

**ISA**

# Enforcement Policy



ISRAEL SECURITIES AUTHORITY



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# ISA

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# The seven foundations of the ISA's enforcement policy

## Protecting the investor public

1.

### Protecting the interests of the investor public

By law, the function of the ISA is to protect the interests of the public investing in securities. To fulfill this role, the law granted the ISA regulatory, supervisory, and enforcement powers. Enforcement of violations in the capital market is critical to ensure a fair market and to maintain public trust in the market.

Alongside the need to exercise these powers effectively and efficiently, the ISA is committed to legal and constitutional principles such as respect for human dignity and commensurability, and to the principles of natural justice such as equality and fairness.

2.

### Criminal, administrative, and private enforcement

The ISA operates in three areas of enforcement: criminal enforcement, administrative enforcement, and involvement in private enforcement proceedings.

Criminal investigations and administrative inquiries are conducted by the Investigations Department. These proceedings are subject to the Securities Law and relevant criminal and administrative rulings as well as to directives related to investigations issued by the Attorney General and the State Attorney.

Administrative enforcement proceedings are handled by the Administrative Enforcement Department, and are heard by the administrative panel that was established under the Securities Law.

Private enforcement proceedings (mainly class actions and derivative actions) are conducted by private entities. Yet, due to the significance of private enforcement, the ISA is also occasionally involved in these proceedings, mainly by assisting in financing the proceedings, playing a role in settlement negotiations, and presenting professional positions.

3.

### Severity of the offense, strength of the evidence, and ISA policy

The principle that distinguishes between the initiation of a criminal investigation proceeding and an administrative inquiry is defined by law. This principle is a function of three factors: the severity and circumstances of the act, the strength of the relevant evidence, and ISA policy.



## 4.

### **Criminal enforcement**

Criminal enforcement constitutes a critical element in establishing legal compliance, creating deterrence of violations, and punishing offenders.

The ISA exercises its criminal enforcement powers in order to address serious offenses committed in the capital market. In recent years the courts have defined serious standards of punishment for capital market offenses including incarceration, in order to protect the public interest. In a series of decisions, the courts have determined that securities fraud and insider trading are serious offenses that call for serious penalties.

The court has the power to impose penalties on defendants charged under the Securities Law and the Penal Law, including incarceration, community service, suspended jail sentence, fines, etc.

## 5.

### **Administrative enforcement**

The administrative enforcement track is designed to improve the efficiency of securities enforcement; reduce the time between the commission of a violation and imposition of a sanction on the violator; and match the severity of the punishment to the severity of the violation. In contrast to criminal proceedings, administrative proceedings have a lower burden of proof, which is similar to the required burden of proof in civil actions. The sanctions imposed in administrative proceedings are also different and more lenient compared with the sanctions imposed in criminal proceedings.

Similar to conventional practice worldwide, administrative proceedings are suitable for handling cases in which the violator acted negligently, or cases in which the violator's mental state (or mens rea) is higher, yet whose circumstances justify an administrative proceeding (such as violations involving isolated incidents, limited profits, or limited damage).

## 6.

### **Private enforcement**

Alongside the administrative and criminal enforcement investigations and proceedings that the ISA initiates, private enforcement action pertaining to corporate and securities laws also takes place, mainly in the form of class actions and derivative actions. Private enforcement proceedings may be conducted concurrently with or independent of the ISA's enforcement actions. Private enforcement is in the responsibility of the market and is conducted by the market. Nonetheless, in view of the public significance of private enforcement proceedings, the ISA is also involved in them.

## 7.

### **Vigorous, meaningful enforcement**

Financial crime in general, and securities offenses specifically, demand resolute, impactful enforcement. Securities offenses frequently involve sophisticated schemes based on the abuse of positions of power and other people's money, and are difficult to prevent or trace. Both the number of victims and the potential damage to the capital market, the economy, and society in general may be extensive.



# General

The function of the Israel Securities Authority (hereinafter, "ISA" or "the Authority"), which is defined in Article 2 of the Securities Law 5728-1968 (hereinafter, "the Securities Law"), is "to protect the interests of the public investing in securities." To perform this function, the Securities Law granted the ISA regulatory, supervisory and enforcement powers.

