



רשות ניירות ערך

ISRAEL SECURITIES AUTHORITY

מחלקת תאגידים . www.isa.gov.il

Staff Position

The positions of the ISA Staff presented below are professional positions that reflect decisions and positions of the Staff on issues related to the implementation of laws under the supervision of the ISA. The content of the published positions guides the ISA and the Staff in the exercise of their powers and the public can use them and apply them in similar circumstances.

5 Nisan 5780
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Clarification of Legal Position no. 101-22: Holding of shares that are part of a swap trade

On February 28, 2019, the Israel Securities Authority (hereafter: the ISA) Staff published Legal Position number 101-22 regarding the holding of shares that are part of a swap trade (hereafter: the Position).¹ According to the Position, and as a rule, in a swap trade as defined in the Position, the two sides of the trade are to be viewed as “holders” of the shares in the trade and as “holding securities together with others”, according to the definition of these terms in the Securities Law, 5728 – 1968 (hereafter: the Law).

In the Position, the ISA staff characterizes the swap trades and describes the need to formulate the Position in view of the instances in which swap trades have been used in order to circumvent the intent of reporting the holdings of principal shareholders and the control of a corporation, as well as the intent of the Tel-Aviv Stock Exchange’s rules regarding the minimal rate of public holdings; whose goal is to reliably differentiate between a principal shareholder in the corporation and the public.

In view of the enquiries received from various entities in the market regarding the scope of the Position’s application, and among other things, in order to increase the financial flexibility in the market in view of the effects of the Covid-19 virus, the ISA Staff is hereby clarifying that the Position does not apply to swap trades of a purely financial nature. These include, for example, an agreement between two sides in order to simply purchase a monetary exposure, according to which each of the sides commit to paying the other an amount derived from the change in the price of the company’s shares by a certain date, without either side, or anyone on their behalf, actually holding the shares in the trade.

In this context, and as a rule, even if one of the following characteristics exists, the swap trade will be considered to be a purely financial trade, that does not lead to a change in the holdings of the sides in a trade involving the underlying asset:

¹ Following is the link to the Position on the ISA site: (Hebrew Version)
http://www.isa.gov.il/%D7%92%D7%95%D7%A4%D7%99%D7%9D%20%D7%9E%D7%A4%D7%95%D7%A7%D7%97%D7%99%D7%9D/Corporations/Staf_Positions/SLB_Decision/Control_Oner/Documents/SLB_SWAP.pdf

- The swap trade does not result in a deviation to above the threshold of holdings that is specified in the Securities Law (5 percent), in the Companies Law (25 percent, 45 percent and 90 percent) or in the Tel-Aviv Stock Exchange rules (regarding the public holdings), such that even if the shares in the trade swap are considered to be holdings of one side or the other in the transaction, this does not involve a crossing of the aforementioned thresholds (whether from above or below, according to the circumstances).
- The side acquiring exposure to returns on shares in the swap trade is an institutional entity.²

It should be emphasized that if in the aforementioned cases the swap trade is carried out by a principal shareholder in the company, a disclosure of this is required as part of the reporting of holdings of principal shareholders, including the proportion of the shares in the swap trade and the terms of the trade,³ even if it does not change the proportion of holdings in the company.

Finally, it should be mentioned that the ISA Staff is amending the Position such that in swap trades that are under its purview, the ISA Staff will view each of the sides in the trade as a holder of the shares; however, it will not view the sides in the trade as holding securities together with others in the absence of any indication of collaboration between them.

² The ISA Staff will view an institutional body as one that is included in items (1) to (4) of the First Addendum to the Law and also a body that is fully owned by one of them.

³ [According to reg. 33\(C\)\(16\) to the Securities Regulations \(Periodic and Immediate Reports\), 1970.](#)