

## **Clarification regarding distribution agreement contracts with a foreign fund manager**

The payment of distribution fees with respect to offering of units in foreign funds within Israel is currently regulated in Regulation 2(A1) of the Joint Investment Trusts Regulations (Distribution Fees), 5766-2006. According to the Regulation, a foreign fund manager may pay a fee to the Israeli distributor, in accordance with Regulation 3, with respect to foreign fund units the offering of which the Israel Securities Authority has approved in accordance with section 113b(a) of the Joint Investment Trust Law 5754-1994. The payment of the distribution fee may be part of a distribution agreement between the foreign fund manager and the distributor.

In conversations that the Authority's staff held with the managers of foreign funds and with distributor stock exchange member, the Authority has learned that in order to implement these contractual agreements (primarily because of the differences between the distribution methods that are the standard methods used abroad, and the standard distribution method used in Israel), the fund managers and distributor stock exchange members wish to use a broker which is a trading platform as well as a platform for making information available (hereafter: "a platform") on which it will be possible to gather, calculate and transfer the distribution fees from the fund managers to the distributor stock exchange member, on the one hand – and which will also allow for simple trading through a system that provides information only regarding the funds for which the distribution agreements were signed.

Questions have been addressed to the Authority's staff regarding the contractual relationships between the distributor stock exchange member and the platform - relationships in which the fund managers are not parties. In response, the Authority wishes to clarify that in order for the fund managers to be allowed to actually make payments in connection with the sale of units in their funds, and for the distributor stock exchange member to be allowed to collect such payments – within the framework of the exception to the prohibition in section 82(a)(3) of the Law – the payment of the distribution fee to the distributor stock exchange member must be in accordance with the provisions of Regulation 2 of the Distribution Fee Regulations. This means that the fee must be charged and paid and collected pursuant to a contractual relationship, consisting of a transaction for the provision of distribution services and the payment for such services. In order for a relationship that exists through a platform to satisfy this

---

Investment Department

condition, the fund manager must act in accordance with one of the following alternatives:

- 1) The fund manager enters into an agreement with the distributor stock exchange member, pursuant to which the fund manager undertakes to pay the distribution fee at the rate established in the regulations for receiving consulting and distribution fees from a stock exchange member, through a platform. This agreement would need to be one that is in parallel to the agreement signed by the stock exchange member and the platform;
- 2) The fund manager grants the platform a power of attorney to enter into a contract with the stock exchange member for the receipt of distribution services, such services to be provided to the manager against the payment of the distribution fee at the rate established in the regulations. The fund manager will present this power of attorney to the distributor stock exchange member at the member's request. If this option is used, the distribution agreement between the platform and the distributor exchange member need not include a reference to this power of attorney.
- 3) The fund manager contracts with the platform, through an agreement which it can present to the distributor stock exchange member at its request. In this agreement the platform undertakes to contract with the distributor stock exchange member through a distribution agreement for distribution services to be provided to the fund manager. In the framework of this contract, the consideration to be paid for the distribution services will not exceed the distribution fee rate established in the regulations, and the fund manager will undertake to pay the platform for entering into this agreement in the name of the fund manager.

Best regards,

Maya Gerty Gilboah

Legal Advisor

Supervision of Mutual Funds Unit