When exercising the enforcement powers granted to it, alongside its desire to operate effectively and efficiently, the ISA is bound by several principles, including principles of natural justice such as equality and fairness, as well as legal and constitutional principles such as respect for human dignity and commensurability, all with the overarching aim of ensuring the proper and fair conduct of the capital market and its players and protecting the interests of the investor public, as it is authorized by the legislator.

Effective enforcement of the norms that apply to all capital market players is a critical component in the maintenance of a modern, effective capital market. Enforcement powers are exercised in order to deter violations of the law, to promote adoption of high standards of conduct in the capital market, and to establish a set of incentives and considerations that encourage legal compliance by capital market players.

An important factor in promoting effective enforcement is the ISA's ability to operate in multiple areas of enforcement, based on its enforcement policy, its ability to allocate resources at the time, the circumstances of each specific case, and other factors.

The ISA operates in three areas of enforcement: criminal enforcement, administrative enforcement, and is involved in private enforcement proceedings (in the latter, the ISA is involved yet does not initiate these proceedings). Enforcement activities are performed mainly by the following ISA departments: Investigations, Intelligence and Market Surveillance Department ("the Investigations Department"), the Administrative Enforcement Department, the Securities Department at the Tel Aviv District Attorney's Office ("The Securities District Attorney's Office"), and by the ISA's General Counsel Department. Criminal investigations and administrative inquiries are conducted by the Investigations Department. These proceedings are subject to the Securities Law and relevant criminal and administrative rulings as well as to directives related to investigations issued by the Attorney General and the State Attorney.



The principle that distinguishes between the initiation of a criminal investigation proceeding and an administrative inquiry is defined by law. According to the law, when the ISA considers initiating one of these proceedings, the Chairperson of the ISA must take three factors into consideration: the severity and circumstances of the act or deed; the nature and strength of the relevant evidence; and ISA policy. The criteria that are applied in the decision to assign cases to the criminal or administrative track are described in detail for the purpose of public transparency.

When the ISA Chairperson orders the initiation of an overt criminal investigation, the Investigations Department operates according to the powers vested in it by the Law, and upon the conclusion of the investigation, the Investigations Department transfers the file to the Securities District Attorney's Office, together with its assessment of the sufficiency of the evidentiary foundation, subject to the law, for a decision on whether to prosecute or close the criminal case. From this point, criminal enforcement proceedings are handled by the Securities District Attorney's Office and are typically conducted in the Tel Aviv – Jaffa District Court (The Economic Department).

When the ISA Chair orders the initiation of an overt administrative inquiry, the Investigations Department operates according to the powers vested in it by the Law. Upon the conclusion of the administrative inquiry, the file is transferred to the Administrative Enforcement Department, together with its assessment of the sufficiency of the evidentiary foundation for an administrative prosecution or closure of the case. From this point, administrative enforcement proceedings are handled by the Administrative Enforcement Department, and presented before the administrative panel that was established under the Securities Law.

Private enforcement proceedings (mainly class actions and derivative actions) are obviously conducted by private entities. Yet, due to the significance that the ISA attributes to private enforcement, the General Counsel Department (Private Enforcement Unit) is occasionally involved in these proceedings, mainly by assisting in financing the proceedings, playing a role in settlement negotiations, and presenting professional positions. These proceedings may be conducted separately from or concurrently with the ISA's criminal or administrative enforcement actions related to the same act.

In conclusion of this section, it should be noted that the ISA regularly publishes rulings, decisions of the administrative enforcement panel, ISA positions submitted to court, and staff positions on enforcement-related issues on its website.



# Criminal Enforcement

Financial crime in general, and specifically securities offenses, demand resolute, impactful enforcement. Such crimes include sophisticated offenses involving the abuse of positions of power and other people's money, which are difficult to trace or prevent. Both the number of victims and the potential damage to the capital market and society in general may be extensive. For this reason, criminal enforcement constitutes a critical element in establishing legal compliance, creating deterrence of violations, and punishing offenders. The ISA exercises its criminal enforcement powers to address serious offenses involving the capital market, including violations of the Securities Law such as securities fraud, use of insider trading, and reporting violations; violations of other securities laws; and various violations of the Penal Law and the Prohibition Against Money Laundering Law 5760-2000 (hereinafter, "the Anti-Money Laundering Law") that are defined as securities offenses in the Securities Law, when they accompany such offenses (such as bribery, fraud and breach of trust by a public servant, fraud and breach of trust in a corporation, deception and fraud, offenses by directors in a body corporate, falsification of records in corporate documents, obstruction of justice, and use of prohibited property).

