the Provident Fund Supervision Law, the Pension Counseling and Marketing Law, the Securities Law; the Joint Investment Trusts Law; the Companies Ordinance; the Banking (Licensing) Law; the Banking Ordinance 1941; the Banking (Service to Customers) Law 5741-1981; the Insurance Business Control Law 5741-1981; the Currency Control Law 5738-1978; the Income Tax Ordinance; the Value Added Tax Law 5736-1975; the Customs Ordinance; the Trade Levies Law 5751-1991; the Prohibition of Money Laundering Law 5760-2000; or another offense that because of its nature, severity or circumstances makes a person unfit to be a licensee;

**"Authority"** – the Israel Securities Authority that was set up under the Securities Law;

**"underwriting obligation"** – as defined in the Securities Law 5728-1968;

**"connection"** of a person to a financial asset – each of the following:

- (1) the financial asset is managed by that person or was issued by him;
- (2) that person – or another on his behalf or for him – is directly or indirectly entitled to a benefit, other than the refund of a fee or of a distribution fee said in section 17(b)(3) to (5), otherwise than from the buyer or holder of the financial asset, in connection with the performance of a transaction with the financial asset or with its continued holding; for purposes of this definition, **"person"** includes whoever controls him or is controlled by either of them, holds a position in either of these, is employed by or employs one of these;

**"Stock Exchange member"** – as defined in section 50A of the Securities Law;

**"company"** – as defined in the Companies Ordinance;

**"Banking (Licensing) Law"** – the Banking (Licensing) Law 5741-1981;

**"Companies Law"** – the Companies Law 5759-1999;

**"Pension Counseling and Marketing Law"** – the Control of Financial Services Law (Pension Counseling, Marketing and Clearing System) 5765-2005

**"Joint Investment Trusts Law"** – the Joint Investment Trusts Law 5754-1999;

"**Penal Law**" – the Penal Law 5737-1977;

"**Securities Law**" – the Securities Law 5728-1968;

"**Control of Provident Funds Law**" – the Control of Financial Services (Provident Funds) Law 5765-2005;

"**underwriter**" – whoever assumes an underwriting obligation;

"**investment adviser**" or "**adviser**" – whoever engages in investment advising;

"**investment advising**" – giving advice to others on the profitability of investing in, holding, acquiring or selling securities or financial assets; for this purpose, "**advice**" – whether direct or indirect, including by means of publication, in circulars, in professional opinions, by use of the mails, facsimile or any other medium, exclusive of advertising by the State or by a body corporate that performs a lawful function within the limits of its responsibility;

"**qualified client**" – a client who, when the contract for the provision of services to him was made, was mentioned in Schedule One and the conditions said there applied to him;

"**insurer**" and "**insurance agent**" – as defined in the Control of Financial Services (Insurance) Law 5741-1981;

"**structured product**" – an investment, either as a deposit or in some other way, on which the yield or the risk is determined by a formula that is based on changes in one or several of the following:

- (1) one or several indexes;
- (2) the price of one or of several securities;
- (3) the price of one or of several commodities;
- (4) the price of options or of futures;
- (5) interest or differentials between different interest rates;
- (6) currency exchange rates or differentials between different currency exchange rates

other than an investment that unconditionally assures payment of the capital amount with changes that stem from paragraphs (1) or (2) below, if so prescribed in the investment conditions, and that also unconditionally assures the payment said in paragraph (3) below, if such was prescribed, on condition that – if a choice is given between two or more of what is enumerated below – payment shall be assured according to the highest among them:

- (1) differentials of an index that is not a securities index;
- (2) currency exchange rate differentials;
- (3) fixed or variable interest;

the Minister of Finance may – in consultation with the Authority and with approval by the Knesset Finance Committee – designate investments that, notwithstanding the aforesaid, are included in this category or are not included in it;

"**index products**" – basket certificates, merchandise certificates, short certificates and cover options, within their meaning in the Stock Exchange By-laws, and also other index products within their meaning in the Stock Exchange By-laws that the Minister of Finance designated in consultation with the Authority and with approval by the Knesset Finance Committee;

"**Fund Manager**" – within its meaning in section 4 of the Joint Investment Trusts Law;

"**investment marketer**" or "**marketer**" – a person engaged in the marketing of investments;

"**investment portfolio manager**" or "**portfolio manager**" – a person engaged in the management of investment portfolios;

**"Register of the Foreign Dealers"** – within its meaning in Article Three of Chapter Two "A";

**"blind trusteeship"** – the management of investment portfolios for a client who does not have the right to give orders or to lay down guidelines about the securities or financial assets that will be acquired, held or sold for him;

**"officer"** – as defined in the Companies Law;

**"investment portfolio management"** – the performance of transactions, at the performer's discretion, on account of another person;

**"securities"** – as defined in section 1 of the Securities Law, exclusive of securities not listed for trading on an Exchange and index products, including securities issued by the Government and foreign securities, or as the Minister of Finance shall prescribe in consultation with the Authority and with approval by the Knesset Finance Committee;

**"foreign securities"** – securities listed for trading on an Exchange abroad or in an organized market abroad;

**"financial assets"** – units defined in the Joint Investment Trusts Law, shares or units of Funds registered abroad, options, futures, structured products, index products and also training funds, or as the Minister of Finance shall prescribe in consultation with the Authority and with approval by the Knesset Finance Committee;

**"transaction"** – a transaction with securities or financial assets;

**"Companies Ordinance"** – the Companies Ordinance [New Version] 5743-1983;

**"investment marketing"** – advising others on the advisability of investing, holding, buying or selling securities or financial assets, when the adviser has a connection to a financial asset; for the present purpose, **"advising"** – within its meaning in the definition of "investment advising";

**"services"** – investment advising, investment marketing or portfolio management, all or part of them;

**"licensed body corporate"** – a body corporate with a license under this Law;

**"affiliated body corporate"** of another body corporate – a body corporate for which one of the following holds true:

- (1) it controls the other body corporate;
- (2) it is controlled by the other body corporate;
- (3) one person holds control over it and over the licensed body corporate;

**"savings program"** – a savings program approved by the Minister of Finance and by the Knesset Finance Committee under the Encouragement of Savings (Tax Reductions and Guarantee of Loans) Law 5716-1956;

**"Stock Exchange By-laws"** – within their meaning in section 46 of the Securities Law;

**"bank"**, **"foreign bank"** and **"banking corporation"** – within their meaning in the Banking (Licensing) Law;

**"management company"** and **"training fund"** – within their meaning in the Control of Provident Funds Law;

**"relative"**, **"interested party"**, **"equity"**, **"misleading particular"**, **"control"**, **"Exchange"**, **"holding"** and **"acquisition"** – as defined in section 1 of the Securities Law;

**"joint investments trust fund"**, **"open fund"** and **"organized market"** – as defined in section 1 of the Joint Investment Trusts Law;

**"option"** and **"future"** – as defined in section 64(b) of the Joint Investment Trusts Law;

**"partnership"** and **"limited partner"** – as defined in the Partnership Ordinance [New Version] 5735-1975.

## CHAPTER TWO: MUST HAVE A LICENSE

### Must have license

2. (a) A person shall not engage in investment advising, except if he holds an advising license; an individual who holds an advising license may engage in investment advising either as an individual or as employee of a company that holds an advising license or holds a portfolio management license and also engages in advising, or as employee or partner of a partnership that holds an advising license.
- (b) A person shall not engage in investment portfolio management, except if he holds a portfolio management license, and if he is an individual – if he who holds a license and is employed by a company that holds a portfolio management license.
- (b1) A person shall not engage in investment marketing, except if he holds a marketing license; an individual marketing licensee may engage in investment marketing as an individual or as employee of a company that holds a marketing license or holds a portfolio management license and also engages in marketing, or as employee or partner of a partnership that holds a marketing license.
- (b2) Notwithstanding the provisions of subsection (b1), an institutional body may engage in investment marketing in respect of financial assets that are managed by it or that were issued by it and only of those, even if it does not hold a marketing license; however, those who in its name engage in marketing investments shall all be marketing licensees, and if it is a Fund Manager – shall all be marketing licensees or portfolio management licensees; the provisions of Chapters Three and Five to Eight that apply to a marketing licensee shall apply to an institutional body that engages in investment marketing under this subsection.
- (c) Notwithstanding the provisions of subsections (a) and (b1), a portfolio management licensee may also engage in investment advising or in investment marketing, and in only one of these; however, if it is a body corporate connected to an institutional body or to a marketing licensee it shall not engage in investment advising; the provisions of this Law that apply to an advising licensee shall apply to a portfolio management licensee who engages in investment advising not in connection with the management of portfolios, and the provisions of this Law that apply to marketing licensees shall apply to it when it engages in investment marketing.
- (d) The provisions of subsections (a) to (b1) shall not prevent –
  - (1) a person during the period of his internship toward getting a license under this Law, from working under the supervision of a licensee on conditions that will be prescribed by regulations, on condition that a said person does not engage in investment advising or investment marketing and does not manage investment portfolios;
  - (2) whoever does not hold a license from working for a licensee, on condition that a said person does not engage in investment advising or in investment marketing, and does not manage investment portfolios.
  - (3) whoever is a licensee, as defined in the Pension Counseling and Marketing Law, from engaging in pension counseling or pension marketing, as the case may be, as defined in the said Law, in respect of a pension product, as defined in that Law, which also is a financial asset.

**These activities do not require a license**

3. (a) The following activities do not require a license under this Law:
- (1) *repealed*
  - (2) *repealed*
  - (3) investment advising or investment portfolio management for not more than five clients in the course of a calendar year by an individual who does not engage in investment advising or portfolio management as part of a licensed body corporate or of a banking corporation;
  - (4) investment advising in communications media;
  - (5) investment advising or investment marketing that a person provides by virtue of his membership in the investment committee or in the Board of Directors of a body corporate only to that body corporate, in the course of performing his function as committee member or as Board of Directors member, as the case may be;
  - (6) managing the investment portfolio of a body corporate by whoever does that as part of his duties in that body corporate or in a body corporate affiliated to that body corporate;
  - (7) investment advising or portfolio management for a relative;
  - (8) investment advising by a body corporate, the main activity of which is the assessment of the value of a body corporate, on condition that it does not engage in other investment advising or in portfolio management;
  - (9) investment advising or portfolio management by an auditor, attorney-at-law or tax consultant, in conjunction with the service provided to his client within the scope of his said profession;
  - (10) investment portfolio management by a person appointed by order of a competent Court or Tribunal to deal with another person's assets while exercising his responsibility;
  - (11) investment advising, investment marketing or portfolio management for a qualified client;
  - (12) investment advising or investment marketing in respect of a financial assets or categories of financial assets, as the Minister of Finance prescribed in consultation with the Authority and with approval by the Knesset Finance Committee.
- (a1) Notwithstanding the provisions of paragraph (3) in subsection (a), if a person engages in investment advising or in portfolio managing, as said in that paragraph, without holding a license under this Law –
- (1) the provisions of Chapters Three and Four, as the case may be, shall apply to him, as if he were a licensee;
  - (2) he shall inform the client he advises or for whom he manages an investment portfolio – before he contracts with him – that he is not a licensee and if he was a licensee in the past he shall also state the circumstances because of which he ceased being a licensee, and in his notice he shall also state whether he carries insurance as required of a licensee under the provisions of this Law.
- (a2) Notwithstanding the provisions of paragraph (11) in subsection (a), if a person engages in investment advising, investment marketing or portfolio management as said in that paragraph without holding a license under this Law –
- (1) the provisions of Chapters Three, except sections 12, 13, 14, 16 and 18,

- shall apply to him, as if he were a licensee, and in respect of whoever engages in portfolio management – also the provisions of Chapter Four, other than section 24; the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe an exemption from additional provisions in respect of some or all of the said services that are provided for all qualified clients or for certain categories thereof;
- (2) he shall inform the client to whom he provides services – before he contracts with him – that he is not a licensee, and if he was a licensee in the past, he shall also state the circumstances because of which he ceased being a licensee, and in his notice he shall also state whether he carries the insurance required of a licensee under the terms of this Law.
- (a3) Notwithstanding the provisions of paragraph (5) in subsection (a), whoever engages in investment marketing as said in that paragraph without holding a license under this Law shall inform the Investment Committee or the Board of Directors, as the case may be, of his connection to any financial asset and of the nature and particulars thereof.
- (b) Notwithstanding the provisions of subsection (a), investment advising in communications media – whether by a licensee or by whoever does not hold a license – shall include a notice by the person who provides the advising whether he has or does not have a personal interest in the subject, as well as notice that the advice given is not a substitute for advising that takes the specific particulars and requirements of every person into account.
- (c) In respect of investment advising, investment marketing or portfolio management provided by a licensee to a qualified client, the provisions of sections 12, 13, 14, 16, 18, 24 and 25 shall not apply, as the case may be; the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe exemptions from additional provisions in respect of some or all of the said services that are provided to all qualified clients or to categories thereof.

#### **Offer to provide services**

- 3A. No person shall offer to provide services, unless the service is provided by the holder of an appropriate license under this Law or by whoever has the right to provide a said service even without a license under the provisions of sections 3 or 9 or of Chapter Two "A"; in this subsection, "**offer to provide**" – whether directly or indirectly, also by means of advertisements, circulars, opinions, by mail, facsimile, telephone or in any other manner.

