April 16, 2019

Q&A in response to publication of Conditions for a General Permit under Section 49A to the Securities Law, December 27, 2018

No.	Summary of question	ISA Staff response
1.	What is the deadline for filing an application according to Section 49A according to the transition provision defined in the Conditions for a General Permit?	According to the transition provision defined in the Conditions of a General Permit under Section 49A to the Securities Law (hereinafter, "General Permit"), Applications for a general permit must be submitted to the ISA within four months of the publication date of the permit format, and the prohibition on operating without a permit will come into effect six months after the publication date of the permit format. If the applicant does not receive a response to its application by the end of said six month period, the applicant may continue to operate until a response to its application is received. The General Permit was published on December 30, 2018. According to the ISA Staff Notice published on April 16, 2019, a one-month extension was granted on the transition provision. Therefore, the deadline for filing applications in compliance with the transition provision is May 30, 2019, and the prohibition against operating without a permit will come into effect on July 30, 2019.
2.	Is a foreign exchange that (a) previously received No Action letter from the ISA in the matter of the prohibition on managing an exchange without a license in Israel with respect to Section 45, or (b) received a permit under Section 49A, now required to file a new application for a permit?	Yes. To ensure that entities operating in Israel comply with the General Permit according to Section 49A to the Securities Law 5728-1968 (hereinafter, "the Law") and in order to present a complete picture of the entities operating in Israel under a permit, even entities that previously received a permit under Section 49A or received No Action letters are required to file a new application for a permit.

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3.	Is a permit under Section 49A to the Law obviate the need to apply for a stock exchange license under Section 45(a) to the Law?	No. As expressly stated in the explanatory note to the General Permit under Section 49A to the Law: "*With respect to marketing activities by a foreign stock exchange itself, the prohibition defined in Section 49A applies* ***in addition*** *to the prohibition defined in Section 45(a) to the Law on operating a securities trading system in Israel without a license. The ISA staff previously clarified that in general, solicitation of Israeli investors by a securities trading system or its representative may create a linkage between the system and Israel such that it is required to be licensed as a stock exchange in Israel*." Therefore, applying for a permit under Section 49A to the Law is not an alternative route for obtaining a stock exchange license, and any entity whose operations require that such a license be issued, cannot operate without such a license.

No.	Summary of question	ISA Staff response
4.	Is a permit under section 49A required when an entity offers brokerage services involving securities that are not traded on a securities exchange?	Section 44EE to the Law defined a System for Trading in Securities ("Securities Trading System") as "a multilateral system with which trading in securities is conducted, by bringing together buy orders and sell orders of securities and facilitating transactions between buyers and sellers of securities, acting without discretion, according to pre-determined rules"; Examples of trading venues included in the definition of a Securities Trading System are venues regulated as Regulated Markets and MTFs in the EU, and venues regulated as Exchanges and ATSs in the USA. The prohibition defined in Section 49A applies to offering securities trading services through a Securities Trading System that does not have a stock exchange license in Israel. With respect to trading services involving securities that are not traded on Securities Trading systems, as defined above, no permit under Section 49A is required because such services are not rendered through a securities trading system. However, such service providers are not exempt from all other obligations and restrictions that may apply to them under the Law, such as obligations and restrictions related to trading platform (as defined in section 44L to the Law), public offering of securities, offering of mutual funds, or the offering of investment consulting, investment marketing, or investment portfolio management services.

No.	Summary of question	ISA Staff response
5 .	Is a foreign entity allowed to offer or render securities trading services to persons in Israel who independently approach the entity, without a permit under Section 49A?	Section 49A prohibits any entity from making an approach to offer securities trading services[1] through a Securities Trading System that is not managed by a stock exchange (licensed in Israel) without a permit issued by the Chair of the ISA. Making an approach to offer securities trading services means — any direct or indirect approach to a person (including corporation) in Israel or any direct or indirect marketing activity in Israel, including by phone, email, written publications or orally, in general publications to the general public or to a specific group of individuals, making an approach through agents, publications in the media, on the Internet, and on social media. The Law does not prohibit an approach made by a person in Israel to foreign entities at the person's own exclusive initiative requesting to receive securities trading services from that entity, provided that said foreign entity does not operate in Israel at all, has not made any approaches to entities in Israel, and the service is limited to the specific service in respect of which the approach was made (offering other services or follow-up services is prohibited if the entity does not have a permit).