In recent years, the ISA has investigated large-scale economic cases in diverse areas that require expertise in trading, including complex cases of securities fraud, insider trading cases, fraud cases involving investment advising and portfolio management without a license and offenses of involving deceit and fraud; accounting cases that involve deceptive reporting, money laundering, falsification of corporate records, and fraud in public companies; fraud cases involving public securities offerings without a prospectus, bribery in public companies and investment banks, and violations of the Securities Law; cases involving fraud and deceit by civil servants together with securities offenses; and fraud cases together with violations of managing a trading platform without a license.

Overt criminal investigations are initiated by the Investigations Department following a decision by the ISA Chairperson. In such criminal investigations, the ISA exercises various powers including the power to order the submission of documents and information, search and seizure, move for temporary injunctions to seize property; the power to investigate, detain, arrest and release; the power to order wiretaps according to the Communications Data Law, the powers of appointed officers defined in the Law, and other powers.





Conditional release proceedings, detention proceedings, and hearings related to gag orders and property seizure orders are conducted by the Investigations Department before the Magistrate Court in Tel Aviv.

After the Investigations Department concludes the criminal investigation, the case is transferred to the Securities District Attorney's Office for review. The Securities District Attorney's Office reviews the collected investigative materials and decides whether to prosecute or close the case, based on the criteria defined in the Law, in binding precedents, and in professional directives issued by the Attorney General and the State Attorney. The Securities District Attorney's Office is also authorized to enter into a conditional stay of proceedings agreement if it believes, based on the considerations listed in the directive, that fulfillment of the conditions of the agreement will satisfy the public interest under the circumstances.

Most criminal bills of indictment involving securities offenses (and other criminal offenses that are defined as securities offenses under the Penal Law) are filed in the Economic Department of the District Court in Tel Aviv-Jaffa by the Securities District Attorney's Office.

The court has the power to impose penalties on defendants charged under the Securities Law and the Penal Law, including incarceration, community service, suspended jail sentence, fines, or other penalties. Furthermore, according to Article 226 of the Companies Law, the court has the authority to order the termination of service of an individual who is convicted of certain offenses. In recent years, the courts have reiterated the significance of mandatory minimum penalties for securities offenses, including incarceration, in order to protect the public interest. This position is reflected in a series of decisions in which the courts imposed penalties commensurate with the severity of the offense in the cases of securities fraud and insider trading offenses.

In terms of policy guidelines and broad considerations, the Securities District Attorney's Office, like other District Attorney units, is subject to the considerations and policy of prevailing law, binding precedents, and directives of the State Attorney and the Attorney General.



# Administrative Enforcement

To ensure an all-encompassing, effective, and proportionate system of enforcement, in 2011 the ISA was also granted the powers of administrative inquiry and prosecution of companies and individuals for the commission of the administrative offenses listed in the Securities Law (hereinafter, "the Administrative Violations").

The administrative enforcement track is designed to improve the efficiency of securities enforcement, reduce the time between the commission of an offense and the imposition of sanctions on the offender, and match the severity of the punishment to the severity of the offense. In contrast to criminal proceedings, the lower burden of proof in administrative proceedings is similar to the required burden of proof in civil actions. The sanctions imposed in administrative proceedings are also different and more lenient compared with the sanctions imposed in criminal proceedings.

Similar to conventional practice worldwide, administrative proceedings are suitable for handling cases in which an infringer is negligent or cases involving violations in which the infringer's mental state (or mens rea) is "awareness" or "willful blindness." These cases are assigned to the administrative enforcement track when justified by the circumstances of the commission of the offense, either because the offense is an isolated incident, it generated limited profit or caused limited damage, or for other reasons. Before the ISA was granted administrative enforcement powers, such offenses were partly enforced through criminal proceedings or were not enforced at all. Administrative proceedings are designed to address these violations in a more efficient and comprehensive manner.

