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GORNITZKY

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New prohibition on offering to Israeli investors trading services of securities traded on foreign exchanges without a permit from the Israel Securities Authority*

On December 30, 2018, the Israel Securities Authority published the terms and conditions of the permit for the offering of securities trading services through a system that does not operate without a stock exchange license by virtue of the Israeli Securities Law, 5728-1968.

In view of the impact of the provisions of the amendment to the Securities Law, and in light of the publication of the terms and conditions for obtaining a permit, we wish to provide the clients of our firm with an update regarding the main issues.

General

Section 49A to the Securities Law, as amended in 2017, prohibits the offering of securities trading services through a securities trading system that is not managed by a licensed stock exchange in Israel in such a manner that: (a) no person shall offer to provide securities trading services through a securities trading system unless the system is operated by a licensed stock exchange under the Israeli Securities Law; (b) the chairman of the Israel Securities Authority may grant a permit to offer to provide such securities trading services through a securities trading system that is operated by a stock exchange outside of Israel, upon such terms and conditions that he shall determine, should he find that this will not adversely affect the interests of the investing public in Israel.

As the provision under Section 49A prohibits any offering of securities trading services through a system that operates without an Israeli stock exchange license, it also applies to the offering of brokerage services for the purpose of purchasing securities on a stock exchange overseas.

The Terms and Conditions of the Permit

The terms and conditions of the permit, as were published this week, refer separately to stock exchanges and to other entities that wish to engage in the said activities.

With respect to other entities that are not stock exchanges (or any entity on their behalf), which are seeking to engage in the aforesaid activities, the permit refers to entities that wish to apply solely to qualified investors (individuals or corporations) as well as to entities that wish to apply to the general public, in such a manner that with respect to the entities that wish to apply to the general public (as distinct from entities that wish to apply to qualified investors), the general permit is based on the recognition of the reliability and skill of the entities mentioned in the permit, which can be reflected from their status as banking corporations, as non-bank stock exchange members, or as entities that are subject to specific and appropriate supervision in the United States or in the European Union.

An entity that wishes to obtain a permit by virtue of the general permit **is required to apply to the Israel Securities Authority.**

According to the Israel Securities Authority, the general permit does not prevent any entity that does not comply with the terms and conditions thereof from submitting a well-reasoned application to the Israel Securities Authority, to grant it a specific permit, and such an application will be considered on the merits. In particular, entities that are subject to specific supervision in foreign jurisdictions, other than the United States or the European Union, may submit a well-reasoned application to the Israel Securities Authority, which pertains to the appropriateness of the supervision that applies to them, including their obligations with respect to their Israeli clients.

Validity and Relevant Dates

An application to obtain a general permit shall be filed with the Israel Securities Authority within four months from the date of this publication, and the prohibition on operating without a permit will take effect six months after the publication thereof. An entity that has not filed an application to obtain a permit by the expiration of four months from the date of publication thereof will not be able to continue to operate without a permit.

We would be pleased to be of assistance should you have any questions and/or require any further clarifications in connection with the foregoing in this memorandum.

For further information please contact:



Yair Shiloni, Partner

✉ shiloni@gornitzky.com



Netanel Kahane, Associate

✉ netanelk@gornitzky.com