CHAPTER 363

SECURITIES INDUSTRY

LIST OF AUTHORISED PAGES

1 – 115 LRO 1/2017

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

SECTION

1. Short title.
2. *Repealed*.
3. Purposes.
4. Interpretation.
5. Ownership and control of securities.
6. Control of an issuer.
7. Securities business.
8. Carrying on business in The Bahamas.
9. References.

PART II
THE SECURITIES COMMISSION

10. Continuation of the Commission.
11. Declaration of interest.
12. Functions of the Commission.
13. Powers of the Commission.
14. Delegation.
15. Executive Director.
16. Funds and Resources.
17. Borrowing powers.
18. Advances and Guarantees.
19. Repayment of interest.
20. Surplus funds.
21. Reserve fund.
22. Authority to set fees.
23. Balancing revenue and surplus.
24. Secretary and other officers.
25. Commission staff.
26. Appointment of experts.
27. Indemnity.
28. Confidentiality.
29. Powers of Minister.
30. Accounts, auditor and audit.
31. Annual report.
32. Commission procedures.

33. Panels of the Commission.

PART III
ASSISTANCE TO DOMESTIC AND FOREIGN REGULATORY AUTHORITIES

DIVISION 1 - INTERPRETATION

34. Interpretation.

DIVISION 2 - ASSISTANCE TO DOMESTIC REGULATORY AUTHORITIES

35. Exercise of powers on behalf of domestic regulatory authorities.

DIVISION 3 - ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

36. Conditions for provision of assistance.
37. Assistance that may be rendered.

DIVISION 4 - GENERAL

38. Authority to enter into Memoranda of Understanding.
39. Offences under this Part.
40. Immunities.

PART IV
INVESTIGATIONS AND INSPECTIONS

DIVISION 1 -INTERPRETATION

41. Interpretation.

DIVISION 2-INVESTIGATIONS

42. Power to investigate.
43. Powers to obtain information for investigation.
44. Uncooperative witness liable for contempt.

DIVISION 3-INSPECTIONS

45. Compliance inspections-regulated persons.
46. Power to require reports.
47. Compliance inspection of other market participants.
48. General.
49. Participation of other regulatory authorities in inspections under this Part.

DIVISION 4-PROVISION OF INFORMATION RELATING TO TRANSACTIONS

50. Provision of information.

DIVISION 5-GENERAL

51. Liens.
52. Information about documents not in person's possession.
53. Secrecy.
54. Exemption.
55. Privilege.
56. Use of documents etc.
57. Offence of obstruction of investigations and inspections.

PART V
REGULATION OF MARKETPLACES, ETC.

58. Registration.
59. Conditions and restrictions on registration.
60. Approval of regulatory instruments.
61. Commission powers.
62. Delegation.
63. Voluntary surrender.
64. Auditors and audits.
65. Reporting to the Commission.
66. Notices.
67. Keeping of records.
68. Offences.

PART VI
REGISTRATION OF PERSONS CARRYING ON SECURITIES BUSINESS

69. Registration requirement.
70. Notices.
71. Surrender of registration.
72. Criminal convictions.
73. Voluntary liquidation.
74. Offence.

PART VII
CONDUCT OF SECURITIES BUSINESS

75. Duties to clients.
76. Auditor.
77. Reporting to the Commission.
78. Responsibility for actions of persons acting on behalf of registered firm or party related to investment fund.
79. Keeping of records.
80. Prohibition.

PART VIII
COMPENSATION FUND

81. Compensation funds.

PART IX
DISTRIBUTIONS AND PROSPECTUSES

82. Interpretation.
83. Prospectus required.
84. Receipt for preliminary prospectus.
85. Selling activities before issue of receipt for prospectus.
86. Defective preliminary prospectus.
87. Delivery of prospectus.

88. Amendments.
89. Certificates.
90. Expert's consent.
91. Issue of receipt.
92. Exempt distributions.
93. Exemptions for approved foreign issuers.
94. Distributions made outside The Bahamas.
95. Resale restrictions.
96. Lapse date.
97. Offence.

PART X
CONTINUING OBLIGATIONS OF PUBLIC ISSUERS

98. Disclosure to the public.
99. Timely disclosure of material changes.
100. Auditors and audits.
101. Filing of annual audited financial statements.
102. Delivery of continuous disclosure documents to security holders.
103. Proxies and proxy solicitation.
104. Exemptions for certain foreign issuers.
105. Offence.

PART XI
GOVERNANCE OF PUBLIC ISSUERS

106. Governance of public issuers.

PART XII
TAKE-OVER BIDS

107. Take-overbids.

PART XIII
MISCONDUCT

108. Application and definitions.
109. Market manipulation.
110. False trading and market rigging-creating a false or misleading appearance of active trading etc.
111. False trading and market rigging-artificially maintaining etc. trading price.
112. Misleading or deceptive conduct.
113. Misleading the Commission.
114. Dissemination of information about illegal transactions.
115. False or misleading statements.
116. Inducing persons to deal.
117. Dishonest conduct.
118. Prohibited representations.
119. Prohibition on purchasing or selling of securities by certain persons.
120. Front running.
121. Defence-belief that other party knows information.
122. Defence of automatic or predetermined trade.

123. Defences- trading as agent.
124. Defences-trade or recommendation by individual with no inside or material order information.
125. Exemptions and modifications.
126. Offences.

PART XIV
REPORTING BY SECURITY HOLDERS OF PUBLIC ISSUERS

127. Application.
128. Initial insider report.
129. Disclosure of beneficial interest in share capital.
130. Public issuer to keep register of its security holders.
131. Offence.

PART XV
ENFORCEMENT

132. Compliance orders.
133. Orders in the public interest.
134. Application to court.
135. Administrative penalty.
136. Removal of benefits.
137. Payment of costs.
138. Order to freeze property.
139. Hearings.
140. Limitation periods.
141. Directors and officers.

PART XVI
CIVIL LIABILITY FOR MISREPRESENTATIONS

142. Interpretation.
143. Liability for misrepresentation in prospectus-damages.
144. Action by security holders for rescission for misrepresentation in prospectus.
145. Due diligence defence.
146. Commission may seek leave to bring action or appear or intervene in an action.
147. General.

PART XVII
GENERAL PROVISIONS

148. Regulations.
149. Rules.
150. Rule-making process.
151. Regulation prevails over rule.
152. Power to vary Commission rules.
153. Power to remove exemption contained in Commission rule.
154. Guidelines.
155. Administrative proceedings and reviews.
156. Review of decisions of securities exchange etc.

157. Appeals to court.
158. Filing of documents and public availability.
159. Verification.
160. Register as evidence.
161. Discretionary exemptions.
162. Designation orders.
163. Conditions on decisions.
164. Discretion to revoke or vary decision.
165. Recognition of foreign jurisdictions and foreign securities exchanges.
166. Commission to keep register.
167. Stamp duty exemption.

PART XVIII
TRANSITION PROVISIONS AND REPEALS

168. Definitions.
169. Existing unregistered market participants.
170. Securities exchanges registered under the former Act.
171. Clearing facilities registered under the former Act.
172. Broker-dealers and securities investment advisors.
173. Registered individuals.
174. Interim financial statement requirements for public issuers.
175. Insider reporting obligations.
176. Savings.
177. *Repealed*.

FIRST SCHEDULE
PART 1 — SECURITIES
PART 2 — SECURITIES BUSINESS - REGULATED ACTIVITIES
PART 3 — EXCLUDED ACTIVITIES
PART 4 — EXCLUDED PERSONS

SECOND SCHEDULE — THE COMMISSION

THIRD SCHEDULE (SECTION 177) — REPEALS

CHAPTER 363

SECURITIES INDUSTRY

An Act to update and modernise the law relating to the regulation of securities exchanges and the securities industry; to expand and enhance the powers of the securities commission; to repeal the Securities Industry Act, Chapter 363 and for connected matters.

10 of 2011
34 of 2016

[Assent 1st June, 2011]
[Commencement 30th December, 2011] *S.I. 107/2011.*

PART I
PRELIMINARY

1. This Act may be cited as the Securities Industry Act. Short title.

2. *Repealed*. *S.I. 107/2011.*

3. The purposes of this Act are to — Purposes.

(a) provide protection to investors from unfair, improper or fraudulent practices;

(b) foster fair and efficient capital markets and confidence in the capital markets in The Bahamas;

(c) reduce systemic risk; *34 of 2016, s. 2.*

(d) reduce the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime such as money laundering, fraud and insider dealing; and

(e) promote public understanding of the financial system including awareness of the benefits and risks of different kinds of investment or other financial dealing.

4. (1) In this Act — Interpretation.

"affiliate" means, in relation to an issuer, another issuer if —

(a) one of them is the subsidiary of the other; or

(b) the same person controls each of them;

"alternative trading system" or "ATS" means a marketplace that —

(a) is not a quotation and trade reporting system or a securities exchange; and

(b) does not —

(i) require an issuer to enter into an agreement to have its securities traded on the marketplace;

(ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;

(iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace; and

(iv) discipline subscribers other than by exclusion from participation in the marketplace;

"ancillary facility" means any person providing prescribed services to a marketplace, clearing facility, registrant, or to a public issuer with securities listed or traded on a marketplace, where the services facilitate or are ancillary to the operations of a marketplace;

"approved auditor" has the prescribed meaning;

"approved foreign issuer" means a foreign issuer that —

(a) is a public issuer, or equivalent, under the securities laws of a recognised foreign jurisdiction; and

(b) meets the prescribed criteria;

"approved rating organisation" means an organisation that is prescribed as such;

"associate" means, if used to indicate a relationship with a person —

(a) a partner, other than a limited partner, of the person;

(b) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar capacity;

(c) an issuer of which the person owns or controls voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer; or

(d) a family member of the person, or a family member of the person's spouse, if the family member has the same home as that person;

"beneficial owner" means the person who is entitled to the benefits of ownership of a security although that person may not be the registered owner of the security;

"beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

"business combination" means an amalgamation, merger, arrangement or similar transaction;

"clearing facility" means a person that —

(a) maintains records of trades of securities for the purpose of settling claims for money and securities;

(b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;

(c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry; or

(d) performs any combination of two or more functions referred to in paragraphs (a) to (c), but does not include a registrant or financial institution acting exclusively in the ordinary course of its customary business;

"Commission" means the Securities Commission of The Bahamas as continued under Part II;

"company" means any corporation or other incorporated person;

"Consolidated Fund" means the fund established by Article 128 of the Constitution;

"control block holder" means a person that —

(a) holds more than 30% of the voting rights attached to all an issuer's outstanding voting securities; or

(b) is able to affect materially the control of the issuer, whether alone or by acting in concert with others;

"decision" means —

(a) if used in relation to the Commission or a person delegated a power of the Commission, a direction, decision, order, ruling or requirement made under securities laws; or

(b) if used in relation to a marketplace, self-regulatory organisation or clearing facility, a direction, decision, order, ruling or requirement made in relation to a regulatory instrument;

"director" means a director of a corporation or an individual performing a similar function or occupying a similar position for a company or for any other person;

"distribution" means —

(a) a trade in a security of an issuer that has not been previously issued;

(b) a trade, by or on behalf of an issuer, in a previously issued security of that issuer that has been redeemed, purchased by or donated to that issuer;

(c) a trade in a previously issued security of an issuer by a control block holder;

(d) a trade within a prescribed class of trades; or

(e) a trade described in an order made under subsection 161(2);

"distribution period" means the period between the issue of the receipt for a prospectus and the earlier of—

(a) the date the distribution ceased; and

(b) the lapse date of the prospectus under section 96;

"document" includes, in addition to a document in writing —

(a) an electronic communication as defined in the Electronic Communications and Transactions Act; Ch. 337A .

(b) any map, plan, graph or drawing;

(c) any photograph;

(d) any disc, tape, sound track or other device in which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced; and

(e) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

"domestic regulatory authority" means an authority in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions and includes —

(a) authorities that regulate or supervise financial institutions;

(b) securities exchanges;

(c) self-regulatory organisations;

(d) law enforcement agencies;

(e) governmental or regulatory agencies not mentioned in paragraphs (a) to (d); and

(f) any other Bahamian authority, as prescribed;

"Executive Director" means the Executive Director of the Commission;

"expert" means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by the person;

"expert's report" means a report, opinion, valuation or statement made or purporting to be made by an expert;

"family member" means a person's spouse, parent, grandparent, brother, sister, child or grandchild;

"file" means to submit a document to the Commission as required under a provision of

securities laws that requires such document be filed, other than a document provided to the Commission under Part IV;

"financial institution" means a bank or trust company licensed under the Banks and Trust Companies Regulation Act or an insurance company registered under the Insurance Act;

Ch. 316.

Ch. 347.

"foreign disclosure requirements" means the requirements to which a foreign issuer is subject concerning disclosure made to an overseas regulatory authority in a recognised foreign jurisdiction, which disclosure is made publicly available;

"foreign issuer" means an issuer that is not organised under the laws of The Bahamas;

"foreign jurisdiction" means a jurisdiction other than The Bahamas;

"form of proxy" means a written or printed form that, upon completion and signature by or on behalf of a security holder, becomes a proxy;

Ch. 363.

"former Act" means the Securities Industry Act;

"generally accepted accounting principles" means the standards promulgated by the International Accounting Standards Board or as prescribed;

"generally accepted auditing standards" means the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or as prescribed;

"inside information" means material information that has not been generally disclosed;

"insider" means —

(a) a director, senior officer or significant security holder of an issuer; or

(b) a director or senior officer of a subsidiary of an issuer, or of a significant security holder of an issuer, if the director or senior officer's responsibilities routinely provide the individual with access to inside information about the issuer;

"interim period" means a completed three, six or nine month period in a financial year;

"investment fund" has the meaning given in the Investment Funds Act; Ch. 369A.

"investment fund administrator" has the meaning given in the Investment Funds Act; Ch. 369A.

"issuer" means a person that —

(a) has a security outstanding; or

(b) proposes to issue a security;

"issuer bid" has the prescribed meaning;

"jurisdiction" means a country or territory or a political subdivision of a country or territory;

"market participant" means —

(a) a marketplace;

(b) a self-regulatory organisation;

(c) a clearing facility;

(d) a registrant;

(e) a compensation, contingency or similar fund formed to compensate clients of registrants;

(f) a custodian of assets of a registrant or a client of a registrant;

(g) a public issuer;

(h) a transfer agent or registrar for securities of a public issuer;

(i) an investment fund;

(j) a party related to an investment fund;

(k) a general partner or a partner, director, officer or significant security holder of a person referred to in this definition;

(l) a person that the Commission has ordered is exempt from a provision of securities laws;

(m) a rating organisation; or

(n) a person described in an order made under subsection 161(2);

but does not include a person —

(aa) described in an order made under subsection 161(1); or

(bb) within a prescribed class of persons;

"marketplace" means —

(a) a securities exchange, a quotation and trade reporting system, or an ATS;

(b) a person not included in paragraph (a) that —

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;

(ii) brings together the orders for securities of multiple buyers and sellers; and

(iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or

(c) a person described in an order made under subsection 161(2), but does not include a person —

(aa) described in an order made under subsection 161(1); or

(bb) within a prescribed class of persons;

"material information" means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer;

"Member" means a person appointed by the Minister to the Commission under section 10;

"Minister" means the Minister to whom responsibility for finance is assigned;

"misrepresentation" means —

(a) in relation to an issuer —

(i) an untrue statement of material information;

(ii) the failure to disclose material information that is required to be disclosed; or

(iii) the omission of material information from a statement, if that information is necessary to prevent the statement from being false or misleading in the circumstances;

(b) in any other circumstance, a statement about something that a reasonable investor would consider important —

(i) in making a decision to trade a security; or

(ii) in relation to a trading or advising relationship with a person, if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances;

"offering document" means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision regarding securities being sold in a distribution to which section 83 would apply but for the availability of one or more of the exemptions contained in this Act or regulations;

"officer" means a person working in an executive capacity for the Commission, an issuer, a registrant or any other person; *34 of 2016, s. 3.*

"order" means, unless a contrary intention appears, an order or decision of the Commission or its delegatee;

"overseas regulatory authority" means an authority in a jurisdiction outside The Bahamas that exercises functions corresponding to any function of the Commission;

"party related to an investment fund" has the meaning given in the Investment Funds Act; Ch. 369A.

