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### **Memorandum of Law**

#### Improving Efficiency in Securities Regulation (Legislative Amendments) 5780-2020

1. Amendment to the Joint Investments in Trust Law (Amendment No. \_\_\_\_\_)
2. Amendment to the Regulation of Investment Advice, Investment Marketing and Portfolio Management Law (Amendment No. \_\_\_\_\_)
3. Amendment to the Securities Law (Amendment No. \_\_\_\_\_)
4. Transitional Provisions

Explanatory Notes

General

## **A. Title of the Proposed Law**

Improving Efficiency in Securities Regulation (Legislative Amendments) 5780-2020

## **B. The Aim of and Need for the Proposed Law, Main Regulations, and Effect on Existing Law**

Securities is a highly dynamic field, with developments occurring frequently in the capital market. There is a need for the ability to rapidly adjust regulation in this field to these changes, in order to support efficient supervision and market development, and remove needless requirements.

The field of securities is also subject to technical/professional requirements, such as the types assets and percentage holdings permitted in mutual funds, or detailed reporting by licensees to their customers. The professional nature of these rules also calls for significant flexibility and attentiveness to market developments.

While the majority of securities laws are enacted in primary and secondary legislation, these procedures are not suitable for all the regulation in this field. Not only is legislation unnecessary with respect to specific, complex, professional rules that are subject to frequent modifications and adjustments over time, but experience also shows that a long time elapses — sometimes even many years — from the date on which a need to revise a provision of law is recognized until the date the amendment is effectively passed. This difficulty exists in ordinary times and is aggravated in times of crisis, as in current coronavirus crisis and its impact on the capital market. In a market seriously affected by a crisis, the ability to respond rapidly to market developments becomes all the more important. Therefore, the ISA requires the appropriate authority to independently and quickly determine rules through directives rather than legislative amendments.

This Proposed Law concerns the authorization of the ISA to determine rules on the following specific topics that the ISA has found call for extensive flexibility in formulating rules and adjusting them to the market situation: Investment restrictions; asset diversification and evaluations in mutual funds; equity, insurance, and reports of licensed portfolio managers, investment advisors, and investment marketers; special disclosure rules for reporting entities; and leverage in trading platforms to their own account.

## **C. The effects of the Proposed Memorandum of Law on the Budget and the Staffing Needs of the Initiating Office, Other Government Ministries, and Other Authorities**

No impact on the budget or staffing needs is expected.

## **D. The text of the Memorandum of Law and explanatory notes.**

## Memorandum of Law submitted by the Ministry of Finance

### Improving Efficiency in Securities Regulation (Legislative Amendments) 5780-2020

Amendment

No. \_\_\_\_\_ to

the Joint

Investment

Trust Law

1. In the Joint Investment Trust Law 5754-1994<sup>1</sup> (“the Joint Trust Law”) -
  - (1) In Section 43(b), “The Authority may prescribe provisions” shall replace “The Minister of Finance may, in regulation, prescribe provisions.”
  - (2) In Section 46 -
    - (a) In (d), “the Authority may issue directives, generally or by categories of funds, concerning the day” shall replace “The Minister of Finance may prescribe by regulations, generally or by categories of funds, the day.”
    - (b) In (e), “the Authority may issue directives, generally or by categories of funds, the days” shall replace “The Minister of Finance may prescribe by regulations, generally or by categories of funds, concerning the days.”
  - (3) In Section 50(b), “The Authority may issue directives” shall replace “the Minister of Finance may make provisions in regulations.”
  - (4) In Section 56(b), “The Authority may issue directives” shall replace “the Minister of Finance may make provisions in regulations.”
  - (5) In Section 57(b)(3), “The Authority may issue directives” shall replace “the Minister of Finance may make provisions in regulations.”
  - (6) In Section 59, “instructed by the Authority, and all that of the categories and on the conditions that it determined in

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<sup>1</sup> Book of Laws 5754, p. 308; 5779, p. 251.

directives” shall replace  
“designated by the Minister of Finance in regulations, and all  
that of the categories and on the conditions that he prescribed.”

(7) In Section 62(b), “The Authority may issue directives, generally or for categories of funds, conditions for buying” shall replace “The Minister of Finance may prescribe, generally or for categories of funds, conditions for buying.”

(8) In Section 63, ““The Authority may issue directives, generally or for categories of funds, conditions” shall replace “The Minister of Finance may prescribe by regulations, generally or for categories of funds, conditions.”