#### **Activity prohibited for licensees**

4. (a) An individual licensee shall not hold and shall not acquire for himself securities and units, as defined in the Joint Investment Trusts Law.
- (b) An individual investment portfolio manager shall not manage portfolios for his relatives or for a body corporate in which he or his relatives are controlling members.
- (c) The prohibition in subsections (a) and (b) shall not apply to the following:
- (1) securities issued by the State;
- (2) securities issued by the body corporate in which the licensee or his spouse is employed (in this paragraph and in paragraphs (2a) and (2b) – the

- licensee) or issued by a body corporate that controls the said body corporate and offered to the licensee as part of an employee remuneration program, within its meaning in section 15B(1) or (2) of the Securities Law, on condition that – within seven days after he acquired them – the licensee transferred the securities to a blind trusteeship, and if restrictions apply to the sale of the securities under section 15C(a)(1) of the Securities Law – within seven days after the end of the restriction period prescribed in that section; if, after acquisition of the securities said in this paragraph the licensee held only the said securities, either alone or together with securities said in paragraphs (1), (2a), (2b), (3), (4), (6) or (7), the licensee may not transfer them to a blind trusteeship, but the provisions of section 52I(b) of the Securities Law shall apply to their sale, mutatis mutandis;
- (2a) securities in a body corporate that the licensee held when that body corporate offered its securities for the first time to the public, and for this purpose –
- (a) the provisions of paragraph (2) shall apply, mutatis mutandis, to transferring the said securities to a blind trusteeship; if the licensee does not hold the said securities in a blind trusteeship, the provisions of section 15 shall apply to advising or the performance of transactions in respect of the said securities;
  - (b) notwithstanding the provisions of subparagraph (a), if the licensee is an interested party and an employee, or an interested party and an officer of the said body corporate, he may not transfer the securities to a blind trusteeship and he may also perform transactions with the said securities for himself; in the said case the licensee shall not counsel and shall not carry out transactions for his clients in respect of securities of the said body corporate, and he shall also inform all his clients immediately that he is an interested party in that body corporate and that he is not allowed to counsel them or to perform transactions for them in respect of those securities;
  - (c) the provisions of this paragraph shall apply to the holding of securities in only one body corporate or in a body corporate affiliated with it;
- (2b) securities of a body corporate that the licensee held before he received the license, on condition that – within seven days after he received the license – the licensee transfers the securities to a blind trusteeship, and if restrictions apply to the sale of the securities under section 15C(a) of the Securities Law – within seven days after the end of the restriction period prescribed in that section; however, if the licensee is an interested party and an employee or an interested party and an officer of the said body corporate, he has the right not to transfer the securities to a blind trusteeship and he may also perform transactions with the said securities for himself; in the said case, the licensee shall not counsel and shall not perform transactions for his clients in respect of securities of the said body corporate and he shall also inform all his clients immediately that he is an interested party in that body corporate and that he is not allowed to counsel them or to perform transactions for them in respect of those securities; the provisions of this paragraph shall apply to holding

- securities in only one body corporate or in a body corporate affiliated to it;
- (3) units of an open fund; however, the provisions of this paragraph shall not apply to the acquisition of units in an open fund by a licensee who is one of those specified below, if the number of units held by him after the acquisition of the said units exceeds 25% of all units in the fund at the end of the day before the day of the acquisition;
    - (a) a controlling member of the Fund Manager;
    - (b) a director, member of the investment committee or employee of the Fund Manager or of the company that controls the Fund Manager or is controlled by a said company;
  - (3a) shares or units of a fund registered abroad;
  - (4) investments in advanced training funds;
  - (5) securities acquired by the trustee in a blind trusteeship and held for an individual licensee by the said trustee;
  - (6) foreign securities issued by a body corporate the securities of which are not listed for trading on an Exchange, and the listed value for trading of its securities is greater than the new shekel amount equal to US\$ 200 million or greater than another amount set by the Minister of Finance by order, upon a proposal by the Authority or in consultation with it and with approval by the Knesset Finance Committee; for this purpose –  
"foreign securities" – other than shares or units of a fund registered abroad;  
"listed value for trading" – the quantity listed for trading of the foreign securities issued by the body corporate in the place where they were acquired, multiplied by the price set for those securities at the end of the trading day before the trading day on which they were acquired;
  - (7) index products.

**Prohibition on a significant real body corporate controlling and holding means of control in a portfolio manager that is a significant financial body**

4A. (a) In this section –

"financial body" and "real body corporate" – as defined in section 28 of the Law to Promote Competition and Reduce Concentration 5774-2013 (in this Law: Law to Promote Competition and Reduce Concentration);

"significant financial body" – a financial body for which one of these holds true:

- (1) it is listed in the list of significant financial bodies;
- (2) the provisions of section 29(a)(1) of the Law to Promote Competition and Reduce Concentration apply to it, even if it is not listed in the list of significant financial bodies;

"list of significant financial bodies" – the list of significant financial bodies published under section 29 of the Law to Promote Competition and Reduce Concentration;

"list of significant real bodies corporate" – the list of significant real bodies corporate published under section 30 of the Law to Promote Competition and Reduce Concentration;



**"control"** of a real body corporate – also by holding a controlling parcel, as defined in the Companies Law, in a real body corporate that does not have any other controlling member;

**"significant real body corporate"** – a real body corporate for which one of these holds true:

- (1) it is listed in the list of significant real bodies corporate;
  - (2) the provisions of section 30(a)(1) of the Law to Promote Competition and Reduce Concentration apply to it, even if it is not listed in the list of significant real bodies corporate; however, for this matter the authority vested in the Controller of Restrictive Business Practices in the closing passage of the definition of "determining sales volume" in section 30(e) of the said Law shall be vested in the Authority Chairman;
  - (3) the provisions of section 30(a)(2) of the Law to Promote Competition and Reduce Concentration apply to it, even if it is not listed in the list of significant real bodies; however, for this purpose the authority vested in the Business Concentration Reduction Committee in the closing passage of the definition of "determining credit" in section 30(e) of the said Law shall be vested in the Authority Chairman;
- (b) A significant real body corporate or whoever controls it shall not control a portfolio manager that is a significant financial body and it shall not hold more than 10% of a certain kind of means of control in a said portfolio manager; the Minister of Finance may, upon a proposal by the Authority or in consultation with it, prescribe a percentage smaller than 10% for the purposes of this subsection, provided it is not less than 5%; in the determination of the said percentage the structure of the portfolio management industry shall, inter alia, be taken into consideration.
- (c) Whoever holds more than 5% of a certain kind of means of control in a significant real body corporate (in this section: the holder) shall not control a portfolio manager that is a significant financial body; for purposes of the percentage of a said holder's holding the holdings of the portfolio manager, of financial bodies that control it or are controlled by it or of other financial bodies controlled by the holder shall not be counted; for purposes of the calculation of the determining sales volume and of the determining credit of the real body corporate under section 30 of the Law to Promote Competition and Reduce Concentration, a real body corporate that is not the holder or a body corporate that is not a real body corporate in which the holder holds more than 5% of the means of control or a body corporate that is not a body corporate controlled by a said body corporate shall not be taken into account.
- (d) If a significant real body corporate or whoever controls it controls an portfolio manager that is a significant financial body or if it holds means of control in a said portfolio manager, or if a holder of means of control in a significant real body corporate controls a said portfolio manager that is a significant financial body in violation of the provisions of this section, he shall sell the means of control that he holds, so that he will not hold means of control of any kind in excess of the percentage allowed to be held under this section, and the Authority Chairman may issue instructions on this matter, including instructions said in paragraphs (1) to (4) of section 23E(a) of the Joint Investment Trusts Law, mutatis mutandis; the provisions of section 23E(d) and (e) of the Joint Investment Trusts Law shall apply to this matter, mutatis mutandis; when the

Authority Chairman has issued instructions under this subsection, he shall send notice to that effect also to the portfolio manager.

- (e) Without derogating from the Authority Chairman's powers to demand information under this Law, he may – for the implementation of this section –
- (1) demand from whoever controls or holds means of control in a portfolio manager in excess of the percentages said in subsections (b) or (c), or from whoever applied for a license to engage in portfolio management under section 5, information on the value of all his assets and of the assets of every person whose assets are taken into account for the designation of a financial body as a significant financial body; for this purpose, "**value of all the assets**" – as defined in section 29(d) of the Law to Promote Competition and Reduce Concentration;
  - (2) demand from whoever controls or holds means of control in excess of the percentages said in subsections (b) or (c) in a portfolio manager that is a significant financial body, or from whoever applies for a license to engage in portfolio management under section 5 and who will be a significant financial body after he receives the license, information on his sales and credit data and on those of everybody whose determining sales volume or determining credit are taken into account for the determination that a real body corporate is a significant real body corporate, provided that the Authority Chairman not ask under this section for information about credit received by an individual, except after he asked for information about credit received by the concerned bodies corporate and concluded that that information and other information in his possession does not suffice for the implementation of this section; for this purpose, "**credit**", "**determining credit**" and "**determining sales volume**" – as defined in section 30(e) of the Law to Promote Competition and Reduce Concentration.

#### **Application for a license**

5. (a) Whoever wants to engage in investment portfolio management, investment marketing or investment advising shall submit an application for an appropriate license to the Authority.
- (b) In the license application said in subsection (a) the applicant shall include particulars, documents and reports, as the Minister of Finance shall prescribe in consultation with the Authority.
- (c) The Authority may demand from the applicant additional particulars, documents and reports, if it finds it necessary to do so in order to decide on the application.

#### **Authority's decision on the application**

6. If the Authority concluded that the application should be accepted, it shall give the applicant a license; if the Authority concluded that the license should be made conditional or that the application should not be accepted, it shall inform the applicant of its reasons and it shall give him a suitable opportunity to present his arguments to it before a decision is made.

#### **Conditions for granting an advising license and a marketing license**

7. (a) The Authority shall grant an advising license or a marketing license, as the case may be, to an applicant who is an individual, if it finds that the following hold

true for him:

- (1) he is an adult;
  - (2) he is a resident of Israel or proved that – even though he is not a resident of Israel – he is able to comply with all the provisions under this Law and that they can be enforced on him;
  - (3) he has not been convicted of an offense;
  - (4) he passed examinations, for which the subjects and arrangements were prescribed by regulations;
  - (5) he completed an internship during a period and according to arrangements prescribed by regulations;
  - (6) *repealed.*
- (b) The Authority shall grant an advising license or a marketing license, as the case may be, to an applicant who is a partnership, if it finds that the following hold true for it:
- (1) the partners are licensees;
  - (2) the partnership assumed the obligation that all persons who will engage in investment advising or in investment marketing in its name will be its employees or partners who hold appropriate licenses, or that at least one employee or partner holds an appropriate license and that the others, who will act as aforesaid in its name, are foreign dealers who may, under the provisions of section 10B, engage in investment advising or in investment marketing;
  - (3) the partnership complies with the conditions and amounts set in regulations in respect of insurance;
  - (4) the partnership assumed the obligation that it will not have as officer any person who it knows was convicted of an offense, and also not a person to whom applies a prohibition against serving as officer by virtue of means of enforcement said in section 52DDD of the Securities Law, imposed on him under Chapter Eight "D" of the Securities Law, under Chapter Seven "B" of this Law or under Chapter Ten "A" of the Joint Investment Trusts Law during a period in which the said prohibition applies to him.
  - (4) the partnership undertook that it shall not have as officer any person who it knows was convicted of an offense, and also not a person to whom applies a prohibition against serving as officer by virtue of means of enforcement said in section 52DDD of the Securities Law, imposed on him under Chapter Eight "D" of the Securities Law, under Chapter Seven "B" of this Law or under Chapter Ten "A" of the Joint Investment Trusts Law – during the period in which the said prohibition applies to him.
- (c) The Authority shall grant an advising license or a marketing license, as the case may be, to an applicant that is a company, if it finds that the following hold true for it:
- (1) the company assumed the obligation that all persons who will engage in investment advising or in investment marketing in its name will be its employees who hold appropriate licenses, or that at least one employee holds an appropriate license and that the others, who will act as aforesaid in its name, are foreign dealers who may, under the provisions of section 10B, engage in investment advising or in investment marketing;
  - (2) the company assumed the obligation that it will not have as officer any person who it knows was convicted of an offense, and also not a person to

- whom applies a prohibition against serving as officer by virtue of means of enforcement said in section 52DDD of the Securities Law, imposed on him under Chapter Eight "D" of the Securities Law, under Chapter Seven "B" of this Law or under Chapter Ten "A" of the Joint Investment Trusts Law during a period in which the said prohibition applies to him.
- (3) the company has an equity that is not smaller than the amount that will be prescribed by regulations;
  - (4) the company holds insurance, bank guaranties, deposits or securities in amounts, in proportions and on conditions that will be prescribed by regulations;
  - (5) the company does not engage in underwriting.
- (c1) The Authority shall not grant an advising license to an applicant, even if he complies with the conditions in subsections (a) to (c), if he or it is one of the following:
- (1) the holder of a marketing license or an institutional body;
  - (2) a pension agent, as defined in the Pension Advising and Marketing Law;
  - (3) an insurance agent;
  - (4) one who controls or holds more than 10% of any category of means of control in one of those enumerated in paragraphs (1) to (3);
  - (5) one controlled by one of those enumerated in paragraphs (1) to (4), but a banking corporation controlled by whoever controls an institutional body or by whoever holds more than 10% of a certain kind of means of control of an institutional body shall have the right to engage in investment advising, subject to the conditions prescribed by the Chairman of the Authority in order to prevent conflicts of interest in the provision of advising, on condition that the said banking corporation must not provide advising in respect of the financial assets to which the institutional body is connected;
  - (6) an officer or employee of one of those enumerated in paragraphs (1) to (5).
- (c2) Even if an applicant meets all the conditions in subsections (a) to (c), the Authority shall not grant him or it a marketing license, if he or it is one of the following:
- (1) the holder of an advising license;
  - (2) a banking corporation, other than a bank or foreign bank said in section 27I of the Banking (Licensing) Law;
  - (3) a pension counselor, as defined in the Pension Advising and Marketing Law;
  - (4) whoever controls one of those enumerated in paragraphs (1) to (3);
  - (5) whoever is controlled by one of those enumerated in paragraphs (1) to (4);
  - (6) an officer or an employee of one of those enumerated in paragraphs (1) to (5).
- (d) The Authority may refuse to issue an advising license or a marketing license, as the case may be, to an applicant, if it concluded that there are circumstances because of which he is not fit to be an advising licensee or a marketing licensee, as the case may be, having taken the requirements of the work into consideration, and if it is a body corporate – also if it concluded that such circumstances exist in respect of one of these:
- (1) a controlling member of the license applicant;

- (2) an officer of the license applicant or of the controlling member of the license applicant.
- (d1) Repealed
- (e) Regulations for purposes of subsections (a)(4) and (5), (b)(3) and (c)(3) and (4) shall be made by the Minister of Finance, either generally or by categories of applicants, in consultation with the Authority and with approval by the Knesset Finance Committee.
- (f) The Minister of Finance may, upon a proposal by the Authority or in consultation with it and with approval by the Knesset Finance Committee, prescribe instances in which applicants will be exempt of the obligation of internship or of examinations, or both.

#### **Exemption from internship and examinations when exchanging advising and marketing licenses**

7A. An individual advising licensee who gives up his said license and applies for a marketing license, and an individual marketing licensee who gives up his said license and applies for an advising license shall be exempt of the obligation of internship and examinations under section 7(a)(4) and (5) in order to obtain the requested license.