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6.	May a foreign bank that does not have a permit under Section 49A, and has a representative office in Israel or otherwise markets banking services to individuals in Israel offer securities trading services through a securities trading system that is not licensed in Israel?	No. Following the previous question, making such an approach to persons (including corporations) in Israel is prohibited if the foreign bank does not have a permit under Section 49A. It does not matter whether a customer requested said securities trading services at his own initiative or not, and that is because the entity operates in Israel and offers services in Israel. For such entities, operating without a permit is prohibited.
7.	Is a foreign broker who offers brokerage services to an Israeli banking corporation or a non-banking TASE member (NBM) for the customers of the banking corporation or the NBM required to obtain a permit under Section 49A?	In many cases, Israeli banking corporations or NBMs provide brokerage services to their customers through foreign brokers who provide the Israeli banking corporations or NBMs securities execution services through a securities trading system outside Israel for their respective customers. In such event, the foreign broker, who offers such services to an Israeli banking corporation or Israeli NBM for their respective customers, is not required to obtain a permit under Section 49A, provided that he meets two cumulative conditions: (a) The Israeli banking corporation or Israeli NBM has a permit under Section 49A; and (b) The contractual engagement and the contractual relationship in place are between the Israeli banking corporation or Israeli NBM and their customers, and not between the foreign broker and the customers of the Israeli banking corporation or Israeli NBM.

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8.	Is an entity that previously offered securities trading services through a Securities Trading System that does not have a stock exchange license in Israel and will discontinue its offers to persons (including corporations) in Israel before the General Permit came into effect permitted to continue to render services to its existing customers in Israel?	Such an entity may not continue to approach its customers in Israel and offer trading services if it does not have a permit under Section 49A, but it may continue to render that specific service that it began to render before the Permit came into effect until such service has been concluded.
9.	In the application for a permit, may an applicant declare that it will meet the conditions of the permit on a future date? We received several questions from entities that requested more time to complete the organizational assimilation of rules that would ensure compliance with the conditions of the permit.	When applying for a permit, the applicant must declare that it meets the relevant conditions defined in the General Permit. According to the transition provision and the ISA Staff Notice of an extension to applications, applications for a General Permit must be filed with the ISA by May 30, 2019, and the prohibition on operating without a permit will enter into effect on July 30, 2019. Applicants must fully assimilate rules designed to ensure that they comply with the conditions by July 30, 2019. In their declaration, applicants may state that they will meet the conditions beginning from a future date, provided that this date is not later than July 30, 2019 – but they must also file an additional declaration no later than July 30, 2019, that clarifies that it meets the conditions on the date of the declaration.

No.	Summary of question	ISA Staff response
10.	Regarding an entity for which 2 of the alternatives defined in the General Permit obtain, and the entity approaches only qualified investors and furthermore is subject to regulation and supervision as a broker-dealers – can this entity file an application for a permit on behalf of both alternatives jointly and modify the format of the required disclosure for this purpose?	No. An entity for which 2 of the alternatives in the General Permit obtain must chose under which alternative it wishes to receive the permit, and must make a disclosure to its customers using the relevant disclosure format that appears in the General Permit. An entity that chooses to operate under Alternative A (qualified investors) must convey the disclosure format that appears in the General Permit but may also convey to the public and its clients any other information regarding the supervision that applies to it, provided that this information meets the requirements of the law, and specifically that it contains no misleading information. Furthermore, an entity that operates under Alternative B (an entity subject to supervision in the EU or the USA) may choose to restrict its operations exclusively to qualified investors.
11.	Alternative B, subparagraph (1)b refers to "a member of the Tel Aviv Stock Exchange that is not a banking corporation." Does this include a "remote member" as this term is defined in the Rules and Regulations of the TASE?	Pursuant to Section 6A(b) to the First Part of the TASE Rules and Regulations, "a remote member shall not solicit Israeli clients to act through it,' and therefore a permit under Section 49A to the Law is irrelevant to remote members.