In the years since the administrative enforcement track came into effect, the ISA has handled diverse administrative cases that involved corporate offenses, investment-related offenses, and stock exchange trading offenses.

An administrative inquiry is initiated by the Investigations Department following a decision by the ISA Chairperson. The Investigations Department's powers in these inquiries are more limited compared with a criminal investigation, and include the power to demand documents and information and summon individuals to an administrative inquiry. Upon conclusion of the inquiry, the case is transferred to the Administrative Enforcement Department, which handles the case from this point onward.



The ISA's Administrative Enforcement Department functions as the administrative prosecution. The Department handles the administrative pleadings after reviewing the administrative inquiry files it receives from the Investigations Department. The ISA Chairperson may then decide to initiate an administrative proceeding, which will be conducted before the Administrative Enforcement Committee.

The Administrative Enforcement Committee has six members who operate in panels of three. Two members function as the panels' chairpersons. Retired district judges who were not ISA employees at their appointed, are selected to serve as panel chairpersons and this is their sole role as ISA employees. According to the law, the remaining four members of the Committee are selected by the Minister of Justice: Two legalists and two individuals with expertise in finance and capital markets.

The Administrative Enforcement Committee is the body that makes the determinations with respect to the commission of administrative offenses, and is authorized to impose enforcement measures. The enforcement measures are defined in the Securities Law, and include monetary fines (maximum amounts for fines have been defined for administrative offenses); license suspension of one year for portfolio managers or investment advisors, or suspension of a permit to serve as a mutual fund manager (suspension for a longer period is subject to court approval, as is the revocation of such licenses and permits); one-year prohibition to serve as a senior official in a regulated entity (prohibitions for longer periods, up to 5 years, are subject to court approval); payment to the party injured by the offense (subject to regulations whose issue is pending); and actions to rectify the offense and prevent its recurrence. The Committee may also impose suspended enforcement measures.

According to the Securities Law and the rules of procedures that the Committee established for its work, the Administrative Enforcement Department notifies the suspect and the Administrative Enforcement Committee of the enforcement measures that the ISA is requesting in the case in question one week before the committee hearing. In the oral hearing, both parties to the proceeding – the ISA and the suspected infringer – present arguments on the suspect's responsibility for the commission of the offense and the enforcement measures to be imposed on them.

The Administrative Enforcement Committee has independent discretion to impose enforcement measures according to six considerations listed in the Securities Law: the facts; the circumstances of the violation; the presence or absence of previous violations; the infringer's actions upon the discovery of the violation; the infringer's personal circumstances; and the ISA's enforcement policy. The Administrative



Enforcement Committee's decisions regarding the commission of the offense and the enforcement measures to be imposed are accompanied by reasoning in writing and are posted on the ISA website when the decisions come into force. The Committee may impose one or more of the enforcement measures listed in the Securities Law if it finds that the suspect committed the offense attributed to him. The monetary fines that the Committee may impose are limited to the maximum amounts determined for each administrative offense.

Another enforcement instrument is the option of entering into an administrative enforcement arrangement with suspects. These arrangements may include imposition of the above enforcement measures by consent, and are subject to approval of the Administrative Enforcement Committee.

The Administrative Enforcement Law defines an explicit prohibition against insurance or indemnity with respect to monetary fines imposed in administrative proceedings, although it is permissible to indemnify or insure an individual against payment to victims of a violation and/or expenses incurred in an administrative proceeding (such as attorney's fees).

**Following are the guidelines that the ISA implements in administrative proceedings:**

- 1. Enforcement of events that is considered by the ISA to be of high public interest.** Examples are cases of gross negligence or more serious violations, or cases in which the ISA wishes to establish deterrence (due to the large scope of violations committed negligently, or due to the scope of damage caused, for example).
- 2. Enforcement against the key individuals involved in the commission of the offense.** Because administrative offenses are offenses of strict liability or offenses committed with negligence, potential infringers may constitute a broad group. In general, the ISA focuses on prosecuting the major infringers who are directly involved in the commission of an offense. While this approach occasionally requires the ISA to forgo prosecution of all the individuals involved in the affair, it is able, by focusing on the main infringers, to conserve the resources and costs required to conduct a full administrative enforcement proceeding as well as the time of the parties and the Committee.
- 3. Use of graded scale of punishment based on involvement and seniority.** In its motions to impose enforcement measures, the ISA strives to match the severity



of the enforcement measure to each infringer's involvement in the commission of the offense, and where relevant, to the infringer's rank or standing in their corporation or in the capital market. In this manner, a graded scale of punishment is applied to all the various infringers in each case, according to their role in the commission of the offense.