"person" includes an individual, company, partnership, party, trust, fund, association and any other organised or incorporated group of persons, and the personal or other legal represent-

tative of any person to whom the context can apply;

"prescribe" or "prescribed" means prescribed by regulation or rule;

"private company" means a company whose constitutive document —

(a) restricts the right to transfer its shares;

(b) limits the number of its security holders to no more than fifty beneficial owners, where two or more persons holding securities jointly shall be counted as one person; and

(c) prohibits any invitation to the public to subscribe for any securities of the company;

"promoter" means a person that takes the initiative in founding or organising an issuer;

"prospectus" means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase;

"proxy" means a completed and signed form of proxy by which a holder of voting securities of an issuer appoints a person to attend and act on the security holder's behalf at a meeting of security holders;

"public issuer" means an issuer that —

(a) has filed a prospectus for which the Commission has issued a receipt under Part IX;

(b) has completed a takeover, business combination or other reorganisation, involving an exchange of securities in which one of the parties was a public issuer;

(c) has issued a security that —

(i) was listed for trading on a securities exchange registered with the Commission at the time this Act comes into force; or

(ii) at any time after this Act comes into force, has been traded on a registered marketplace registered under Part V;

(d) was a public company or deemed public company under the former Act at the time that Act was repealed; or

(e) is described in an order made under subsection 161(2); but does not include an issuer —

(aa) described in an order made under subsection 161(1);

(bb) that is an investment fund; or

(cc) within a prescribed class of issuers;

"publish" with respect to an action to be taken by the Commission includes —

(a) publish in a daily newspaper of general circulation in The Bahamas;

(b) print in a periodical regularly published by the Commission;

(c) post on the Commission's website; or

(d) any other method of publication of the rule or proposed rule as prescribed;

"purchase" includes any purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

"quotation and trade reporting system" means a facility that disseminates price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registrants, but does not include a securities exchange, ATS or a registrant;

"rating organisation" means an organisation that issues publicly available ratings that are current assessments of the credit worthiness of obligors with respect to specific securities;

"recognised foreign jurisdiction" means a foreign jurisdiction recognised under section 165;

"recognised foreign securities exchange" means a securities exchange located in a foreign jurisdiction recognised under section 165;

"registrant" means any person registered under Part VI of the Act or required to be so registered;

"registered clearing facility" means a clearing facility registered under Part V of the Act;

"registered firm" means a person registered under subsection 69(1) to carry on securities business in The Bahamas;

"registered marketplace" means a marketplace registered under Part V of the Act;

"registered representative" means an individual who is registered under subsection 69(4) to act on behalf of a registered firm;

"registered securities exchange" means a securities exchange registered under Part V of the Act;

"registered self-regulatory organisation" means a self-regulatory organisation registered under Part V of the Act;

"regulated person" means a registrant, a person registered under Part V of the Act, an investment fund or an investment fund administrator;

"regulations" means the regulations made under this Act and, unless the context otherwise indicates, includes the rules;

"regulatory instrument" means a by-law, rule or other similar instrument of a marketplace, clearing facility or self-regulatory organisation;

"representative" means, when used in relation to a registrant, an individual who acts for or on behalf of the registrant in the carrying out of securities business and who is a director, officer, partner or employee of the registrant who performs any such securities business for the registrant;

"reserve fund" means the fund established by the Commission under section 21;

"sale" includes a sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise; but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

"securities" means the assets, rights or interests specified in Part 1 of the First Schedule; First Schedule.

"securities activity" means an activity comprising securities business set out in Part 2 of the First Schedule; First Schedule.

"securities business" has the meaning assigned in section 7;

"securities exchange" means a marketplace, other than a quotation and trade reporting system or ATS, that maintains or provides —

(a) physical facilities where persons may meet to execute trades in securities; or

(b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale;

"securities laws" means this Act and the Investment Funds Act; Ch. 369A.

"self-regulatory organisation" means a person, other than a marketplace, that sets standards for, or monitors the conduct of, its members or participants relating to trading in or advising on securities;

"senior officer" means an officer of an issuer whose responsibilities routinely provide the officer with access to inside information about the issuer;

"significant security holder" means, in relation to a person, a security holder that —

(a) owns or controls 10% or more of any class of the person's voting securities, excluding any securities that the security holder, if a registrant, holds in the course of a public distribution; or

(b) is able to affect materially the control of the person, whether alone or by acting in concert with another person;

"spouse" means a person who —

(a) is married to another person and is not living separate and apart from that person; or

(b) is living and cohabiting with another person in a marriage-like relationship;

"subsidiary" means an issuer that is controlled by another issuer;

"subscriber", when used in relation to an ATS, means any person that has entered into a contractual agreement with an ATS to access such ATS for the purpose of effecting transactions in securities or submitting, disseminating or displaying orders on such ATS, including a client, member user or participant in the ATS;

"surplus funds" has the meaning given the term in section 20;

"take-over bid" has the prescribed meaning;

"trade" includes —

(a) any purchase or sale of a security for valuable consideration; or

(b) any participation as a registrant or agent in any transaction in a security;

"underwriter" means a person who —

(a) as principal, agrees to purchase a security for the purpose of a distribution;

(b) as agent, offers for sale or sells a security in connection with a distribution; or

(c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for valuable consideration,

but does not include —

(aa) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or

(bb) an issuer that purchases shares of its own issue and resells them;

"voting security" means a security carrying voting rights —

(a) under all circumstances; or

(b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right to acquire such a security.

Ownership and control of securities.

5. In this Act —

(a) person owns a security if the security is beneficially owned by the person;

(b) a person controls a security if —

(i) the person, directly or indirectly, directs the trading or voting of the security;

(ii) the security is owned by an issuer that the person controls; or

(iii) the security is owned by an affiliate of the person or by an issuer that the person controls.

Control of an issuer.

6. (1) A person controls an issuer if the person, acting either alone or jointly or in concert with other persons, has the power to direct that the business and affairs of the issuer be conducted in accordance with the person's wishes.

(2) Where the person or persons own or control more than 50% of the outstanding securities carrying voting rights in an issuer, such person or persons are deemed to control the issuer.

(3) Where the person or persons own or control more than 30% of the outstanding securities carrying voting rights in an issuer, such person or persons are presumed to control the issuer.

(4) The power under section (1) to direct the business and affairs of an issuer may arise through the ownership or control over securities of the issuer, or by virtue of any agreement, arrangement, commitment or understanding with any person or persons.

Securities business.

7. (1) For the purposes of this Act, a person carries on securities business if that person is engaged in the course of business in any one or more of the securities activities set out in the Part 2 of the First Schedule. First Schedule.

(2) For the purposes of this Act, a person engages in securities business if that person enters or offers to enter into an agreement the making or performance of which by either party constitutes a securities activity.

(3) The activities set out in Part 3 of the First Schedule do not constitute securities business for the purposes of this Act. First Schedule.

(4) Without prejudice to the generality of subsection 149(1), the Commission may, by rule, amend the First First Schedule.

Schedule by deleting or amending any of the provisions or adding new provisions.

Carrying on business in The Bahamas.

8. (1) For the purposes of this Act, a person carries on securities business in or from The Bahamas if such person —

(a) is incorporated, established or registered under any law in The Bahamas;

(b) carries on securities business from a place of business maintained by such person in The Bahamas; or

(c) engages in an activity the doing of which constitutes the carrying on by such person of securities business in or from The Bahamas under an order made under subsection (2).

(2) The Commission may make an order specifying the circumstances in which a person is to be regarded as —

(a) carrying on securities business in or from The Bahamas; or

(b) not carrying on securities business in or from The Bahamas.

(3) An order under subsection (2) may be made so as to apply —

(a) generally to all securities activities;

(b) in relation to a specified category of securities activity; or

(c) in relation to a particular securities activity.

(4) An order made under subsection (2) may be made subject to conditions.

(5) For the purpose of this section, a person maintains a place of business if the person carries on securities business from premises the person occupies, at which the person employs staff and pays salaries and other expenses in connection with that business.

References.

9. Any reference in this Act —

(a) to "the Act" shall, unless expressly stated, include a reference to any regulations, rules, orders, notices and other subsidiary legislation made under this Act;

(b) to "securities laws" shall, unless expressly stated, include a reference to any regulations,

rules, orders, notices and other subsidiary legislation made under a securities law; and

(c) to any other statute shall, unless expressly stated, include a reference to any regulations, rules, orders, notices and other subsidiary legislation made under that statute.

PART II
THE SECURITIES COMMISSION

Continuation of the Commission.

10. (1) The Securities Commission of the Bahamas, a body corporate continued under the former Act, is continued.

Second Schedule.

(2) The Second Schedule shall have effect with respect to the Commission.

(3) The Members of the Commission shall consist of a Chairman, a Deputy Chairman and such number of other Members, not being more than seven, as the Minister may from time to time determine.

(4) The Minister shall appoint all the Members and shall appoint one of their number to be its Chairman.

(5) The Members shall be selected from among persons identified in the prescribed manner and who appear to the Minister to be qualified as having had experience of or shown capacity in matters relating to industry, commerce, law, finance or administration.

(6) In addition to Members appointed in subsection (3) the Executive Director of the Commission, the Governor of the Central Bank and the Registrar of Insurance shall be ex-officio Members of the Commission.

(7) The Chairman shall hold office for a term of five years and shall be eligible for re-appointment for one additional term only.

(8) The Deputy Chairman and the other Members of the Commission shall hold office for such term, not exceeding four years, as the Minister may direct in the instrument appointing such Member, and shall be eligible for re-appointment.

(9) A Member shall not be eligible for re-appointment, if, by reason of consecutive appointments to the Commission, he has been a Member for a continuous period of ten years or more.

(10) The Minister shall, in setting the term of appointment or re-appointment of a Member, consider the terms of the other Members then in office and use the Minister's best efforts to provide that the terms of no more than one-third of the Members expire in any twelve month period.

(11) The Minister may, by instrument in writing, appoint some suitable person as a Member of the Commission to act temporarily in the place of any Member who is absent or otherwise unable to act.

(12) The Minister shall appoint new Members of the Commission on the advice of the Commission and the securities and investment funds industries in The Bahamas.

(13) A Member may at any time resign his Membership by notice in writing addressed to the Minister.

(14) The Minister may terminate the appointment of the Chairman, the Deputy Chairman or a Member of the Commission if the Minister is satisfied that the person —

(a) has been absent from meetings of the Commission for more than three consecutive meetings without the permission of the Commission or without reasonable cause;

(b) has become bankrupt or made arrangements with his creditors;

(c) is incapacitated by physical or mental illness;

(d) has been, in The Bahamas or in any other jurisdiction, convicted of a criminal offence involving fraud or dishonesty, or found liable in a civil or regulatory action for activities involving fraud or dishonesty; or

(e) is otherwise unable or unfit to discharge the functions of the position to which that person was appointed.

(15) A Member shall be paid such remuneration and allowances in respect of the Member's office as the Minister may determine from time to time.

(16) The appointment, termination, death or resignation of any Member of the Commission shall be published promptly in the *Gazette*.

Declaration of interest.

11. (1) In carrying out the Member's duties and activities, the Member shall act honestly, fairly and with integrity and in the best interests of the Commission.

(2) A Member who is in any way, whether directly or indirectly, interested in a matter before the Commission shall avoid any real or potential conflicts which a reasonable person may consider sufficiently material to affect a Member's judgement.

(3) A Member with an interest in a matter shall not take part in any deliberations or vote on that matter and shall leave the room during such deliberations.

(4) For the purposes of this section, a Member shall be deemed to have an interest in a matter if the Member, the Member's spouse or child, or any other relative that resides in the same dwelling as the Member, or the Member's nominee, is a security holder or partner in, or an officer or director of, an issuer having an interest or being involved in a matter before the Commission.

Functions of the Commission.

12. (1) The functions of the Commission are to —

(a) advise the Minister on all matters relating to the capital markets and its participants;

(b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;

(c) foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;

(d) protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices;

(e) promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;

(f) create and promote conditions that facilitate the orderly development of the capital markets; and

(g) perform any other function conferred or imposed on it by securities laws or Parliament.

(2) In the exercise of its functions the Commission shall satisfy itself that the provisions of the Financial Transactions Reporting Act, and any other Act or regulation administered by the Commission are being complied with.

Ch. 368.

Powers of the Commission.

13. For the purpose of the discharge of its functions the Commission has power, subject to this Act, to —

(a) regulate and govern the capital markets and its participants;

(b) deal with such matters as may be referred to it by any person from time to time;

(c) authorise and regulate registrants, marketplaces, investment fund administrators and other market participants with a view to maintaining proper standards of conduct and professionalism in the capital markets;

(d) monitor the solvency of regulated persons and take measures to protect the interests of clients and others where the solvency of any such person is in doubt;

(e) regulate issuers offering their securities to the public, including public issuers and investment funds;

(f) adopt measures to supervise and minimise any conflict of interests that may arise in the case of market participants;

(g) regulate take-over bids;

(h) take enforcement action against any person for failing to comply with securities laws;

(i) recommend regulations to the Minister and formulate rules;

(j) publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application, or enforcement of securities laws;

(k) make any order which the Commission may make under securities laws; and

(l) do all things, and take all actions, which may be necessary or expedient or are incidental to the discharge of any function or power given to the Commission.

Delegation.

14. (1) The Commission may, by order, delegate any responsibility, power or function conferred on it by securities laws, except the power to make rules and to hear appeals within its jurisdiction, to the Executive Director or any officer of the Commission.

(2) The Executive Director may, by written order, sub-delegate to any employee of the Commission any responsibility, power or function delegated to the Executive Director by the Commission under subsection

(1), unless the Commission delegation order specifically states that no sub-delegation is permitted.

Executive Director.

15. The Minister shall appoint an Executive Director who shall —

(a) hold office on such terms as the Minister shall approve; and

(b) perform the duties assigned by the Commission or by any written law.

Funds and Resources.

16. Subject to section 22, the funds and resources of the Commission shall consist of —

(a) all sums provided by Parliament;

(b) all fees and other sums from time to time paid to or received by the Commission from its operations;

(c) all sums from time to time borrowed by or advanced to the Commission under this Part; and

(d) all other sums or other property as from time to time may in any manner be lawfully paid to or vested in the Commission whether or not for any matter incidental to its functions.

Borrowing powers.

17. (1) Subject to this section, the Commission may borrow sums required by it to meet any of its obligations or discharge any of its functions and may, in respect of any borrowing, issue debentures in such forms as the Commission may determine.

(2) Any borrowing of the Commission pursuant to subsection (1) shall be subject to the approval of the Minister as to the amount to be borrowed, the source of the borrowing and the terms on which the borrowing may be effected.

(3) An approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

Advances and Guarantees.

18. (1) Subject to subsection (3), the Minister may at the request of the Commission make advances to the Commission for the purposes of enabling the Commission to defray expenditures properly chargeable to its capital account, including provision of working capital.

(2) Subject to subsection (3), the Minister may at the request of the Commission guarantee, in any such manner and on any such conditions as the Minister thinks

fit, the repayment of the principal of, and the payment of interest and other charges on, any authorised borrowings of the Commission made under this Part.

(3) The prior approval of the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act must be given to any guarantee under this section.

(4) Where any sum is paid under a guarantee given under this section, the Minister shall as soon as practicable after the end of each financial year that there is any amount outstanding, lay before the House of Assembly a statement relating to that sum.

(5) Any sums required by the Minister for making, advancing and discharging any guarantees under this section shall be charged on and issued out of the Consolidated Fund.

(6) In this section and in this Part "financial year" means the period of twelve months beginning on 1st January in any year.

Repayment of interest.

19. (1) The Commission shall make to the Minister at such times and in such manner as the Minister may direct, payments on any amount as may be directed in or towards repayment of any sums issued in fulfilment of any guarantee given under this Part and payments of interest on any outstanding sums so issued at such rate as the Minister may direct, and different rates of interest may be directed for different periods.

(2) The Minister shall lay before the House of Assembly a statement of any payment due from the Commission under subsection (1) that is not duly paid as required.

Surplus funds.

20. (1) Subject to subsection (2), all sums standing to the credit of the Commission and not required for any current purpose (in this Part referred to as "surplus funds") may from time to time either be carried to any reserve fund established under section 21 or be invested by the Commission in government securities approved by the Minister; and the Commission may from time to time, with the approval of the Minister, sell any or all of such securities.

(2) No surplus funds are to be carried to the reserve fund or invested in securities under subsection (1) without the consent of the Minister.

Reserve fund.

21. (1) The Commission shall establish a reserve fund and may determine the management of the fund, the sum to be carried from time to time to the credit of the fund and the application of the fund.

(2) No part of the reserve fund shall be applied otherwise than for the purposes of the Commission.

Authority to set fees.

22. (1) For the purpose of carrying out its powers or functions, the Commission may, by rule, prescribe the fees payable to the Commission for any function performed by the Commission or required under securities laws.

(2) Despite the provisions of any other law —

(a) the fees payable to the Commission under securities laws;

(b) the revenue from the exercise of a power conferred or the discharge of a duty imposed on the Commission under securities laws; and

(c) the investments held by the Commission,

do not form part of the Consolidated Fund and, subject to this section, shall be applied to carrying out the powers conferred and duties imposed on the Commission under securities laws.

(3) Funds received by the Commission —

(a) under subsection 135(1) or section 136; or

(b) under a settlement of a matter relating to a contravention or alleged contravention of this Act, excluding an amount designated in the settlement as —

(i) a cost recovery; or

(ii) an allocation to or for the benefit of a third party,

may be expended only for the purpose of promoting public understanding of the financial system.