#### **Conditions for granting a portfolio management license**

8. (a) The Authority shall grant a portfolio management license to an applicant who is an individual, if it finds that the following hold true for him:
- (1) he is an adult;
  - (2) he is an Israel resident or proved that, even though he is not an Israel resident, he is able to comply with all provisions under this Law and that they can be enforced on him;;
  - (3) he has not been convicted of an offense;
  - (4) he passed examinations, the subjects and order of which were prescribed in regulations;
  - (5) he completed an internship during a period and according to arrangements prescribed by regulations;
  - (6) *repealed*.
- (b) The Authority shall grant a portfolio management license to an applicant that is a company, if it finds that the following hold true for it:
- (1) the company does not engage in underwriting and engages only in the management of investment portfolios, in investment advising, in investment marketing or in pension advising or pension marketing, as defined in the Pension Advising and Marketing Law, in the performance of Stock Exchange operations and in the performance of attendant operations required therefor; for this purpose, "**attendant operations**" – including investment in different categories of deposits in Israel currency or in foreign currency and in investments in savings programs approved by the Minister of Finance and the Knesset Finance Committee under the Encouragement of Saving (Income Tax Reductions and Loan Guaranties) Law 5716-1956.
  - (2) the company assumed the obligation that those who engage in its name in portfolio management, in investment advising or in investment marketing will be company employees who hold appropriate licenses, or that at least one employee will hold a portfolio management license and that the

- others who will be active in its name as aforesaid will be foreign dealers who may engage in portfolio management, investment advising and investment marketing under the provisions of section 10B;
- (3) the company assumed the obligation that no person it knows to have been convicted of an offense will serve as one of its officers, and also not a person to whom a prohibition against serving in it as officer applies because of means of enforcement said in section 52DDD of the Securities Law, imposed on him under Chapter Eight "D" of the Securities Law, under Chapter Seven "B" of this Law or under Chapter Ten "A" of the Joint Investment Trusts Law – during the period in which it applies to him;
  - (4) the company has equity in an amount that is not smaller than the amount prescribed in regulations;
  - (5) the company holds insurance, bank guaranties, deposits or securities in amounts, at rates and on conditions prescribed by regulations.
- (c) The Authority may refuse to grant a portfolio management license to an applicant, if it concluded that there are circumstances because of which he is not fit to be a portfolio management licensee or a marketing licensee, having taken note of requirements of the work, and if it is a body corporate – also if it concluded that such circumstances exist in respect of one of these:
- (1) a controlling member of the license applicant;
  - (2) an officer in the license applicant or in the controlling member of the license applicant.
- (c1) Repealed
- (d) Regulations for purposes of subsections (a)(4) and (5), and (b)(4) and (5) shall be made by the Minister of Finance, generally or for categories of applicants, in consultation with the Authority and with approval by the Knesset Finance Committee.
- (e) The Minister of Finance may, upon a proposal by the Authority or in consultation with it and with approval by the Knesset Finance Committee, prescribe instances in which an applicant will be exempt of the obligation of internship or of some or all examinations, or of both.

#### **Granting licenses in special instances**

- 8A. The Authority may grant a license under this Law to an applicant who is an individual, even if he did not meet some of the conditions in section 7(a)(4) of (5), or in section 8(a)(4) or (5), as the case may be, if it is satisfied that – because of special reasons – he may be deemed qualified to receive a said license, taking his education and professional experience into account.

#### **Activity in banking corporations**

9. (a) A banking corporation is not allowed to engage in portfolio management.
- (b) A bank and another banking corporation may – as far as it is allowed to do so under the Banking (Licensing) Law – engage in investment advising without having to get a license under this Law, on condition that none of the conditions under section 7(c1) hold true in their respect, other than the condition in paragraph (4) there that relates to holding more than 10% of any category of means of control in an institutional body that is an insurer or that relates to being controlling members of an insurance agent according to the provisions of section

- 11(b)(2) of the Banking (Licensing) Law; however the persons who engage in investment advising in the name of the Bank or of the banking corporation, as the case may be, shall belong to one of the following groups:
- (1) employees of the bank or of the banking corporation who hold advising licenses;
  - (2) employees of the bank or of the banking corporation who are allowed to engage in investment advising without a license under the provisions of section 3(a)(4) or (11);
  - (3) foreign dealers who may engage in investment advising under the provisions of section 10B.
- (b1) Banks and foreign banks said in section 27I of the Banking (Licensing) Law may engage in investment marketing, provided they received a license under section 7, and the provisions of the Law that apply to holders of marketing licenses shall apply to them and those who in their name engage in investment marketing shall belong to one of the following groups:
- (1) employees of the bank or of the foreign bank who hold marketing licenses;
  - (2) employees of the bank or of the foreign bank who are allowed to engage in investment marketing without a license under the provisions of section 3(a)(11);
  - (3) foreign dealers who may engage in investment marketing under the provisions of section 10B.
- (b2) The Authority may instruct a bank or a foreign bank said in subsection (b1) that some or all of the provisions that apply under this Law to a banking corporation shall apply to them in place of some or all of the provisions of the said subsection.
- (c) The provisions of Chapter Three and of section 25(b) that apply to advising licensees shall also apply to investment advising by banks or other banking corporations, as said in subsection (b).
- (c1) A banking corporation, within its meaning in section 7(c2)(2), is not allowed to engage in investment marketing; however, a said banking corporation and its employees who hold advising licenses or who have the right to engage in investment advising without a license under the provisions of section 3(a)(11) may engage in investment marketing in respect of structured products, options or futures that are issued by that same banking corporation, even if they do not hold marketing licenses, and the provisions of Chapter Three, other than section 16A(a)(1) there, and the provisions of section 25(b1) that apply to marketing licensees shall apply to their said activity; the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe instances in which a banking corporation will be exempt of the provisions of Chapter Three or of section 25(b1).
- (d) No person shall serve as officer of a licensed body corporate that is a body corporate affiliated to a banking corporation, if he is an officer or employee of the banking corporation or of another body corporate affiliated to it; for this purpose, "**employee**" - an employee of the banking corporation or of a body corporate affiliated to it, including an employee on leave without pay.
- (e) The Controller of Banks may exempt a person from the applicability of all or some of the provisions of subsection (d), if the equity of the banking corporation, with which the licensed body corporate is affiliated, is less than an

amount prescribed by the Controller and published in Reshumot.

- (f) Notwithstanding the provisions of section 2(c), a body corporate that holds a portfolio management license and that is a body corporate affiliated with a banking corporation, within its meaning in section 7(c2)(2), is not allowed to engage in investment marketing, except as said in subsection (c1).

### **Cancellation or suspension of license**

10. (a) The Authority may cancel a license, after it gave the licensee an opportunity to present his arguments to it, if one of the following holds true for the licensee:
- (1) he was given the license on the basis of false information;
  - (2) he ceased to meet one of the conditions for granting a license;
  - (3) he violated one of the conditions of the license;
  - (4) a Court determined that he violated a provision under this Law or provisions of any other statute that relates to securities;
  - (5) he was adjudged bankrupt and has not yet been released as said in section 62 of the Bankruptcy Ordinance, or is legally incompetent, and – if it is a body corporate – a temporary winding up order was made for it or a receiver was appointed for it or the body corporate decided on voluntary liquidation
- (a1) (1) The Authority may cancel or suspend the license of a licensed body corporate, after it has given the licensee an opportunity to present its arguments to it, if it concluded that there are circumstances enumerated in the list under paragraph (4) that evidence that it is not fit to be a licensee (hereafter: fault in credibility); said circumstances shall be weighed in respect of the following:
- (a) the licensee;
  - (b) controlling members of the licensee;
  - (c) officers in each of those specified in subparagraphs (a) and (b).
- (2) A panel may cancel or suspend the license of an individual licensee if there are circumstances specified in the list under paragraph (4) that evidence a fault in the licensee's credibility and the provisions of sections 52SS and 52YY of the Securities Law shall apply to the procedure of canceling or suspending a license under this paragraph, mutatis mutandi; for this purpose, "**panel**" – a panel of the Committee defined in section 38F.
- (3) Notwithstanding the provisions of paragraph (1). the Authority may instruct a panel to decide – in a proceeding said in paragraph (2) – also about the cancellation or suspension of the license of a licensed body corporate, in whose name an individual licensee operates, if it found that there are circumstances specified in the list under paragraph (4) that evidence a fault in the credibility of both the said individual and of the body corporate, in whose name the individual operates.
- (4) The Authority shall prescribe a list of circumstances that evidence a fault in the credibility of a licensee, of an officer of a licensee and of a controlling member of a licensee; a said list shall be posted on the Authority's Internet site and shall go into effect 30 days after the day on which it was posted, but a change in the list shall not apply to a pending proceeding under this section; a notice of a list that was posted and of every change thereof and of the date of their effect shall be published in



Reshumot.

- (b) An individual licensee who ceased to engage in the work to which the license applies may apply to the Authority in writing that his license be canceled or suspended for a period that he requested; a licensed body corporate that ceased to engage in the activity that is the subject of the license may apply to the Authority in writing that its license be canceled.
- (c) *Repealed*
- (c1) If an individual licensee is not insured as required under the provisions of section 20C, the Authority shall suspend his license until the said insurance has been made.
- (d) *Repealed*.
- (e) A notice of the cancellation or suspension of a license shall be made public, either by the Authority or by the licensee, all as the Authority shall prescribe.
- (f) *Repealed*
- (g) If a person's license has been canceled and if the grounds for the cancellation have been corrected, he may apply to the Authority to renew the license; the provisions of sections 7 and 8 shall apply, mutatis mutandis, to the renewal of a license.

## CHAPTER TWO "A": INVESTMENT ADVICE, INVESTMENT MARKETING AND PORTFOLIO MANAGEMENT BY FOREIGN DEALERS

### Article One: Definitions

#### Definitions

10A. In this Chapter –

**"foreign permit"** – a permit to engage in the provision of services in a foreign state under the Law of that state;

**"foreign individual"** – an individual who is not an Israel resident and who holds a foreign permit;

**"foreign dealer"** – a foreign individual or a foreign body corporate;

**"foreign body corporate"** – a body corporate for which all the following hold true:

- (1) it was incorporated abroad;
- (2) control of it is held by persons who are not Israel residents; for this purpose holding or acquiring securities together with others shall not be deemed holding with Israel residents;
- (3) it holds a foreign permit;
- (4) its activity under the foreign permit is generally carried on outside Israel;

**"licensed body corporate"** – including a bank and also another banking corporation that under the Banking (Licensing) Law is allowed to engage in investment advising or in investment marketing.

### Article Two: Provision of Services by a Foreign Dealer through a Licensed Body Corporate

### **Provision of services of a foreign dealer through a licensed body corporate**

- 10B. (a) Notwithstanding the provisions of section 2, a foreign dealer may engage in the provision of services to clients of a licensed body corporate even without an appropriate license under this Law if the conditions specified below are complied with and subject to the provisions of this Chapter:
- (1) the foreign dealer and the licensed body corporate contracted a written agreement for provision of the said services;
  - (2) the foreign permit held by the foreign dealer allows it to engage – in the state where the permit was issued – in the provision of said services, and if it is a foreign body corporate – that those engaged in its name in the provision of said services also hold aforesaid foreign permits;
  - (3) the licensed body corporate may itself provide the services to its clients under the provisions of this Law;
  - (4) the foreign dealer and the licensed body corporate are registered in the Register of Foreign Dealers under the provisions of Article Three.
- (b) Notwithstanding the provisions of subsection (a), if the licensed body corporate is a foreign bank the provisions of section 10C, 10E and 10F shall apply also when the service is provided to persons who are not clients of the licensed body corporate, provided they are clients of a bank that controls the licensed body corporate or of a bank controlled by the licensed body corporate or by the bank that controls it in the foreign country, and these sections shall be read as if everywhere "client of the licensed body corporate" had been replaced by "client as said in section 10B(b)"; in this subsection, "**foreign bank**" – a bank in a foreign country with a license to operate as a foreign bank in Israel under the Banking (Licensing) Law.

### **Applicability of provisions to registered foreign dealers**

- 10C. The provisions of Chapter Three – except for section 13 – and also the provisions of Chapter Four and of section 25 shall apply to foreign dealers for whom the conditions said in section 10B hold true (in this Article: registered foreign dealer), mutatis mutandis, as if they were licensees.

### **Agreement between the licensed body corporate and its client**

- 10D. In the agreement between the licensed body corporate and its client the licensed body corporate shall state explicitly – in addition to the provisions of section 13 – the services in respect of which it contracted with the registered foreign dealer said in section 10B, which will be provided by the foreign dealer under the provisions of this Chapter, as well as the financial assets and securities, in respect of which the said services will be provided.

### **Civil liability of the registered body corporate for the foreign dealer's acts**

- 10E. Without derogating from the foreign dealer's liability, the licensed body corporate shall bear civil liability for the acts of the foreign dealer with whom it contracted for the provision of services to its clients, and in this respect the provisions of this Law shall apply to the licensed body corporate, as if it itself provided the services to its clients; for this purpose, "**act**" includes omission.

**Obligation of the licensed body corporate to supervise the foreign dealer's acts**

- 10F (a) A licensed body corporate must supervise and do everything possible in order to prevent violations of the provisions specified below by the foreign dealer, with whom it contracted for the provision of services to its clients
- (1) the provisions of section 10B;
  - (2) the provisions of Chapter Three, except section 13, and also the provisions of Chapter Four and of section 25, as made applicable to the foreign dealer in section 10C.
- (b) If the foreign dealer violated any of the provisions specified in subsection (a), the assumption is that the licensed body corporate violated its obligation under the said subsection and it shall be liable as specified below, as the case may be, except if it proved that it did everything possible to fulfill its said obligation:
- (1) in respect of a violation of the provisions of section 10B, as said in subsection (a)(1) – to the penalty said in section 39(a);
  - (2) in respect of a violation of any of the provisions specified in subsection (a)(2) – means of enforcement under Chapter Seven "B" or a penalty under Chapter Eight, as the case may be, which could have been imposed on the licensed body corporate if it itself had violated the provision.

**Notice to the Authority and to clients that activity was terminated**

- 10G. If any of the conditions enumerated in section 10B has ceased to exist, the licensed body corporate shall immediately give notice to the Authority and to its clients that the foreign dealer's activity through it has been terminated; the provisions of sections 27(f) and 27A shall apply to a notice under this section.

**Article Three: Register of Foreign Dealers**

**Registration in the Register of Foreign Dealers**

- 10H. (a) Foreign dealers and licensed bodies corporate that want to be registered in the Register of Foreign Dealers under the provisions of Article Two shall submit to the Authority an application to be registered as aforesaid; in an application under this subsection the applicant shall include the foreign dealer's address in Israel for the service of Court documents, and he shall attach to it documents and certifications that evidence compliance with the conditions prescribed in section 10B, and inter alia the foreign permit and the contracted agreement between the foreign dealer and the licensed body corporate.
- (b) The Minister of Finance may, on the Authority's recommendation or in consultation with it, prescribe provisions on keeping the Register of Foreign Dealers and on the manner of registration in it, including the particulars that shall be included in the application under subsection (a) and the certifications and documents that shall be attached to it.
- (c) If the Authority concluded that the foreign dealer or the licensed body corporate complies with the conditions prescribed in section 10B, it shall register it in the Register of Foreign Dealers; the Register of Foreign Dealers shall be open for inspection by the public and shall be posted on the Authority's Internet site.