- 4. Involvement of outside advisors concerning the inclusion of misstatements in financial statements.** The offense involving the inclusion of misstatements in a prospectus, financial statement, or notice applies not only to the officers of a company, but also to any individual involved in the inclusion of the misstatement. Consequently, individuals who are directly responsible for that act are liable for the offense, in addition to the liability of the corporation on whose behalf they acted. Therefore external advisors such as accountants and outside legal counsel, may be named as infringers in reporting offenses when they have significant involvement and where the required mens rea exists.<sup>1</sup>
  
- 5. Considerations in imposing monetary fines.** The imposition of monetary fines on companies and individuals is a major enforcement measure used in administrative enforcement. When the ISA requests the imposition of a monetary fine, it considers the totality of circumstances, including the severity of the offense, the infringer's status and position in the corporation, the infringer's role in the commission of the offense and their gain (if quantifiable); and the scope of the damage. Nonetheless, when considering the appropriate amount of a fine, the ISA also takes into consideration – with respect to individuals and corporations both – any fundamental financial difficulties they have, if the ISA is persuaded of the credibility of such claims. It is the ISA's position that such leniency should be applied only in justified circumstances and situations, because as a rule, monetary fines should have a deterrence effect.
  
- 6. Prohibited service – adjustment of the prohibited service period based on a corporate officer's essential role in their company.** The ISA believes that the enforcement measure of prohibiting an infringer from serving as a senior officer in a regulated entity is an important one. In the appropriate cases, the ISA will request the imposition of this measure alone, or in addition to another enforcement measure. Appropriate cases are cases in which at least one of the following features obtained (the list is not exhaustive): the offense is grave, ongoing, involves senior officeholders, or creates a special risk for capital market investors.

1. External entities may also be liable for the inclusion of misstatements in their own opinions that are attached to the corporation's disclosures with their consent.



The ISA takes into account the extent of the damage that will be caused to the officeholder as a result of the actual period of prohibited service, and inter alia considers whether the prohibition will have an immediate impact on his work, which is the case when the infringer is serving at the time of the administrative proceeding as an officeholder in a regulated entity. In the appropriate cases, the ISA also takes into account the implications of the prohibition for the corporation and its shareholders, where the ISA is persuaded that the infringer is an essential corporate officer whose absence from the corporation's management for an extended period will cause harm to the corporation's business.

Furthermore, it is the ISA's position that in the appropriate cases, the period of prohibition may be balanced with the amount of the monetary fine imposed on the officer, together, where the severity of one measure sets off the severity of the other, such that their combined effect ensures an appropriate degree of enforcement.

- 7. Consideration of effective implementation of internal corporate enforcement programs at the time of the commission of the offense.** Both when direct liability for negligence is imposed on the company or on one of its officers, and when derivative liability is imposed on the CEO, the ISA takes into account whether an effective internal enforcement program was in place at the time of the commission of the offense and, among other things, led to the discovery of the offense. To grant such consideration, a detailed presentation of the enforcement program must be presented to the ISA by the suspected offender, the ISA must be satisfied that the enforcement program was effectively implemented during the time relevant for the offense, and that consideration should be given when weighing the corporation's or individual's negligence in committing the violations under the circumstances.

Consideration depends on the specific circumstances of each case and may be expressed as reclassification of the offense in a lighter category, reduction of the number of offenses included in the proceeding, request for lenient enforcement measures under the circumstances, entering into an enforcement arrangement in lieu of a full proceeding, and non-enforcement against all or some offenders.