(4) When ordered to do so by the Minister, the Commission shall pay into the Consolidated Fund such of its surplus or reserve funds as the Minister requires, other than an amount held pursuant to subsection (3).

(5) In determining the amount of a payment to be made under subsection (4), the Minister shall allow reserves for the future needs of the Commission as the Minister considers appropriate, and shall ensure that the payment will not impair the Commission's ability to pay

its liabilities, meet its obligations as they become due or fulfil its contractual commitments.

Balancing revenue and surplus.

23. (1) The Commission shall discharge its functions to ensure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue accounts and its funds under sections 20 and 21 taking one year with another.

(2) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account and its funds under sections 20 and 21 for that year shall be applied by the Commission for the purposes of the Commission.

Secretary and other officers.

24. (1) The Commission —

(a) shall appoint an employee to be the Secretary of the Commission, who shall be an officer of the Commission; and

(b) may appoint other employees to be officers of the Commission as it considers necessary.

(2) The Commission may terminate the appointment of an officer at any time.

Commission staff.

25. (1) The Commission may employ any person the Commission considers necessary to perform its duties and exercise its powers under securities laws.

(2) Except as provided in any contract of employment with the Commission, the Minister may grant to any employee of the Commission in respect of his service with the Commission pensions, gratuities or other like allowances at the rate prescribed by and in accordance with the provisions of the Pensions Act as if reference in that Act to the "Governor-General", the "public service" and a "public officer" were references to the Commission acting with the approval of the Minister, service in the Commission and such employee, respectively.

Ch. 43.

(3) For the purpose of subsection (1) reference to the service of an employee of the Commission includes any continuous period of service of that employee with an approved authority immediately prior to his service with the Commission.

(4) In this section the expression "approved authority" has the same meaning as in section 2 of the Pensions Act.

Ch. 43.

(5) The pensions, gratuities or other like allowances which are payable under subsection (1) shall be charged on and paid out of the funds of the Commission or the Consolidated Fund.

Appointment of experts.

26. (1) The Commission may appoint, hire or retain, on such terms and conditions as it may approve, an expert to assist it in any manner that it considers necessary.

(2) Where the Commission appoints an expert to advise it on the development of specific policies, rules or other regulatory proposals of the Commission, the expert shall formulate and report the expert's views to the Commission in writing and the Commission may, if it thinks fit, make the report available to the public.

Indemnity.

27. (1) No civil or criminal liability shall attach to the Commission, a Member, the Executive Director, an employee or an agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a function or power of the Commission under this Act or the Investment Funds Act, or the regulations made under either Act.

Ch. 369A.

(2) The Commission may indemnify a Member, the Executive Director, an employee or an agent of the Commission against the cost of defending his actions while so discharging his functions.

(3) No civil or criminal liability shall attach to a registered securities exchange or registered self-regulatory organisation, or any director, officer, employee or an agent of the registered securities exchange or registered self-regulatory organisation, for any act done in good faith in the performance of a duty or in the exercise of —

(a) a function or power delegated by the Commission to the registered securities exchange or registered self-regulatory organisation under securities laws; or

(b) a regulatory function or power of the registered securities exchange or registered self-regulatory organisation exercised under its regulatory instruments.

Confidentiality.

28. (1) The Commission or any Member, officer, employee, agent or adviser of the Commission who discloses any information relating to —

(a) the affairs of the Commission;

(b) any application made to the Commission;

(c) the affairs of a market participant;

(d) a request for assistance from a domestic regulatory authority or an overseas regulatory authority; or

(e) the affairs of a client of a regulated person,

that the person has acquired in the course of that person's duties or in the exercise of the Commission's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding three years.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;

(b) for the purpose of assisting the Commission to exercise any function conferred on it by securities laws;

(c) in respect of the affairs of a market participant or of a client of a regulated person, with the consent of the market participant or client, as the case may be, which consent has been voluntarily given;

(d) where the information disclosed is or has been available to the public from any other source;

(e) where the information disclosed is in a manner that does not enable the identity of any market participant or of any client of a regulated person to which the information relates to be ascertained;

(f) to a person with a view to the institution of, or for the purpose of —

(i) criminal proceedings;

(ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of the person's professional duties;

(iii) disciplinary proceedings relating to the discharge by a public officer, or a Member or employee of the Commission, of that person's duties; or

(g) in any legal proceedings in connection with —

(i) the winding-up or dissolution of a regulated person; or

(ii) the appointment or duties of a receiver of a regulated person.

Powers of Minister.

29. (1) The Minister may give the Commission directions in writing for the discharge of its functions where the Minister is of the opinion that such directions are necessary or advisable to ensure that The Bahamas complies with its obligations under international treaties and agreements, and the Commission shall give effect to such directions.

(2) The Commission shall promptly give the Minister any information about its activities, operations and financial affairs as the Minister requests.

(3) The Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Commission and the person designated shall report the results of the examination to the Minister.

(4) The Members and employees of the Commission shall give the person designated by the Minister under subsection (3) all the assistance and cooperation necessary to enable that person to complete the examination.

Accounts, auditor and audit.

30. (1) The Commission shall keep proper accounts of all transactions and shall prepare annual financial statements in accordance with generally accepted accounting principles.

(2) The financial statements prepared pursuant to subsection (1) shall present the financial position, results of operations and changes in the reserve fund and cash flow of the Commission for its most recent fiscal year.

(3) The Commission shall appoint one or more approved auditors to audit the financial statements of the Commission for each fiscal year.

Annual report.

31. (1) The Commission shall, as soon as practicable after the end of each financial year and in any event not later than 30th June in any year, submit to the Minister a report containing —

(a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct; and

(b) the audited financial statement of the Commission accompanied by the auditor's report.

(2) The Minister shall cause a copy of the report together with a copy of the audited financial statements and the auditor's report to be laid on the table of both Houses of Parliament.

(3) Copies of an annual report shall be made available to the public no later than fourteen days after it is laid in Parliament under subsection (2).

Commission procedures.

32. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and time and on such days as the Chairman may determine.

(2) The Chairman, or in his absence the Deputy Chairman, or in the absence of both of them, such other person as authorised by the Chairman, shall preside at all meetings of the Commission.

(3) A quorum for a meeting of the Commission shall consist of the person authorised under subsection (2) to preside at the meeting of the Commission and three other members.

(4) The decisions of the Commission shall be by a majority of votes and in any case in which the voting is equal, the Chairman or the Deputy Chairman presiding at the meeting has a casting vote, in addition to an original vote.

(5) The Commission may establish codes —

(a) respecting the calling of and conduct of business at meetings of the Commission;

(b) respecting procedures for the initiation and holding of hearings by the Commission;

(c) prescribing the procedure for appeals and review of decisions of —

(i) persons to whom the Commission's powers have been delegated; and

(ii) persons registered under Part V;

(d) with the approval of the Minister, establishing a code of conduct governing the activities of Members and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable; and

(e) respecting any other matter, whether or not required by this Act, relating to the organisation, procedure, administration or practice of the Commission.

Panels of the Commission.

33. (1) The Commission may establish one or more panels and, in matters referred to a panel by the Commission, the panel has the powers of the Commission delegated to it by Commission order.

(2) A panel shall be composed of three or more persons appointed by the Commission, one or more of whom may be a Member. *34 of 2016, s. 4.*

(3) The Commission may appoint one or more qualified person to a panel who is not a Member.

(4) The Commission may —

(a) terminate appointments to a panel; and

(b) except for a panel that has commenced a hearing, fill a vacancy on a panel.

(5) The Commission may refer a matter that is —

(a) before the Commission, to a panel; and

(b) before a panel, to the Commission or to another panel.

(6) An approved settlement agreement in a matter involving disciplinary proceedings before a panel shall not be subject to appeal. *34 of 2016, s. 4.*

PART III
ASSISTANCE TO DOMESTIC AND FOREIGN REGULATORY AUTHORITIES

DIVISION 1 - INTERPRETATION

Interpretation.

34. In this Part, unless the context otherwise requires —

"designated third party", in relation to a foreign jurisdiction, means —

(a) any person or body responsible for supervising the overseas regulatory authority in question;

(b) any authority of the foreign jurisdiction responsible for carrying out the supervision, investigation or enforcement in question; or

(c) any authority of the foreign jurisdiction, other than the requesting overseas regulatory authority, exercising a function that corresponds to a regulatory function of the Commission under this Act;

"enforce" means enforce through criminal, civil or administrative proceedings;

"enforcement" means the taking of any action to enforce a law or regulatory requirement against a specified person, where the law or regulatory requirement relates to the capital markets of the foreign jurisdiction of the regulatory authority concerned;

"investigation" means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, where the law or regulatory requirement relates to the capital markets of the foreign jurisdiction of the regulatory authority concerned;

"material" includes any information or document in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes the power to require the production of a copy of it in legible and intelligible form;

"supervision", in relation to an overseas regulatory authority, means the taking of any action for the supervision of —

(a) a marketplace or any other person regulated or supervised by the overseas regulatory authority; or

(b) the issue of or trading in securities in the foreign jurisdiction of the overseas regulatory authority.

DIVISION 2 – ASSISTANCE TO DOMESTIC REGULATORY AUTHORITIES

Exercise of powers on behalf of domestic regulatory authorities.

35. (1) At the request of a domestic regulatory authority, the Commission may, where it considers appropriate, exercise its powers under securities laws for the purposes of assisting the performance by the domestic regulatory authority of its regulatory functions.

(2) Notwithstanding subsection 28(1), the Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under securities laws to any other domestic regulatory authority where the Commission considers such information may be relevant to the functions of such other domestic regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

DIVISION 3 – ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Conditions for provision of assistance.

36. (1) The Commission may provide the assistance referred to in section 37 to an overseas regulatory authority if the Commission is satisfied that all of the following conditions are fulfilled —

(a) the assistance is intended to enable the overseas regulatory authority, or any designated third party, to carry out the supervision, investigation or enforcement to which the request relates;

(b) the overseas regulatory authority has given a written undertaking that any material obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified at the time of the request or thereafter and is approved by the Commission;

(c) the overseas regulatory authority has given a written undertaking not to disclose to a third party, other than a designated third party of the foreign jurisdiction in accordance with paragraph (d), any material received pursuant to the request;

(d) the overseas regulatory authority has given a written undertaking to obtain the prior consent of the Commission before disclosing to a designated third party any material received pursuant to the request, and to make such disclosure only in accordance with such conditions as may be imposed by the Commission;

(e) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;

(f) the matter to which the request relates is of sufficient gravity; and

(g) the rendering of assistance will not be contrary to the public interest of The Bahamas or the interest of the investing public.

(2) In deciding whether to grant a request for assistance referred to in section 37 from an overseas regulatory authority, the Commission may also have regard to the following —

(a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in The Bahamas, have constituted a breach of securities laws;

(b) whether the overseas regulatory authority has given or is willing to give an undertaking to the Commission to comply with a future request by the Commission to the overseas regulatory authority for similar assistance; and

(c) whether the overseas regulatory authority has given or is willing to give an undertaking to the Commission to contribute towards the costs of providing the assistance that the overseas regulatory authority has requested.

(3) Where an overseas regulatory authority fails to comply with a requirement of the Commission under subsection (1) or (2), the Commission may refuse to provide the assistance sought.

Assistance that may be rendered.

37. (1) Notwithstanding subsection 28(1), the provisions of any prescribed written law or any requirement imposed thereunder, or any rule of law, the Commission may, in relation to a request by an overseas regulatory authority for assistance —

(a) transmit to the overseas regulatory authority any material in the possession of the Commission that is requested by the authority;

(b) order any person to furnish to the Commission any material that is requested by the overseas regulatory authority, that the Commission may then transmit to that authority;

(c) order any person to give the Commission assistance in connection with a request made by an overseas regulatory authority; or

(d) order any person to make an oral statement to the Commission on any information requested by the overseas regulatory authority, record such statement, and transmit the recorded statement to the authority.

(2) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(3) A person shall not be required under this section to disclose information or to produce a document which the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(4) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the legal adviser —

(a) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person —

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(5) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(6) Where the person in possession of any document required to be produced under this Part claims a lien on the document —

(a) the requirement to produce the document shall not be affected by the lien;

(b) no fees shall be payable for or in respect of the production; and

(c) the production shall be without prejudice to the lien.

DIVISION 4 – GENERAL

Authority to enter into Memoranda of Understanding.

38. (1) The Commission may, in the exercise of its cooperative functions, enter into Memoranda of Understanding with overseas regulatory authorities for —

(a) the purpose of assisting an overseas regulatory authority, or any designated third party, to carry out its supervision, investigation or enforcement functions;

(b) the purpose of assisting in consolidated supervision with such overseas regulatory authority, or any designated third party; or

(c) such other purposes as the Commission may deem fit.

(2) No memorandum of understanding may call for assistance beyond that which is provided for under securities laws, or relieve the Commission of any of its obligations under this Part.

(3) The Commission shall notify the Ministry of Finance of each memorandum of understanding and promptly publish the Memorandum of Understanding in the *Gazette*.

Offences under this Part.

39. (1) Any person who —

(a) without reasonable excuse, refuses or fails to comply with an order under this Part;

(b) in purported compliance with an order under this Part, furnishes to the Commission any material known to the person to be false or misleading in a material particular; or

(c) in purported compliance with an order made under this Part, makes a statement to the Commission that is false or misleading in a material particular,

is guilty of an offence and shall be liable on summary conviction to a fine not exceeding $100,000.

(2) If the offence of which the person is convicted under subsection (1) is continued after conviction, the person commits a further offence and shall be liable on summary conviction to a fine of $10,000 for every day on which the offence is continued.

Immunities.

40. (1) No civil or criminal proceedings, other than proceedings for an offence under section 39, shall lie against any person for —

(a) furnishing to the Commission or transmitting any material to the Commission or an overseas regulatory authority, if the person had furnished or transmitted that material in good faith in compliance with an order made under this Part;

(b) making a statement to the Commission in good faith and in compliance with an order made under this Part; or

(c) doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or material imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART IV
INVESTIGATIONS AND INSPECTIONS

DIVISION 1 - INTERPRETATION

Interpretation.

41. For the purposes of this Part, "regulated person" includes a party related to an investment fund.

DIVISION 2 - INVESTIGATIONS

Power to investigate.

42. (1) The Commission may conduct such investigation as it considers necessary or expedient for any of the following purposes —

(a) to determine whether any person has contravened, is contravening or is about to contravene securities laws;

(b) for the administration of securities laws; or

(c) to assist in the administration of the securities legislation of another jurisdiction.

(2) For the purposes of subsection (1), the Commission may conduct the investigation or may, in writing, appoint another person for that purpose.

(3) The Commission may, notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1).

Powers to obtain information for investigation.

43. (1) Where the Commission considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may —

(a) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;

(b) enter, during reasonable hours, the business premises of such person for the purpose of —

(i) inspecting and copying information or documents stored in any form on such premises; and

(ii) removing from the premises any information or documents;

(c) require such person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require;

(d) require such person to produce, or procure the production of, specified documents or documents of a specified description;

(e) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (c) and (d);

(f) require such person to give the Commission all assistance in relation to the investigation that the person is reasonably able to give.

(2) If a person, acting on behalf of the Commission, enters premises under subsection (1)(b), the person must present proof of his or her authority to do so.

34 of 2016, s. 5.

(3) The Commission may, in exercising its powers under this section, seek the assistance of the Commissioner of Police.

34 of 2016, s. 5.

(4) The assistance sought under subsection (3) shall be —

(a) for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified by the Commission; and

(b) provided in such manner as the Commission may require.

(5) Any information or document removed under subsection (1)(b) must be returned to the person from whom, or premises from which, it was taken as soon as practicable. *34 of 2016, s. 5.*

Uncooperative witness liable for contempt.

44. On application by the Commission to the court, a person summoned under section 43 is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

(a) attend;

(b) give evidence; or

(c) produce a document in the custody, possession or control of that person.

DIVISION 3 - INSPECTIONS

Compliance inspections-regulated persons.

45. (1) At any time, the Commission may conduct an on-site or off-site inspection of the business of a regulated person for the purpose of —

(a) determining if the person is complying with —

(i) securities laws;

(ii) the Financial Transactions Reporting Act; or Ch. 368.

(iii) any other prescribed statute that is administered by the Commission; or

(b) assisting in the administration of the securities legislation of another jurisdiction.

(2) The Commission may, in writing, appoint another person to conduct the inspection under subsection (1).

(3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents, that reasonably relates to the inspection.

(4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

(5) The Commission may enter, during reasonable hours, the business premises of a person under inspection for the purpose of —

(a) inspecting and copying information or documents stored in any form on such premises; and

(b) removing from the premises any information or documents.

(6) The Commission may require a person under inspection to give an explanation of, or further particulars regarding, any information or document produced under subsection (4).

(7) If a person, acting on behalf of the Commission, enters premises under subsection (5), the person must present proof of his or her authority to do so.