- (d) The registration of a foreign dealer or of a licensed body corporate in the Register does not constitute verification of the particulars that appear in the Register or evidence that the foreign dealer or the licensed body corporate, as the case may be, complied with the requirements of the Law.

#### **Removal from the Register of Foreign Dealers**

- 10I. If the Authority concluded that any of the conditions enumerated in section 10B ceased to hold true for a foreign dealer or for a licensed body corporate that is registered in the Register of Foreign Dealers, it may remove it from the Register of Foreign Dealers.

### **CHAPTER THREE: OBLIGATIONS OF TRUST AND CAUTION OF INVESTMENT ADVISERS, INVESTMENT MARKETERS AND PORTFOLIO MANAGERS**

#### **Obligation of trust**

11. (a) A licensee shall act for his clients' benefit in good faith and with diligence, shall not prefer his personal interests or the interests of any other person to his clients' benefit and shall not give preference to one client's interests over those of another client.
- (b) The client's agreement – whether in advance, written or oral –, in respect of a certain transaction or in respect of categories of transactions shall not release the licensee from his obligations under this Chapter, except if an explicit provision in this Law provides differently.

#### **Adapting the service to the client's needs**

12. A licensee shall, as far as possible, adapt the advice he gives to clients, the marketing he provides for them or the nature of transactions that he performs for them to the needs and instructions of each client, after he clarified with the client the objectives of the investment, his financial situation, including his securities and financial assets, and also other relevant circumstances, as far as the client agreed to give information thereon.

#### **Written agreement**

13. (a) A licensee shall draw up a written agreement with the client and give him a copy of it before he begins to provide the service.
- (b) The agreement shall include the subjects required for the contract, including the following:
- (1) the client's identifying particulars and data;
  - (2) the client's needs and instructions, as said in section 12;
  - (3) the remuneration and refund of expenses that shall be debited to the client and the manner of their calculation;
  - (4) a provision that the client may, at any time, cancel the contract with the licensee;
  - (5) a provision whether advising or marketing may or may not be performed by telephone;
  - (6) a provision that the client is aware that the licensee's obligation to maintain confidentiality is subject to his obligation to provide information

- under any statute;
- (7) in respect of a licensee who is a Stock Exchange member – a provision that the client knows that the agreement is subject to the Stock Exchange member's obligations according to the Exchange by-laws under the Securities Law.
  - (8) *repealed*
- (c) An agreement between a portfolio manager and a client shall also include the following:
- (1) a power of attorney that specifies the extent of the authorization and of the discretion allowed the portfolio manager, including a statement on the manner in which the investment portfolio is to be managed, whether in a blind trusteeship or otherwise;
  - (2) the possibility that credit may be accepted for the client, the terms of that credit, or the absence of that possibility;
  - (3) provisions on the categories of securities and financial assets that will be included in the investment portfolio and each category's proportion of the value of the portfolio, or a provision that that shall be determined at the portfolio manager's discretion;
  - (4) an authorization to acquire securities, options or futures at prices above the Exchange quotations known at the time of the acquisition and also an authorization to sell the said assets at prices below the Exchange quotations known at the time of the sale, or the absence of an authorization to acquire or sell as aforesaid;
  - (5) in respect of a portfolio manager that is a body corporate affiliated to an institutional body or marketer, and in respect of a portfolio manager that engages in investment marketing – the particulars of which the customer must be informed under section 16A(a).
- (c1) An agreement between a marketer and a client shall also include the particulars of which the client must be informed under section 16A(a).
- (d) The particulars under subsection (b)(1) and (2) shall be updated whenever the client gives notice of any change; if the client did not give notice in respect of particulars under subsection (b)(2), the licensee shall initiate updates of the particulars at times and in a manner prescribed by the Authority under subsection (d1).
- (d1) The Authority shall, in instructions under section 28(b), prescribe times for updating particulars said in subsection (d), how they are to be documented and that the documentation is to be sent to the client; when setting the said times the Authority shall, inter alia, take into account the kind of service that the licensee provides and the nature of the connection between the licensee and the client.
- (e) Any stipulation in an agreement that releases a licensee of an obligation imposed on him under this Law or under any other statute in respect of the manner in which he performs his function or that restricts his responsibility is void.
- (f) The Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe provisions on how an agreement between licensee and client is to be drawn up, the form of the agreement and how it is to be delivered to the client, and also on additional subjects to be included in the said agreement, either generally or for categories of agreements, and he may prescribe categories of agreements in which any of the items in subsections (b) and (c) do not have to be included.

### **Fair disclosure**

14. (a) Investment advisers or investment marketers shall make fair disclosure to the client of all substantive aspects of their advising or marketing and of proposed transactions.
- (b) Without derogating from the generality of the provisions of subsection (a), the Minister of Finance may, in consultation with the Authority, prescribe matters that shall be deemed substantive for advising, marketing or transactions, as well as rules on the nature of fair disclosure.

### **Conflict of interests**

15. (a) When a licensee learns of a conflict of interest between himself or the licensed body corporate of which he is an employee or partner and a client – whether in the course of serving that client in general or in respect of a certain transaction – the licensee must inform the client, in writing or by a telephone call of which the licensee shall make a written record, that the conflict of interests exists and he must abstain from performing any act that involves a conflict of interests, except if the client gave his advance agreement for that transaction in writing or by a telephone call in connection with that transaction of which the licensee shall make a written record; the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe the particulars that shall be included in the written records said in this section and how they are to be drawn up, kept and communicated to the client.
- (b) Without derogating from the generality of the provisions of subsection (a), the Minister of Finance may, in consultation with the Authority, prescribe circumstances that shall be deemed conflicts of interest.

### **Must not give preference**

16. (a) In the course of investment advising or investment portfolio management a licensee must not give preference to his own securities or financial assets or to those of a body corporate affiliated with the body corporate of which he is an employee or partner, because of the said connection.
- (b) A portfolio manager shall not order for a client securities underwritten by a body corporate connected to him or by a body corporate affiliated to the body corporate by which he is employed, except if the client agreed thereto in advance in writing; the portfolio manager shall report to his client about a said order within 30 days after it was performed.
- (c) A portfolio manager shall not acquire for a client securities underwritten by a body corporate affiliated with it or by a body corporate affiliated with the body corporate by which it is employed, as long as three months have not passed since the date on which the underwriting obligation was fulfilled, if on the said date the underwriter still has securities that it acquired under the underwriting obligation, except if the client gave his advance written consent thereto in respect of a certain transaction; when a period longer than three months but shorter than six months after the underwriting obligation was exercised has passed, the portfolio manager may buy said securities for his client, if the client gave his written consent thereto in advance; the portfolio manager shall report to his client about a said acquisition within 30 days after it was performed; in this subsection, "**date on which the underwriting obligation was fulfilled**" – the date specified below, as the case may be:

- (1) if the underwriter undertook to acquire securities offered by prospectus, if the public does not acquire them – the date of conclusion of the sale to the public, as part of which the underwriter acquired the said securities;
  - (2) if the underwriter undertook to acquire securities offered by prospectus in order to sell them to the public – the date on which the sale of the said securities by the underwriter to the public was concluded.
- (d) An acquisition said in subsections (b) and (c) shall be performed on the Exchange or at a price not higher than the Exchange quotation known at the time of the acquisition.

**Fair disclosure, conflict of interests and preference in the marketing of securities**

- 16A. (a) Without derogating from the generality of the provisions of section 14, the following provisions also shall apply to an investment marketer, to a portfolio manager that is a body corporate affiliated to an institutional body and to a marketer and portfolio manager who engages in the marketing of investments:
- (1) in every place where he conducts his business and in all other places prescribed by the Authority Chairman each of them shall inform his clients – by a prominent and clear sign or in any other manner as prescribed by the Authority Chairman – of the fact that he engages in investment marketing and not in investment advising or the fact that it is a body corporate affiliated to an institutional body or to a marketer, as the case may be, and of the institutional bodies to whose financial assets he has a connection;
  - (2) each of them shall disclose to clients in a language understood by them the facts stated in paragraph (1), both orally and in a written document delivered to the client before a contractual tie is established with him, and they shall also publish on their Internet site what is provided in paragraph (1), their connection to financial assets and its nature, and the fact that they prefer those financial assets; the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe rules on the details to be presented in the document and on the Internet site under this paragraph about the connection that constitutes a benefit said in paragraph (2) of the definition of "connection", including the type of benefit, its extent and how it is calculated.
- (b) Notwithstanding the provisions of sections 11(a) and 16(a), marketers, portfolio managers that are bodies corporate affiliated to an institutional body or marketer, and portfolio managers who engage in the marketing of investments may – as part of their investment marketing or portfolio management activity, as the case may be – prefer a financial asset to which they are connected over another financial asset that is similarly suitable for the client and to which they are not connected, on condition that they met all disclosure requirements toward the client under subsection (a).
- (c) A marketer's or a portfolio manager's connection to a financial asset shall not be deemed a conflict of interests with his client, for the purpose of section 15.
- (d) Whoever markets investments in communications media shall include a notice whether he does or does not have a personal interest in the matter, and also a notice that investment marketing does not take the place of marketing that takes the special facts and needs of each person into consideration.

### Prohibited incentives

17. (a) A licensee – or another person on his behalf or for him – must not accept any direct or indirect benefit in connection with investment advising, investment marketing, the performance of a transaction or abstention from its performance, except for the remuneration and repayment of expenses by the client, as prescribed in the agreement under section 13(b)(3).
- (b) The provisions of subsection (a) shall not apply to the following:
- (1) investment advising, investment marketing, the performance of transactions or abstention from their performance on the part of a licensee, in respect of securities issued by him or by whoever is controlled by him;
  - (2) investment marketing, the performance of transactions or abstention from their performance by the holder of a marketing license in respect of securities to which the said marketer has a connection;
  - (3) the acceptance of sell or buy commission refunds by portfolio management licensees from Stock Exchange members for the performance of certain transactions or of a complex of transactions, of which the certain transaction is a part, on condition that the client, for whom the transaction was carried out, gave his written advance consent to acceptance of the said refund and to its amount;
  - (4) the acceptance of a distribution fee by whoever is not a marketer from a Fund Manager in respect of the performance of a transaction, on condition that the client for whom the transaction was carried out gave his written advance consent to acceptance of the said refund and to its amount, and that the distribution fee accords with the provisions under section 82(c) of the Joint Investment Trusts Law;
  - (5) the acceptance by an investment adviser of a fee that was paid by a management company under the provisions of section 32(e)(2) of the Control of Provident Funds Law, in respect of the performance of a transaction in a training fund, on condition that the client, for whom the transaction was performed, gave his written advance consent to the acceptance of the said fee and to its amount, and that the amount of the fee does not depend on the identity of the management company from which it is received;
  - (6) (a) the acceptance of a benefit for making an analysis, in special instances and under special conditions that the Authority shall determine, on condition that a statement that the benefit was accepted for it is attached to the analysis; said determinations shall be made in a manner that assures acceptance of the benefit in a manner that reduces the apprehension that its acceptance influenced the analysis and the Authority may also – inter alia – weigh these instances and circumstances:
    - (1) the analysis concerns securities or financial assets, in respect of which a decision to invest in them requires special expertise;
    - (2) the analysis concerns a field in which it may contribute to the development of trading on the Exchange
- (b) In this paragraph, "**analysis**" – a document that includes an



analysis of securities or financial assets and that provides reasoned information or a target price, on which a decision on the profitability of investing, holding, buying or selling the said securities or financial assets may be based.

- (c) The holder of an advising license or a licensee that is a banking corporation that engages in investment marketing shall not give any benefit to any of its employees, branches or units in connection with investment advising, investment marketing, the performance of transactions or abstention from the performance of transactions, as the case may be, if the benefit is determined by the identity of the body that issued the securities that are the subject of the advising, marketing or transaction, or by the identity of the body that is connected to the financial assets that are the subject of the advising, marketing or transaction.
- (d) The remuneration and refund of expenses charged to a customer for investment advising shall be calculated independently of the identity of the body that issued the securities or that is connected to the financial assets with which the advising dealt, and independent of any payment by the client to the said body.
- (e) In this section, "**licensee**" – including whoever controls him or is controlled by either of them, as well as any officer or employee of any of these.

#### **Prohibition of investment advising and the performance of transactions in respect of certain financial assets**

17A. Investment advisers and whoever engages in investment advising in their name shall not provide advising and shall not perform any transaction with financial assets of an institutional body that is connected to whoever holds 10% or more of any category of means of control in the adviser; for this purpose, "**institutional body**" – includes whoever controls it or is controlled by either of them.

#### **Restrictions on an investment adviser being party to an unusual contract**

- 17B. (a) An investment adviser shall not contract with an institutional body for the provision of services that are not in the ordinary course of an investment adviser's business, that are not on market terms and that are likely to have a substantive effect on the investment adviser's profitability, property or obligations (in this section: "**unusual contract**"), except if they obtained advance written approval therefor from the Authority Chairman, and – if the investment adviser is a banking corporation – also from the Supervisor of Banks.
- (b) The acceptance of consideration by investment advisers from an institutional body under an agreement for the provision of service that is not an unusual contract, or under an unusual contract that was approved under the provisions of subsection (a) constitutes an activity that accords with the investment advisers' obligations under sections 11 and 15.
- (c) In this section, "**institutional body**" and "**investment adviser**" – including a body corporate affiliated with them.

17C. Repealed

#### **Special risks**

18. (a) If a transaction involves special risks, the investment adviser or the investment marketer, as the case may be, shall inform the client of the nature of the risk.

- (b) Portfolio managers shall not perform for clients transactions that involve special risks without the clients' advance written consent to that transaction or to transactions that involve that type of risk.
- (c) Without derogating from the generality of the provisions of subsections (a) and (b), the transactions specified below shall be deemed transactions that involve special risks:
  - (1) transactions with a security, the prospectus of which stated that investing in it involves a special risk, as long as two years have not passed since the date of the prospectus, except when the risk that was stated as aforesaid no longer exists;
  - (2) transactions that involve a short sale, within its meaning in section 63 of the Joint Investment Trusts Law, and lending securities for the performance of said transactions;
  - (3) transactions with futures, options or structured products;
  - (4) any other transaction that the Minister of Finance designated for this purpose in consultation with the Authority and with approval by the Knesset Finance Committee.