(9) In Section 64 -

(a) In (a), “The Authority may issue directives, generally or for categories of funds, concerning the conditions” shall replace “The Minister of Finance may prescribe by regulations, generally or for categories of funds, the conditions.”

(b) In (c) “The Authority may issue directives concerning the manner of calculating the value of the underlying asset” shall replace “The Minister of Finance may prescribe, by regulations, the manner of calculating the value of the underlying asset.”

(10) In Section 65 -

(a) In (a), “but the Authority may issue directives concerning the categories of transactions that a Fund Manager may perform on credit, on conditions it determines, and may also” shall replace “But the Minister of Finance may prescribe, by regulations, categories of transactions that a Fund Manager may carry out on credit on conditions that he prescribed and he may also prescribe”

(b) In (b), “The Authority may issue directives, generally or for categories of funds, concerning the maximum rate of a fund's obligations in proportion to its net asset value, and may set different proportions for

different categories of obligations” shall replace  
”The Minister of Finance may prescribe by regulations, generally or for categories of funds, the maximum rate of a fund’s obligations in proportion to the net value of its assets, and he may set different proportions for different categories of obligations.”

(c) In (c), “set by the Authority in directives” shall replace “set by the Minister of Finance.”

(11) Section 65A - revoked.

(12) In Section 97(b1) -

(a) In (1), “and Sections 43(b), 46(d) and (e), 50(b), 56(b), 57(b)(3), 59, 62, 63, 64(a), and 65” shall come after “under subsection (b).”

(b) In (2), “directives under subsection (b1)(1)” shall replace “instructions under subsection (b).”

(13) In Schedule One -

(a) In Part Two -

(1) In item (14), the words “or 65A(a)(1)” shall be deleted.

(2) In item (17), “instructed by the Authority” shall replace “prescribed by the Minister of Finance.”

(b) In Part Three, in item (21), “instructed by the Authority” shall replace “prescribed by the Minister of Finance.”

Amendment

No.

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the

Regulation

of

2. In the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law 5755-1995<sup>2</sup> (“the Advice Law”) -

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<sup>2</sup> Book of Laws 5755, p. 416; 5779, p. 251.

Investment  
Advice,  
Investment  
Marketing  
and  
Investment  
Portfolio  
Management  
Law, 1995

(1) In Section 7 -

(a) In Section 7(b), the following will replace (3):

“(3) the partnership has insurance or alternatives to insurance in such amounts and under such terms as the Authority determines in directives;”

(b) In Section 7(b1) -

(1) In (3), the text will be marked (a), and will be followed by:

“(b) The Authority may a reduction or increase in said amount, taking into consideration, among other things, the risks that characterize the association’s operations, provided that an increase in the amount in such a manner will be in effect for a limited period as instructed by the Authority;”

(2) In (4), “insurance alternatives in such amounts, proportions, and on conditions that the Authority will determined in directives” shall replace “bank guaranties, deposits or securities in amounts, in proportions, and on conditions that will be prescribed by regulations.”

(c) In (c)

(1) In (3), the text will be marked (a), and will be followed by:

“(b) The Authority may instruct a reduction or increase in said amount, taking into consideration, among other things, the risks that characterize the company’s operations, provided that an increase in the amount in such a manner will be in effect for a limited period instructed by the Authority;”

(2) In (4), “insurance alternatives in such amounts, proportions, and on such conditions as the Authority will determine in directives” shall replace “bank guaranties, deposits or securities in amounts, in proportions, and on conditions that will be prescribed by regulations.”

(d) In (e), “a(4) and (5), (b1)(3) and (c)(3)” shall replace “(a)(4) and (5), (b)(3) and (c)(3) and (4).”

2 In Section 8 -

(a) In (b) -

(1) In (4), the text will be marked (a), and will be followed by:

“(b) The Authority may instruct a reduction or increase in said amount, taking into consideration, among other things, the risks that characterize the company’s operations, provided that an increase in the amount in such a manner will be in effect for a limited period instructed by the Authority;”

(2) In (5), “insurance alternatives in such amounts, proportions, and on such conditions that the Authority will determine in directives” shall replace “bank guaranties, deposits, or securities in amounts, in proportions, and on conditions that will be prescribed by regulations.”

