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## **Israel Securities Authority**

### **Draft of amendment to Joint Investments Trust Regulations (Foreign Fund Unit Offerings), 5776 – 2016**

Version for public comments

Comments will be accepted until January 15<sup>th</sup> 2021

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We draw your attention to the manual published by the ISA regarding the initiation of regulation – see: [http://www.isa.gov.il/Download/IsaFile\\_7067.pdf](http://www.isa.gov.il/Download/IsaFile_7067.pdf). According to the manual, the main comments from the public will be put into a document with the formulated version of the regulation together with the names of the respondents from the public. See also paragraph 7 of that manual regarding special requests not to publish said names.

## **Explanation**

As of 2017 and in accordance with Amendment 23 to the Joint Investments Trust Law, 5754 – 1994, foreign funds that meet the requirements specified in the **Joint Investments Trust Regulations (Foreign Fund Unit Offerings), 5776 – 2016** (hereafter: “Foreign Fund Regulations”) and have obtained approval from the Israel Securities Authority (ISA) can offer their units to the public in Israel.

The Foreign Fund Regulations stipulate the conditions for registration of a foreign fund in Israel. The examination for dual-listing of foreign funds is based primarily on the law according to which the fund operates (in this regard, Regulation 2(a)(6) states that the laws are UCITS (The Undertakings for Collective Investment in Transferable Securities) Directive or the American Investment Company Act of 1940 (hereafter: “American law”). In addition, with respect to a foreign ETF, the regulations state that it must be listed on a foreign stock exchange. with reference to the definition of a “foreign stock exchange” in the Securities Law, 5738 – 1968 (hereafter: the “Securities Law”).

In other words, the condition for dual- listing of foreign ETFs that are traded on a foreign stock exchange essentially rests on the dual-listing arrangement set forth in the Securities Law.<sup>1</sup> This arrangement is based

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<sup>1</sup> The stock exchanges listed in the second and third additions to the Securities Law are:

Second Addition

(paragraph 1)

Foreign stock exchanges

1. New York Stock Exchange (NYSE)
2. NYSE American
3. National Association of Securities Dealers Automated Quotation Global Select Market – (NASDAQ)
4. NASDAQ Global Market

Second Addition A

(paragraph 35-33-1)

Foreign stock exchanges

- (1) New York Stock Exchange (NYSE);
- (2) National Association of Securities Dealers Automated Quotation Global Select Market (NASDAQ).

Third Addition

(paragraphs 1, 35-28, 35-20 and 35-31)

on the suitability of the laws, the supervision in practice and the market discipline that exists on these stock exchanges with respect to traded corporations, and it is basically intended to encourage Israeli companies which have listed their shares on foreign stock exchanges to be listed also on the Tel Aviv Stock Exchange (TASE). Accordingly, the examination and the evaluation of these stock exchanges in order to include them within the dual-listing arrangement in the Securities Law is suited to the corporate category but is not necessarily suitable for the examination that should be examined with respect to dual-listing of foreign ETFs.

The reliance on the dual-listing arrangement in the Securities Law is doubly problematic, in that on the one hand stock exchanges that are not suited to the arrangement may be included in the list of relevant stock exchanges for foreign funds. On the other hand, foreign stock exchanges that are suited to the arrangement may not be included in the list of stock exchanges that are relevant for foreign funds. Thus, for example, foreign ETFs that are listed for trade on the leading stock exchanges for trade in ETFs, which are not included in the Addition to the Securities Law, cannot be dual-listed in Tel Aviv. Another problem is that the list of relevant stock exchanges is liable to change from time to time. For example, the FCA recently published an advisory document regarding its intention to transfer all of the ETFs traded on the London Stock Exchange from the Premium List to the Standard List, which is not included in the Addition to the Securities Law.