## **8. Encouragement of enforcement arrangements in administrative proceedings.**

The Securities Law grants the ISA the power, if it has good grounds to believe that an offense was committed, to enter into an enforcement arrangement with suspected infringers at any stage of the administrative proceeding before its conclusion (Article 54B). The ISA may do so subject to the considerations listed in Article 52RR, if it believes that compliance with the terms of the arrangement will serve the public interest under the circumstances. Negotiations toward an arrangement may be initiated by the infringer or by the ISA.

The ISA encourages enforcement arrangements in administrative proceedings and views such arrangements as a legitimate means of achieving the aims of enforcement and as a quick, cost-beneficial conclusion to administrative proceedings. In contrast to commercial contracts, an enforcement arrangement is an enforcement action performed by a regulatory agency against an individual or a company, with their consent. The ISA considers whether the arrangement serves its aim of protecting the investor public and other aims such as to convey a clear and consistent message to the market through the publication of the arrangement. The ISA agrees to enforcement arrangements only in the appropriate cases in which the terms of the arrangement generate a desired outcome.

Notably, the Chair of the ISA may enter into an enforcement arrangement even before the initiation of an administrative inquiry or in its early stages. The tendency to enter into an arrangement at such early timing, rather than conduct a full administrative inquiry, increases in the case of isolated offenses that are not serious, and where the infringer assumes full responsibility for the offense and is cooperating with the ISA. A condition for entering into an arrangement at such an early stage of the enforcement procedure is that the ISA has knowledge of the nature and scope of the prohibited conduct, which allows it to reasonably assess the prospects of achieving a desired outcome in the proceeding. For this purpose, the suspected infringer should present information to the ISA that shows reasonable grounds to assume that he or she committed the offense, and a full depiction of the facts.

According to the Securities Law, an enforcement arrangement does not require on a full admission by the infringer. Therefore, it is the ISA's position that it may enter into enforcement arrangements even where such arrangements do not include the admission of all the facts or the commission of the offenses,



provided that the arrangement reflects the factual foundation on which the offenses in question might be consolidated. The ISA believes that even when the infringer does not fully admit to the actions attributed to them, in the appropriate circumstances an arrangement may fulfill its goal and promote protection of the interests of the investor public by imposing administrative sanctions that create deterrence. A categorical requirement to have all infringers make a full admission of the offenses attributed to them within an enforcement arrangement may reduce the incentives to enter into such arrangements and can be expected to reduce the number of arrangements that are concluded between the ISA and infringers. Therefore, the ISA believes that in certain cases, an enforcement arrangement is justified even in the absence of a full admission. Notably, even in those cases, a full admission of the facts is required without admitting the legal consequences derived from them. In some cases, such as grave offenses, the ISA will make an effort to reach an arrangement that includes a full admission.

Related to this, Article 54B also grants the Chairperson of the ISA the power to terminate a criminal investigation and enter into an administrative enforcement arrangement with the suspect in lieu of pursuing a criminal investigation.

In general, criminal files are transferred to the Taxation and Economics Unit in the State Attorney's Office for a decision. After the criminal investigation is conducted, the ISA rarely exercises its authority to enter into administrative enforcement agreements regarding these investigations. The ISA exercises this authority in cases in which there the pursuit of a criminal investigation is difficult, or when it becomes clear toward the conclusion of a criminal investigation, after the factual picture of the case emerged, that the evidence collected in the case does not meet the required burden of proof for a criminal prosecution, but is sufficient for an administrative proceeding. In this context it is important to note that such arrangements are made only if the suspect is the party that initiates the arrangement and is willing to make a full admission of the offenses in question.

In addition to administrative proceedings that are conducted before the Administrative Enforcement Committee, securities laws also provide for an additional administrative proceeding, which is the imposition of monetary fines by an internal committee headed by the Chair of the ISA sitting alongside two ISA plenary members. These monetary fines are imposed on regulated entities who commit specific offenses





under securities laws, the Companies Law, and the Anti-Money Laundering Law. The Administrative Enforcement Department is in charge of managing and overseeing these ordinary monetary fine proceedings.

Although the monetary fine proceeding is a quick and efficient tool that is suitable for addressing strict liability cases, and whose facts are simple to investigate and prove, the ISA does not impose a monetary fine on all the offenses listed in the relevant Schedule of the Securities Law. Instead, it examines the totality of circumstances surrounding the offense in each case, including the harm caused to the infringer's clients, prevalence of the offense in the capital market, recidivism, and other factors.

