



ISRAEL SECURITIES AUTHORITY

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

Proposed Amendment to Regulation of Investment Advising, Investment Marketing, and Portfolio Management (Amendment no.) (General Investment Advising) Law 5780-2020

1. In this Law –

...

“**Supervisor of Banks**” — as defined in the Banking Ordinance 1941;¹

...

“**Securities**” – Securities, as defined in Section 1 of the Securities Law, [that are offered to the public on the basis of a prospectus](#); or listed for trade on the stock exchange, including foreign securities and securities issued by the government, or as otherwise determined by the Minister of Finance in consultation with the [Authority](#) and approved by the Knesset Finance Committee;

“**Foreign Securities**” – [Securities listed on a stock exchange outside Israel or on a regulated market outside Israel, or securities offered to the public outside Israel on the basis of a public offering document](#);

...

“**Capital Market Authority**” – An authority established according to the Control of Financial Services Law (Legislative Amendments) 5776-2016;²

...

3. (a) These following activities do not require a license under this Law:

...

~~-(4) investment advising in communications media;~~

...

(11) investment advising [or](#) investment marketing that [are not rendered through general services, as defined in Section 3B](#), or investment portfolio management — all, to qualified customers;

¹ Eton Rishmi 1134, 1341, Addendum 1; p. Eton Rishmi; Sefer Hukim 2314 5771 (August 15, 2011) p. 1102.

² Sefer Hukim 2582, p. 1254; 17 Av, 5777, August 21, 2016.



ISRAEL SECURITIES AUTHORITY

...

(a2) Notwithstanding the provisions of paragraph (11) in subsection (a), a person engaged in investment advising, investment marketing, or investment portfolio management as stated in that paragraph, without holding a license under this Law —

(1) will be subject to the provisions of Chapter C, excluding sections 12, 13, 14, ~~and 16, and 18~~, as if they were licensed; and with respect to a person engaged in portfolio management — the provisions of Chapter D excluding section 24 also apply; ~~the Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, prescribe~~ The Authority may ~~define~~ prescribe exemptions from additional directives concerning said services, that are provided for all qualified clients or for certain categories 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) The provisions of sections 12, 13, 14, 16, ~~18~~, 24, and 25, as relevant, will not apply to investment advising, investment marketing, or investment portfolio management rendered by a licensee to a qualified customer; ~~The Minister of Finance may, in consultation with the Authority and with approval by the Knesset Finance Committee, The Authority may~~ 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, and may stipulate conditions for said exemptions.

3A. No person shall offer services unless the service is rendered by a holder of an appropriate license under this Law, or by a person permitted to render such services even without a license, pursuant to paragraphs 3, 3B, 9 or Chapter B1; In this subsection, “offer of services” — either directly or indirectly, including by publications, circulars, opinions, and by mail, by fax, telephone, or in any other manner.

3B. (a) the provisions of this Law will not apply to any person or entity engaged in general investment advising, provided that all of the following obtain:

(1) The advice provider is not a supervised entity. For this purpose, "supervised entity" is a member of a stock exchange or an entity supervised by any other the following: the Authority, the Capital Market Authority, or the Supervisor of Banks; and any corporation that is controlled by one of them, a corporation that controls any of them, or a corporation that is controlled by a corporation that controls any one of them, and whoever is employed by any of these;

(2) The advice provider has no personal interest or preference with respect to the transaction or the security or the financial asset concerning which general advising is rendered, and;

(3) The advice provider receives no consideration for the general investment advice.



ISRAEL SECURITIES AUTHORITY

(b) The general investment adviser will include a notice that the service constitutes general investment advising, and that such advice does not constitute a substitute for investment advising that takes into account an individual's specific needs and information; and will include any other details as determined by the Authority for all or specific classes of advising.

(c) Notwithstanding the provisions of subsection (a), the provisions of subsection (b) and sections 11 and 20, mutatis mutandis, will apply to general investment advisers, described in said subsection, who do not hold a license under this Law.

(d) The Authority may exempt any person or entity engaged in general investment advising or general investment marketing or a class of said services, either in entirety or in part, if the Authority believes that granting said exemption does not harm the interests of the investing public, and the Authority may stipulate conditions for said exemption;

(e) In this section "general investment advising" – is investment advising rendered uniformly to more than one individual, and is not based, nor is it presumed to be based, on the circumstances and information of a specific individual; "general investment marketing" – rendering general investment advising where said service provider has a linkage to a financial asset.