- (b) In (d), “(a)(4) and (5), and (b)(4)” shall replace “(a)(4) and (5), and (b)(4) and (5).”
- 3. In Section 20C(b), “that the Authority will determine in directives concerning insurance or insurance alternatives” shall replace “that the Minister of Finance will prescribe – in consultation with the Authority and with approval by the Knesset Finance Committee – in respect of insurance”
- 4. In Section 26 -
  - (a) The following will replace subsection (a):

“(a) A licensee and banking corporation will deliver to clients periodic reports and additional reporting that contain such details as instructed by the Authority in directives, in such manner, on such dates, and for such periods as the Authority instructs.”
  - (b) The following will come after subsection (a):

“(a1) The Chair of the Authority may, for reasons that will be recorded, exempt a licensee or banking corporation from submitting reports under this section, or may extend the period for their submission.”
  - (c) Subsection (c1) - revoked.
- 5. Section 27 - the following will come after subsection (g):

“(h) The Authority will define the details that must be included in the reports under this Section, the dates of their preparation and submission, and their format, and the Authority may determine additional reports that a licensee or banking corporation must submit to the Authority. Furthermore, the Authority may instruct that such reports be made public and the manner of such publication.”

“(i) The Chair of the Authority may, for reasons that will be recorded, exempt a licensed corporation, fund manager, banking corporation, or any

categories of the same, from submitting reports or notices under this section, or may extend the period for their submission.”

6. Section 27C - revoked.
7. In Section 28(c) -
  - (a) In (1), the following text will come after “subsection (b)”: “and sections 7(b)(3), (b1)(3) and (4), (c)(3)(b) and (4), and 8(b)(4) and (5), 26(a), and 27(h).”
  - (b) In (2), “as stated in subsection (1)” will replace “under subsection (b).”
8. In Schedule Two -
  - (a) In Part One, in item (25), the words “under the provisions of section 27C” shall be deleted.
  - (b) In Part Two, item (6) -
    - (1) The words “27C” shall be deleted;
    - (2) The words “under section 27” shall replace “under section 27C(2).”
9. In Schedule Four -
  - (a) In item (27), the words “27C” shall be deleted.
  - (b) In item (28), “or section 27(h)” shall replace “or section 27C.”

Amendment  
No. \_\_\_\_ to  
the  
Securities  
Law

3. In the Securities Law 5728-1968<sup>3</sup> (“the Securities Law”) -

1. Section 15E shall be replaced with the following:

“(a) If the Authority concluded that it is necessary to do so in order to protect the interest of the public that invests in the securities, the Authority may define rules concerning exemptions from provisions related to the details in a

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<sup>3</sup> Book of Laws 5728, p. 234; 5779, p. 63.

prospectus and to the structure and format of a prospectus, under this Chapter, or additional disclosures beyond the disclosures stated herein, provided that such rules will be with respect to categories of offers, securities, or corporations whose features required a different disclosure, and the specific details required in their case were not determined in the directives under Law.

(b) The Authority will publish a notice in Reshumot on the determination of rules under subsection (a) and their date of application.

(c) Rules under subsection (a) and any modification to them will be available for perusal by the public at the Authority's offices, and will be published on the Authority's website, and the Authority may instruct additional modes of publication."

2. Section 36A shall be replaced with the following:

"(a) If the Authority concluded that it is necessary to do so in order to protect the interest of the public that invests in the securities, it may define rules concerning an exemption from the provisions concerning details in reports under this Chapter, or disclosures in addition to the information contained in such reports, provided that the rules will address categories or securities or corporations, whose features require a different disclosure in their matter and specific details required in their case were not determined in the directives under Law.

(b) The Authority will publish a notice in Reshumot on the determination of rules under subsection (a) and their date of application.

(c) Rules under subsection (a) and any modification to them will be available for perusal by the public at the Authority's offices, and will be published on the Authority's website, and the Authority may instruct additional modes of publication.

(d) The Minister of Finance, with the approval of the Knesset Finance Committee, may issue directives pursuant to which the Authority will be permitted to make general rules on the

implementation of an International Financial Reporting Standard, as defined in section (c), in the reports under this section, prior to the date on which the Standard becomes mandatory; Such rules and any modification to them will be published on the Authority's website, and notice of the publication and the date on which they come into force will be published in Reshumot."

3. In Section 44CC, subsection (1) - shall be deleted.

4. The following text shall come after Section 44CC:

"Regulations  
concerning  
leverage

44CC1 (a) The Authority may issue directives in the matter of the permitted degree of leverage of the financial instruments traded on the platform, including different degrees of leverage in respect of different categories of financial instruments.

(b) The provisions stated in subsection (a) and any modification to them will be published on the Authority's website, and notice of the publication and the date on which they come into force will be published in Reshumot."

5. In Section 53 -

In subsection (a)(4), "a directive of the Authority under Section 15E" shall come after "did not comply with."