In view of the fact that several offenses are covered by similar and overlapping directives in the Schedule to the Securities Law concerning monetary fines and in the Schedule concerning administrative enforcement proceedings, the ISA staff published criteria for deciding which proceeding is appropriate in each case: a monetary fine proceeding or other administrative enforcement measures. The criteria are: simplicity or complexity of the factual evidence; the nature, strength, and circumstances of the event in totality; the severity of the act or omission; the state of mind of the individuals involved in the offense and the prospects of proving it; and policy considerations (priorities, time since the commission of the offense and its implications, past and current enforcement policy, equality of enforcement, and mitigating circumstances).

A monetary fine comprises a base amount and an additional amount for an ongoing offense, and lessening these amounts according to the Securities Regulations (Reduction of Monetary Fines) 5761-2011 (hereinafter, "the Reduction Regulations"). The base amounts of monetary fines are listed in the relevant schedules to the laws that grant the ISA the power to act, and typically depend on the scale of operations or size of the offender, if it is a corporate body.

Where the offense is continuous, an amount equal to 2% of the base fine is added for every day the offense persists<sup>2</sup> (up to three times the amount of the base fine, or in the case of offenses of late filing of financial statements, up to five times the amount of the base fine).

2. Notably, the ISA plenary approved a proposed amendment to the law, according to which a mere 0.5% would be added for each additional day of the offense, with a maximum of 1.5 times the base amount, and 2 times the base amount for late reporting of financial statements.



The Adjustment Regulations define the following grounds for deducting amounts from the amount of the fine plus the addition: first offense; the offense was discontinued at the infringer's initiative and the infringer reported it to the ISA; the infringer took steps to prevent recurrence of the offense and to mitigate the damage in a manner the ISA found satisfactory; exceptional personal circumstances (only applicable to individual infringers); the severity of the facts that constitute the offense; other factual circumstances including the infringer's role; the extent of the offense; the potential gain from the offense; the potential loss or damage caused by the offense; and the adverse effect of the monetary fine on the offender's future operations.

In addition to monetary fines imposed under securities laws, monetary fines are also imposed on TASE members, licensed trading platform owners, and investment portfolio managers for offenses listed in the Anti-Money Laundering Law and relevant regulations. These fines are imposed by a committee headed by the Chairperson of the ISA, an ISA employee, and a legalist appointed by the Minister of Justice from among the ministry's employees – all as described in Chapter E of the Anti-Money Laundering Law. The Administrative Enforcement Department is in charge of managing and overseeing monetary fines in this area as well.



# Private Enforcement

Alongside the administrative and criminal enforcement investigations and proceedings that the ISA initiates, private enforcement action pertaining to corporate and securities laws also takes place, mainly in the form of class actions and derivative actions (hereinafter, jointly, "Class Actions"). Private enforcement is the responsibility of the market and is conducted by the market, and may be conducted concurrently with or independent of the ISA's enforcement actions. Nonetheless, in view of the public significance of private enforcement proceedings, the ISA is also involved in them.

The ISA's involvement in private enforcement actions is conducted in three primary levels:

**Financing.** The ISA has the authority to assist in the financing of class actions, in such amount and under such terms as it determines, if it is convinced that the action is in the public interest and there is a reasonable probability that it will be certified by the court as a class action or derivative action.

**Settlement arrangements.** Most class action settlements in the areas of securities and corporate law come to the ISA for review. The ISA assesses whether the settlement is consistent with the interests of the class or the company, reviews the general public interest, and if necessary submits its comments to the court, jointly with the comments of the Ministry of Justice. The aspects that the ISA reviews are fundamentally similar to the factors that the court considers before approving a settlement.

**Appearance and submission of professional positions in legal proceedings.** The ISA rarely intervenes in class actions and does so only where it believes that its expertise and knowledge have special value, such as in the case of a professional position that triggers a debate on broad issues; legal issues related to the interpretation of the securities laws; where the ISA is concerned that important issues may not be taken into consideration; or where there is a concern of significant harm to the investors public.



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