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SECURITIES INDUSTRY ACT, 2024

Arrangement of Sections

Section

PART I - PRELIMINARY **8**

1. Short title and commencement....8
2. Purposes of Act....8
3. Interpretation....9
4. Ownership and control of capital market instruments....24
5. Control of an issuer....25
6. Capitals markets business and regulated activity. 25
7. Carrying on capital markets business in The Bahamas....25
8. References....26

PART II – THE SECURITIES COMMISSION **26**

ADMINISTRATION 26

9. Interpretation of Part II. 26
10. Continuation of the Commission. 27
11. Procedures of the Commission....28
12. Executive Director....29
13. Declaration of interest....29
14. Functions and powers of the Commission. 30
15. Crisis management and resolution powers of Commission. 31
16. Delegation. 32
17. Secretary and other officers....32
18. Commission staff. 32
19. Appointment of experts. 33
20. Commission may establish panels. 33
21. Confidentiality....34
22. Immunity and indemnity....35
23. Powers of Minister....36

FINANCIAL PROVISIONS 36

24. Funds and resources....36
25. Borrowing powers....36
26. Advances and guarantees....37
27. Repayments. 37
28. Reserve fund....37
29. Surplus funds....38
30. Balancing revenue and surplus. 38
31. Authority to set fees. 38

32. Account, auditor and audit....39
33. Annual report. 39

PART III – MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET 40

34. Interpretation of Part III. 40
35. Information for systemic risk....40
36. Power of Commission to issue directives for systemic risk....41
37. Arrangements with other supervisory authorities....41

PART IV – ASSISTANCE TO DOMESTIC AND FOREIGN REGULATORY AUTHORITIES 42

INTERPRETATION 42

38. Interpretation of Part IV. 42
ASSISTANCE TO DOMESTIC REGULATORY AUTHORITIES 43

39. Exercise of powers on behalf domestic regulatory authorities....43
ASSISTANCE TO OVERSEAS REGULATORY AUTHORITIES 44

40. Conditions for provision of assistance. 44
41. Assistance to be rendered....45
GENERAL 46

42. Authority to enter memoranda of understanding....46
43. Offences under Part IV....47

PART V – INVESTIGATIONS, INSPECTIONS AND GENERAL ACCESS TO INFORMATION 47

INVESTIGATIONS 47

44. Power to investigate. 47
45. Powers to obtain information for investigation....48
46. Uncooperative witness liable for contempt....49
INSPECTIONS 50

47. Compliance inspections – regulated persons....50
48. Power to require review reports. 51
49. Compliance inspection of other market participants....51
50. Participation of other regulatory authorities in inspections under this Part. ……52
51. Commission to make recommendation based on report. 53
52. Commission may recover costs for inspections....53
PROVISION OF OTHER INFORMATION TO THE COMMISSION 53

53. Provision of ownership and transaction-related information....53
54. General authority to access records and to request information....54
55. Powers to require information....55
GENERAL 56

56. Information about documents not in person’s possession....56

57. Use of documents, etc. 56
58. Offence of obstruction of investigations and inspections....56

PART VI – REGULATION OF MARKETPLACES ETC. 57

59. Registration of marketplace, clearing facility, etc....57
60. Conditions and restrictions on registration. 57
61. Renewal of registration under Part VI. 57
62. Approval of regulatory instruments....58
63. Commission's powers....58
64. Delegation of power to registered exchange or self regulatory organisation.....59
65. Surrender of registration. 59
66. Auditors and audit. 60
67. Reporting to the Commission....61
68. Notice of prescribed event to be given to Commission....61
69. Voluntary liquidation. 61
70. Prohibition to operate unregistered marketplace, clearing facility, etc....61

PART VII – REGISTRATION OF PERSONS CARRYING ON CAPITAL MARKETS BUSINESS 62

71. Registration of persons in capital markets business....62
72. Registration of representative....63
73. Conditions and restrictions on registration under Part VII. 63
74. Renewal of registration under Part VII....64
75. Notice of prescribed event to be given to Commission....65
76. Voluntary surrender of registration. 65
77. Effect of criminal convictions....65
78. Commission approval required for voluntary liquidation....65
79. Continued jurisdiction after surrender or revocation. 66
80. Offence under Part VII....66

PART VIII – CONDUCT OF CAPITAL MARKETS BUSINESS 66

81. Duties to clients. 66
82. Information to be given to a person who invests in capital market instruments. 66
83. Auditor. 67
84. Reporting to the Commission. 68
85. Responsibility for actions of persons acting on behalf of registered firm. 68
86. Keeping of records and dissemination of documents. 68
87. Ownership prohibition. 69
88. Short selling prohibition. 69

PART IX – TRADING IN DERIVATIVES 70

89. Trades of derivatives. 70
90. Disclosure documents....70
91. Derivatives transaction not void for non-compliance. 70
92. Order to exempt trade, derivative or person, etc....70

PART X – COMPENSATION FUND **71**
93. Compensation funds....71

PART XI – DISTRIBUTIONS AND PROSPECTUSES **71**
94. Interpretation of Part XI. 71
95. Prospectus required....71
96. Other forms of prospectus. 72
97. Receipt for preliminary prospectus. 72
98. Selling activities before issue of receipt for prospectus. 72
99. Defective preliminary prospectus. 72
100. Issuer to send prospectus to person expressing interest. 73
101. Amendments....73
102. Certificates....74
103. Expert's consent. 74
104. Issue of receipt. 74
105. Exempt distributions. 74
106. Exemptions for approved foreign issuers. 75
107. Distributions made outside The Bahamas....75
108. Resale restrictions....75
109. Lapse date....76
110. Unlawful distribution....76