(8) Any information or document removed under subsection (5) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.

Power to require reports.

46. (1) The Commission may require a regulated person to provide the Commission with a report, in such form as may be specified in the notice, by the person's approved auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the regulated person to provide information under section 45.

(2) The report referred to in subsection (1) shall be prepared at the expense of the regulated person.

(3) The person appointed by a regulated person to make the report required under section (1) shall immediately give written notice to the Commission of any fact or matter of which that person becomes aware which indicates —

(a) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the regulated person; and

(b) that the matters are likely to be of material significance for the exercise, in relation to such person, of the Commission's functions under this Act.

(4) The person appointed to make a report required under this section must be a person approved by the Commission.

Compliance inspection of other market participants.

47. (1) The Commission may inspect the business of a market participant, other than a regulated person, for the purpose of —

(a) determining if the person is complying with —

(i) securities laws;

(ii) the Financial Transactions Reporting Act; Ch. 368. or

(iii) any other prescribed statute that is administered by the Commission; or

(b) assisting in the administration of the securities legislation of another jurisdiction.

(2) For the purposes of subsection (1), the Commission may, in writing, appoint another person to conduct the inspection.

(3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents, that reasonably relates to the inspection.

(4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

General.

48. (1) After the conclusion of an inspection of a regulated person under section 45 or a market participant under section 47, a report shall be prepared setting out the findings of that inspection.

(2) The Commission shall consider and make recommendations on any information or report prepared under this Division.

(3) The Commission shall assess charges to recover the cost of any inspection performed under this Division.

(4) Upon application, the Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

Participation of other regulatory authorities in inspections under this Part.

49. (1) Subject to subsection (2), the Commission may, upon the request of a domestic regulatory authority or an overseas regulatory authority, permit the authority to take part in a compliance inspection undertaken by the Commission.

(2) The Commission shall not permit an overseas regulatory authority to take part in a compliance inspection under subsection (1) unless it is of the opinion that the participation of the overseas regulatory authority is reasonably required —

(a) for the effective supervision of a regulated person; or

(b) for the purposes of the regulatory functions of the overseas regulatory authority.

(3) The Commission may, in deciding whether to permit an overseas regulatory authority to take part in a compliance inspection under subsection (1), take into account, in particular, whether the overseas regulatory authority is subject to adequate legal restrictions on further disclosure and whether it is likely, without the written permission of the Commission —

(a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in supervision; or

(b) to take any action on information obtained or documents examined or obtained during the compliance inspection

(4) For the purposes of this section, "overseas regulatory authority" includes an authority in a foreign jurisdiction that exercises regulatory or supervisory functions over entities carrying on banking, insurance, securities or other financial services business.

DIVISION 4 - PROVISION OF INFORMATION RELATING TO TRANSACTIONS

Provision of information.

50. (1) The Commission may, for the purposes of assisting in the performance of any of its functions or the exercise of any of its powers under securities laws, require —

(a) a person registered as the holder of securities in a register kept by or on behalf of an issuer;

(b) a person that the Commission has reasonable cause to believe holds any securities;

(c) a person that the Commission has reasonable cause to believe has acquired or disposed of any securities, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise; or

(d) a regulated person through which the Commission has reasonable cause to believe any securities have been acquired, disposed of, dealt with or traded,

to furnish to the Commission any of the information specified in subsection (2) within the time and in the form specified.

(2) The information specified for the purposes of subsection (1) consists of —

(a) particulars that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom the securities in question are held, or have been acquired, disposed of, dealt with or traded, as the case may be;

(b) the instructions given to or by the person referred to in paragraph (a) or any officer, employee or agent of such person, in relation to

the holding, acquisition, disposal, dealing, or trading of or in respect of the securities;

(c) the particulars of the securities and the consideration given or received; and

(d) any other information in the possession of the person as the Commission may specify.

DIVISION 5 - GENERAL

Liens.

51. Where the person in possession of any document required to be produced under this Part claims a lien on the document —

(a) the requirement to produce the document shall not be affected by the lien;

(b) no fees shall be payable for or in respect of the production; and

(c) the production shall be without prejudice to the lien.

Information about documents not in person's possession.

52. If a person who is required under this Part to produce a document fails to do so, the Commission may require the person to state to the best of that person's knowledge and belief —

(a) where that document may be found; and

(b) the identity of the person who last had custody of that document.

Secrecy.

53. An order under this Part shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Exemption.

54. (1) Any person who complies with a requirement imposed by the Commission in the exercise of its powers under this Part shall not be treated as being in breach of any restriction upon the disclosure of information or material imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(2) A person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made or purporting to have been made under any provision of this Part for the inspection, copying or production of information or documents.

Privilege.

55. (1) A person shall not be required under this Part to disclose information or to produce a document that the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(2) For the purposes of this Part, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the legal advisor —

(a) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person —

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(3) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

Use of documents, etc.

56. Where information or documents are produced pursuant to this Part, the Commission may —

(a) take copies or extracts from them; and

(b) use or permit the use of any of the information or documents in any proceeding.

Offence of obstruction of investigations and inspections.

57. (1) A person who without reasonable cause —

(a) fails to comply with a requirement of the Commission under this Part;

(b) with intent to avoid the provisions of this Part, falsifies, destroys, mutilates, defaces, hides or removes a document; or

(c) wilfully obstructs an inquiry by the Commission made in accordance with the provisions of this Part,

is guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

(2) If the offence of which the person is convicted under subsection (1) is continued after conviction, the person commits a further offence and shall be liable —

(a) on summary conviction, to a fine of $10,000 for every day on which the offence is continued; or

(b) on conviction on information, to —

(i) a fine of $10,000 for every day on which the offence is continued;

(ii) imprisonment for five years; or

(iii) both fine and imprisonment.

(3) A person contravenes this section if the person knows or reasonably should know that a hearing, inspection or investigation is to be conducted and the person takes any action referred to in subsection (1) before the hearing, inspection or investigation.

PART V
REGULATION OF MARKETPLACES, ETC.

Registration.

58. (1) No person shall carry on business as a marketplace or clearing facility in or from The Bahamas unless registered under this Part.

(2) If the Commission considers it in the public interest to do so, the Commission may require a self-regulatory organisation or ancillary facility to register under this Part and may prescribe the requirements applicable to such persons.

(3) An application for registration under this Part must be in the prescribed form.

(4) The Commission may, on application, register the applicant if the Commission is satisfied that all prescribed requirements have been fulfilled and to do so would be in the public interest.

(5) A registration is effective until —

(a) it is revoked;

(b) it expires;

(c) the conditions for continuing the registration have not been met; or

(d) the Director accepts a surrender of registration under section 63.

(6) Where the Commission refuses to grant a registration under this Part, the applicant shall be provided with notice in writing of the reasons for the refusal and the applicant may file an appeal pursuant to section 157.

(7) Any person registered as a securities exchange with the Commission on the date that this Part comes into force shall be deemed to be registered as a marketplace under this Part as of that date.

Conditions and restrictions on registration.

59. (1) The Commission may grant or renew a registration under this Part subject to such terms, conditions or restrictions as the Commission deems fit.

(2) The Commission may, at any time, by notice in writing to the registered person, vary any term, condition or restriction or impose such further term, condition or restriction as the Commission deems fit.

Approval of regulatory instruments.

60. If a person registered under this Part adopts, amends or repeals a regulatory instrument, the adoption,

amendment or repeal is not effective until the Commission approves it.

Commission powers.

61. (1) If the Commission considers it in the public interest to do so, the Commission may make a decision about a person registered under this Part, including a decision about —

(a) the person's regulatory instruments;

(b) the person's procedures or practices;

(c) the business or regulatory services provided by the person;

(d) trading or quotation activity on a marketplace;

(e) a security or class of securities traded or quoted on a marketplace; or

(f) an issuer whose securities are traded or quoted on a marketplace.

(2) No registered securities exchange may admit any person to membership on the securities exchange unless that person is registered under the Act.

(3) No registered securities exchange may admit a person to become a security holder of the securities exchange unless that person is approved by the Commission.

(4) The Commission shall have the authority to hear appeals of a person registered under this Part from any ruling, decision or order and may establish its own procedures for such proceedings.

Delegation.

62. (1) The Commission may delegate to a registered securities exchange or registered self-regulatory organisation, any of the powers conferred on it by this Act, including the authority to adopt and enforce rules for the conduct of their members and the responsibility to regulate their members' compliance with the provisions of those rules and of this Act.

(2) Any order of delegation issued under subsection (1) shall be published.

(3) The Commission may withdraw, add or vary any powers delegated under subsection (1) as it deems necessary.

(4) Notwithstanding any delegation under subsection (1), the Commission shall continue to have full authority to regulate the activities of the registered se-

curities exchange or registered self-regulatory organisation and any of its members.

Voluntary surrender.

63. (1) If a person registered under this Part applies to the Commission to surrender its registration, the Commission may accept the surrender unless the Commission considers it prejudicial to the public interest to do so.

(2) The Commission may, on receiving an application under subsection (1), without providing an opportunity to be heard, suspend or impose any condition or restriction on the registration that the Commission deems appropriate.

Auditors and audits.

64. (1) Every person registered under this Part shall appoint an approved auditor who shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements of the person and shall provide the Commission with the prescribed reports on the financial affairs of the person.

(2) The Commission may impose all or any of the following duties on the auditor of a person registered under this Part —

(a) a duty to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;

(b) a duty to enlarge or extend the scope of the audit of the business and affairs of the person registered under this Part;

(c) a duty to carry out any other examination or establish any procedure in any particular case;

(d) a duty to submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(3) The person registered under this Part shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (2).

Reporting to the Commission.

65. Within the prescribed periods, a person registered under this Part shall deliver to the Commission —

(a) annual financial statements in respect of the year along with the report of the auditor;

(b) interim financial statements and other information as may be prescribed; and

(c) all reports or other information and documents as the Commission may prescribe.

Notices.

66. (1) An applicant for registration under this Part and a person registered under this Part shall provide the Commission notice in writing of the occurrence of any prescribed event within the time periods prescribed.

(2) Upon receipt of a notice under subsection (1), the Commission may review the person's application or registration and may take any action that the Commission deems appropriate.

Keeping of records.

67. (1) A market participant shall —

(a) make and keep such information and documents in such form and for such periods —

(i) as are reasonably necessary in the conduct of its business and operations, including to document compliance with all requirements imposed by statute or regulation on the market participant; and

(ii) as may be prescribed; and

(b) file with or deliver to the Commission any prescribed document or report.

(2) The Commission may require a market participant to disseminate to the public any report filed with the Commission under paragraph (1)(b).

(3) In addition to subsection (1), a registered marketplace shall keep a record of each trade executed through its facilities showing the time when it took place and any other prescribed information.

(4) A market participant shall deliver to the Commission a copy of, or an extract from, any information or document kept under this section upon receipt of a request from the Commission.

Offences.

68. (1) No person may establish or maintain, or assist in establishing or maintaining, a marketplace or clearing facility in The Bahamas or conduct business on or with a marketplace or clearing facility in The Bahamas other than one registered in accordance with this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and shall be liable on summary

conviction to a fine of $150,000 or to imprisonment for two years or to both.

PART VI
REGISTRATION OF PERSONS CARRYING ON SECURITIES BUSINESS

Registration requirement.

69. (1) No person may carry on any securities business in or from The Bahamas, or purport to do so, unless that person is —

(a) registered with the Commission to carry on that business and has received written notice of the registration; or

(b) exempt from registration.

First Schedule.

(2) The persons specified in Part 4 of the First Schedule are not required to register to conduct securities business.

(3) For the purposes of subsection (1), a person may be considered to purport to carry on securities business where that person —

(a) uses one or more words which connote securities business, either in English or in any other language, in the description or title under which the person carries on business;

(b) makes a representation in a document or in any other manner that the person is carrying on securities business; or

(c) otherwise holds itself out as carrying on securities business.

(4) No individual shall act as a representative in respect of any securities business or hold himself or herself out as doing so unless —

(a) that person has been registered with the Commission as a representative for that securities business; and

(b) when so acting, the individual is doing so for the registered firm that sponsored that individual's application for, or for renewal of, registration as a representative.

(5) Subsection (4) does not apply to —

(a) an employee performing functions which are solely administrative in nature, including tech-

nology support, facilities support, human resources management and clerical support; or

(b) any prescribed person.

(6) The termination of the employment of registered representative with a registered firm shall operate as a suspension of the registration of that individual until notice in writing has been received by the Commission from another registered firm of the employment of the individual and the reinstatement of the registration has been approved by the Commission.

(7) An application for registration under this Part must be in the prescribed form.

(8) The Commission may, on application, register the person if the Commission is satisfied that all prescribed requirements have been fulfilled and to do so would be in the public interest.

(9) The Commission may grant or renew a registration subject to such terms, conditions or restrictions as the Commission thinks fit.

(10) The Commission may, at any time, by notice in writing to the registered firm or registered representative, vary any term, condition or restriction or impose such further term, condition or restriction as the Commission may think fit.

(11) A registration is effective until —

(a) it is revoked;

(b) it expires;

(c) the conditions for continuing the registration have not been met; or

(d) the Commission accepts a surrender of registration under section 71.

(12) Where the Commission refuses to grant a registration under this Part, the applicant shall be provided with notice in writing of the reasons for the refusal and the applicant may appeal that decision.

Notices.

70. (1) An applicant for registration and a registrant shall provide the Commission notice in writing of the occurrence of any prescribed event within the time periods prescribed.

(2) Upon receipt of a notice under subsection (1), the Commission may review the person's application or

registration and may take any action that the Commission deems appropriate.

Surrender of registration.

71. (1) The Commission may, on application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant if the Commission is satisfied that the surrender of the registration would not be prejudicial to the public interest.

(2) On receiving an application under subsection (1), the Commission may, without providing an opportunity to be heard, suspend or impose any condition or restriction on the registration that the Commission deems appropriate.

Criminal convictions.

72. (1) Where a registrant is convicted in The Bahamas or elsewhere of a criminal offence involving fraud or dishonesty, such person shall cease to be registered under this Act with effect from the date of the conviction.

(2) Where a registrant is convicted in The Bahamas of any criminal offence other than fraud or dishonesty under Bahamian law, or is convicted of any like criminal offence under any foreign law in any foreign jurisdiction, such person's registration shall be reviewed by the Commission and may be subject to revocation, suspension or other remedial action.

(3) Where a registrant has been the subject of any disciplinary action by any domestic regulatory authority or overseas regulatory authority, such person's registration shall be reviewed by the Commission and may be subject to revocation, suspension or other remedial action.

Voluntary liquidation.

73. A registered firm shall not go into voluntary liquidation without the prior approval of the Commission and if proceedings for an involuntary liquidation are commenced against a registered firm the Commission shall be immediately notified in writing by the affected registered firm or by one of its partners, directors or officers.

Offence.

74. (1) It is an offence —

(a) for a registrant to carry on securities business or purport to do so otherwise than in accordance with the permission given to the registrant under this Part;

(b) for a person to carry on securities business or purport to do so without having been registered

to do so with the Commission under this Part; and

(c) for a person to make a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Part. *34 of 2016, s. 6.*

(2) Any person or registrant who contravenes the provisions of subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of $150,000 or to imprisonment for two years or to both.

PART VII
CONDUCT OF SECURITIES BUSINESS

Duties to clients.

75. A registered firm, its officers, directors, partners and employees and parties related to an investment fund shall —

(a) act honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market; and

(b) act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.

76. (1) A registered firm shall appoint an approved auditor.

(2) The auditor shall —

(a) make an examination of the annual financial statements and other regulatory filings of the registered firm in accordance with generally acceptable auditing standards and shall prepare a report on the audit in accordance with generally accepted accounting principles; and

(b) when requested to do so by the Commission, provide a report on whether or not the business of the registered firm has been conducted in accordance with the provisions of this Act relating to the prescribed requirements and the financial affairs of registered firms.

(3) The Commission may, where the report of the auditor required by subsection (2)(a) is qualified in any respect or the report required by subsection (2)(b) discloses that there are any material weaknesses or deficiencies in or non-compliance with any of the prescribed requirements, take any action that is deemed necessary until the matters

giving rise to the qualified audit report are resolved or the matters giving rise to the weaknesses or deficiencies or non-compliance are rectified.

(4) The auditor shall, where in the course of performing the duties required by subsection (2) he comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements is present or that there is a material weakness or deficiency in or non-compliance with any of the prescribed requirements, provide notice to the Commission immediately in the prescribed form and a copy of the notice must be delivered promptly to the registered firm.

(5) The Commission may require the auditor of a registered firm to —

(a) submit to the Commission such additional information in relation to the audit as the Commission considers necessary;

(b) enlarge or extend the scope of the audit of the business and affairs of the registered firm;

(c) carry out any other examination or establish any procedure in any particular case;

(d) submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(6) The registered firm shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (5).

Reporting to the Commission.

