

Client Update: The ISA Client Needs Assessment Order for License Holders, 2021

The Israel Securities Authority (the "ISA") last year finalised new rules for assessing the needs and instructions of investment advisory or investment management clients; these take effect from 7 August 2022, replacing the 2014 Order under the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law, 5755-1995 (the "Law").

A client needs assessment is a statutory obligation for ISA regulated entities ("License Holders") under section 12 of the Law.

The Law exempts a person from undertaking a needs assessment where the person who seeks the service has signed a declaration and been evidenced to be an "Eligible Client"^[i], prior to the engagement commencing.

Many investment advisers nevertheless undertake a needs assessment for Eligible Clients, either as a safety net in the case of client mis-categorisation, or to ensure consistency with the arrangements that they implement globally in their business, or simply as best practice. Those that do this voluntarily, prefer to have a single process that meets both Israeli and non-Israeli requirements.

The equivalent EU rules are in MIFID 2 Article 25(2), and Articles 54 and 55 of the Delegated Regulation.^[ii] ESMA closed its consultation at the end of April 2022 on its 'Consultation Paper: Guidelines on certain aspects of the MiFID II suitability requirements'.^[iii] The UK requirements are found in COBS 9A.2 in the FCA rulebook and are similar to the MIFID 2 requirements. Where applicable in our discussion of the new Israeli Order, we cross-refer to the Annex 3 Draft ESMA Guidelines in their Consultation Paper.

The outgoing requirements for the needs assessment were very prescriptive, and inconsistent with the approach taken under MIFID. The new rules are specifically designed to be 'principles based' and provide much more flexibility to the investment adviser in terms of format; it seems that the ISA has drawn inspiration from MIFID2. Chapter 1 defines the terms 'Known State of Affairs' and the 'Client'.

The outgoing requirements for the needs assessment were very prescriptive, and inconsistent with the approach taken under MIFID. The new rules are specifically designed to be 'principles based' and provide much more flexibility to the investment adviser in terms of format; it seems that the ISA has drawn inspiration from MIFID2. Chapter 1 defines the terms 'Known State of Affairs' and the 'Client'.

The outgoing requirements for the needs assessment were very prescriptive, and inconsistent with the approach taken under MIFID. The new rules are specifically designed to be 'principles based' and provide much more flexibility to the investment adviser in terms of format; it seems that the ISA has drawn inspiration from MIFID2. Chapter 1 defines the terms 'Known State of Affairs' and the 'Client'.

The outgoing requirements for the needs assessment were very prescriptive, and inconsistent with the approach taken under MIFID. The new rules are specifically designed to be 'principles based' and provide much more flexibility to the investment adviser in terms of format; it seems that the ISA has drawn inspiration from MIFID2. Chapter 1 defines the terms 'Known State of Affairs' and the 'Client'.

Chapter 2: The License Holder must implement an "Initial Process" in which he collates a set of information on the client that provides the 'Known State of Affairs' on the client's financial situation and investment goals but has discretion on the mix of methods used to gather this – by conversation with the client – either in person or remotely, the completion of client questionnaires,^[iv] third party databases, or from print or online media. The detail and breadth of the information to be gathered should be tailored to the nature of the client, the services proposed, and the nature of the investment asset under consideration.^[v]

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.

Once the 'Known State of Affairs' is complete, it must be presented to the client, for them to agree that it is a true reflection of the reality, or for it to be amended. The investment goals can relate to an investment term; or to a percentage of total available liquid assets and securities. It can also expressed by defining a level of volatility or standard deviation for the portfolio holdings, instead of a percentage split between bonds and equities as may have been done in the past.



Vered Pilichovski-Czyzyk, Partner

VeredPi@ayr.co.il



David Gilinsky, Associate

DavidG@ayr.co.il



Amar Reiter Jeanne Shochatovitch & Co

Disclaimer: The contents of this document is general information only, and does not constitute legal advice or a legal opinion, and cannot be used for any other purpose.

i] Any entity that falls into one of the categories listed in the First Addendum to the Law, or for a natural person, meeting two of the three requirements specified in that Addendum: (i) a capital asset requirement of 12 million NIS; (ii) a market experience requirement; or (iii) a frequency or securities trading outside of a managed portfolio.

[ii] Regulation (EU) 2017/565 of 25 April 2016.

[iii] ESMA 35-43-2998 (below "ESMA").

[iv] cf. ESMA, paras 21, 22.

[v] cf. ESMA, para. 32.

[vi] cf. ESMA, para. 30.

[vii] cf. ESMA, para. 19.