#### **Obligation of confidentiality**

19. (a) Subject to the provisions of any statute or of an agreement, in which the client explicitly waived the obligation of confidentiality toward a person designated in that agreement, a licensee shall keep confidential information given him by the client, including the documents delivered into his possession and their contents, as well as every other particular that relates to acts in respect of which he engaged in advising or marketing for the client or which he performed for his account.
- (b) The provisions of the Protection of Privacy Law 5741-1981 shall apply to the obligation of confidentiality under this section also when the injured party is a body corporate.

#### **Obligation of caution**

20. A licensee shall engage in his work cautiously and with a degree of expertise, as a reasonable licensee would do under similar circumstances, and he shall adopt all reasonable measures to protect his clients' interests.

#### **Investment adviser must not advertise institutional bodies**

- 20A. An investment adviser shall not advertise – in communications media, by circulars, mail, electronic mail, facsimile, the Internet or by any other means – that he engages in investment advising in connection with financial assets, to which a certain institutional body is connected.

### **Restriction of the use of the word "advising" by investment marketers**

20B. Investment marketers, portfolio managers that are bodies corporate connected to an institutional body or to a marketer and portfolio managers that engage in investment marketing shall not use the word "advising" or any word derived therefrom in the name under which they conduct their business or in advertising on their behalf.

### **Licensees' obligation to comply with conditions on insurance, equity, bank guaranty, deposit and securities**

- 20C.(a) A licensed body corporate shall not engage in any activity that is the subject of the license while it does not comply with the conditions and the amounts prescribed in respect of insurance, equity, bank guaranty, deposit or securities under section 7(b)(3) or (c)(3) or (4) or under section 8(b)(4) or (5), as the case may be.
- (b) An individual licensee shall not engage in any activity that is the subject of the license while he does not comply with the conditions, amounts and proportions that the Minister of Finance will prescribe – in consultation with the Authority and with approval by the Knesset Finance Committee – in respect of insurance to cover the licensee's liability for any negligent act or omission towards a client.

### **Prohibition of additional activities**

- 20D. (a) A company that is a licensee shall not engage in underwriting.
- (b) A company that holds a portfolio management license shall not engage in any additional activity that is not one of the activities enumerated in section 8(b)(1).

### **Responsibility of an individual licensee**

21. Working within the framework of a body corporate shall not derogate from the applicability of provisions of this Law to an individual licensee who works in the name of a body corporate.

## **CHAPTER FOUR: SPECIAL RULES FOR PORTFOLIO MANAGERS**

### **Keeping and managing clients' assets separately**

22. A portfolio manager shall –
- (1) keep the securities and financial assets of his clients separate from his own;
  - (2) keep the securities and financial assets of each client separately, decide on the performance of a transaction separately for each client and shall keep records in respect of money, securities and financial assets of each client separately, but a portfolio manager may perform the transactions for his clients by aggregate orders;
  - (3) keep for each client a monetary account and a securities and financial assets account with a banking corporation, with a bank abroad, with a Stock Exchange member or with whoever has the right – under the Laws of the country in which he acts – to keep monetary accounts, securities accounts or financial assets accounts for clients;
  - (4) perform securities and financial transactions for his clients separately from those that he carries out for his own account;

- (5) credit and debit the clients' accounts with him on the day on which the transaction was performed.

**Must not use a client's assets**

23. (a) A portfolio manager must not use a client's money, securities or financial assets for any purpose other than the performance of transactions for that client and according to the agreement concluded with him and the power of attorney received from him.
- (b) A portfolio manager must not perform any transaction with a client and must not derive any benefit from a client's assets, except if the client gave his advance written consent to that transaction or that benefit.

**Fees and expenses**

24. Portfolio managers shall not make their fees conditional on profits derived by the client from a transaction or on the number of transactions performed for the client.

**CHAPTER FOUR "A": CORPORATE GOVERNANCE**

**Definitions**

24A. In this Chapter –

"**financial body**" – each of these: a Provident Fund or a management company, as defined in the Control of Provident Funds Law, an insurer, a licensed body corporate, a Fund Manager or an underwriter as defined in the Securities Law, all exclusive of a company that controls a large portfolio management company and a company controlled by a said company;

"**outside director**" and "**relative**" – as defined in the Companies Law;

"**large portfolio management company**", "**group**" and "**total value of assets**" – as defined in Schedule One "A".

**Board of Directors**

- 24B. (a) At least five directors shall serve on the Board of Directors of a large portfolio management company; in respect of the appointment of outside directors, a large portfolio management company shall be treated like a company, the securities of which were offered to the public by prospectus and are held by the public, and the provisions of sections 239 to 249 of the Companies Law on the appointment of outside directors shall apply, mutatis mutandis, except when a different provision has been made under this Law.
- (b) A large portfolio management company shall appoint the outside directors after the Audit Committee checked and certified that they meet the qualifications prescribed in section 240 of the Companies Law; however, without derogating from the provisions of subsection (a), the provisions of this subsection shall not apply to the nomination of the first outside directors in the company.
- (c) The number of directors of a large portfolio management company who also serve as directors of other financial bodies shall not exceed one third of their total number.
- (d) A director of a large portfolio management company shall not serve at the same time as director in more than two additional financial bodies, except in cases that

- the Minister of Finance permitted in regulations.
- (e) The number of directors who are employees of a large portfolio management company or are engaged by it shall not exceed one third of their number.
  - (f) When appointing the Board of Directors of a large portfolio management company the composition of the Board of Directors shall be fixed in a manner that will enable the Board of Directors to fulfill its obligations.

#### **Preventing conflicts of interests**

24B1. Whoever controls a significant real body corporate, is connected to a said controlling member or is an officer of a significant real body corporate shall not be appointed and shall not serve on the Board of Directors of a portfolio management company that is a significant financial body; the Authority Chairman may prescribe instructions about the continued service of a Director in the course of sale proceedings said in section 4A(d); in this section –

**"person connected to a controlling member"** – a relative or partner of the controlling member or a person with a connection to the controlling member, as defined in section 240(b) of the Companies Law;

**"financial body"** and **"real body corporate"** – as defined in section 28 of the Law to Promote Competition and Reduce Concentration;

**"significant financial body"** – a financial body listed in the list of significant financial bodies under section 29 of the Law to Promote Competition and Reduce Concentration;

**"controlling member"** of a significant real body corporate – including the holder of a controlling parcel, as defined in the Companies Law, in a significant real body corporate that does not have any other controlling member;

**"significant real body corporate"** – a real body corporate listed in the list of significant real bodies corporate that was published under section 30 of the Law to Promote Competition and Reduce Concentration.

#### **Chairman of the Board of Directors**

- 24C. (a) The Board of Directors of a large portfolio management company shall elect one of its members to serve as chairman of the Board of Directors.
- (b) The General Manager of a large portfolio management company, a person directly or indirectly subject to the General Manager or a relative of the General Manager shall not serve as chairman of the Board of Directors.
- (c) Powers of the General Manager or powers vested in a person directly or indirectly subject to the General Manager shall not be vested in the chairman of the Board of Directors of a large portfolio management company or in his relative; the chairman of the Board of Directors shall not hold any other position in the company, except that of member of a Board of Directors committee that is not the Audit Committee, as said in section 24H(d).

#### **Powers of the Minister of Finance**

24D. The Minister of Finance may prescribe qualifications for Directors and for members of Board of Directors committees that the Board of Directors of a large portfolio management company shall appoint under this Chapter, provisions to assure the effectiveness and orderly functioning of the internal audit system and of the internal enforcement program, including provisions on the obligation to appoint officers to be in charge of the said system and program and their qualifications, as well as provisions to assure the management of an effective risk control system.

### **Conducting Board of Directors meetings**

- 24E. (a) Meetings of the Board of Directors of a large portfolio management company shall be held at least once in every quarter; the interval from one meeting to the next shall not exceed four months.
- (b) A majority of the Directors shall constitute a quorum at Board of Directors meetings, on condition that the following hold true:
- (1) an outside Director is present at the meeting;
  - (2) the number of Directors who serve as Directors of more than one financial body present at the meeting is not greater than one third of those present.
- (c) At Board of Directors meetings a protocol shall be kept, in which shall be recorded the names of those present, the main points of the discussion and the decisions that were adopted.
- (d) If an outside Director is absent from four consecutive Board of Directors meetings his term of service shall lapse.

### **Responsibilities of the Board of Directors**

- 24F. The responsibilities of the Board of Directors of a large portfolio management company shall be, inter alia:
- (1) to appoint a General Manager, to supervise his functioning and to examine the manner in which Board of Directors decisions are implemented out by the General Manager;
  - (2) to approve the internal audit system and the internal enforcement program and to ascertain that the company has the tools that make it possible to keep track of the implementation of investment programs according to the clients' instructions and requirements;
  - (3) to appoint an internal auditor according to the Audit Committee's proposal, to approve his work program according to the Audit Committee's recommendation and also to discuss faults of substantive importance for the company's operation and ways to correct them;
  - (4) to approve work procedures that provisions under this Chapter obligate the company to prescribe and that the Authority decided must be approved by the Board of Directors;
  - (5) to discuss the company's compliance with the conditions of the license, as prescribed in section 8;
  - (6) to discuss any subject of substantive importance for the company's activity or for the supervision and control thereof.

### **Must not delegate**

- 24G. (a) The Board of Directors of a large portfolio management company is not allowed to delegate its powers under paragraphs (1), (3) and (5) of section 24F.
- (b) The Board of Directors of a large portfolio management company may delegate its authority under paragraph (2) of section 24F to the Audit Committee, on condition that it receive updates from the Audit Committee about decisions that it adopted under the said paragraph and that are of substantive importance for the company's operation immediately after their adoption, and that once a year it also receive from the Audit Committee a survey of the subjects enumerated in that paragraph.

### **Audit Committee**

- 24H. (a) The Board of Directors of a large portfolio management company shall appoint, from among its members, an Audit Committee (in this Law: Audit Committee)..
- (b) The responsibilities of the Audit Committee shall be:
- (1) to propose to the Board of Directors a candidate for the position of internal auditor according to section 24F(3), to discuss the work program proposed by the internal auditor and to submit its recommendations in respect of the program to the Board of Directors;
  - (2) to find faults in the company's activity through the internal auditor and other means of control and supervision, to prescribe ways of correcting said faults that are not of substantive importance for the company's operation and to propose to the Board of Directors ways of correcting faults that are of substantive importance for its operation;
  - (3) to examine the company's internal audit system and the way the internal auditor functions, and also whether he has the resources and means he needs in order to perform his function;
  - (4) to certify that the qualifications prescribed in section 240 of the Companies Law, as said in section 24B(b), are complied with in respect of the outside Directors.
- (c) The number of Audit Committee members shall not be less than three, all outside Directors shall be members of the Audit Committee and they shall be a majority of its members; the chairman of the committee shall be an outside Director.
- (d) The chairman of the company's Board of Directors and every Director who is employed by the company or regularly provides services to it, as well as a controlling member of the company or his relative shall not be members of the Audit Committee.
- (e) The internal auditor shall receive notice of Audit Committee meetings that will be held and he may participate in them.
- (f) The internal auditor may request that the chairman of the Audit Committee convene the committee and the chairman of the Audit Committee shall convene it within a reasonable time, if he saw a reason for doing so.
- (g) At least once a year the Audit Committee shall have a meeting only with the internal auditor.
- (h) Audit Committee meetings shall be held at least once every three months.
- (i) At least three members, including an outside Director, constitute a quorum at Audit Committee meetings; however, in urgent cases, when one Director cannot participate in the Audit Committee meeting and consequently there is no quorum at the Audit Committee meeting, the quorum at that meeting shall be at least two members, including an outside Director; the protocol of the said meeting shall include an explanation why it was urgent to hold the meeting.
- (j) A protocol shall be kept at Audit Committee meetings, in which shall be recorded the names of those present, the main points of the discussion and decisions that were adopted; the protocol shall be available for reading by every Director of the company.

### **Internal auditor**

- 24I. (a) The provisions of sections 3(a), 4(b), 8, 9, 10 and 12 of the Internal Audit Law 5752-1992 shall apply, *mutatis mutandis*, to the internal auditor who will be

- appointed under section 24F(3).
- (b) The internal auditor shall examine, inter alia, whether the company's acts are in order in respect of compliance with statutes, with orderly business practice and with provisions prescribed under this Law by the company's Board of Directors.
  - (c) The internal auditor shall report his findings to the chairman of the Board of Directors, to the Audit Committee and to the General Manager.

**Reservation as to applicability**

24J. The provisions of this Chapter shall not apply to a large portfolio management company during the first six months after it became a large portfolio management company.

**Change of Schedule One "A"**

24K. The Minister of Finance may – by order upon a proposal of the Authority or in consultation with it, with the consent of the Minister of Justice and with approval by the Knesset Finance Committee – change Schedule One "A"

**CHAPTER FIVE: RECORDS AND REPORTS**

**Recording transactions**

25. (a) A portfolio manager shall keep a record of every transaction performed for a client.
- (b) A licensee shall keep a record of every advice that he gave to a client.
  - (b1) An investment marketer shall keep a record of every marketing transaction that he performed toward a client.
  - (c) The provisions of subsections (b) and (b1) shall also apply if the advising or marketing act did not result in a transaction.
  - (d) A licensee shall keep the records said in this section for a period of seven years.
  - (e) The Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, designate the particulars that must be included in the records said in this section, and also how they are to be drawn up, kept and given to the client.

**Reports to clients**

26. (a) A portfolio manager shall deliver to clients – at least once every three months – detailed reports on the composition of their investment portfolios, their monetary accounts and their direct and indirect debits for fees and expenses, including payments to whoever controls the portfolio manager or is controlled by him or to the company controlled by a said person, and he shall attach thereto details of the transactions performed for the client during the period since the previous report, with emphasis on transactions that involved special risks and credit transactions, if any.
- (b) Reports to clients for whom the portfolio manager acts under a blind trusteeship shall be in the format, at times and under conditions specified in the agreement between them; a said client may give in advance some or all of the written consents required under this Law.
  - (c) A portfolio manager shall, at any time, give clients on their demand additional



particulars either on the state of their investment portfolios or monetary accounts, or in respect of a certain transaction, but he may refrain from doing so if he concluded that the client's demand is unreasonable.

- (c1) A licensee shall inform the clients of every change of address of his place of business within seven days after he began to deal at that address as a licensee.
- (d) There shall be no misleading particulars in reports under this section.

### **Reports to the Authority**

27. (a) Once a year a licensee shall submit to the Authority a notice on compliance with the requirements and extent of insurance and – if it is a body corporate – also an auditor's certification on compliance with the minimum equity requirements under this Law.