77. Within the prescribed periods, a registered firm shall deliver to the Commission —

(a) the annual financial statements in respect of the year along with the report of the auditor;

(b) a copy of the annual report of the auditor on results of the procedures performed by the auditor as required by subsection 76(2)(b);

(c) interim financial statements and other information as may be prescribed; and

(d) all reports or other information as the Commission may prescribe.

Responsibility for actions of persons acting on behalf of registered firm or party related to investment fund.

78. (1) A registered firm shall be responsible for all acts and omissions of each partner, director, officer, representative, employee and agent acting on its behalf.

(2) A party related to an investment fund shall be responsible for all acts and omissions of each partner, director, officer, representative, employee and agent acting on its behalf.

Keeping of records.

79. (1) A registered firm shall —

(a) make and keep such information and documents in such form and for such periods —

(i) as are reasonably necessary in the conduct of its business and operations, including to document compliance with all requirements imposed by statue or regulation on the registrant; and

(ii) as may be prescribed; and

(b) file with or deliver to the Commission any prescribed document or report.

(2) The Commission may require a registered firm to disseminate to the public any report filed with the Commission under paragraph (l)(b).

(3) A registered firm shall deliver to the Commission a copy of, or an extract from, any information or document kept under this section upon receipt of a written request from the Commission.

Prohibition.

80. (1) A registered firm, without the prior approval of the Commission, may not —

(a) become a significant security holder of any issuer that is not a registered firm other than in the usual course of the business of trading in securities;

(b) acquire any shares, debentures or other interest in any other registered firm, except where the transaction involves acquiring all the voting securities of the other registered firm; or

(c) permit anyone to become a significant security holder of the registered firm.

(2) Failure to comply with this section shall render the registration of the registered firm revocable by the Commission.

PART VIII
COMPENSATION FUND

Compensation funds.

81. The Commission may prescribe requirements regarding the establishment, maintenance and use of compensation funds for the protection of registrants and clients of registrants who may suffer loss as a result of the bankruptcy, insolvency or winding-up of a registrant.

PART IX
DISTRIBUTIONS AND PROSPECTUSES

Interpretation.

82. (1) In this Part —

"communication" means a notice, circular, letter or advertisement in any media;

"foreign prospectus" means a prospectus or other offering document to be used in connection with a distribution of securities that has become final for the purposes of a distribution in the recognised foreign jurisdiction and includes any supplement or amendment to the document.

(2) For the purposes of this Part, a communication solicits the purchase or sale of securities if —

(a) it invites a person to enter into an agreement for, or with a view to subscribing for, or otherwise acquiring or underwriting, any securities; or

(b) it contains information reasonably calculated to lead, directly or indirectly, to a person entering into such an agreement.

(3) This Part does not apply to securities that are equity interests in investment funds.

Prospectus required.

83. (1) No person shall trade in a security on the person's own account or on behalf of any other person where the trade would be a distribution of the security unless a preliminary prospectus and a prospectus have been filed with the Commission and the Commission has issued a receipt for each document.

(2) A preliminary prospectus and a prospectus filed under this Part must disclose all material information about the issuer and the securities being offered and contain the prescribed information.

Receipt for preliminary prospectus.

84. The Commission shall issue a receipt for a preliminary prospectus immediately upon the filing of the preliminary prospectus.

Selling activities before issue of receipt for prospectus.

85. (1) During the period between the filing of the preliminary prospectus and the issue of the receipt for the prospectus, provided the requirements of section 87 are met, it is permissible to —

(a) distribute a communication identifying the security proposed to be issued provided that the communication contains all prescribed information;

(b) distribute a preliminary prospectus; and

(c) solicit expressions of interest from prospective purchasers.

(2) No binding agreement to purchase the securities may be entered into until the Commission issues the receipt for the prospectus.

Defective preliminary prospectus.

86. The Commission may, without giving notice, if it appears to it that a preliminary prospectus does not substantially comply with the prescribed requirements, order that the activities permitted by section 85 shall cease until a revised preliminary prospectus satisfactory to the Commission is filed and forwarded to each recipient of the defective preliminary prospectus.

Delivery of prospectus.

87. (1) An issuer, selling security holder or registrant who solicits a sale of securities or receives an expression of interest, order or subscription from a person for a security offered in a distribution during the period before the issue of a receipt for the prospectus shall send to such person the preliminary prospectus or amended preliminary prospectus, as the case may be.

(2) An issuer, selling security holder or registrant who receives an expression of interest, order or subscription for a security offered in a distribution shall, during the distribution period, send to such person a prospectus, or amended prospectus, as the case may be.

(3) The documents required to be sent under subsections (1) and (2) shall be sent within two business days after the expression of interest, order or subscription is received.

(4) An issuer or selling security holder that files a preliminary prospectus and prospectus with the Commission under this Part shall make copies of those

documents available without charge upon request and shall furnish to a registrant a reasonable number of copies of the documents.

Amendments.

88. (1) The issuer shall, if there is a change in any material information after a receipt is obtained for a preliminary prospectus and before the receipt for the prospectus is obtained or during the distribution period, file with the Commission an amended preliminary prospectus or amended prospectus containing the particulars of the material information.

(2) Every preliminary prospectus or prospectus thereafter sent or delivered to any person shall include the amended preliminary prospectus or amended prospectus.

(3) Where an amended prospectus is required to be filed with the Commission under subsection (1), the distribution of securities under the prospectus shall cease until such time as the Commission has issued a receipt for the amended prospectus.

(4) An issuer, selling security holder or registrant who sent a preliminary prospectus to a person under subsection 87(1) shall send to each such person an amended preliminary prospectus immediately after it has been filed.

(5) An issuer, selling security holder or registrant who sent a prospectus to a purchaser under subsection 87(2) shall send to each purchaser an amended prospectus immediately after a receipt is issued by the Commission for the amended prospectus.

Certificates.

89. A prospectus or amended prospectus filed with the Commission shall contain certificates in the prescribed form signed by the prescribed persons.

Expert's consent.

90. The Commission shall not issue a receipt for a prospectus that includes an expert's report unless the prescribed requirements have been met regarding the expert's consent.

Issue of receipt.

91. (1) Subject to subsections (2), (3) and (4), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the filing of the prospectus.

(2) The Commission shall refuse to issue a receipt for a prospectus —

(a) if the Commission considers that the distribution would be prejudicial to the public interest; or

(b) for any other prescribed reason.

(3) Where the Commission refuses to issue a receipt for a prospectus, the Commission shall provide the issuer with notice in writing of the reasons for the refusal and the issuer may appeal that decision.

(4) The Commission may, in connection with the issue of a receipt for a prospectus, impose any condition that in the opinion of the Commission is necessary for the protection of investors.

Exempt distributions.

92. The requirement to file a prospectus under section 83 does not apply to a distribution —

(a) of securities issued by the Government of The Bahamas;

(b) of securities issued by a private company;

(c) of securities of an investment fund licensed or registered under the Investment Funds Act, or exempt from licensing or registration under that Act; Ch. 369A.

(d) by an issuer of its own securities that are distributed to holders of its securities as a dividend;

(e) by an issuer of a security to holders of its securities incidental to a reorganisation or winding up or to a distribution of its assets for the purpose of winding up its affairs;

(f) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer on —

(i) a statutory amalgamation or arrangement; or

(ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

(g) by an issuer pursuant to a prescribed take-over bid;

(h) where the Commission, being satisfied that to do so would not be prejudicial to the public interest, makes an order exempting the distribution and

such order may be subject to any condition the Commission considers appropriate; or

(i) in such other prescribed circumstances.

Exemptions for approved foreign issuers.

93. (1) An issuer that is an approved foreign issuer may satisfy the requirements of sections 83, 87, 88, 89 and 90 by —

(a) filing with the Commission the prescribed documents; and

(b) delivering to each purchaser in The Bahamas —

34 of 2016, s. 7.

(i) the foreign prospectus; and

(ii) any other prescribed document.

(2) Where an approved foreign issuer files with the Commission the documents required under subsection (1), the Commission shall issue a receipt for such foreign prospectus unless the Commission determines it is not in the public interest to do so.

Distributions made outside The Bahamas.

94. (1) A distribution of securities issued, or to be issued, by an issuer that is incorporated in or established under the laws of The Bahamas that is made outside The Bahamas shall be made in accordance with the laws or rules of the country in which the distribution is made.

(2) For the purposes of subsection (1), "laws" includes any subordinate legislation and "rules" includes any applicable listing rules or any rules issued by a marketplace to which the issuer is subject.

Resale restrictions.

95. The first trade in securities previously acquired pursuant to a prescribed exemption, other than a further trade exempted by this Act or the regulations, is deemed to be a distribution, unless the prescribed conditions are met.

Lapse date.

96. (1) Subject to subsection (2), in this section "lapse date" means in respect of a distribution to which section 83 or 93 applies, the date that is 12 months after the date the Commission issued the receipt for the prospectus or foreign prospectus.

(2) The Commission may order that the period specified in subsection (1) shall be reduced to not less than three months.

(3) No distribution of a security to which section 83 or 93 applies shall continue after the lapse date unless a new prospectus or foreign prospectus that complies with this Part is filed and the Commission issues a receipt for the document.

Offence.

97. If a distribution is carried out other than in compliance with this Part, the issuer and every person who is knowingly a party to the distribution is guilty of an offence and shall be liable to a fine of $1,000 for every day, or part thereof, from the date of the first solicitation in connection with the distribution until a receipt has been issued for a prospectus by the Commission and shall be further liable —

(a) on summary conviction to a fine of $30,000 or to imprisonment for six months, or to both;

(b) on conviction on information to a fine of $75,000 or to imprisonment for one year or to both.

PART X
CONTINUING OBLIGATIONS OF PUBLIC ISSUERS

Disclosure to the public.

98. (1) A public issuer must disclose to the public the prescribed information about the business operations and securities of the issuer.

(2) A public issuer shall disclose to the public, as soon as practicable, any information relating to the public issuer, including information on any significant new developments in the issuer's business or affairs which is not public knowledge, which —

(a) is necessary to enable them and the public to appraise the position of the public issuer;

(b) is necessary to avoid the establishment of a false market in its securities;

(c) might reasonably be expected materially to affect market activity in and the price of its securities; or

(d) may significantly affect its ability to meet its commitments.

(3) Information disclosed to the public by a public issuer must —

(a) include all material information;

(b) not contain a misrepresentation; and

(c) present a balanced view of the issuer's activities.

(4) The Commission may prescribe the method to be used by the public issuer to disclose information to the public.

(5) A public issuer must treat its security holders in a fair and equitable manner.

(6) Every director and officer of a public issuer, in exercising their powers and discharging their duties, shall —

(a) act honestly and in good faith with a view to the best interests of the issuer; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Timely disclosure of material changes.

99. (1) Subject to subsection (2), where a material change occurs in the affairs of a public issuer, the issuer shall —

(a) immediately, and in any event within one day of the material change, issue a press release that discloses the nature and substance of the material change; and

(b) within five days of the material change, file with the Commission a report in the prescribed form.

(2) If the public issuer is of the opinion that the disclosure required by subsection (1) would be unduly detrimental to its interests, it must immediately advise the Commission in writing of the material change and the reasons why the issuer is of the opinion that public disclosure should be withheld.

(3) Where the Commission is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a public issuer, the Commission may, after giving the public issuer an opportunity to be heard —

(a) require disclosure to the public of the material change in accordance with subsection (1); or

(b) permit non-disclosure of the material change by the public issuer provided non-disclosure does not continue beyond the time set out in subsection (5).

(4) A decision of the Commission under subsection (3) is final and no appeal from such a decision shall be available.

(5) Notwithstanding any permitted non-disclosure under subsection (2) or (3)(b), the public issuer shall disclose such material change no later than the thirtieth day

following the date on which the public issuer would have been required to issue a press release in respect of the material change under subsection (1).

(6) The public issuer shall, notwithstanding a report has been given to the Commission under subsection (2), promptly disclose the material change in the manner referred to in subsection (1) upon the public issuer becoming aware, or having reasonable grounds to believe, that persons are purchasing or selling securities of the issuer with knowledge of the undisclosed material change.

(7) For the purposes of this section, a "material change" means any change in any material information regarding the public issuer.

Auditors and audits.

100. Every public issuer shall appoint an approved auditor who shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements of the person and shall provide the Commission with the prescribed reports on the financial affairs of the person.

Filing of annual audited financial statements.

101. (1) Every public issuer shall, within 120 days after the end of the issuer's financial year or such other prescribed period, file with the Commission annual financial statements prepared and certified as prescribed.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the public issuer.

(3) The Commission may, where the report of the auditor required by subsection (2) is qualified in any respect, take any action that it deems necessary until the matters giving rise to the qualified audit report are resolved.

(4) The auditor shall, where in the course of performing the duties required by subsection (2) he comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements is present, provide notice to the Commission immediately in the prescribed form and deliver a copy of the notice promptly to the public issuer.

(5) Every public issuer shall file with the Commission interim financial statements, prepared and certified as prescribed, within the prescribed period after the end of the financial period to which it relates.

(6) Every public issuer shall, within the prescribed period, file with the Commission —

(a) a copy of its annual report containing the prescribed information; and

(b) all reports or other information and documents as the Commission may prescribe.

Delivery of continuous disclosure documents to security holders.

102. (1) A public issuer shall, as soon as practicable after filing with the Commission, send to each security holder at the address provided to the public issuer as the preferred delivery address of the security holder, or at the last address of the security holder shown on the securities register of the public issuer, and at no cost to the security holder, the —

(a) annual financial statements and the report of the auditor;

(b) interim financial statements;

(c) annual report; and

(d) any other prescribed report or document.

(2) The obligation to send documents to security holders under subsection (1) does not apply —

(a) to documents published as prescribed; or

(b) if a security holder has informed the issuer that the security holder does not wish to receive the documents.

Proxies and proxy solicitation.

103. (1) In this section "solicit" and "solicitation" includes —

(a) a request for a proxy, whether or not accompanied by or included in a form of proxy;

(b) a request to execute or not to execute a form of proxy or to revoke a proxy;

(c) the sending of a form of proxy or other communications to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and

(d) the sending of a form of proxy to a security holder under subsection (2),

but does not include —

(i) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a security holder;

(ii) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(iii) the sending by a registrant of documents to a beneficial owner;

(iv) the solicitation by a person in respect of securities of which the person is the beneficial owner; or

(v) other prescribed activities.

(2) A public issuer shall, concurrently with the giving of notice of a meeting of its security holders, send a prescribed form of proxy and any other prescribed document to each holder of voting securities who is entitled to receive notice of the meeting at the latest address of the security holder shown on the securities register of the issuer.

(3) A person shall not solicit proxies under subsection (2) unless each security holder whose proxy is solicited is sent all prescribed documents concurrently with the solicitation.

(4) A person soliciting proxies shall, concurrently with sending the proxy material required in subsection (2), file with the Commission a copy of each document sent to security holders.

(5) The Commission may —

(a) require a public issuer to file with the Commission, within such time limit as may be prescribed, draft copies of any documents that the issuer intends to send to security holders under this section prior to any sending; and

(b) may review any proxy materials or any other communications to security holders and require modifications to the documents or delay any mailing or security holder meeting as a result of its review.

Exemptions for certain foreign issuers.

104. A public issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 103, provided that it —

(a) complies in all respects with the foreign disclosure requirements of its recognised foreign jurisdiction regarding —

(i) the disclosure of changes in material information on a timely basis;

(ii) the preparation, filing and delivery of annual audited financial statements; and

(iii) the preparation, filing and delivery of interim financial statements;

(b) files with the Commission all such documents which it files with the overseas regulatory authority in the recognised foreign jurisdiction in respect of the items described in paragraph (a); and

(c) delivers to each security holder resident in The Bahamas, at the latest address shown on the securities register of the public issuer and at no cost to the security holder, the documents that such security holder would be entitled to receive under securities laws of the recognised foreign jurisdiction if such security holder were resident in that foreign jurisdiction.

Offence.

105. A public issuer that contravenes this Part, or makes a misrepresentation in any document required to be filed with the Commission or sent to security holders under this Part, is guilty of an offence and is liable —

(a) on summary conviction to a fine of $30,000 or to imprisonment for six months, or to both;

(b) on conviction on information to a fine of $75,000 or to imprisonment for one year or to both.

PART XI
GOVERNANCE OF PUBLIC ISSUERS

Governance of public issuers.

106. For the purposes of this Act and the regulations, a public issuer shall comply with all prescribed requirements regarding the governance of public issuers, including requirements relating to —

(a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of members;

(b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;

(c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers and employees and applicable to persons or companies that are in a special relationship with the public issuer, including the minimum requirements for such a code; and

(d) procedures to regulate conflicts of interest between the interests of the public issuer and those of a director or officer of the public issuer.

PART XII
TAKE-OVER BIDS

Take-overbids.

107. A person shall not make a take-over bid or issuer bid for a public issuer except in accordance with the prescribed requirements.

PART XIII
MISCONDUCT

Application and definitions.