...

8.

...

~~(d) Regulations concerning subparagraphs (a)(4) and (5) and (b)(4) and (5) will be enacted by the Minister of Finance, for all or classes of applicants, after consulting with the ISA, and with the approval of the Knesset Finance Committee.~~

...

13

~~(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.~~

...

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.~~

(c) The service provider or any party acting on their behalf shall not include misleading information in their services rendered, in their publications, or in any other information that they convey.



ISRAEL SECURITIES AUTHORITY

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 ~~may~~, prescribe a list of circumstances that shall be deemed conflicts of interest. Said list will be published on the ISA website and will come into effect 30 days from their publication; A notice of publication of the list and any changes therein, and their date of application, will be published in Reshumot [Official Gazette].

...

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.~~

...



ISRAEL SECURITIES AUTHORITY

~~(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.~~

...

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) will not apply to these:

...

~~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.~~

...

~~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:~~



ISRAEL SECURITIES AUTHORITY

~~(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.~~

...

20D.

...

(b) A company that holds a portfolio management license shall not engage in any additional activity that is not listed in section 18(b)(1). Notwithstanding this provision, the Authority Chairperson may permit said company to engage in an additional activity in such cases and on such terms as it determines. The Authority Chairperson shall not change or revoke any such permit so granted without granting the company in question an opportunity to present its arguments.

...

~~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.~~

...

25

...

~~(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.~~

26.

(a) A portfolio manager will, at least once every three months, submit to the customers a report including details as the Authority orders in directives under Section 28(b), a 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



ISRAEL SECURITIES AUTHORITY

~~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.~~

...

~~(d) There shall be no misleading particulars in reports under this section.~~

27.

...

~~(g) There shall be no misleading particulars in reports under this section.~~

...

27A.

(a) All requests by an authorized corporation to revoke or suspend its license, under section 10(b), and all reports, notices, information, or other documents that an authorized corporation is required to submit to the Authority or to the [Exchange](#) according to section 27 or according to directives issued [by the Authority under Section 28\(b\)](#), will be filed according to Chapter G1 of the Securities Law.

...

~~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.~~

~~27D. whoever submits a license application, report, document to the Authority, or report or notice to a customer shall not include any misleading statement therein.~~

...

39.

...

(b) A person who performed one of the following is subject to one year imprisonment or a fine in an amount that is five times the amount of the fine determined in section 61(a)(2) in the Penal Law, and if a corporation — a fine that is twice that amount:



ISRAEL SECURITIES AUTHORITY

(1) held or purchased securities for himself, in violation of section 4(a).

...

(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~~ caused the inclusion of a misstatement in services rendered, in publications thereof, license applications, reports, documents addressed to the ISA, or notice to a customer, in violation of the provisions of sections 14(c) or 27D;

...

(14) failed to comply with the demand of the Authority Chairperson or an authorized Authority employee to furnish information or documents, in violation of section 29(b) or section 56A1 of the Securities Law, as applied in section 29(c);

...

Transition Provisions

- (a) Regulations, rules, and directives enacted by the Minister of Finance before the Law comes into effect, under the powers vested in them, under sections 8(d), 25(e), and 27C of the Law in respect of matters on which the power to issue directives was transferred to the Authority by law, and were in force on the eve of the publication of this Law in Reshumot [Official Gazette], will remain in force as long as they are not revoked or replaced at the order of the Authority under its powers under the said sections, as transferred to the Authority by this Law.
- (b) If the Authority issues directives that revoke or replace regulations, rules, and directives determined by said Minister in subsection (a), the Authority will list in those directives a list of the revoked or replaced regulations.
- (c) Notwithstanding the provisions of section 3B(d), any individual that engaged in general investment advising or general investment marketing without a license under section 3 may continue to do so even without a license if they submitted an application for exemption within 45 days from the date this Law came into force and received confirmation from the Authority that that said application was received, as long as the Authority did not issue a decision on the application for exemption or if the Authority issued an exemption for that class of services.
- (d) The rules of Regulation of Engagement in Investment Advising, Investment Marketing, and Investment Portfolio Management (Receipt of Benefits for Analyst Reports) 5780-2020 will remain in force as long as they were not revoked or replaced at the Authority's orders under its powers according to section 3B(d) of the Law.

