

## **SHARE BUYBACK BY BANKING CORPORATIONS**

### **CHAPTER A: GENERAL**

#### **Introduction**

1. Share buyback is an act in which a corporation purchases its own shares. As with dividends, share buyback reduces the corporation's number of outstanding shares. In contrast to dividends, share buyback does not constitute a declaration to the corporation's investors of its long-term intentions. Thus, a corporation may buy back its shares to address a capital surplus, while complying with its dividend policy and capital targets.
2. A banking corporation's share buyback of its shares poses several challenges and risks. The unique implications of share buyback by banking corporations stem from the capital adequacy requirements to which banking corporations are subject, their involvement in the capital market, the potential conflict of interests, and the effects on the share of holdings of the their shareholders.
3. This Directive permits banking corporations to buy back shares and determines the conditions to which share buyback is subject, in line with conventional regulatory practice in various countries. The Directive also regulates banking corporations' indirect activities involving their own shares in which they extend financing to purchase these shares or extend financing that is secured by the banking corporations' own shares.
4. To remove all doubt, it is clarified that this Directive adds to the Companies Law and the securities laws.

#### **Application**

5. (a) This Directive applies to all the following corporations (hereinafter, "Banking Corporations"):
  - (1) Banking corporations, excluding foreign banks and Joint Service Companies;
  - (2) Auxiliary corporations that are credit card companies;

(3) Corporations to which Proper Conduct of Banking Business Directives nos. 201–211 apply under the force of Article 20(3) to Proper Conduct of Banking Business Directive no. 201;

(4) Acquirers, as defined in Article 36(i) to the Banking (Licensing) Law, 5741-1981.

(b) The Supervisor of Banks may determine specific directives to apply to a specific banking corporation, which differ from the directives referenced below, or may, under exceptional circumstances, exempt a banking corporation from a specific directive where the Supervisor deems fit to do so in view of special circumstances and for reasons that will be recorded.

## **6. Definitions**

**“Qualified Customer”** A customer listed in Schedule One to the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law, 5755-1995, excluding customers according to paragraphs (8) and (9) to said Schedule.

**"Companies Law"-** The Companies Law, 5759–1999;

**“Borrower”,**

**“Group of borrowers”** As defined in Proper Conduct of Banking Business Directive no. 313.

**“Securities”** Shares of the banking corporation or securities which may be converted into shares of the banking corporation or which may be realized for shares of the banking corporation;

**“Purchase”** As defined under “distribution” in the Companies Law, excluding extending financing for purchase, as set forth in Article Three.

**CHAPTER B: PURCHASE**

7. A banking corporation and a corporation controlled by it may purchase securities issued by the banking corporation (hereinafter, "Purchase") if all of the following conditions obtain:
- (a) Compliance with the conditions for distribution according to Section 302 of the Companies Law and the conditions for distribution according to Proper Conduct of Banking Business Directive no. 331 (Distribution of Dividends by Banking Corporations).
  - (b) The purchase volume in each plan does not exceed 3 percent of the issued and paid-in share capital of the banking corporation on the plan approval date, as defined in Subsection (f) below.
  - (c) The purchase offer is not directed at a specific group of shareholders. This condition will not apply to shareholders who are qualified customers.
  - (d) The banking corporation operates according to the safe harbor mechanism published by the Israel Securities Authority (Legal Position No. 199-8 dated July 26, 2010), which guarantees a legal defense against allegations of insider information use. The purchase plan defined according to this mechanism will also take into account the volume of trading in the banking corporation's shares.
  - (e) The purchase plan was approved by the banking corporation's board of directors, as set forth in Subsection (f) below.
  - (f) The banking corporation obtained approval for the purchase plan from the Supervisor of Banks based on a purchase plan presented to the Supervisor, which includes at least the following information:
    - (1) Confirmation that the banking corporation meets the conditions set forth in Subsections (a) through (e) above.
    - (2) The effects of the purchase, from a broad perspective that takes into account all the distributions expected according to the banking corporation's dividend policy, on the banking corporation's compliance with its internal and

regulatory capital requirements both on the application submission date and over the capital planning horizon, typically for a three-year period;

- (3) The effects of the purchase on compliance with other regulatory capital-based restrictions such as the leverage ratio, and restrictions on borrowers and groups of borrowers.
  - (4) The considerations for the purchase and the expected treatment of the shares (for example, will they will be sold back?).
  - (5) Potential effects of the plan on the banking corporation's shareholders, as far as such effects are known to the banking corporation (for example, will an existing shareholder exceed the minimum reporting requirements?).
- (g) As a rule, supervisory approval for a purchase plan will be valid for no more than one year.

**CHAPTER C: EXTENDING FINANCING FOR A PURCHASE**

8. Neither a banking corporation nor a corporation controlled by it shall extend financing for the purpose of purchasing securities issued by the banking corporation, whether on market terms or not.
9. Without detracting from the general nature of the aforesaid in Section 8 above:
  - (a) A banking corporation or a corporation controlled by it may accept securities issued by the banking corporation as collateral for the indebtedness of a borrower or a group of borrowers, if the aforesaid collateral does not exceed 0.5 percent of the banking corporation's issued and paid-in share capital.
  - (b) A banking corporation or a corporation controlled by it may finance transactions involving units of share indices, including funds that invest in securities.
  - (c) The total collateral that are securities issued by the banking corporation, which a banking corporation or a corporation controlled by it received in respect of the activities listed in Subsections (a) and (b) may not exceed 5 percent of the banking corporation's issued and paid-in share capital.

For the purpose of this paragraph, "share index unit" – is a share index that includes the shares of the banking corporation; "funds that invest in securities" – are funds whose holdings include securities issued by the banking corporation.

10. Notwithstanding Section 8 above, a banking corporation may provide financing for a purchase, as part of a plan to purchase securities by employees, provided that the banking corporations issues a written notice to the Supervisor of Banks shortly after adopting a resolution concerning an employee purchase plan.

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Update of file

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