



Goldfarb Seligman
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To: The Firm's Clients

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Re: Amendment of the Definition of "Qualified Investor" under the Securities Law

At the end of March 2016, an amendment (the "**Amendment**") to the Israeli Securities Law, 1968 - 5728 (the "**Securities Law**") changing the definition of "Qualified Investor" set forth in the first addendum to the Securities Law (the "**Addendum**") came into effect. The Amendment expands, in certain aspects, the exemption from the obligation to file a prospectus with respect to the offering of securities to individuals who satisfy the new criteria established for "Qualified Investors".

Qualified Investor Criteria for Individuals

According to the new definition, individuals, or entities wholly owned by individuals, who satisfy one of the new tests set forth in the Addendum, will not be counted for the purposes of the 35 offerees limitation existing in the Securities Law (offering of securities to more than 35 offerees who are not exempt offerees requires the publication of a prospectus approved by the Israel Securities Authority (the "**ISA**")). The new tests are as follows:

- **The "Asset Value Test"** - The aggregate value of the Liquid Assets¹ owned by the applicable individuals exceeds NIS 8 million.
- **The "Income Test"** - The applicable individuals' income in each of the two most recent years exceeds NIS 1.2 million or the joint income of the Family Unit² to which the applicable individuals belong in each of the two most recent years exceeds NIS 1.8 million.
- **The "Combined Test"** - The aggregate value of the applicable individuals' Liquid Assets exceeds NIS 5 million and the applicable individuals' income in each of the two most recent years exceeds NIS 600,000 or the joint income of the Family Unit to which the applicable individuals belong exceeds NIS 900,000.

¹ "Liquid Assets" - cash, deposits, Financial Assets as defined in the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law, 5755 - 1995 and securities that are traded at the stock exchange; "Financial Assets" - Units (as defined in the Joint Investment Trusts Law, 5754 - 1994), shares, or units of a fund registered out of Israel, options, future contract, structured products, index products and study funds.

² "Family Unit" - an individual and his/hers family members living with him or that financially depends on him/her.

The new tests replace a much more complicated test (the "**Former Test**"), which required the satisfaction of two out of three of the following subtests: first, the "Asset Value Subtest", which required a much higher threshold of the aggregate value of the investor's Liquid Assets (NIS 12 Million as opposed to a NIS 8 Million threshold in the independent Asset Value Test, and a NIS 5 Million threshold in the new Combined Test); second, the "Expertise Subtest", which required expertise and skills in the field of capital markets and was not explicitly defined; and third, the "Transactions Subtest", which required the execution of a high number of capital market transactions, especially for individuals who are not active in the capital markets. The last two subtests of the Former Test were removed from the Addendum and replaced by the new criteria set forth above.

It should be noted that the Former Test continues to apply for the purpose of the Investment Advice, Investment Marketing and Investment Portfolio Management Law, 1995, which until the Amendment shared the same test with the Securities Law.

Procedures for Confirming Qualified Investor Status

Following the Amendment, in order for the exemption from publishing a prospectus with respect to offerings made to qualified investors to apply, the issuer of securities (an "**Issuer**") must receive a declaration from the investor confirming the investor's satisfaction of the "Qualified Investor" tests set forth in the Addendum and must confirm that the investor indeed satisfies such "Qualified Investor" criteria.

In this respect it should be noted that the Amendment formally adds to the Securities Law an existing position previously published by the ISA (the "**ISA Position**")³, pursuant to which an Issuer must confirm that an investor indeed satisfies the "Qualified Investor" tests, as opposed to just receiving a declaration confirming such satisfaction. Given the above, we believe that Issuers can continue to rely on the ISA Position with respect to the new "Qualified Investor" tests, and therefore, inter alia:

- An Issuer can distinguish between the offering stage, in which the Issuer only needs to receive a declaration from the qualified investor with respect to his satisfaction of the new "Qualified Investor" tests, and the actual investment stage, prior to which the Issuer must complete the confirmation of the investor's "Qualified Investor" status.
- The ISA Position with respect to confirmation of compliance with the Former Test shall also apply to the confirmation of compliance with the new "Asset Value Test" and the "Income Test",

³ Staff Position 103-35: "Private Placement to Sophisticated Investors".

pursuant to which an Issuer needs to execute reasonable measures in verifying the criteria, including by way of obtaining certification from an external body (such as accountants, lawyers, etc.), which examined the investor's data and confirmed the investor's satisfaction of the applicable "Qualified Investor" test.

- In the event an offering or sale of securities is made to the same Qualified Investor within a period of one year from the date on which its compliance was verified in the manner described above, it is sufficient to only obtain the investor's declaration that it still meets the "Qualified Investor" tests (provided the issuer does not know otherwise).

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For further information regarding this newsletter, please contact Adv. Oren Wolpin, a partner at our Corporate, Finance, Banking and Insurance Department, specializing in private investment funds and ad-hoc private placements, by email: Oren.wolpin@goldfarb.com or by phone: +972 (3) 608-9372.