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12.	Does publication on the permit holders' website satisfy the requirement in the General Permit regarding the disclosure regarding the nature of the permit (in the format that appears in the Conditions)?	The General Permit determine that "a permit holder who informs any individual that he received an ISA permit according to Section 49A to the Law is required to submit a prominent disclosure in the following format…" In other words, wherever the permit holder informs any individual that he holds a permit, he must also include disclosure using the format that appears in the General Permit. If the permit holder states on his website that he holds a permit under Section 49A, it must also include a disclosure there, in the appropriate format.
13.	Is a portfolio manager required to hold a permit under Section 49A due to its activities involving the portfolios that it manages? Is it required to obtain a permit in respect of its other activities (that do not involved managed portfolios)?	Securities transactions that are executed as part of portfolio management services (which are provide lawfully) within the managed portfolio are not subject to the permit regime defined in Section 49A. In contrast, securities transactions executed by a portfolio manager that are not conducted in the limits of the managed portfolio are subject to the permit regime defined in Section 49A.
14.	If an entity is registered in the Register of Foreign Dealers pursuant to the Regulation of Investment Advice, Investment Marketing and Portfolio Management Law 5755-1995 ("**foreign Dealers**" and "**the Advising Law**") as a foreign portfolio management and investment marketing company, can this entity file an application for a permit under Alternative B (1)(d) (corporations that are licensed under the Advising Law)?	In regard to the operations of a Foreign Dealer as a portfolio manager (within the managed portfolio) – such activities do not require a permit under Section 49A. Foreign Dealers who are involved in investment marketing must file an application for a permit according to Alternative B(1)(d) (corporations that are licensed under the Advising Law).

15.	Does an investment advisor who holds an investment advising license according to the Advising Law and who renders services to customers who are not qualified investors require a general permit under Section 49A to the Law in the following situations: (a) The advisor is authorized to submit orders in the client's account and executes securities trading orders on the client's behalf through an entity listed in (1)(a)-(c) under Alternative B to the General Permit (banking corporations, non-banking TASE member, a US broker-dealer, an investment firm or credit institution that may provide investment services under the EU MiFID Directive), whether that entity holds a permit under Section 49A or not. (b) The advisor refers clients to open an account with an entity listed in (1)(a)-(c) under Alternative B to the General Permit, so that the clients can execute securities transactions through that entity. (c) The advisor renders only advisory services to clients, and does not execute any securities trades for his clients and does not refer his clients to open an account with specific entities through which the client may receive securities trading services through a securities trading system that does not have a stock exchange license in Israel.	In situations (a) and (b), the advisor must submit an application for a general permit under Section 49A to the Law. In situation (c), the advisor is not required to obtain a general permit under Section 49A to the Law. Note that in situations (a) and (b), the advisor may not receive any remuneration from the entity to which he refers his customers.

No.	Summary of question	ISA Staff response
16.	Is a licensed advisor who submits an application for a general permit under Section 49A for rendering services to clients who are not qualified investors, required to list in the application, entities enumerated in (1)(a)-(c) under Alternative B to the General Permit with which the advisor works on behalf of clients or to which the advisor refers clients?	A licensed advisor or investment marketer who submits an application for a general permit under Section 49A for rendering services to clients who are not qualified investors is not required, in the application, to list the brokers with whom he works on behalf of clients or to whom he refers clients. In this case the licensed professional has an obligation to confirm that these are entities that are subject to supervision and regulation as broker-dealers in the US or subject to supervision and regulation as investment firms or credit institutions that may provide investment services in any EU country under the MiFID Directive.
17.	Can an application for a permit be filed jointly for several entities that are members of a group?	It is possible to apply jointly for a permit for several members of a group. In any case, each entity in the group must attached its own declaration to the application for a general permit.
18.	What is the format of the declaration that is required according to Section 49A?	The declaration must include the following information: The entity must state in detail the conditions defined in the General Permit that are relevant for said entity, and declare that the entity satisfies these conditions. If the declaration is in English, the format of the declaration should relate to the wording of the conditions as mentioned in the English translation available at the following LINK.

No.	Summary of question	ISA Staff response
19.	What identifying details must be included in an application for a general permit under Alternative A of section 2 in the General Permit (offers limited to qualified investors)?	The application must include, at minimum, the applicant's name, ID or incorporation number, and domicile or place of incorporation, details of a contact person for receiving correspondence from the ISA (address, telephone, and email) should be included. The applicant must notify the ISA of any change in the details related to the contact person. Entities that are subject to supervision, regulation, or licensing with respect to financial services they render must also note the name of the regulator in charge of said supervision, regulation, or licensing, the country in which the entity is subject to the same, and the entity's license number, if any.
20.	What identifying details must be included in an application for a general permit under Alternative B of section 2 in the General Permit (offers not limited to qualified investors)?	The application must include, at minimum, the applicant's name, ID or incorporation number, and domicile or place of incorporation. Details of a contact person for receiving correspondence from the ISA (address, telephone, and email) should be included. The applicant must notify the ISA of any change in the details related to the contact person. The application must also include the name of the regulator in charge of said the applicant's supervision, regulation, or licensing, the country in which the entity is subject to the same, and the entity's license no (if any). Furthermore, the applicant must note the types of operations that it is permitted to perform under the foreign license that it holds.

[1] Foreign laws have similar restrictions on solicitation.