(a)

(b) In subsection (b) -

In subsection (1b), the following text shall be added "or failed to comply with a directive of the Authority under Section 15E."

(1)

In (5a), the words "or instruction" shall be deleted.

(2)

6. In Schedule Five -

In item (3), "36A" shall be added after "sections 26(c), 30, 35N(f), 35O(a), 35W(b), 35X, 35EE(a), 36."

(a)

In item (6), the words "in a draft prospectus, prospectus, periodic report, or immediate report

(b)

according to the Authority's directives under Section 15E or Section 36A" shall replace "in a periodic report or in an immediate report according to the Authority's directions and instructions under section 36A."

7. In Schedule Seven -

In Part Two, item (13), "in violation of the directives under Section 44CC1(a)" shall replace "in violation of

(a) the provisions of section 44CC(1)."

(b) In Part Three, item (2), "36A" shall be added after "in violation of provisions under sections 25(d), 26(c), 30, 35N(f), 35O(a), 35W(b), 35X, 36."

Transitional Provisions 4.

(a) Regulations prescribed by the Minister of Finance before this Law comes into effect in Reshumot, by the power vested in him under Sections 43(b), 46(d) and (e), 50(b), 56(b), 57(b)(3), 59, 62(b), 63, 64, 65(a)-(c), and 131(a) of the Joint Investment Law, under Sections 7(b)(3), (b1)(3) and (4), (c)(3), (4), and (e), 8(b)(4), (5), and (d), 20C(b), 27C and 42 of the Advice Law, and under Sections 36A(f), 44CC(1) to the Securities Law, on the matters in which the authority to issue directives was passed to the Authority ("Authority") by this Law, and which were in force on the eve of the publication of this Law in Reshumot, will remain in force as long as they are not revoked or replaced by a directive of the Authority under the authority vested in it under said sections, and passed to it under this Law.

(b) If the Authority issued a directive that revokes or replaces regulations prescribed by the Minister, as stated in subsection (a), the Authority will provide details of the list of revoked or replaced directives, in a notice published in Reshumot according to Section 97(b1) of the Joint Investment Law, according to Section 28(c) of the Advice Law, or Section 44CC1(a) of the Securities Law concerning such directives.

## Explanatory Notes

### General

Securities is a highly dynamic field, with developments occurring frequently in the capital market. There is a need for the ability to rapidly adjust regulation in this field to these changes, in order to support efficient supervision and market development, and remove needless requirements.

The field of securities is also subject to technical/professional requirements, such as the types assets and percentage holdings permitted in mutual funds, or detailed reporting by licensees to their customers. The professional nature of these rules also calls for significant flexibility and attentiveness to market developments.

While the majority of securities laws are enacted in primary and secondary legislation, these forms of law are not suitable for all the regulation in this field. Not only is legislation unnecessary with respect to specific, complex, professional rules that are subject to frequent modifications and adjustments over time, but experience also shows that a long time elapses — sometimes even many years — from the date on which a need to revise a provision of law is recognized until the date the amendment is effectively passed. This difficulty exists in ordinary times and is aggravated in times of crisis, as in the case of the coronavirus crisis and its impact on the capital market. In such circumstances, where the market is gravely affected by the crisis, it becomes all the more important to respond rapidly to market developments.

In view of the above, the ISA requires the appropriate powers to independently and quickly determine rules through directives rather than legislative amendments. It is proposed to extend the authority that already exists in law. It should be noted that the ISA's authority to issue directives is much more limited than the powers of corresponding regulators in the capital market (the Bank of Israel, and the Capital Market, Insurance, and Savings Authority), and more limited than the powers of other securities regulators around the world to issue directives, including the US Securities and Exchange Commission (SEC), which regulates securities in the US, and the Financial Conduct Authority (FCA) that regulates securities in the UK.

The proposed change does not create a sweeping change in securities laws. Rather, it is designed to address several specific topics in which the ISA has found that flexibility is needed in formulating directives and adjusting them to market conditions. The proposed Law concerns the ISA's authority to issue directives on restrictions on investments, asset diversification, and pricing in mutual funds; directives concerning equity, insurance, and reporting requirements of licensed investment portfolio managers, investment advisors, and investment marketers; Special disclosure rules for reporting entities; and changes in the permitted degree of leverage in trading on platforms to their own account.

