

November 22, 2021

The Israel Securities Authority

Authority Decision – transfer of ETFs from the "premium listing" to the "standard listing" at the London Stock Exchange

Background

The Joint Investment Trust Regulations (Foreign Fund Unit Offerings), 5776-2016 ("**the Foreign Funds Regulations**"), allow the offer of units of foreign funds to the public in Israel by way of "dual listing" via registering them for trade at the Tel Aviv Stock Exchange ("**the Stock Exchange**"). The listing is possible subject to complying with the conditions prescribed in the Regulations, including the fund's activity in accordance with the laws enumerated in the Second Schedule to the Foreign Funds Regulations (The Undertakings for Collective Investment in Transferable Securities) (the "**UCITS**" Directive) or the American Investment Company Act of 1940); and also for the foreign fund units to be registered for trade at one of the stock exchanges enumerated in the Second or Third Schedule to the Securities Law, 5728-1968 (hereinafter: "**the Securities Law**"). With regard to the London Stock Exchange, the Third Schedule to the Securities Law relates to the premium listing and does not include the standard listing.

On January 4th, 2022, a change made by the Financial Conduct Authority ("**FCA**") is due to enter into force, whereby all the foreign exchange-traded funds ("ETFs") registered for trade at the London Stock Exchange in the premium listing will be transferred to the standard listing¹. The rationale forming the basis for this change is the fact that the standard listing complies with the FCA's approach regarding all the

¹ On March 9th, 2020, the FCA published a working paper for comments from the public in this matter.

regulatory requirements by virtue of the provisions of the UCITS Directive applicable to the ETF in any case, as opposed to the premium listing, which applies additional stringent requirements which constitute an unnecessary regulatory burden on this type of products, unlike reported corporations. The FCA emphasized that the change in the registration rules arises from several main reasons:

1. Reducing regulatory burden – a large part of the requirements of the registration rules in the premium listing imposes a stringent regulatory burden, which is added to the regulation which already applies to issuers and fund managers under the specific law regulating the funds' activity. The purpose of the amendment is, *inter alia*, to prevent two regulatory systems applying at the same time, and thereby reducing the regulatory burden which applies to the participants and lowering costs, all while not coming at the expense of protecting the investors.
2. Efficiency – the rules of registration applicable to the premium listing do not fit and are not applicable for funds since they do not take into account the unique characteristics of funds, such as a different corporate structure, unique type of activity, etc. The transfer of the funds to the standard listing is designed to guarantee better suitability for the product, the structure and the business model of the funds, and via this to cause the market to work much more efficiently.
3. Existing protection – the present rules, which provide protection layers for the investor, exist in any case within the framework of the regulation applicable to funds by virtue of the UCITS Directive, such as for example the investment rules and corporate governance requirements, and they shall continue to apply to the funds even after the change in the listing.

In January 2021 the Authority plenum approved the proposal for amendment to the Foreign Funds Regulations (after comments from the public) so that the definition of the stock exchange abroad would no longer refer to the Securities Law, and would allow the determination of an independent listing of relevant stock exchanges for trade in

foreign funds based, *inter alia*, upon the criteria of tradability. This is alongside the qualitative test for dual listing of the foreign funds which is based upon supervision and regulation under the UCITS Directive or under American law, as prescribed by the Foreign Funds Regulations.

Nevertheless, the legislative process, by its very nature, takes a long time and this being the case it is reasonable that an amendment to the Regulations in this matter would be approved and enter into force after the date of the entry into force of the aforesaid change in England.

The effect of the change in the listing of the foreign funds at the London Stock Exchange on the listing in Israel

The changes proposed by the FCA are likely to have an effect on the registration of foreign funds in Israel on two levels: traded foreign funds which have already received a permit from the Authority to offer units to the public in Israel and to be registered for trade at the stock exchange on the basis of their being registered in the premium listing, and now they will be transferred to the standard listing; traded foreign funds that will be registered for trade in the standard listing (after the change forming the subject matter of the FCA Decision) and will apply for the Authority's permit to offer units to the public in Israel and to be registered for trade at the stock exchange.

The change proposed by the FCA is a sweeping change which from the date of its entry into force will transfer all the ETFs to the standard listing at the London Stock Exchange. In the Authority's opinion, in accordance with the FCA's grounds as set out above, the change is technical in its nature and does not harm the quality of the protection for the investors, a protection which is achieved by means of the regulation under the UCITS Directive. Therefore, until the completion of the amendment to the Foreign Funds Regulations, and given that the premium listing will cease to be used for the ETFs, the Authority will also recognize the standard listing for the purpose of the fulfillment of the condition of the registration of the foreign fund for trade at "a foreign stock exchange".

Decision

1. ETFs which have received the Authority's permit to offer their units to the public in Israel and to register their units for trade at the stock exchange shall not be deemed as not complying with the requirements of the Foreign Funds Regulations due to the transfer of their listing to the standard listing at the London Stock Exchange, and the Authority shall not act pursuant to Section 113G of the Joint Investment Trust Law, 5754-1994 for the termination of the offer of the units in these funds.
2. In relation to the ETFs which wish to register their units for trade at the stock exchange after the change in the listings at the London Stock Exchange, their registration in the standard listing at the London Stock Exchange shall be deemed to comply with the requirements of the Foreign Funds Regulations for the purposes of registration for trade at "a foreign stock exchange", until the amendment of the Regulations.