(b) *Repealed*

(c) A portfolio manager must report to the Authority immediately, if one of the conditions for granting its license has ceased to hold true and – if he is an individual – also if he does not carry insurance as required by provisions under section 20C, or if one of the conditions because of which the Authority may cancel or suspend the license has come to hold true, and in respect of the examination of credibility said in section 10(a1) the licensee shall inform the Authority when one of the following occurs in Israel or abroad:

- (1) conviction for an offense;
- (2) an indictment brought or a disciplinary proceeding held for the commission of an offense;
- (3) an investigation or administrative inquiry in connection with the commission of an offense or with the violation of the provision of an economic statute, on the part of an authority competent to conduct an investigation or administrative inquiry, as the case may be;
- (4) payment of a monetary obligation in lieu of a criminal proceeding in connection with the violation of a provision of an economic statute, as well as the conduct of an administrative proceeding for the violation of a said provision, the possible result of which is the imposition of administrative means of enforcement;
- (5) payment of monetary composition or receipt of a demand for such payment for the violation of a provision of an economic statute;
- (6) judgment in a civil action or a civil action brought for violation of a provision of an economic statute, also by way of an action by virtue of section 63 of the Civil Wrongs Ordinance [New Version], on condition that the said action includes an argument of fraud or negligence;

in this subsection –

**"provision of an economic statute"**, **"offense"** – as defined in section 9A(e) of the Joint Investment Trusts Law;

**"monetary obligation in lieu of a criminal proceeding"** – as defined in section 260(a) of the Companies Law.

- (c1) A licensee shall report the address of his place of business as licensee and every change thereof to the Authority within seven days after he began to do business at that address as a licensee.
- (c2) A licensed body corporate, a Fund Manager and a banking corporation shall report to the Authority without delay about the new employment of a licensee or the termination of the employment of a licensee who was employed by it.

- (c3) On January 21 of each year licensed bodies corporate, Fund Managers and banking corporations shall submit a report to the Authority, in which shall be specified the names of all licensees employed by them on the last day of the month before the date of the report's submission and the address of the branch in which they are employed, and also the names of all licensees whose employment ended after the date on which the previous report under this subsection was submitted; holders of advising licenses or holders of marketing licenses and also holders of portfolio management licenses shall be specified separately in the report under this subsection..
- (d) A licensee or a banking corporation must report to the Authority as said in this section also upon a special demand from the Authority or the Authority Chairman, and upon a said demand it shall also report any occurrence or matter about which information is important to a reasonable client who uses his services.
- (e) A licensee or a banking corporation must submit to the Authority in writing – on demand by the Authority or by an Authority employee whom it authorized – explanations, details, information and documents on particulars included in a report or notice under this section.
- (f) The Authority may post on its internet site or publish in two daily newspapers that appear in Israel in Hebrew and that it believes to be widely distributed notices or reports submitted to it under this section and it may order licensees or banking corporations to publish said reports or notices in a manner that it shall prescribe.
- (g) There shall be no misleading particulars in reports under this section.

#### **Ways of reporting to the Authority**

- 27A. (a) An application by a licensed body corporate, that its license be canceled or suspended under section 10(b), and also reports, notices, information and every other document that a licensed body corporate must submit to the Authority or to the Exchange under sections 27 or 27C shall be submitted according to Chapter Seven "A" of the Securities Law.
- (b) *Repealed.*

#### **Certified copy**

- 27B. (a) *Repealed*
- (b) The certified copy of a document submitted to the Authority shall be accepted in any legal proceeding like an original, and it shall be conclusive evidence that the original document is held by the Authority.

#### **Additional reports**

- 27C. The Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe provisions on these matters:
- (1) reports in addition to those enumerated in this Law that licensees and banking corporations must submit to the Authority or to clients, the particulars to be included in them, the dates when they are to be drawn up and submitted, and their format; he also may prescribe an obligation to make said reports public and how they are to be publicized;
  - (2) the particulars to be included in reports that licensees, banking corporations or Fund Managers must submit under this Law, the dates when they are to be

- drawn up and submitted and format;
- (3) exemptions for licensees, banking corporations, Fund Managers or for categories thereof from the obligation to report under this Law.

## CHAPTER SIX: THE AUTHORITY'S RESPONSIBILITIES AND POWERS

### The Authority's supervision of licensees

28. (a) In the performance of their obligations under this Law, licensees shall be subject to supervision by the Authority.
- (b) For purposes of the supervision said in subsection (a), the Authority may issue instructions on the way a licensee, its officers and all its employees shall act and conduct themselves, all in order to assure the licensee's orderly operation and the protection of its clients' interests; said instructions may be issued to all licensees or to certain categories of licensees.
- (c) (1) Instructions under subsection (b) do not have to be published in Reshumot, but the Authority shall publish in Reshumot a notice that said instructions were issued and the date on which they go into effect.
- (2) Instructions under subsection (b) and every change thereof shall be open for inspection by the public at the offices of the Authority, they shall be posted on the Authority's Internet site and the Authority may order their publication in additional ways.
- (d) (1) For purposes of the supervision said in subsection (a), the Authority may also authorize persons who are not Authority employees to audit licensees and to demand documents and information about them, such as are needed for the exercise of its responsibility, provided the following two conditions are met:
- (a) the Israel Police gave notice – not later than three months after it received a candidate's particulars – that it does not object to his authorization for reasons of public safety, including any criminal past;
- (b) he was given appropriate training or met additional qualifications, as the Authority Chairman ordered.
- (2) Persons authorized under this subsection shall not disclose the contents of information or documents they received by virtue of their position, except for purposes of the audit, to the Authority Chairman or to an Authority employee according to directions from the Authority Chairman; this provision shall not prevent disclosure at the Attorney General's demand for purposes of a criminal trial, or at the demand of a Court.

### Applying the Authority's power

29. (a) In this section –
- "**violation**" – each of these:
- (1) a violation within its meaning in section 48A;
- (2) a violation defined in section 38F;
- "**offense**" – each of these:
- (1) an offense under this Law;

- (2) an offense under sections 284, 290, 291, 415, 423, 424, 424A and 425 of the Penal Law, committed in connection with an offense under paragraph (1);
  - (3) an offense under sections 3 and 4 of the Prohibition of Money Laundering Law 5760-2000, committed in connection with an offense under paragraphs (1) or (2);
  - (4) an offense under sections 240, 242, 244, 245 or 246 of the Penal Law, committed in connection with an investigation or a judicial proceeding for an offense under paragraphs (1) to (3).
- (b) (1) In order to assure the implementation of this Law or if there are reasonable grounds to assume that a violation was committed or if suspicion of the commission of an offense arose, the Authority Chairman or an Authority employee whom he so authorized in writing may –
- (a) demand from any person any information or document connected to a licensee's business or to a said violation or offense;
  - (b) enter, after he identified himself, a place where he has reason to assume that activity of a supervised factor, as defined in the Securities Law, takes place and that it is not used only as a residential house, and demand that he be given documents said in subparagraph (a); however, a said document shall not be seized if a copy thereof will suffice.
- (2) The provisions of section 56A(b) of the Securities Law shall apply to the return of documents that were given to the Authority under paragraph (1).
- (c) The provisions of sections 56A1 to 56E of the Securities Law shall apply to offenses, mutatis mutandis and with this change: in section 56C2, replace "paragraphs (3) or (4) of the definition of "securities offense"" with "paragraphs (2) or (3) of the definition of "offense", as defined in the Advising Law"..

*Chapter Seven (Sections 30 to 38): Repealed*

## **CHAPTER SEVEN "A": IMPOSITION OF MONETARY COMPOSITION BY THE AUTHORITY**

### **Monetary composition**

- 38A. (a) If a person violated one of the provisions under this Law that apply to him, as specified in Schedule Two – (in this Chapter: violator and violation, respectively) the Authority may impose monetary composition on the violator and the provisions under Chapter Eight "C" of the Securities Law shall apply to this matter, mutatis mutandis and with the changes prescribed in this Chapter.
- (b) For the purposes of this Chapter the definition of "repeated violation" in section 52S of the Securities Law shall be read with the following at its end: "and in respect of item (26) in Part One of Schedule Two of the Advising Law the violation of that provision shall be weighed, which was made under section 28(b) of the Advising Law".

### **Amount of monetary composition**

- 38B. (a) The amount of monetary composition to be imposed on a violator under this

Law shall be the amount specified in his respect in Schedule Three.

- (b) The amount of monetary composition to be imposed under this Chapter on a violator that is a company with a portfolio management license shall be set under Schedule Three according to the total value of the company's assets; for this purpose, "**total value of assets**" – the value of the securities and financial assets under the company's management according to the last report that the company submitted to the Authority under this Law before the violation was committed.
- (c) The amount of monetary composition to be imposed under this Chapter on a violator that is a body corporate that holds an investment advising license or an investment marketing license shall be set under Schedule Three according to the number of licensees employed by the body corporate according to the last report that the company submitted to the Authority under this Law before the violation was committed.

#### **Reduced amounts**

- 38C. (a) The Authority does not have the right to impose monetary composition in amounts lower than the amounts specified in Schedule Three, except under the provisions of subsection (b).
- (b) The Minister of Finance may, with the consent of the Minister of Justice, designate cases, circumstances and considerations, because of which it shall be possible to reduce the amount of monetary composition specified in Schedule Three by maximum rates that he shall prescribe.

#### **Violation of the same provision in respect of several clients**

38D. The violation of the same provision in respect of several clients shall be deemed one violation and the monetary composition under section 38B shall be determined according to the date of the last violation.

#### **Change of Schedule Two and of Schedule Three**

38E. The Minister of Finance may – by order on a proposal of the Authority or in consultation with it, with the consent of the Minister of Justice and with approval by the Knesset Finance Committee – change Schedule Two and Schedule Three, on condition that the amount of monetary composition prescribed in Schedule Three not exceed NS 2 million.

### **CHAPTER SEVEN "B": IMPOSITION OF ADMINISTRATIVE MEANS OF ENFORCEMENT BY THE ADMINISTRATIVE ENFORCEMENT COMMITTEE**

#### **Definitions**

- 38F. In this Chapter –
- "**the Committee**" – the Administrative Enforcement Committee appointed under section 52FF(a) of the Securities Law;
- "**violation**" – an act or omission that is one of the following:
- (1) it is specified in Schedule Four;
  - (2) it is included in the list of acts or omissions that the Authority prescribed under section 38K and it demonstrates that the person who committed it did not act

with the caution with which a reasonable licensee would have acted under similar circumstances.

**Application of provisions to the inquiry of a violation and an administrative enforcement proceeding**

38G. If a person committed a violation, the provisions of Chapter Eight "D" of the Securities Law that apply to the violator and to the violation of a provision enumerated in Part Three of Schedule Seven of the said Law, mutatis mutandis and with the changes specified in this Article.

**Application of provisions on monetary composition**

38H. The provisions of section 52AAA(a) of the Securities Law shall apply to the imposition of monetary composition under this Chapter, as specified below:

- (1) in respect of a violator who is the individual holder of an investment advising or investment marketing license – in the maximum amount of NS 25,000;
- (2) in respect of a violator who is the individual holder of a portfolio management license – in the maximum amount of NS 50,000;
- (3) in respect of a violator who is some other individual – in the maximum amount of NS 1 million;
- (4) in respect of a violator that is a body corporate – in the maximum amount of NS 5 million.

**Responsibility of General Managers and of partners, other than limited partners**

38I. The provisions of section 52LLL of the Securities Law shall apply to violators and violations, but the maximum amount of monetary composition that may be imposed under this section on the General Manager of a body corporate or on a partner in a partnership, other than a limited partner, as the case may be, is NS 50,000.

**Indemnification and insurance are prohibited**

- 38J.. (a) Notwithstanding the provisions of any statute and without derogating from the provisions of sections 262 to 264 of the Companies Law –
- (1) a proceeding under Chapters Seven "A" and Eight "A" (in this section: proceeding) must not be insured, either directly or indirectly;
  - (2) an insurance contract for an insurance event that is a proceeding is void;
  - (3) a body corporate shall not indemnify and shall not pay – directly or indirectly – monetary composition that was imposed on anybody else, and a controlling member of a body corporate shall not indemnify and shall not pay – directly or indirectly – monetary composition that was imposed on the body corporate, on a senior officer of the body corporate or on an employee of the body corporate;
  - (4) provisions or undertakings to indemnify for a proceeding are void.
- (b) (1) Notwithstanding the provisions of subsection (a), it is possible to indemnify or insure a person for payments to a person injured by a violation said in section 52BBB(a)(1)(a) of the Securities Law or for expenses he incurred in connection with a proceeding held on his matter, including reasonable legal expenses, including Advocates' fees, also by means of indemnification in advance.
- (2) An undertaking to indemnify or insure an officer of a body corporate

under paragraph (1) shall not be in effect, except if the by-laws of the company include a provision that permits that.

**List of acts or omissions that evidence a fault in respect of caution**

38K. The Authority shall determine, for the purposes of this Chapter, a list of acts or of omissions that evidence that the licensee who performed them did not act with the caution with which a reasonable licensee would have acted under similar circumstances; a said list shall be posted on the Authority's Internet site and shall go into effect 30 days after it was posted, but a change in the list shall not apply to a pending Administrative Enforcement Proceeding; notice that the list was posted, of every change therein and of the date of their effect shall be published in Reshumot.