108. (1) Sections 109, 110, 111, 114, 119 and 120 do not apply to conduct relating to securities issued by investment funds.

(2) In this Part "dishonest" means —

(a) dishonest according to the standards of ordinary people; and

(b) known by the person to be dishonest according to the standards of ordinary people.

Market manipulation.

109. A person must not take part in or carry out, whether directly or indirectly and whether in The Bahamas or elsewhere, a transaction or series of transactions that has or is likely to have the effect of —

(a) creating an artificial price for trading in securities on a registered marketplace; or

(b) maintaining a price for trading in securities on a registered marketplace at a level that is artificial, whether or not it was previously artificial.

False trading and market rigging-creating a false or misleading appearance of active trading etc.

110. (1) A person must not do, or omit to do, an act, whether in The Bahamas or elsewhere, if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance —

(a) of active trading in securities on a registered marketplace; or

(b) with respect to the market for, or the price for trading in, securities on a registered marketplace.

(2) For the purposes of subsection (1), a person is taken to have created a false or misleading appearance of active trading in particular securities on a registered marketplace if the person —

(a) enters into, or carries out, either directly or indirectly, any transaction of purchase or sale of any of those securities that does not involve any change in the beneficial ownership of the products;

(b) makes an offer to sell any of those securities at a specified price and has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to purchase the same number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to sell; or

(c) makes an offer to purchase any of those securities at a specified price and has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to sell the same number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to purchase.

(3) The circumstances in which a person creates a false or misleading appearance of active trading in particular securities on a securities exchange are not limited to the circumstances set out in subsection (2).

(4) For the purposes of subsection (2)(a), a purchase or sale of securities does not involve a change in the beneficial ownership if a person —

(a) who had an interest in the securities before the purchase or sale; or

(b) an associate of such a person,

has an interest in the securities after the purchase or sale.

(5) The reference in paragraph (2)(a) to a transaction of purchase or sale of securities includes —

(a) a reference to the making of an offer to purchase or sell securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to buy or sell securities.

False trading and market rigging— artificially maintaining etc. trading price.

111. (1) A person must not, whether in The Bahamas or elsewhere, enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in —

(a) the price for trading in securities on a registered marketplace being maintained, inflated or depressed; or

(b) fluctuations in the price for trading in securities on a registered marketplace.

(2) In determining whether a transaction is fictitious or artificial for the purposes of subsection (1), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

Misleading or deceptive conduct.

112. (1) A person must not engage in conduct, in or from The Bahamas, in relation to securities business or a security that is misleading or deceptive or is likely to mislead or deceive.

(2) The reference in subsection (1) to engaging in conduct in relation to a security includes any of —

(a) trading in a security;

(b) issuing a security;

(c) publishing a notice in relation to a security;

(d) making, or making an evaluation of, an offer under a take-over bid or a recommendation relating to such an offer; or

(e) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of paragraphs (b) to (d).

Misleading the Commission.

113. A person must not, in purported compliance with any requirement imposed by or under securities laws, knowingly or recklessly provide the Commission or the public with information that —

(a) is false;

(b) is misleading in a material particular; or

(c) fails to state a fact that is required to be stated or that is necessary to make the statement not misleading.

Dissemination of information about illegal transactions.

114. A person must not, whether in The Bahamas or elsewhere, circulate or disseminate, or be involved in the circulation or dissemination of, any statement or information to the effect that the price for trading in securities on a registered marketplace will, or is likely to, rise or fall, or be maintained, because of a transaction, or other act or thing done, in relation to those securities, if —

(a) the transaction, or thing done, constitutes or would constitute a contravention of section 109, 110, 111 or 112; and

(b) the person, or an associate of the person —

(i) has entered into such a transaction or done such an act or thing; or

(ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising the circulation or dissemination of, the statement or information.

False or misleading statements.

115. A person must not, whether in The Bahamas or elsewhere, make a statement, or disseminate information, if —

(a) the statement or information is false in a material particular or is materially misleading;

(b) the statement or information is likely —

(i) to induce persons in The Bahamas to trade securities; or

(ii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in securities on a registered marketplace; and

(c) when the person makes the statement, or disseminates the information —

(i) the person does not care whether the statement or information is true or false; or

(ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

Inducing persons to deal.

116. A person must not, in or from The Bahamas, induce another person to trade in securities —

(a) by making or publishing a statement, promise or forecast if the person knows or is reckless as to whether the statement is misleading, false or deceptive;

(b) by a dishonest concealment of material information; or

(c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if —

(i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and

(ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to others.

Dishonest conduct.

117. A person must not, in the course of carrying on a securities business in or from The Bahamas, engage in dishonest conduct in relation to securities business or a security.

Prohibited representations.

118. (1) Except as prescribed, no person, for the purpose of inducing another person to trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that any person —

(a) will resell or repurchase such security; or

(b) will refund all or any of the purchase price of such security.

(2) No person, for the purpose of inducing another person to trade in a security, shall make any representation, written or oral, relating to the future value or price of such security.

(3) Except as prescribed, no person, for the purpose of inducing another person to trade in a security, shall make any representation, written or oral, that such security will be listed on any securities exchange.

Prohibition on purchasing or selling of securities by certain persons.

119. (1) In this section —

"person in a special relationship" means, in relation to a public issuer —

(a) an insider, officer, employee, affiliate or associate of the public issuer;

(b) an associate or affiliate of an insider;

(c) a person that is making or proposing to make a take-over bid for the securities of the public issuer;

(d) a person that is proposing to —

(i) become a party to a reorganisation or business combination with the public issuer; or

(ii) acquire a substantial portion of the property of the public issuer;

(e) a person engaging in or proposing to engage in any business or professional activity with or on behalf of the public issuer or with or on behalf of a person referred to in paragraph (c) or (d);

(f) an insider, officer, employee, affiliate or associate of a person referred to in paragraph (c), (d) or (e);

(g) a person with inside information, if the information was obtained at a time when the person was a person in a special relationship under paragraph (a), (b), (c), (d), (e) or (f); or

(h) a person that obtained inside information from another person —

(i) who, at the time, was a person in a special relationship under this definition, including this paragraph; and

(ii) whom the person knew or reasonably should have known was a person in a special relationship.

(2) A person that —

(a) is in a special relationship with the public issuer; and

(b) has inside information about the public issuer,

must not —

(c) trade any security of the public issuer; or

(d) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the public issuer.

(3) A public issuer, or a person in a special relationship with a public issuer, must not inform another person of inside information about the public issuer unless it is necessary in the course of the public issuer's or the person's business.

(4) A public issuer, or a person in a special relationship with a public issuer, with inside information about the public issuer, must not recommend or encourage another person to —

(a) trade a security of the public issuer; or

(b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the public issuer.

Front running.

120. (1) In this section, "material order information" means information that —

(a) relates to —

(i) the intention of a person responsible for making decisions about an investment portfolio to trade a security on behalf of the investment portfolio;

(ii) the intention of a registrant trading on behalf of an investment portfolio to trade a security on behalf of the investment portfolio; or

(iii) an unexecuted order, or the intention of any person to place an order, to trade a security; and

(b) if disclosed, would reasonably be expected to affect the market price of the security.

(2) If a person knows of material order information, the person must not —

(a) trade a security that is the subject of the information;

(b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a);

(c) inform another person of the material order information, unless it is necessary in the course of the person's business; or

(d) recommend or encourage another person to —

(i) trade the security referred to in paragraph (a); or

(ii) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a).

Defence-belief that other party knows information.

121. (1) A person does not contravene subsection 119(2), 120(2)(a) or 120(2)(b) if, at the time the person trades the security, the person reasonably believes that the purchaser or seller of the security knows the inside information or material order information.

(2) A person does not contravene subsection 119(3), 119(4), 120(2)(c) or 120(2)(d) if, the person reasonably believes that the other person knows the information at the time the person —

(a) informs the other person of the inside information or material order information; or

(b) recommends or encourages the other person to trade the security.

Defence of automatic or predetermined trade.

122. A person does not contravene subsection 119(2), 120(2)(a) or 120(2)(b) if the person —

(a) trades the security under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining the inside information or material order information; or

(b) trades the security as a result of a written legal obligation —

(i) imposed on the person; or

(ii) that the person entered into before obtaining the inside information or material order information.

Defences-trading as agent.

123. A person does not contravene subsection 119(2), 120(2)(a) or 120(2)(b) if the person trades —

(a) as agent under the specific unsolicited instructions of the principal;

(b) as agent under specific instructions that the agent solicited from the principal before obtaining the inside information or material order information;

(c) as agent or trustee for another person because of that other person's participation in a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan; or

(d) as agent or trustee for another person to fulfil a written legal obligation of the other person.

Defences-trade or recommendation by individual with no inside or material order information.

124. A person does not contravene subsection 119(2), 119(4), 120(2)(a), 120(2)(b) or 120(2)(d) if —

(a) the person is not an individual; and

(b) the individual making the trade or recommendation on behalf of the person does not have inside information or material order information and is not acting on the advice or recommendation of an individual who does have that information.

Exemptions and modifications.

125. (1) The Commission may prescribe that —

(a) a person or class of persons is exempt from all or specified provisions of this Part; or

(b) a security or a class of securities are exempt from all or specified provisions of this Part; or

(c) this Part applies as if specified provisions were omitted, modified or varied as prescribed.

(2) For the purpose of this section, the provisions of this Part include the definitions in the Act or regulations as they apply to references in this Part.

Offences.

126. (1) Any person who contravenes a provision under this Part, other than under section 119, is guilty of an offence and shall be liable —

(a) on summary conviction to a fine of $75,000, or to imprisonment for a term of one year, or to both;

(b) on conviction upon information to a fine of $150,000, or to imprisonment for a term of two years or to both.

(2) Any person who is guilty of an offence under this Part, other than under section 119, shall return any gains made or loss avoided from contravention of the sections, and if the court so directs, pay a penalty not to exceed twice the amount of such gains or loss avoided.

(3) Any person who contravenes section 119 is guilty of an offence and shall be liable on conviction on

information to a fine of $150,000 or to imprisonment for a term of two years or to both, and if the court so directs, pay a penalty not to exceed twice the amount of the unlawful gains made or losses avoided by the person.

PART XIV
REPORTING BY SECURITY HOLDERS OF PUBLIC ISSUERS

Application.

127. The provisions of this Part shall apply *mutatis mutandis* to partnerships, limited partnerships, trusts, joint ventures, syndicates, and other public issuers, as the case may be.

Initial insider report.

128. (1) An insider of a public issuer who —

(a) owns or controls a security of the public issuer; or

(b) owns or controls, or has entered into a transaction involving, a security the value of which is derived from or varies materially with the value or market price of a security of the public issuer,

must, within the prescribed time, file a report with the Commission in the prescribed form disclosing the insider's direct or indirect beneficial ownership or control of securities of the public issuer.

(2) No person is required to file a report under this section where the person does not beneficially own or control any securities of the public issuer.

(3) If an insider of a public issuer filed or was required to file a report under subsection (1) and —

(a) there is a change in the insider's beneficial ownership or control of a security of the public issuer, or of a security the value of which is derived from, or varies materially with, the value or market price of a security of the public issuer;

(b) the insider enters into a transaction involving a security of the public issuer or a security the value of which is derived from, or varies materially with, the value or market price of a security of the public issuer; or

(c) there is a change in a transaction referred to in paragraph (b) or subsection (1)(b), or a change in the security involved in the transaction,

the insider must, within the prescribed time, file a report with the Commission in the prescribed form disclosing the change or transaction.

(4) Any person who files a report with the Commission under this section must immediately send a copy of that report to the public issuer.

(5) For the purposes of this section, an insider shall be deemed to beneficially own securities that are beneficially owned by an affiliate or associate of that insider.

Disclosure of beneficial interest in share capital.

129. (1) A public issuer may require any person that is a holder of its securities —

(a) to indicate in writing the capacity in which the person holds the securities of the public issuer; and

(b) if the person holds the securities otherwise than as beneficial owner, to indicate so far as it lies within the person's knowledge, any other person who has an interest in them, either by name and address or by other particulars sufficient to enable that other person to be identified, and the nature of that other person's interest.

(2) Where a public issuer is informed, in response to a notice given under this section, that any other person has an interest in the securities of the public issuer, the public issuer may require that other person —

(a) to indicate the capacity in which that person holds that interest; and

(b) if that person holds it otherwise than as beneficial owner, to indicate so far as it lies within the person's knowledge, the person who has an interest in the issuer, either by name and address or by other particulars sufficient to enable that person to be identified, and the nature of that person's interest.

(3) Any public issuer may require any holder of its securities to indicate whether any of the voting rights carried by any securities of the public issuer held by that person are the subject of an agreement or arrangement under which another person is entitled to control the exercise of the voting rights and, if so, to give, so far as it lies within the security holder's knowledge, particulars of the agreement or arrangement and the parties to it.

(4) Where a public issuer is informed, in response to a notice given to any person under this section, that any other person is a party to an agreement or arrangement mentioned in subsection (3), the public issuer may require that other person to give, so far as it lies within that person's knowledge, particulars of the agreement or arrangement and the parties to it.

(5) A public issuer shall keep a record of —

(a) each demand made under this section; and

(b) the information received in response to each demand.

(6) The Commission may require that a public issuer deliver to the Commission a copy of the record kept by the public issuer under subsection (5).

(7) All notices sent by a public issuer under this section may require that a response be returned within the period specified in the notice and, in all cases, this period shall be at least ten days after the date the notice was sent.

(8) All notices and responses under this section shall be in writing.

Public issuer to keep register of its security holders. Offence.

130. A public issuer shall keep a register containing the prescribed information about its security holders.

131. Any person who commits a breach of any section in this Part or, in complying with any section in this Part, makes a statement which the person knows to be false, or recklessly makes a statement which is false, or fails to supply any particulars which the person is required to supply, is guilty of an offence and shall be liable —

(a) on summary conviction to a fine of $30,000 or to imprisonment for a term of six months, or to both;

(b) on conviction on information to a fine of $75,000 or to imprisonment for a term of one year, or to both.

PART XV
ENFORCEMENT

Compliance orders.

132. Without prejudice to any other action that may be instituted or taken against a person, if at any time it appears to the Commission that a person has failed to comply with any of the requirements under securities laws, the Commission may, by written notice, direct the person

to comply with the requirement within such period and on such terms and conditions as the Commission may specify and the person shall comply with the notice.

Orders in the public interest.

133. (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement with the person or after a hearing —

(a) order a person to comply with —

(i) securities laws or a Commission decision; or

(ii) the regulatory instruments or a decision of a person registered under Part V;

(b) order a person, a class of persons or all persons to cease trading a security, a class of securities or all securities;

(c) order that any or all of the exemptions in securities laws do not apply to a person;

(d) prohibit a person from —

(i) acting as a partner, director or officer of another person;

(ii) acting as a registrant, or representative of a registrant;

(iii) acting as a party related to an investment fund;

(iv) acting as an auditor of a market participant;

(v) acting in a management or consultative capacity in connection with activities in the securities market; or

(vi) promoting the trading of a security or of securities generally;

(e) issue a censure or reprimand;

(f) impose conditions or restrictions on a registration, or suspend or revoke a registration;

(g) restrict the trading or advising activities of a registrant or a person exempt from registration;

(h) order a person to change a document;

(i) order a person to publish information or a document;

(j) order a person not to publish information or a document;

(k) order a person that is a market participant to make changes to its practices and procedures;

(l) appoint a person to advise a regulated person on the proper conduct of its affairs and to report to the Commission thereon;

(m) appoint a person to assume control of a regulated person's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver or manager of a business appointed under the law governing bankruptcy or winding-up;

(n) apply to the court for an order to take such action as it considers necessary to protect the interests of —

(i) clients or creditors of a registrant;

(ii) investors or creditors of an investment fund; or

(iii) investment funds administered by an investment fund administrator or creditors of an investment fund administrator;

(o) apply to the court for an order that the person be wound up by the court;

(p) order that a distribution of securities cease and that any subscription funds collected be repaid to subscribers;

(q) order the disgorgement of profits or other unjust enrichment plus a penalty not to exceed twice the amount of such profits or unjust enrichment;

(r) order restitution; or

(s) impose any other sanctions or remedies as the justice of the case may require.

(2) The Commission may make an order under subsection (1)(a) to (g) against a person, without a hearing, if the person —

(a) has been convicted in any jurisdiction of a criminal offence arising from a transaction, business or course of conduct related to securities;

(b) has been found by a court to have contravened the securities laws of any jurisdiction; or

(c) has been found by an overseas regulatory authority to have contravened the securities laws of that jurisdiction.

(3) If the Commission considers it necessary and in the public interest to do so, the Commission may, without

providing an opportunity to be heard, make an order under subsection (1), other than an order under subsection (1)(h), (i) or (j), that is effective for not more than 15 days.

(4) If the Commission considers it necessary and in the public interest to do so, the Commission may, without providing an opportunity to be heard, extend an order made under subsection (3) until the Commission makes a final decision after —

(a) a hearing under subsection (1) is held; or

(b) an opportunity to be heard under subsection (2) is provided.