Until now, only 23 ETFs, under one fund manager, listed for trade on the Premium List of the London Stock Exchange, have been listed for trade on the TASE, while the majority of ETFs are listed on other leading European stock exchanges and therefore they are blocked from listing for trade on the TASE. The ISA staff has also received enquiries from the managers of foreign funds who consider this problem to be a barrier to listing the ETFs under their management for trade on the TASE. In view of the aforementioned, the ISA believes that a separate list of stock exchanges should be created in the Foreign Fund Regulations. This list will include the leading foreign stock exchanges on which foreign funds are traded in Europe and the US, based on the view that the basic condition for approval of these funds by the ISA is that they must first and foremost be supervised and regulated under the UCITS Directive or under the American law.

The ISA staff has carried out a mapping of the relevant stock exchanges and has identified the leading ones in the ETFs market, in which most or all of the ETFs traded on them operate according to the UCITS Directive or the American law. To carry out that mapping, various parameters were taken into account, such as level of daily trading volume, number of traded funds and value of the traded funds' assets on each stock exchange, in order to ensure that the list of stock exchanges will focus on the most liquid stock exchanges and those with the highest trading volumes.

An in-depth examination of the matter revealed that the main consideration in approving ETFs for dual-listing should be based on the law applying to the foreign fund, as well as the supervising regulator, since in contrast to the listing for trade of corporations, most of the supervisory standardization with respect to ETFs is not determined by the stock exchanges. Therefore, the ISA staff are in favor of creating a list of leading stock exchanges on the basis of the aforementioned quantitative data along with reliance on the relevant laws that apply to the foreign funds and familiarity with the relevant regulator of each stock exchange.

### **The proposed amendment**

It is proposed that the Foreign Fund Regulations be amended such that the list of recognized stock exchanges for the purposes of listing of an ETF for trade on the TASE will be determined separately from the definition of a foreign stock exchange according to the Securities Law and will be based on various quantitative parameters, such as trading volume, number of traded funds and value of the assets on each stock exchange. This amendment will essentially lead to the creation of a separate list of stock exchanges for the purpose of

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(A foreign stock exchange according to the decision of the Minister of Finance)

Following are the foreign stock exchanges in the context of paragraph 35-18 of the law:

- (1) –the NASDAQ Capital Market;
- (2) –List of the London Stock Exchange's Main Market (Official U.K. Listing Authority), Premium Listing;
- (3) –London stock Exchange's Main Market, High Growth Segment;
- (4) –The Stock Exchange of Hong Kong (HKEX) Limited Mainboard, Primary Listing.
- (5) –Singapore Exchange Mainboard (SGX), Primary Listing;
- (6) –Toronto Stock Exchange (TSX), Primary Listing

dual-listing of funds, while creating significant modifications to the list of stock exchanges currently existing in the Second and Third Additions to the Securities Law (stock exchanges for dual-listing of corporations). Recognition of the stock exchanges proposed below, which in the opinion of the ISA meet the proposed conditions, will create a potential for recognition and dual-listing of the vast majority of ETFs traded in Europe and almost 100 percent of the ETFs traded in the US, and all on the condition that they also meet the rest of the conditions listed in the Foreign Fund Regulations and the bylaws of the TASE.

The qualitative test for the approval of foreign funds by the ISA is based on their being, first and foremost, supervised and regulated under the UCITS Directive or under the American Law as stipulated by the Foreign Fund Regulations. Therefore, recognition of the stock exchanges for the purpose of listing of an ETF will be carried out according to tests that show a significant volume of trade in the funds in those stock exchanges (in contrast to the dual-listing arrangement in the Securities Law in which any addition of a stock exchange is considered using a subjective test and is decided on by the Minister of Finance in a directive).

**It is proposed that an amendment be made to the paragraph of definitions in the Foreign Fund Regulations, such that the existing definition will be replaced with the following one:**

““Foreign stock exchange” – a stock exchange characterized by significant trading in mutual funds;”

Following is a list of stock exchanges that in the opinion of the ISA currently appear to meet the proposed conditions:

<b>Country</b>	<b>Main stock exchange</b>
UK	LSE
Germany	Berlin
Switzerland	BX Worldcaps
Switzerland	SIX Swiss Ex
Germany	Xetra ETF
Italy	Borsa Italiana
Europe	EuroNext
USA	NYSE Arca
USA	NASDAQ GM
USA	BZX