**Change of Schedule Four**

38L. The Minister of Finance may – by order, on the Authority's proposal or in consultation with it, with the consent of the Minister of Justice and with approval by the Knesset Finance Committee – change Schedule Four

**CHAPTER EIGHT: PENALTIES**

**Penalties**

39. (a) Whoever did one of the following shall be liable to two years imprisonment or to a fine five times the fine set in section 61(a)(3) of the Penal Law, and if it is a body corporate – to double the said fine;
- (1) he engaged in investment advising, investment marketing or investment portfolio management without holding a license in violation of the provisions of sections 2(a) to (b1);
  - (2) he employed in the marketing of investments persons who do not have a marketing license, in violation of the provisions of section 2(b2);
  - (3) he engaged in portfolio management, in violation of the provisions of section 9(a);
  - (4) he engaged in investment advising, in violation of the provisions of section 9(b), or he employed in investment advising persons who do not have an advising license, in violation of the provisions of the same section;
  - (5) he engaged in investment marketing or employed persons in investment marketing, in violation of the provisions of section 9(c1);
  - (6) he engaged in investment marketing in violation of the provisions of section 9(f).
- (b) Whoever did one of the following shall be liable to one year imprisonment or to a fine five times the fine said in section 61(a)(2) of the Penal Law, and if it is a body corporate – to double the said fine:
- (1) he held or acquired securities for himself, in violation of the provisions of section 4(a);
  - (2) he managed investment portfolios for a relative or for a body corporate in which he or his relative is a controlling member, in violation of the provisions of section 4(b);
  - (2a) he gave false or misleading information in an application for a license

- under section 5 or in a report to the Authority under section 27;
- (2b) he controlled a portfolio manager that is a significant financial body or held means of control in a said portfolio manager in violation of the provisions of section 4A;
  - (3) he served as officer of a licensed body corporate, in violation of the provisions of section 9(d);
  - (4) he accepted a benefit in connection with investment advising, investment marketing, the performance of a transaction or the abstention from performing a transaction, in violation of the provisions of section 17(a);
  - (5) he directly or indirectly gave a benefit to one of his employees, one of his branches or one of his units in connection with investment advising, investment marketing, the performance of transactions or abstention from their performance, in violation of the provisions of section 17(c);
  - (6) he calculated the remuneration and refund of expenses, for which the client is to be charged, in violation of the provisions of section 17(d);
  - (7) he counseled or performed a transaction in respect of the financial asset of an institutional body that is an interested party in the adviser or in his employer or is connected to him, in violation of the provisions of section 17A;
  - (8) he entered into an unusual contract with an institutional body, without having received approval therefor, in violation of the provisions of section 17B(a);
  - 9) *repealed*
  - (10) he used the word "advising" or a word derived therefrom in the name under which he manages his business or in advertising on its behalf, in violation of the provisions of section 20B;
  - (11) he engaged in investment advising in a communications medium, does not hold a license and did not include the notice said in section 3(b);
  - (12) he offered to provide services in violation of the provisions of section 3A;
  - (13) he disclosed the contents of information or documents that he received by virtue of his position, in violation of the provisions of section 28(d)(2).
- (b1) Whoever intentionally did anything in order to prevent or obstruct an inquiry into a violation or an administrative enforcement proceeding under Chapter Eight "D", as was made applicable in Chapter Seven "B", shall be liable to three years imprisonment or to a fine two and a half times the fine said in section 61(a)(4) of the Penal Law, and if it is a body corporate – to five times the fine said in that section.
- (c) *Repealed*
  - (d) *Repealed*

#### **Responsibility of a Director of a body corporate**

40. If an offense said in section 39 was committed by a body corporate, the Directors of the body corporate and its general manager shall also bear responsibility for the offense, and in a partnership the partners other than limited partners are responsible, unless they proved one of the following:
- (1) that the offense was committed without their knowledge and that they did not need to know about it or could not know about it;
  - (2) that they took all reasonable steps in order to prevent the offense.



**Delivery of documents from the Authority by secure e-mail**

40A. The provisions of Chapter Seven "B" of the Securities Law shall apply, mutatis mutandis, to notices, instructions, demands or any other document that the Authority or an employee whom it so authorized may deliver under this Law to an authorized body corporate or to whoever applied for the license of an authorized body corporate.

## **CHAPTER EIGHT "A": ARRANGEMENT IN ORDER TO ABSTAIN FROM PROCEEDINGS OR TO STOP PROCEEDINGS SUBJECT TO CONDITIONS**

### **Definitions**

40B. In this Chapter –

"**proceedings**" – the proceeding of an inquiry into a violation or an administrative enforcement proceeding under Chapter Eight "D" of the Securities Law, as was made applicable in Chapter Seven "B", or a criminal investigation under section 56C " of the Securities Law, as was made applicable in section 29(c), as the case may be;

"**violation**", "**offense**" – as defined in section 29(a).

### **Power of the Authority Chairman or of a District Attorney to contract an arrangement in order to refrain from conducting proceedings or to halt proceedings subject to conditions**

40C. The power vested in the Authority Chairman and in District Attorneys to contract arrangements in order to abstain from conducting proceedings or to halt proceedings subject to conditions, as the case may be, according to the provisions of Chapter Nine "A" of the Securities Law, shall be vested in them in respect of violations or offenses and the provisions of the said Chapter shall apply to this matter, mutatis mutandis.

## **CHAPTER NINE: MISCELLANEOUS PROVISIONS**

### **Service of documents from the Authority by secure e-mail**

40D. The provisions under Chapter Seven "B" of the Securities Law shall apply, mutatis mutandis, to notices, instructions, demands and all other documents that the Authority or an employee whom it authorized may serve under this Law to a licensed body corporate or whoever applied for a licensed body corporate license.

### **Fees**

41. (a) The Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe fees that applicants for licenses and licensees, as well as applicants for registration in the Register of Foreign Dealers and persons registered in it under the provisions of Chapter Two "A" must pay to the Authority, and he may also prescribe provisions on linkage differentials and interest payable for arrears in the payment of fees under this section and on the applicability of the Taxes (Collection) Ordinance to the collection of said fees, linkage differentials and interest.
- (b) If a licensee or a person registered in the Register of Foreign Dealers did not pay a fee he should have paid under the provisions of subsection (a) within one year after the date set for its payment under the provisions of the said subsection, his license shall be suspended or his registration shall be canceled, as the case may be, as of the date set therefor in the warning delivered to him by the Authority, until the fee is paid together with linkage differentials and interest according to the provisions of that section; a licensee whose license was suspended under the

provisions of this subsection, shall immediately give his clients written notice thereof; notice of the cancellation of a registration in the Register of Foreign Dealers under the provisions of this subsection shall be delivered according to the provisions of section 10..

- (c) The renewal of a license that was canceled or suspended under this Law or the renewal of a registration in the Register of Foreign Dealers that has been canceled shall be conditional on payment of the debts of the licensee or of the person whose registration was canceled, as the case may be, because of the non-payment of fees or the non-payment of linkage differentials and interest that he was obligated to pay under the provisions of subsection (a).

### **Change of the Schedule**

41A. The Minister of Finance may – by order on the Authority's recommendation or in consultation with it and with approval by the Knesset Finance Committee – change Schedule One.

### **Implementation and regulations**

42. The Minister of Finance is charged with the implementation of this Law and he may, on the Authority's recommendation or after consultation with it, make regulations on any matter that relates to its implementation; regulations under this section shall be made with approval by the Knesset Finance Committee.

### **Amendment of the Banking (Licensing) Law – No. 10**

43. In the Banking (Licensing) Law 5741-1981 –
- (1) In section 1 –
- (a) after the definition of "the Ordinance", insert:
- " **"underwriting obligation"** – as defined in section 1 of the Regulation of Investment Advising and Portfolio Management Law 5755-1995;"
- (b) after the definition of "real estate", insert:
- " **"investment portfolio management"** – within its meaning in the Regulation of Investment Advising and Portfolio Management Law 5755-1995;
- "
- (2) in section 10 –
- (a) in paragraph (7), after "as agent or trustee", insert "but exclusive of assuming an underwriting obligation, the management of a joint investments trust fund within its meaning in the Joint Investment Trusts Law 5754-1994, or the management of investment portfolios;"
- (b) in paragraph (9), replace "as trader, agent or underwriter" with "as trader or agent";
- (3) in section 11, after paragraph (3), insert:
- " (3a) a body corporate that assumes underwriting obligations, its other activities being activities permitted to a bank under section 10;
- (3b) a body corporate that engages in the management of investment portfolios;
- (3c) a manager of joint investments trust funds;"

### **Amendment of the Banking (Service to Customers) Law – No. 4**

44. In the Banking (Service to Customers) Law 5741-1981, in section 5(a), paragraph (4) is repealed.

### **Amendment of the Banking Ordinance – No. 19**

45. In the Banking Ordinance 1941, in section 15C, replace "auxiliary body corporate" with "body corporate said in paragraphs (3a) and (4) of section 11 of the Banking (Licensing) Law 5741-1981".

### **Amendment of the Joint Investment Trusts Law**

46. In the Joint Investment Trusts Law 5754-1994 –
- (1) in section 9(a), replace paragraph (3) with the following:  
" (3) it has insurance, bank guaranties, deposits or securities in amounts, at rates and on conditions prescribed by the Minister of Finance; insurance under this paragraph may be prescribed as insurance in addition to insurance required because of its other activities."
  - (2) in section 13(a), replace paragraph (3) with the following:  
" (3) it holds insurance, bank guaranties, deposits or securities in amounts, at rates and on conditions prescribed by the Minister of Finance."

### **Effect and transitional provisions for certain sections**

47. (a) Sections 2 to 8, 10, 39 and 40 shall go into effect on July 1, 1997.  
(b) Sections 13, 16(b) and (c), 17, 18 and 26 – as far as they relate to persons who were clients of an investment adviser or of a portfolio manager immediately before this Law was published – shall go into effect six months after the date of publication.  
(c) For the purposes of subsections (a) and (b), an individual or a body corporate that engages in investment advising or in portfolio management on the day on which this Law is published and until June 30, 1997, shall be treated as if they held a license under this Law.

### **Transitional provision**

48. (a) In this section –  
"examinations" – examinations prescribed under sections 7 and 8 of this Law;  
"determining period" – the period from August 9, 1994, until June 30, 1997.
- (b) In order to receive a portfolio management license, whoever during the determining period engaged in Israel continuously in portfolio management shall be exempt of the examinations, except for the examination on professional ethics.
  - (c) In order to receive an investment advising license, whoever during the determining period engaged in Israel continuously in investment advising or in portfolio management shall be exempt of the examinations, except for the examination on professional ethics.
  - (c1) The provisions of subsections (b) and (c) shall apply to persons who until February 1, 2006, apply for a license with exemption from examinations, as said in those subsections.
  - (d) Whoever on June 30, 1998, engaged in investment advising or in portfolio management, as the case may be, by virtue of a temporary license, is exempt – until December 31, 1999 – of the examinations, except for the examination on professional ethics.
  - (e) Repealed

### Publication in Reshumot

49. This Law shall be published in Reshumot within 30 days after its adoption.

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### SCHEDULE ONE

(Definition of "qualified client" in section 1)

1. A joint investments trust fund or a Fund Manager;
2. a management company or a provident fund, as defined in the Control of Provident Funds Law;
3. an insurer;
4. a banking corporation and auxiliary body corporate, within their meaning in the Banking (Licensing) Law, other than a joint service company;
5. a licensee;
6. a Stock Exchange member;
7. an underwriter, that meets the qualifications under section 56(c) of the Securities Law;
8. a body corporate, other than a body corporate that incorporated in order to obtain services, the equity of which is greater than NS 50 million; in this paragraph, "**equity**" – also according to foreign accounting rules, international accounting standards and accounting rules commonly accepted in the United States, as defined under sections 17(b)(1) and 36 of the Securities Law;
9. an individual for whom two of the following conditions hold true and who in advance gave his written consent to being deemed a qualified client for the purposes of this Law;
  - (1) the total value of the cash, deposits, financial assets and securities, as defined in section 52 of the Securities Law, that he owns exceeds NS 12 million;
  - (2) he has expertise and qualifications in the sphere of the capital market or was employed for at least one year in a professional position that required capital market expertise;
  - (3) he performed at least thirty transactions, on the average, in each of the four quarters before his consent; for this purpose, "**transaction**" – other than transactions that a portfolio manager performed for an individual connected to him by an investment portfolio management agreement;
10. a body corporate wholly owned by investors enumerated in this Schedule;
11. a body corporate incorporated abroad, with characteristics of activity similar to those of a body corporate named in this Schedule.

### SCHEDULE ONE "A"

(Section 24A)

"**Large portfolio management company**" – a company that is the holder of a portfolio management license and for which at least one of these conditions held true on December 31:

- (1) it and other companies that are holders of portfolio management licenses and that belong to the same group had jointly more than fifty clients and the total value of their assets was in excess of NS 5,000 million;
- (2) it and other companies that are holders of a portfolio management licenses and that

belong to the same group had jointly more than a thousand clients;  
shall continue to be deemed a large portfolio management company even if the said conditions ceased to apply, until three years after the day on which none of those conditions applied to it;  
**"group"** – a group of bodies corporate that maintain ties of control between them, including subsidiaries and affiliates as defined in the Securities Law, and a company controlled by a company that controls each of them;  
**"total value of assets"** – the value of the securities and financial assets managed by a portfolio management company.

## **SCHEDULE TWO** (Section 38A)

### **Part One**

- (1) A licensee, who counseled on investments in communications media without enclosing a notice whether he does or does not have a personal interest in the subject, or a notice that giving advice does not take the place of advising that takes each person's special data and needs into account, in violation of the provisions of section 3(b), except if the licensee gave the said notices to the communications medium and received its written undertaking to include the said notices in the publication;
- (1a) A person who held or purchased a security or units, as defined in the Joint Investment Law, for himself, in violation of the provisions of Section 4(a);
- (1b) A person who managed investment portfolios for a family member or for a corporation in which he or a family member is a controlling owner, in violation of the provisions of Section 4(b);
- (2) he did not, in an agreement with a client, state the services that will be provided by a foreign dealer or the financial assets and securities, in respect of which said services will be provided, in violation of the provisions of section 10D;
- (3) did not immediately give notice to a client that the activity of a foreign dealer has been stopped, in violation of the provisions of section 10G;
- (4) did not clarify with a client the objective of his investments, his financial condition, including his securities and financial assets or the other circumstances that should be of interest, even though the client agreed to give information about them, in violation of the provisions of section 12;
- (5) did not make a written agreement with a client or did not give the client a copy of the said agreement before he began to provide the service, or did not include in the said agreement the subjects he should have included or did not update the client's particulars in it, in violation of the provisions of section 13;
- (6) did not include in the notes of his talks with a client particulars prescribed in section 15(a), or did not formulate or keep said particulars or did not give them to the client in violation of the provisions of that section;
- (7) he ordered for a client securities from an offering, for which a body corporate connected to him or the body corporate by which he is employed are underwriters, without having received the client's advance written consent thereto, or did not report a said order to the client within 30 days of after implementation, in violation of the provisions of section 16(b);
- (8) he acquired for a client securities for the offering of which a body corporate connected