(5) If the Commission makes an order under this section, the Commission must send the order to each person named in the order.

(6) If the Commission sends an order made under subsection (3) or (4), the Commission must send a notice of hearing, or a notice of opportunity to be heard, with the order.

(7) A person appointed under subsection (1)(l) or (m) is appointed at the expense of the relevant regulated person and any expenses reasonably incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the regulated person.

(8) A person appointed under subsection (1)(m) has all the powers necessary, to the exclusion of any other person, other than a liquidator or receiver, to administer the affairs of the relevant regulated person in the best interest of the clients, investors and creditors of the regulated person.

(9) The powers referred to in subsection (8) include the power to terminate the business of the regulated person if it is judged to be insolvent.

(10) A person appointed in respect of a regulated person under subsection (1)(l) or (m) shall —

(a) supply the Commission with such information in respect of the regulated person, when requested to do so by the Commission;

(b) within three months of the person's appointment, or within such other period as the Commission may specify, prepare and supply to the Commission a report on the affairs of the regulated person and where appropriate make

recommendations in respect of the regulated person; and

(c) if the person's appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission shall require.

(11) If a person appointed under subsection (1)(l) or (m) —

(a) fails to comply with an obligation under subsection (10); or

(b) in the Commission's opinion, is not carrying out the person's obligations in respect of the relevant regulated person satisfactorily,

the Commission may revoke the appointment and appoint some other person in the person's place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment.

(12) On receipt of any information or report pursuant to subsection (10) in respect of a regulated person, the Commission may —

(a) require the regulated person to reorganise its affairs in a manner specified by the Commission; or

(b) apply to the Court for an order to wind up, dissolve, liquidate or otherwise terminate, as appropriate, the regulated person upon such terms and conditions as the Court thinks fit;

(c) take such action in respect of the appointment or continued appointment of the person appointed under subsection (1)(l) or (m) as the Commission considers appropriate.

(13) If the Commission takes action under subsection (12) it may —

(a) apply to the court for an order to take such other action as it considers necessary to protect the interests of the clients or creditors of, or investors in, the regulated person; or

(b) take any other action provided for in subsection (1) or (2).

34 of 2016, s. 8.

Powers of Commission to conduct investigations and regulatory hearings and impose sanctions.

133A. The Commission may, where it appears that a person has breached a provision of a securities law or failed to comply with a requirement, directive or order given by the Commission —

(a) conduct investigations and regulatory hearings; and

(b) impose one or more of the sanctions, remedies or other relief as may be prescribed in securities law.

Application to court.

134. Notwithstanding any other provision, if the Commission considers it in the public interest to do so, the Commission may, at any time and without a hearing, apply to the court for an order —

34 of 2016, s. 9.

(a) to enforce a directive or order made by the Commission under securities law;

(b) for a market participant to be wound up, dissolved, liquidated, or otherwise terminated, as appropriate; or

(c) to take any other action as the Commission considers necessary.

Administrative penalty.

135. (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement or after a hearing, order a person that has breached any provision of securities laws to pay the Commission an administrative penalty of not more than $300,000 for each contravention.

(2) Any person in breach of any provision of a securities law solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an automatic penalty of up to $1,000, or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document was filed or delivered.

Removal of benefits.

136. If the Commission considers it in the public interest to do so, the Commission may, after a hearing, order a person to pay to the Commission any amount obtained, or payment or loss avoided, as a result of a contravention of securities laws, plus a penalty not to exceed twice the amount obtained or payment or loss avoided.

Payment of costs.

137. (1) The Commission shall order a person subject to a hearing to pay the costs of the Commission's investigation, the hearing and related costs.

(2) The Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

(3) For the purposes of this section, the costs that the Commission may order the person to pay include —

(a) costs incurred in respect of services provided by persons appointed or engaged under section 26 or subsection 42(2);

(b) costs of matters preliminary to the hearing;

(c) costs for time spent by the Commission or the staff of the Commission;

(d) any fee paid to and costs of a witness; and

(e) costs of legal services provided to the Commission.

Order to freeze property.

138. (1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of securities laws or to assist in the administration of the securities legislation of another jurisdiction, by order for a period not to exceed five days, direct —

(a) a person having on deposit, under control or for safekeeping any funds, securities or other property of the person named in the order to hold them; or

(b) a person —

(i) not to withdraw any funds, securities or other property from any person having them on deposit, under control or for safekeeping; or

(ii) to hold all funds, securities or other property of a client of that person, or of others, in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under an enactment of The Bahamas.

(2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the Commission order shall remain in effect until the judge determines otherwise.

(3) Unless expressly stated, an order made under subsection (1) does not apply to funds, securities or other property at a clearing facility, or to securities in the process of transfer by a transfer agent.

Hearings.

139. (1) At a hearing the Commission shall provide a reasonable opportunity for each person directly affected to be heard and shall give reasonable notice to each such person and may give notice to any interested market participant, which notice shall include the prescribed information.

(2) The Commission may —

(a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in the person's possession or under the person's control, whether they are located in or outside The Bahamas; and

(b) compel a person to give evidence on oath orally or in writing.

(3) Notwithstanding subsection (2), no persons giving evidence before the Commission shall be compelled to incriminate themselves, and every person shall be entitled to all privileges that a witness giving evidence before a court is entitled to in respect of the evidence given by the person to the Commission.

(4) On application by the Commission to the court, a person summoned under subsection (1) is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

(a) attend;

(b) give evidence; or

(c) produce a document in the custody, possession or control of the person.

(5) A hearing under this section shall be open to the public unless the Commission directs otherwise.

(6) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to the procedural rules made by the Commission under this Act, may present evidence and argument and may cross-examine witnesses at the hearing.

(7) Counsel may advise a witness at a hearing under subsection (1).

(8) The Commission may admit as evidence any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognised scientific or technical fact, information or opinion within its area of expertise.

(9) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(10) The Commission shall —

(a) make a final decision in writing and state the findings of fact on which it is based and the reasons for it;

(b) send a copy of the final decision and reasons to each person given notice under subsection (1) and to each person who appeared at the hearing; and

34 of 2016, s.10.

(c) publish a copy of the final decision and reasons or a summary of the decision and reasons in a periodical published by the Commission, on its website or in a daily newspaper circulating in The Bahamas but the Commission may omit the name of an affected person from a decision so published.

Limitation periods.

140. No proceedings against any person for a breach of any of the provisions of securities laws, or for a failure to comply with any of their provisions, may be commenced after the expiration of six years from the day upon which the breach or non-compliance was or ought to have been discovered.

Directors and officers.

141. (1) Notwithstanding any other provision of securities laws, where a person has been convicted of an offence under securities laws, any director or officer of the person who knowingly or recklessly authorised, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Reasonable reliance, including reliance on advice of counsel, an auditor or other expert, in good faith, is a defence in a proceeding under this section.

PART XVI
CIVIL LIABILITY FOR MISREPRESENTATIONS

Interpretation.

142. In this Part —

"prospectus" means a prospectus filed under section 84 or a foreign prospectus filed under section 93, together with any amendment those documents filed under Part IX.

Liability for misrepresentation in prospectus-damages.

143. (1) Where a prospectus contains a misrepresentation, a purchaser who purchases a security offered by the prospectus during the distribution period has a right of action in damages against —

(a) the issuer or the control block holder on whose behalf the distribution is made;

(b) a person who is the chief executive officer, chief financial officer or a director of the issuer at the time the prospectus was filed;

(c) a person who consented to be named in the prospectus as the chief executive officer, chief financial officer or director or as a proposed chief executive officer, chief financial officer or director of the issuer;

(d) where the issuer is not a public issuer prior to the distribution, any person who was a promoter of the issuer within the prescribed period immediately preceding the date of filing of the prospectus;

(e) a person whose consent has been filed as required by section 90 but only with respect to misrepresentations in a prospectus derived from or based on that expert's report; and

(f) any other person who signed a certificate in the prospectus other than a person referred to in paragraphs (a) to (d).

(2) No person, other than the issuer or the control block holder on whose behalf the distribution is made, is liable under subsection (1) —

(a) who, having consented to become the chief executive officer, chief financial officer or a director of the issuer, withdrew the consent before the filing of the prospectus and the prospectus was filed without the person's authority or consent;

(b) who, when the prospectus was filed without the person's knowledge or consent, gave reasonable public notice of that fact immediately after becoming aware of it; or

(c) who, after the filing of the prospectus and before the sale of securities under it, became aware of a misrepresentation and withdrew the person's consent and gave reasonable public notice of the withdrawal of the consent and the reasons for it.

(3) No person is liable under subsection (1) —

(a) where the misrepresentation is contained in a part of the prospectus made on the authority of an expert or based on an expert's report, if the person had reasonable grounds to believe and did believe, up to the time the prospectus was filed, that —

(i) there was no misrepresentation;

(ii) the language in the prospectus fairly represented and was a correct and fair copy of, or extract from, the expert's report; and

(iii) the expert making the statement or preparing the report, opinion, valuation —

(A) was competent to make it;

(B) had consented as required under section 90; and

(C) had not withdrawn that consent; or

(b) where the misrepresentation is contained in what purports to be a statement made by a public official or a copy of, or extract from, a public official document, if the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document and the person had reasonable grounds for believing it to be true.

(4) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(5) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, a court is satisfied that it would not be just and equitable.

(6) Notwithstanding subsections (4) and (5), no underwriter is liable for more than the total public offering

price represented by the portion of the distribution of securities underwritten, or sold by or to, the underwriter.

Action by security holders for rescission for misrepresentation in prospectus.

144. (1) If a prospectus contains a misrepresentation, a purchaser of a security distributed under the prospectus has a right of action against the issuer, selling security holder or the underwriter that sold the securities to the purchaser under the prospectus for the rescission of the sale and the repayment to that purchaser of the price the person paid for that security.

(2) If the purchaser elects to exercise a right of action for rescission against the issuer, selling security holder or underwriter under this section, such person shall have no right of action for damages against such issuer or underwriter under section 143.

(3) The right of rescission also applies to securities sold under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by a court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

Due diligence defence.

145. A person is not liable under section 143 for a misrepresentation in a prospectus if the person proves that the person —

(a) made all inquiries that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not a misrepresentation.

Commission may seek leave to bring action or appear or intervene in an action.

146. The Commission may apply to a court for leave to bring an action under this Part in the name and on behalf of an issuer or a security holder and the court may grant leave on any terms as to security for costs or otherwise that the court considers proper if it is satisfied that —

(a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;

(b) the issuer or security holder has failed or is unable to commence an action; and

(c) the Commission has given sixty days written notice to the issuer or security holder who has refused or failed to commence an action.

General.

147. (1) The rights of action for damages or rescission conferred by sections 143 and 144 shall be in addition to and without derogation from any other right the purchaser may have at law.

(2) In an action brought under section 143 or 144, the person bringing such action shall be deemed to have relied on the prospectus in making the investment decision and need not prove that the person was in fact influenced by the misrepresentation or that the person relied on the misrepresentation in purchasing the security.

(3) No person shall be liable under section 143 or 144 if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(4) The amount recoverable under section 143 or 144 by a purchaser shall not exceed the aggregate price paid by that purchaser for the securities under the offering.

(5) In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of this Part, the standard of reasonableness shall be that required of a prudent person in the circumstances of the particular case.

PART XVII
GENERAL PROVISIONS

Regulations.

148. (1) The Minister may, after consultation with the Commission, make regulations necessary or expedient for carrying out the purposes of securities laws and giving effect to the functions and responsibilities of the Commission.

(2) Without limiting subsection (1), the Minister may make regulations —

(a) regarding any matter in relation to which the Commission may make a rule;

(b) specifying a provision of the regulations the contravention of which constitutes an offence;

(c) governing the procedures that are to be followed by the Commission in making and repealing rules made by the Commission; and

(d) repealing or amending a rule made by the Commission.

Rules.

149. (1) In carrying out the purposes of securities laws and its functions and responsibilities under securities

laws, the Commission may make rules providing for such matters as may be necessary or expedient for giving effect to such purposes, functions and responsibilities.

(2) Rules may vary the provisions in securities laws generally or with respect to its application to —

(a) a person or class of persons;

(b) a security or class of securities; or

(c) a trade or class of trades.

Rule-making process.

150. (1) The Commission shall publish, in a daily newspaper of general circulation in The Bahamas, in any regular periodical published by the Commission or on its website, at least sixty days before the proposed effective date thereof —

(a) a copy of any rule that it proposes to make; and

(b) a concise statement of the substance and purpose of the proposed rule.

(2) After a proposed rule is published in accordance with subsection (1), the Commission shall give interested parties a reasonable opportunity to make written representations with respect to the proposed rule.

(3) The Commission shall publish each final rule, with any amendments that the Commission deems appropriate to make as a result of the public comment process under this section, as prescribed on or before its effective date.

(4) The Commission is not required to comply with subsections (1) and (2) if —

(a) all persons who will be subject to the rule are named and the information required by subsections (1)(a) and (b) is sent to each of them;

(b) the rule only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;

(c) the rule makes no material substantive change in an existing rule;

(d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or

(e) the Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1) and (2) would be prejudicial to the public interest.

(5) The Commission must give a copy of any final rule to the Minister without delay.

34 of 2016, s.11.

(6) A rule, or any amendment to a rule, shall be effective if the Commission has provided the Minister with a copy of the rule or amendment and the Commission has not received an objection to the rule or amendment from the Minister within thirty days after the rule or amendment was delivered to the Minister.

(7) Where the Minister objects to a rule or any amendment to a rule, the Commission shall be provided with notice in writing of the reasons for the objection.

(8) A rule, or any amendment to a rule, shall be effective on the date it is published in the *Gazette* or such later date as may be specified in the rule or amendment.

(9) If the Commission alters or revokes a rule, it must —

(a) publish notice of the alteration or revocation;and

(b) give written notice to the Minister without delay; and

(c) include in such notices details of the alteration or revocation.

Regulation prevails over rule.

151. If a rule made by the Commission conflicts with a regulation made by the Minister, the regulation made by the Minister prevails.

Power to vary Commission rules.

152. If the Commission considers it not prejudicial to the public interest to do so, the Commission may by order vary a rule made under section 149 as it applies to a person, trade or security, or a class of persons, trades or securities.

Power to remove exemption contained in Commission rule.

153. If the Commission considers it in the public interest to do so, the Commission may order that an exemption in a rule made under section 149 does not apply to a person, trade or security, or a class of persons, trades or securities.

Guidelines.

154. The Commission may publish guidelines regarding any regulations or rules made pursuant to securities laws, or of any provisions of securities laws, provided

however that such guidelines shall not be taken as having the force of law.

Administrative proceedings and reviews.

155. (1) Any person directly affected by a decision of the Executive Director or any employee exercising delegated authority from the Commission may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review of that decision by the Commission.

(2) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

(3) Notwithstanding the fact that a person requests a hearing and review under subsection (2), the decision under review takes effect immediately but the Commission may grant a stay until disposition of the hearing and review.

Review of decisions of securities exchange etc.

156. (1) Any person who is aggrieved by any act or omission of a person registered under Part V may lodge a complaint in respect of that act or omission with the Commission.

(2) The Commission may investigate and adjudicate upon the complaint lodged under subsection (1).

(3) Sections 42 and 43 shall apply to any investigation conducted by the Commission under subsection (2).

(4) The Commission may, following receipt of a complaint made under subsection (1), make such order as it thinks just, including an order for the payment by the person registered under Part V of any sum by way of restitution or as compensation for any loss suffered by the complainant.

(5) Subject to subsection (6), the person who has lodged a complaint against a person registered under Part V shall, if the Commission proceeds to a judgement on the complaint, be precluded from pursuing the complaint or making it the basis of any suit, action or proceeding in any court of law.

(6) A person shall not be precluded under subsection (5) unless the person has, before the Commission proceeds to any hearing of and judgement upon the complaint, been informed in writing to that effect.

Appeals to court.

157. (1) A person directly affected by a final decision of the Commission, other than those stated not to be subject to appeal, may appeal to the Supreme Court in accordance with the rules of court within thirty days after the later of the making of the final decision or the issuing of the reasons for the final decision.

(2) Notwithstanding the fact that an appeal is taken under this section, the decision appealed from takes effect immediately but the Commission or the Supreme Court may grant a stay until disposition of the appeal.

(3) The Secretary shall certify to the Supreme Court —

(a) the decision of the Commission, together with a statement of reasons for that decision;

(b) the record of the proceedings before the Commission; and

(c) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard by counsel or otherwise on the argument of an appeal under this section, whether or not the Minister is named as a party to the appeal.

(4) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorised and empowered to do under securities laws and as the court considers proper, having regard to the material and submissions before it and to securities laws, and the Commission shall make such decision or do such act accordingly.

(5) Despite an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances and every such decision is subject to this section.

Filing of documents and public availability.