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;



ISRAEL SECURITIES AUTHORITY

(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; For this purpose, all clients whose total managed assets do not exceed NIS 150,000 shall be deemed a single client.

A company shall continue to be deemed a large portfolio management company even if the said conditions ceased to apply, until three years from the day on which it no longer meets any of those conditions;

“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 A

~~(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. A general investment adviser who did not include a notice that the service constitutes general investment advising, and that such advice does not constitute a substitute for investment advising that takes into account an individual's specific needs and information; or other details as determined by the Authority in this matter, in violation of section 3B(b);~~

~~(1b) Anyone who rendered general investment advising services or general investment marketing services as defined in section 3B, and violated a condition of an exemption granted under section 3B(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~~



ISRAEL SECURITIES AUTHORITY

~~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 person's 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(e), in violation of the provisions of section 18(a);~~

~~(12) he performed for a client one of the transactions specified in section 18(e), 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);—~~

...

~~(23a). Violated the provisions of sections 24B(a) though (c) or (e) or 24B1 regarding the appointment or service of outside directors or restrictions on service on the board of directors; In the matter of service of at least two outside directors, said outside directors have not served for more than 90 days.~~

...

~~(23d). he violated provisions under section 24D about qualifications of Directors and committee members, about the internal audit system and the internal enforcement program;~~

...

~~(23j1). No audit committee served in a large portfolio management company, for more than 90 days, in violation of the provisions of section 24H(c);~~

...

~~(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 a report to a client or in a document, notice, or application to the Authority, pursuant to the directives determined by the Authority under section 28(b) 27C, provided that there was a special demand to state that particular according to this section;~~

Part B

~~(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, or employed a person as an officer in violation of the commitment under section 7(b)(4) or (c)(2) or under section 8(b)(3), as the case may be;~~

...

~~(1b). he made an offer to render services in violation of the provisions of section 3A;~~

...

~~(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~~



ISRAEL SECURITIES AUTHORITY

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 or notice or document to the Authority he did not include a particular he should have included or according to the provisions under sections ~~27C(2) 5 or 27~~ or under the directives issued by the Authority on this matter under section 28(b) on condition that there was a specific demand to include the item under that section;

Schedule Three

(Section 38B(a))

...

5. In respect of an individual ~~holder of a license for portfolio management, investment advising and investment marketing~~—

- (1) a violation of a provision listed in Part A of the Schedule Two — NIS 10,000;
- (2) a violation of a provision listed in Part B of the Schedule Two — NIS 15,000.

6. In the matter of a corporation that is not a license holder or a banking corporation —

- (1) a violation of a provision listed in Part A of the Schedule Two — NIS 50,000;
- (2) a violation of a provision listed in Part B of the Schedule Two — NIS 100,000.

Schedule Four

(Section 38F)

~~(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;

(8A) he included a misstatement in a license application, a report, notice, or document to the Authority in violation of the provisions of section 14(c) or 27D, and he should have known that this statement might have misled the Authority, a client, or a reasonable investor, as the case may be;



ISRAEL SECURITIES AUTHORITY

...

~~(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);~~

...

~~(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(e), 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(e) 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);~~

...

(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 directives issued by the Authority on this matter under section 28(b), 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;~~

Proposed Indirect Amendment to the Securities Law 5728-1968

1. In this Law —

...

“Supervised entity” — each of the factors specified below, as well as controlling shareholders, Directors and senior officers of each of them:

...

(14) whoever engages in investment counseling, investment marketing or and investment portfolio management and is not required to have a license under sections 3 or 3B of the Advice Law;

...

56A1.

(a) In order to assure implementation of this Law, the Authority chairman or an Authority employee whom he gave written authorization may require from the Stock Exchange, from a Stock Exchange member, from a company that holds a platform license under section 44M or from a portfolio



ISRAEL SECURITIES AUTHORITY

manager, as defined in the Counseling Law, any information or document connected to a transaction with securities ~~listed for trading on the Stock Exchange~~ that was carried out by or through them, including identifying particulars of the person for whom the transaction was carried out or of the person who gave the Stock Exchange member or the portfolio manager instructions to perform the transaction.

(b) The provisions of section 56A(b) shall apply to documents delivered under this section.

(c) The provisions of this section shall not derogate from the powers of a Stock Exchange under its by-laws.