**Section 1** - Regulations under the Joint Investment Trust Law 5754-1994 (“the Joint Investment Trust Law”) define a very detailed set of investment rules for mutual funds. It is proposed to authorize the ISA to issue directives concerning rules of investment, diversification, and valuations. Directives on

these issues are rather technical and detailed in nature, and therefore flexibility in their determination and rapid adjustment to market circumstances is warranted. Today, the Minister of Finance has the authority to prescribe regulations on these matters, alongside the ISA's limited authority to issue provisional directives, but these do not obviate the need for lengthy and complex legislative procedures. The need for flexibility with respect to investment rules emerged all the more forcefully recently, when significant market fluctuations seriously challenged mutual funds' efforts to comply with the ordinary investment rules. Furthermore, rigidity of rules significantly limits the development of the mutual fund market and the launch of new classes of funds.

The directives will be published on the ISA website and notice of their issue and date of application will be published in Reshumot, similarly to other directives concerning mutual funds that are published under Section 97 of the Joint Investment Trust Law. The application date of these directives will not precede their publication date in Reshumot.

**Section 2** - The conditions for licensees according to the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law 5755-1999 ("the Advice Law") include compliance with equity and insurance requirements, based on the inflexible terms and amounts determined in the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 5760-2000.

In recent years, ISA Staff has encountered numerous complaints by licensees regarding the high costs imposed on them, due to the small size of the market with unique features, in which only few insurance companies are interested or able to operate. This problem was exacerbated by the market crisis caused by the coronavirus outbreak. It is therefore proposed to authorize the ISA to issue regulations that define the amounts and percentages of the insurance and permit the use of suitable alternatives. For example, the insurance requirement may be reduced if a certain level of equity is obtained, or the requirement might allow the use of insurance alternatives in lieu of equity or insurance.

It is also proposed to authorize the ISA to issue directives on the reports that licensees are required to submit to clients or to the ISA. The directives are highly detailed. Such authority would give the ISA the necessary flexibility to quickly adjust the required information and the timing of the reports to the state of the market and to technological developments.

Such directives will be published on the ISA website and notice of their issue and date of application will be published in Reshumot, similarly to other directives concerning licensees that are published under Section 28 of the Advice Law. The application date of these directives will not precede their publication date in Reshumot.

**Section 3 , paragraphs (1), (2), (5), (6) and (7)(b)** - Regulations under the Securities Law determine disclosure requirements for reporting entities, both in the securities issue stage (disclosures in prospectuses) and when securities are held by the public (disclosures in periodic and immediate

reports). It is proposed to authorize the ISA to define special rules of disclosure for reporting entities' prospectuses or ongoing reports where the ISA believes that different disclosures are required in their case, and are required to protect the interest of public investors in securities. Such authority would facilitate the adjustment of disclosures to classes of corporations or securities, for which the general disclosure requirements defined in the Regulations are not suitable. Disclosure requirements are highly detailed and professional and therefore it is not feasible to define disclosure requirements for each class of corporations and securities. The authority to determine special disclosure requirements is consistent with the directives and the approach reflected in law concerning the disclosures that are relevant for reasonable investors, and will facilitate market development and create legal certainty for both corporations and for investors.

It is further proposed to amend Schedule Five and Schedule Seven of the Securities Law, in order to adjust the list of violations subject to monetary fines and the administrative violations listed in these Schedules to include the provisions of the Proposed Law.

**Section 3, paragraphs (3), (4), and (7)(a)** - Section 44CC of the Securities Law determines that the Minister of Finance may, on a proposal by the ISA or in consultation with it and with approval by the Knesset Finance Committee, prescribe provisions on several matters related to trading platforms on their own account, including but not limited to the permitted degree of leverage of the financial instruments traded on a platform, and the degree of leverage for various classes of financial instruments.

The implication of the leverage inherent in a financial instrument traded on a platform is that the client is not required to deposit the full nominal value of their transactions on the platform, but rather only a proportion of the transaction value. Leverage increases the client's risk because when leverage is high, only small movements in the underlying asset in the direction opposite to the client's position are sufficient to cause the platform to close the client's positions, which results in a loss of the client's investments.

It is proposed to authorize the ISA to determine regulations concerning leverage rates, to replace the relevant text in the Regulations. Determination of leverage rates in a rapid procedure by the ISA will create flexibility and facilitate rapid responses to those market changes that justify a change in leverage rates in order to protect the investors who trade on these platforms. The need to grant such authority to the ISA emerged all the more forcefully during the market crisis caused by the coronavirus outbreak, which led to high fluctuations that increased the probability that investors on such platforms would quickly lose all their investments.

As a supplementary amendment, it is proposed to amend Schedule Seven of the Securities Law, which lists the administrative violations, and to include in the list the violation of a directive issued by the ISA.