158. (1) All documents or information required to be filed with, delivered to or provided to the Commission shall be submitted to the Commission in the prescribed manner.

(2) Subject to subsection (3), the Commission —

(a) shall make all documents or information required to be filed with it available for public inspection; and

(b) may make all documents or information filed with it available to the public by posting such documents to the Internet website of the Commission.

(3) The Commission may hold in confidence all or part of a document or information referred to in subsection (1) if it considers that —

(a) a person whose information appears in the document or information would be unduly prejudiced by disclosure of the information; and

(b) the person's privacy interest outweighs the public's interest in having the information disclosed.

(4) Where a document or information is not expressly required to be filed but is required to be delivered or provided to the Commission by securities laws, the document or information shall not be disclosed under subsection (2) unless the Commission determines that such disclosure is in the public interest.

Verification.

159. The Commission may by notice in writing require the person furnishing any information to the Commission to verify, within a reasonable period as specified in the notice, the information by oath or affirmation.

Register as evidence.

160. Where it is provided in securities laws that a register be established and maintained or kept, or a book of accounts be kept, or a list be prepared or published, any entry in such register, book of account or list, or the production of any licence or certificate issued under securities laws, shall be *prima facie* evidence of the contents thereof.

Discretionary exemptions.

161. (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission may exempt a person, trade or security, or a class of persons, trades or securities, from a provision in Parts V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV of this Act.

(2) Exemptions granted under subsection (1) shall be published by the Commission on its website.

Designation orders.

162. (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission

may, without providing an opportunity to be heard, order that —

(a) an issuer, or an issuer within a class of issuers, is not a public issuer;

(b) a person, or a person within a class of persons, is not a market participant or a marketplace; or

(c) a right or obligation, or a right or obligation within a class of rights or obligations, is not a security.

(2) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, order that —

(a) an issuer, or an issuer within a class of issuers, is a public issuer; or

(b) a person, or a person within a class of persons, is a market participant or a marketplace; or

(c) a trade, or a trade within a class of trades, is a distribution.

Conditions on decisions.

163. The Commission may impose terms, conditions, requirements and restrictions in any decision it makes, as the Commission deems fit.

Discretion to revoke or vary decision.

164. The Commission may, at any time by notice in writing, vary any term, condition, requirement or restriction imposed in any Commission decision or may revoke a Commission decision as it deems fit.

Recognition of foreign jurisdictions and foreign securities exchanges.

165. For the purposes of securities laws, the Commission may, if it is in the public interest to do so, recognise a —

(a) foreign jurisdiction, if the Commission is of the view that the jurisdiction meets the criteria prescribed; and

(b) foreign securities exchanges established and operated in a recognised foreign jurisdiction, if the Commission is of the view that the securities exchange meets the criteria prescribed.

Commission to keep register.

166. (1) The Commission shall maintain a register that shall contain the prescribed information about current and former regulated persons, public issuers and any other person required to be registered with or otherwise approved by the Commission under securities laws.

(2) The Commission may make the register available to the public on the prescribed terms.

Stamp duty exemption. Ch. 370.

167. Notwithstanding any provision of the Stamp Act or any other law to the contrary, stamp duty shall not be payable in respect of the transfer in The Bahamas of any securities listed on a registered securities exchange.

PART XVIII
TRANSITION PROVISIONS AND REPEALS

Definitions.

168. In this Part —

"effective date" means the date when this Act comes into force;

"relevant period" means the period between the effective date and the transition date;

"transition date" means the day that is the first anniversary of the effective date.

Existing unregistered market participants.

169. A person who, immediately before the effective date, was carrying on securities business in or from The Bahamas and was not required to be registered, licensed or otherwise authorised under the former Act, shall be deemed not to be carrying on securities business without registration contrary to this Act by virtue of continuing to carry on that business —

(a) during the relevant period; or

(b) if the person applies for registration during the relevant period, on or from the effective date until the date that the application for registration is granted or refused by the Commission or is withdrawn by the applicant.

Securities exchanges registered under the former Act.

170. Every securities exchange registered with the Commission under the former Act is deemed to be registered as a securities exchange under section 58 of the Act with effect from the effective date.

Clearing facilities registered under the former Act.

171. Every clearing, settlement, depository and custody facility registered with the Commission under section 20 of the former Act is deemed to be registered as a clearing facility under section 58 of the Act with effect from the effective date.

Broker-dealers and securities investment advisors.

172. Every person or company registered with the Commission under the former Act as a broker-dealer or securities investment advisor is deemed to be registered under section 69 of the Act with effect from the effective date.

Registered individuals.

173. Every individual registered with the Commission under the former Act as a securities investment advisor, stockbroker, principal or associated person is deemed to be registered under subsection 69(4) of the Act as a representative with effect from the effective date.

Interim financial statement requirements for public issuers.

174. The obligations on a public issuer to prepare and file interim financial statements with the Commission under subsection 101(5) and to send interim financial statements to the issuer's security holders under section 102 shall not take effect until the issuer's first financial year that begins after the transition date.

Insider reporting obligations.

175. The reporting obligations on insiders of public issuers under section 128 of the Act shall not take effect until the day that is ninety days after the effective date.

Savings.

176. Any authority, approval or exemption granted by the Commission under the former Act which is in force immediately before the effective date —

(a) shall be deemed to continue as if granted by the Commission under the Act; and

(b) in the case of a grant for a specific period, shall be deemed to remain in force for so much of that period as falls after the effective date.

10 of 2011, s.177.

177. *Repealed*.

FIRST SCHEDULE

PART 1 – SECURITIES

Shares

1. Any of the following securities —

(a) shares and stock of any kind in the share capital of a company;

(b) interests in a limited partnership established under the Partnership Act;

Ch. 310.

(c) interests in an exempted limited partnership as defined in the Exempted Limited Partnership Act, as amended;

Ch. 312.

(d) interests in a limited partnership or an exempted limited partnership constituted under the laws of a jurisdiction other than The Bahamas; and

(e) equity interests in a regulated or unregulated investment fund as defined in the Investment Funds Act. Ch. 369A.

Instruments creating or acknowledging indebtedness

2. Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness other than —

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) a cheque, promissory note or other bill of exchange under the Bills of Exchange Act; Ch. 335.

(c) a bankers draft or a letter of credit;

(d) a bank note, a statement showing a balance in a current, deposit or savings account, a lease or other disposition of property;

(e) a contract of insurance;

(f) an instrument creating or acknowledging indebtedness and creating security for that indebtedness over land; and

(g) a debenture that specifically provides it is not transferable or negotiable.

Instruments giving entitlements to securities

3. Warrants and other instruments entitling the holder to subscribe for securities falling within section 1 or 2.

Certificates representing certain securities

4. Certificates or other instruments that confer contractual or proprietary rights —

(a) in respect of any security falling in sections 1, 2 or 3 being a security held by a person other than the person on whom the rights are conferred by the certificate or instrument; and

(b) the transfer of which may be effected without the consent of that person.

Options

5. Options to acquire or dispose of —

(a) a security falling in any other section of this Part;

(b) any currency;

(c) any precious metal; or

(d) an option to acquire or dispose of a security falling within this section by virtue of subsection (a), (b) or (c) above.

Futures

6. These are —

(a) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes.

(b) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised securities exchange, or is made otherwise than on a recognised securities exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(c) A contract not falling within paragraph (b) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.

(d) The following are indications that a contract not falling within paragraph (b) or (c) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes —

(i) one or more of the parties is a producer of the commodity or other property or uses it in his business; or

(ii) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(e) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference, or not solely by reference, to

regularly published prices, to standard lots or delivery dates or to standard terms.

(f) The following are indications that a contract is made for investment purposes —

(i) it is expressed to be as traded on a securities exchange;

(ii) performance of the contract is ensured by a securities exchange or a clearing house; or

(iii) there are arrangements for the payment or provision of margin.

(g) For the purposes of paragraph (a), a price is to be taken to be agreed on when a contract is made —

(i) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contact; or

(ii) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences

7. These are —

(1) Rights under —

(a) a contract for differences; or

(b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —

(i) the value or price of property of any description; or

(ii) an index or other factor designated for that purpose in that contract.

(2) Subsection (1) does not include rights under a contract —

(a) if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the

parties taking delivery of any property to which the contract relates; or

(b) under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

Rights and Interests in Securities

8. Rights to and interests in any security falling within any of the preceding sections of this Part.

Foreign Exchange Contracts

9. A foreign exchange contract when carried out in connection with a transaction in securities that is not —

(a) an option (currency options are covered by section 5); or

(b) a contract to exchange one currency (whether Bahamian or not) for another that is to be settled immediately,

where "foreign exchange contract" means a contract —

(i) to buy or sell currency (whether Bahamian or not); or

(ii) to exchange one currency (whether Bahamian or not) for another (whether Bahamian or not).

Prescribed Securities

10. Anything declared by the regulations or rules to be a security for the purposes of this Part.

PART 2 - SECURITIES BUSINESS - REGULATED ACTIVITIES

The following activities are activities carried on in the course of securities business for the purposes of this Act —

Dealing in securities.

1. (a) buying, selling, subscribing for or underwriting securities as an agent; or

(b) buying, selling, subscribing for or underwriting securities as principal where the person entering into that transaction —

(i) holds himself out as willing, as principal, to buy, sell or subscribe for securities of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;

(ii) holds himself out as engaging in the business of underwriting securities of the kind to which the transaction relates; or

(iii) regularly solicits members of the public with the purpose of inducing them, as principals or agents, to buy, sell, subscribe for or underwrite securities and such transaction is entered into as a result of such person having solicited members of the public in that manner;

(c) For the purposes of this section, "members of the public" means any person other than a person —

(i) referred to in paragraphs 1 to 3 of Part 4;

(ii) regulated by the Commission;

(iii) regulated by a recognised overseas regulatory authority; or

(iv) as prescribed.

Arranging deals in securities.

2. Making arrangements with a view to —

(a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting securities; or

(b) a person, who participates in the arrangements, buying, selling, subscribing for or underwriting securities.

Managing securities.

3. Managing securities belonging to another person in circumstances involving the exercise of discretion.

Advising on securities.

4. Advising a person on securities if the advice is —

(a) given to the person in his capacity as an investor or potential investor or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent) —

(i) buying, selling, subscribing for or underwriting a particular security; or

(ii) exercising any right conferred by a security to buy, sell, subscribe for or underwrite a security.

PART 3 - EXCLUDED ACTIVITIES

The activities specified in this Part are not considered securities business in the following circumstances —

Dealing in securities.

1. (1) Securities evidencing indebtedness —

Where a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or his principal has made, granted or provided.

(2) Issuing, redeeming or repurchasing securities —

Where a company, partnership or trust issues, redeems or repurchases any of its securities falling within sections 1 to 3 of Part 1.

(3) Risk management —

Where a person buys, sells, subscribes for or underwrites securities and —

(a) the transaction relates to securities falling within section 5, 6(1), 7 or 9 of Part 1;

(b) none of the parties to the transaction are individuals;

(c) the sole or main purpose for which the person concerned enters into the transaction, either by itself or in combination with other such transactions, is to limit the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of any activities specified in Part 2 and which is not excluded by virtue of this Part; and

(d) the relevant business is a business other than securities business carried on by —

(i) the person entering into the transaction;

(ii) a company within the same group of companies as such person; or

(iii) another person who is or is proposing to become a participator in a joint enterprise with such person.

(4) Disposal of goods or supply of services —

Where a person buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer and the supplier is acting —

(a) as a principal; or

(b) as an agent,

and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities.

(5) Incidental activity —

Where a person buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting securities business and where such transaction is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(6) Employee schemes —

Where an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen.

(7) Application of proprietary assets —

Where a company, partnership or trust, acting as principal and dealing only on its own behalf buys, sells or subscribes for securities by applying its proprietary assets, otherwise than as described in section 1(b) of Part 2.

(8) Dealing in investment funds —

Where a person carries out those securities activities specified in section 1 of Part 2 solely with respect to securities described in section 1(e) of Part 1.

Arranging deals in securities.

2. (1) Arranging own deals —

Where a person makes arrangements relating to a transaction to which that person will himself be a party as principal or which will be entered into by that person as agent for one of the parties to the transaction.

(2) Incidental activities —

Where a person makes arrangements and such arrangements are made in the course of carrying on any profession or business not otherwise constituting securities business and where the making of the arrangements is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(3) Enabling parties to communicate —

Where a person makes arrangements to provide means by which one party to a transaction, or potential transaction, is able to communicate with other parties to the transaction or potential transaction.

(4) Arrangements in connection with securities evidencing indebtedness —

Where a person makes arrangements in respect of a transaction referred to in section 1(1).

(5) Provision of finance —

Where a person makes arrangements for the sole purpose of providing finance to enable a person, as principal or agent, to buy, sell, subscribe for or underwrite securities.

(6) Introducing —

Where a person makes arrangements to introduce a person to another person and —

(a) the person to whom introductions are to be made is a person referred to in Part 4; and

(b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to

securities generally or in relation to any class of securities to which the arrangements relate.

(7) Arrangements for the issue of securities —

Where a person makes arrangements in respect of a transaction referred to in sections 1(1) and 1(7) of this Part.

(8) Disposal of goods or supply of services —

Where a supplier makes arrangements made for, or with a view to, a transaction that is to be entered into by a customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(9) Employee schemes —

Where a person makes arrangements in connection with the operation by an employer of a share or pension scheme for the benefit of employees or former employees, or of their spouse, widows, widowers or children or step-children under the age of eighteen.

(10) Arranging deals in investment funds —

Where a person makes arrangements for, or with a view to, transactions in securities that are described in section 1(e) of Part 1.

Managing securities.

3. (1) Disposal of goods or supply of services —

Where a person manages securities that are or are to be managed for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer.

(2) Managing investment funds —

Where a person manages securities and —

(a) is incorporated in The Bahamas; and

(b) its sole securities business is the provision of management or advisory services to one or more investment funds licensed or registered by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act. Ch. 369A.

Advising on securities.

4. (1) Advising on investment funds —

Where a person advises on securities and —

(a) is incorporated in The Bahamas; and

(b) its sole securities business is the provision of management or advisory services to one or more investment funds licensed or registered by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act;

Ch. 369A.

(2) Disposal of goods or supply of services —

Where a supplier gives advice to his customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(3) Publications —

Where a person gives advice in any communications media and —

(a) the principal purpose of the publication, taken as a whole including the advertisements, is not to induce persons to buy, sell, subscribe for or underwrite particular securities; or

(b) the person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting.

(4) Incidental activities —

Where a person gives legal, accounting or other advice and —

(a) the securities related advice is given in the course of carrying on any profession or business not otherwise constituting securities business;

(b) the giving of the advice is a necessary or incidental part of other services provided in the course of carrying on that profession or business; and

(c) is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

PART 4 - EXCLUDED PERSONS

The persons specified in this Part are not required to be registered under the Act in the following circumstances —

(1) A company carrying on securities business exclusively for one or more affiliated companies.

(2) A person participating in a joint enterprise (and, where that person is a company, any other affiliated company) with a person carrying on the securities business where the activities constituting such securities business are to be carried on for the purposes of or in connection with that joint enterprise. For the purposes of this paragraph "joint enterprise" means an enterprise into which two or more persons enter for commercial reasons related to a business or businesses, other than securities business, carried on by them.

(3) The following persons —

(a) a registered marketplace;

(b) the Commission;

(c) the Government of The Bahamas;

(d) the Central Bank of The Bahamas.

(4) A person carrying on securities business only in the course of acting in any of the following capacities —

(a) director;

(b) partner;

(c) liquidator, including a provisional liquidator;

(d) trustee in bankruptcy;

(e) receiver of an estate or company;

(f) executor or administrator of an estate; or

(g) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust;

Provided that in each case such person —

(i) is not separately remunerated for any of the activities which constitute the carrying on of securities business otherwise than as part of any remuneration the person receives for acting in that capacity; and

(ii) does not hold himself out as carrying on securities business other than as a necessary or incidental part of performing functions in that capacity; or

(iii) is acting on behalf of a company, partnership or trust that is otherwise registered or exempted from registration under this Act.

SECOND SCHEDULE

THE COMMISSION

Body corporate.

1. (1) The Commission is a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(2) The Commission may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Commission of any document of whatsoever kind must be made by delivering the document to, or sending it by registered post addressed to, the secretary of the Commission at the office of the Commission.

Custody and affixing of seal etc.

2. (1) The seal of the Commission must be kept in the custody of any officer of the Commission as the Commission may approve, and may be affixed to instruments pursuant to a resolution of the Commission and in the presence of the chairman or the deputy chairman and one other member.

(2) The seal of the Commission must be authenticated by the signature of the chairman or deputy chairman and another member, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the chairman or deputy chairman.

Tax liability of Commission.

3. Nothing in this Act shall exempt the Commission from liability for any tax, duty, rate, levy or other charge whatsoever.

THIRD SCHEDULE

(SECTION 177)

Repealed.