- to him or the body corporate by which he is employed were underwriters before three months passed since the underwriter' undertaking was fulfilled, without having received the client's advance written consent thereto or acquired for a client aforesaid securities after the said three months had passed, but six months had not passed since the underwriter' undertaking was fulfilled without having received the client's advance written consent thereto, or did not report a said acquisition to the client within 30 days after it was performed, in violation of the provisions of section 16(c);
- (9) he acquired for a client securities from an offering for which a body corporate connected to him or the body corporate by which he is employed were underwriters off Exchange or at a higher price than the Exchange price known at the time of the acquisition, in violation of the provisions of section 16(d);
  - (10) he did not inform his clients at the place where he works by a clear and obvious sign or by other means prescribed by the Authority Chairman that he is employed in the marketing of securities and not in securities advising or that it is a body corporate linked to an institutional body or marketer, as the case may be, or of the institutional bodies to whose financial assets he is connected, in violation of the provisions of section 16A(a)(1), or he did not disclose to a client before he contracted with him in a language understood by him, orally or by a written document, or did not post on his Internet site that he is employed as aforesaid or that and how it is connected to financial assets or that he prefers those assets, in violation of the provisions of section 16A(a)(2), or he did not include a notice whether he does or does not have a personal interest in the subject, or he did not include a notice that the marketing of investments does not take the place of marketing that takes each persons special circumstances and needs into account, in violation of the provisions of section 16A(d);
  - (11) he did not inform a client of a special risk involved in any of the transactions specified in section 18(c), in violation of the provisions of section 18(a);
  - (12) he performed for a client one of the transactions specified in section 18(c), without the client having given his advance written consent to that transaction or to transactions that involve that risk, in violation of the provisions of section 18(b);
  - (13) he did not maintain the confidentiality of information that a client gave him, including the documents he was given and their content or any other particular connected to acts in respect of which he engaged in advising or marketing for the client or that he performed for his account, in violation of the provisions of section 19;
  - (14) he published in communications media, in a circular, by mail, by e- mail, by facsimile, over the Internet or on any other medium that he engages in investment advising in connection with financial assets to which a certain institutional body is connected, in violation of the provisions of section 20A;
  - (15) he engaged in work that is a subject of the license while he did not comply with the conditions and amounts stated in respect of insurance, equity, bank guaranty, deposit or securities, in violation of the provisions of section 20C;
  - (16) he did not keep his clients' securities or financial assets separate from his own, in violation of the provisions of section 22(1);
  - (17) he did not keep his clients' securities or financial assets separately or did not keep records in respect of each client's money, securities and financial assets separately, in violation of the provisions of section 22(c);
  - (18) he kept for a client a monetary, securities or financial assets account otherwise than with a banking corporation, with a bank abroad, with a Stock Exchange member or with whoever, in the state in which he operates, has the right to keep a monetary, securities or financial assets account for a client, in violation of the provisions of

- section 22(3);
- (19) he did not carry out transactions for his clients separately from those for his own account, in violation of the provisions of section 22(4);
  - (20) he did not credit or debit clients' accounts with him on the day on which a transaction was carried out, in violation of the provisions of section 22(5);
  - (21) he used a client's money, securities or financial assets otherwise than for the performance of transactions for that client or not according to the agreement that was made with him or the power of attorney that he received from him, in violation of the provisions of section 23(a);
  - (22) he performed a transaction with a client or gained a benefit from a client's assets without having received the client's, written advance consent to that transaction or benefit, in violation of the provisions of section 23(b);
  - (23) he made his remuneration conditional on profits realized by the client from a transaction or from several transactions that were carried out for the client, in violation of the provisions of section 24;
  - (23a) he violated provisions under sections 24B(a) to (c) or (e) or 24B1 about the service or appointment of outside Directors or about restrictions on service on the Board of Directors;
  - (23b) he served as Director on more than two financial bodies at the same time, in violation of section 24B(d), or served as member of an Audit Committee in violation of the restrictions prescribed in section 24H(d);
  - (23c) he violated the provisions of section 24C(b) or (c) about restrictions on the service of a General Manager and the vesting of the General Manager's powers;
  - (23d) he violated provisions under section 24D about qualifications of Directors and committee members, about the internal audit system and the internal enforcement program;
  - (23e) he violated provisions of section 24E(a) or (b) about the conduct of Board of Directors meetings;
  - (23f) he did not keep a protocol of Board of Directors or Audit Committee meetings, as required under sections 24E(c) or 24H(j);
  - (23g) he violated the provisions of section 24F(2) by the Board of Directors not approving the internal audit system and the internal enforcement program during a period of more than six months;
  - (23h) he violated the provisions of section 24F(4) or (5) by the Board of Directors not meeting one of its responsibilities under the said section during a period of more than six months;
  - (23i) he violated the provisions of section 24H(b)(1) or (2) by the Audit Committee, which he had appointed, not discussing the internal auditor's work program or ways of correcting faults that were found;
  - (23j) he violated provisions under section 24H(c) or (d) about the composition of the Audit Committee that he appointed and the restrictions on service on it;
  - (23k) he violated provisions of section 24H(g) or (h) about holding Audit Committee meetings;
  - (24) he did not keep records of a transaction that he performed for a client, of advising that he provided for the client or of a marketing act that he performed toward the client, or did not keep said records for a period of seven years, in violation of the provisions of section 25;
  - (25) he did not give the client a report in violation of the provisions of section 26 or did not include a particular that he should have included in it under the provisions of section



27C, provided there was a special demand to state that particular according to this section;

- (26) he violated a provision under section 28(b);
- (27) he did not deliver information or a document in violation of a demand from the Authority Chairman or from an Authority employee who was so authorized, which was addressed to a supervised factor, as defined in the Securities Law, in violation of the provisions of section 29(b) or in violation of the provisions of section 56A1 of the Securities Law, as made applicable by section 29(c);
- (28) he did not give a notice to his clients or did not publish an advertisement in a newspaper in violation of the provisions of sections 38A(a), 38G or 40C;
- (29) he insured, indemnified or paid monetary composition in the place of another in violation of the provisions of section 38J.

### **Part Two**

- (1) He employed a person in his name in investment advising, investment marketing or portfolio management in violation of his undertaking under section 7(b)(2) or (4) or (c)(1) or (2) or under section 8(b)(2) or (3), as the case may be;
- (1a) he did not comply with a demand given him under section 4A(e);
- (2) he received a benefit, directly or indirectly, in connection with investment advising, investment marketing, the performance of a transaction or the abstention from performing a transaction, other than the remuneration and refund of expenses from the client that were prescribed in an agreement under section 13(b)(3), in violation of the provisions of section 17(a);
- (3) he gave a benefit to one of his employees, one of his branches or one of his units in connection with investment advising, investment marketing, the performance of a transaction or the abstention from performing a transaction, such as is determined in consideration of the identity of the body, the securities that it issued having been the subject of the advising, marketing or transaction or of the identity of the body that is connected to the advising, marketing or transaction, in violation of the provisions of section 17(c);
- (4) he made the calculation of the remuneration or the refund of expenses that are to be debited to a client for investment advising subject to the identity of the body, in respect of whose issued securities or in respect of the financial assets connected to it the advising was provided, or subject to payment by the client to a said body, in violation of the provisions of section 17(d);
- (5) he used the word "advising" or any word derived therefrom in the name under which he conducts his business or in advertisements on his behalf, in violation of the provisions of section 20B;
- (6) he did not submit a report to the Authority or did not give it a notice, explanation, specification, information or documents in the manner and at the time prescribed therefor, in violation of the provisions of sections 10G, 27, 27A, 27C, 42, or in violation of provisions under sections 52AA, 52HHH, 54C(c) or 54F of the Securities Law, as made applicable in sections 38A, 38G and 40C, respectively, or in a report he did not include a particular he should have included or according to the provisions under section 27C(2), on condition that there was a specific demand to include the item under that section;

- (7) he violated the provisions of section 24C(a) about the appointment of a chairman of the Board of Directors;
- (8) he violated the provisions of section 24F(1) about the appointment of a General Manager;
- (9) he violated the provisions of section 24F(3) about the appointment of an internal auditor;
- (10) he violated the provisions of section 24H(a) about the appointment of an Audit Committee.

**SCHEDULE THREE**  
(Section 38B(a))

1. In respect of a company that holds a portfolio management license:

Total asset value (in NIS)	Violation of a provision listed in Part A of the Second Addendum		Violation of a provision listed in Part B of the Second Addendum	
	Fine as a proportion of the total asset value	Minimum fine	Fine as a proportion of the total asset value	Minimum fine
Per each shekel of total asset value up to NIS 50,000,000	1/1,000	20,000	1/400	50,000
Per each shekel of total asset value up from NIS 50,000,001 to NIS 500,000,000	1/9,000		1/3,600	
Per each shekel of total asset value up from NIS 500,000,001 to NIS 5,000,000,000	1/90,000		1/36,000	
Per each shekel of total asset value up above NIS 5,000,000,001	1/450,000		1/180,000	
Maximum fine	200,000		500,000	

2. *repealed*

3. In respect of a body corporate that holds an investment advising or an investment marketing license –
  - (1) violation of a provision enumerated in Part One of Schedule Two:- NS 25,000 multiplied by the number of licensees employed by it, up to the amount of NS 200,000;
  - (2) violation of a provision enumerated in Part Two of Schedule Two:- NS 50,000

multiplied by the number of licensees employed by it, up to the amount of NS 500,000.

4. In respect of a banking corporation –
  - (1) violation of a provision enumerated in Part One of Schedule Two – NS 400,000.
  - (2) violation of a provision enumerated in Part Two of Schedule Two – NS 1,000,000.
5. In respect of an individual holder of a license for portfolio management, investment advising and investment marketing –
  - (1) violation of a provision enumerated in Part One of Schedule Two – NS 10,000.
  - (2) violation of a provision enumerated in Part Two of Schedule Two – NS 15,000.

#### **SCHEDULE FOUR** (Section 38F)

- (1) He violated one of the provisions specified in Schedule Two that applies to him, and in the three years before the commission of the said violation he violated the same provision at least twice and the Authority informed him of the commission of each of the said violations separately, whether or not it imposed monetary composition on him for committing the violation.
- (2) In the course of one year he violated the same provision that is specified in Schedule Two and that applies to him towards several clients as specified below, as the case may be:
  - (a) in respect of a violator that is a banking corporation or a licensee with at least fifty clients – toward at least twenty clients;
  - (b) in respect of a violator that is a licensee with at least twenty, but fewer than fifty clients – toward at least ten clients;
  - (c) in respect of a violator that is a licensee with fewer than twenty clients – toward a majority of his clients;
- (3) he engaged in investment advising without holding an advising license or engaged in investment advising not as an individual or as employee of a company that holds an advising license or a portfolio management license and also engages in advising, or not as employee or partner of a partnership that holds an advising license, in violation of the provisions of section 2(a);
- (4) he engaged in portfolio management without holding a portfolio management license or engaged in portfolio management not in a company that holds a portfolio management license, in violation of the provisions of section 2(b);
- (5) he engaged in investment marketing without holding a marketing license or engaged in investment marketing not as an individual or as employee of a company that holds a marketing license or a portfolio management license and also engages in marketing, or not as employee or partner of a partnership that holds a marketing license, in violation of the provisions of section 2(b1);
- (6) he employed in his name in investment marketing of financial assets that are managed by him or that were produced and issued by him a person who does not hold a marketing license or a portfolio management license in violation of the provisions of section 2(b2);

- (7) whoever is not a licensee and provided investment advising in communications media without including a notice whether or not he has a personal interest in the subject or a notice that giving advice does not substitute for advising that takes each person's special data and needs into account, in violation of the provisions of section 3(b), except if he gave the said notices to the communications medium and received its written undertaking that the said notices would be included in the publication;
- (8) he proposed to provide services in violation of the provisions of section 3A;
- (9) *deleted*;
- (10) *deleted*;
- (10a) he controlled a portfolio manager that is a significant financial body or held means of control in a said portfolio manager in violation of the provisions of section 4A;
- (11) he engaged in portfolio management in violation of the provisions of section 9(a);
- (12) he employed in his name in investment advising a person who is not one of those enumerated in section 9(b);
- (13) he served as officer in a licensed body corporate that is a body corporate connected to a banking corporation, while serving as officer or employee in the banking corporation or in another affiliated body corporate thereof, in violation of the provisions of section 9(d);
- (14) he engaged in investment marketing not in the manner said in section 9(c1), in violation of the provisions of section 9(f);
- (15) he gave preference to his personal interests or to the interests of another person over the welfare of his clients or gave preference to the interest of one client over that of another client, in violation of the provisions of section 11;
- (16) he did not adapt the advising or marketing that he performs for a client or the nature of the transactions that he performs for him to the needs and directions of the client, in violation of the provisions of section 12;
- (17) he did not disclose to a client, by proper disclosure, all the matters substantive for the advising or for the marketing that he provides or for a proposed transaction, in violation of the provisions of section 14;
- (18) he did not inform a client of the existence of a conflict of interests between him and the licensed body corporate in which he is employed or is a partner and the client in the manner prescribed under section 15(a) or (b), or he carried out an act that involves a conflict of interests, without having received the client's consent thereto in advance in the manner prescribed in section 15(a);
- (19) while providing investment advising or portfolio management he gave preference to his securities or financial assets or to those of a body corporate connected to the body corporate by which he is employed or in which he is a partner because of the said connection, in violation of the provisions of section 16(a);
- (20) he included a notice according to which he has no personal interest in a subject, while he did have a personal interest in the subject, in violation of the provisions of section 16A(d);
- (21) he provided advising or performed an act with a financial asset, to which an institutional body that holds 10% or more of any kind of means of control in the adviser is connected, in violation of the provisions of section 17A;
- (22) he contracted an exceptional agreement with an institutional body without having received written advance approval by the Authority Chairman, and if it is a banking corporation – also from the Supervisor of Banks, in violation of the provisions of section 17B(a);
- (23) he did not inform a client of a special risk involved in the performance of a transaction

- that is not one of the transactions specified in section 18(c), in violation of the provisions of section 18(a);
- (24) he performed for a client a transaction that is not one of the transactions specified in section 18(c) and the performance of which involves a special risk, without the client having given his advance written approval of that transaction or of transactions that involve that type of risk, in violation of the provisions of section 18(b);
  - (25) he engaged in underwriting in violation of the provisions of section 20D(a), or engaged in an activity that is not one of the activities enumerated in section 8(b)(1), in violation of the provisions of section 20D(b);
  - (26) he did not give a client a report in violation of the provisions of section 26, and he should have known that that can mislead the client;
  - (27) he did not submit a report to the Authority or did not give it a notice, explanation, specification, information or documents in the manner and at the time prescribed therefor, in violation of the provisions of sections 27, 27A, 27C or section 42, or in violation of the provisions of sections 52AA, 52HHH, 54C(c) or 54F of the Securities Law, as made applicable in sections 38A, 38G and 40C, respectively, and he should have known that that can mislead a reasonable investor;
  - (28) he included a misleading particular in a report in violation of the provisions of section 26(d) or section 27C and he should have known that that can mislead the client or a reasonable investor, as the case may be;
  - (29) he disclosed the content of information or of a document that he received by virtue of his position, in violation of the provisions of section 28(d)(2).