PART XII – CONTINUING OBLIGATIONS OF PUBLIC ISSUERS **76**
111. General standards of public disclosure. 76
112. Timely disclosure of material changes....77
113. Auditors and audits of public issuers....78
114. Filing of financial statements and other reports....78
115. Delivery of continuous disclosure documents to security holders....79
116. Proxies and proxy solicitation. 79
117. Exemptions for certain foreign issuers....80
118. Contravention or misrepresentation by public issuer. 81

PART XIII – GOVERNANCE OF PUBLIC ISSUERS **81**
119. Governance of public issuers....81
120. Separation of role of chairman and chief executive officer of public issuer....82

PART XIV – TAKE – OVER BIDS **82**
121. Take-over bids....82

PART XV – MISCONDUCT **82**
MARKET MANIPULATION 82
122. Market manipulation. 82
123. False trading and market rigging – creating a false or misleading appearance of active trading, etc. 83

125. Dissemination of information about illegal transactions.....84
126. Prohibition on purchasing or selling of securities or related financial instruments by certain persons. 84
127. Front running. 85
128. Manipulation of price of derivatives and cornering.....86
129. Penalty for misconduct. 86
MISREPRESENTATION AND MISLEADING CONDUCT 87
130. Misleading or deceptive conduct.....87
131. Misleading the Commission.....87
132. False or misleading statements.....87
133. Inducing persons to deal. 88
134. Dishonest conduct. 88
135. Prohibited representations. 88
136. Tipping off. 89
DEFENCES 90
137. Defences – belief that other party knows information. 90
138. Defences – automatic or predetermined trade. 90
139. Defences – trading as agent. 90
140. Defences – trade or recommendation by individual with no inside or material order information. 91
GENERAL 91
141. Exemptions and modifications. 91

PART XVI – REPORTING BY SECURITY HOLDERS OF PUBLIC ISSUERS 91

142. Application of Part XVI.....91
143. Initial insider report. 91
144. Disclosure of beneficial interests.....92
145. Public issuer to keep register of its security holders.....93
146. Contravention of this Part or making false statement by insider or public issuer. 93

PART XVII – ENFORCEMENT 94

147. Compliance directions.....94
148. Orders in the public interest upon a settlement or after a hearing.....94
149. Orders in the public interest without a hearing.....96
150. Orders made for thirty days. 96
151. Service of order and notice of hearing.....96
152. Person appointed to advise or administer the affairs of the regulated person.....97
153. General penalty. 98
154. Power of Commission to conduct investigations and hearings and impose sanctions. 98

155. Application to court. 98
156. Criminal complaint....99
157. Administrative penalties does not preclude criminal prosecution....99
158. Power to impose an administrative penalty for a contravention....99
159. Power to impose administrative penalties for late filings and late payments. ..100
160. Appeal against administrative penalty....101
161. Miscellaneous provisions concerning administrative penalties. 102
162. Administrative penalty notices. 102
163. Removal of benefits....103
164. Payment of costs. 103
165. Order to freeze property....103
166. Assistance to overseas regulator – freeze orders. 104
167. Hearings. 104
168. Publication of decisions and penalties....106
169. Limitation periods. 106
170. Directors and officers. 106

PART XVIII – CIVIL LIABILITY FOR MISREPRESENTATIONS 106

171. Interpretation of Part XVIII. 106
172. Liability for misrepresentation in prospectus – damages. 107
173. Action by security holders for rescission for misrepresentation in prospectus. 108
174. Due diligence defence. 109
175. General provisions for civil liability....109

PART XIX – GENERAL PROVISIONS 109

176. Regulations. 109
177. Rules. 110
178. Rule-making process. 110
179. Regulation prevails over rule. 111
180. Power to vary Commission rules. 111
181. Power to remove exemption contained in Commission rule. 111
182. Guidelines. 112
183. Power to amend forms. 112
184. Review of delegated decisions. 112
185. Review of decisions of persons registered under Part VI. 112
186. Appeals from hearing decisions....113
187. Judicial review of other Commission decisions. 114
188. Financial statement requirements. 114
189. Filing of documents and public availability. 114
190. Secrecy. 115
191. Immunities. 115
192. Privilege. 116
193. Liens. 116
194. Keeping of records and dissemination of documents....116
195. Verification....117

196. Register as evidence. 117
197. Discretionary exemptions. 117
198. Designation orders. 117
199. Conditions on decisions....118
200. Discretion to revoke or vary decision. 119
201. Recognition of foreign jurisdictions and foreign exchanges....119
202. Commission to keep register. 119
203. Stamp duty exemption. 119
204. Consequential amendments. 119

PART XX – TRANSITION PROVISIONS AND REPEAL 119

205. Interpretation of Part XX....119
206. Existing unregistered market participations newly subject to registration under the Act. 120
207. Securities exchanges registered under the former Act. 120
208. Clearing facilities registered under the former Act. 120
209. Registered firms under the former Act. 120
210. Registered individuals. 121
211. Members of the Commission. 121
212. Savings....121
213. Repeal....121

FIRST SCHEDULE 122

SECOND SCHEDULE 133

THIRD SCHEDULE 134

FOURTH SCHEDULE 146

FIFTH SCHEDULE 150

No. 39 of 2024

SECURITIES INDUSTRY ACT, 2024

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

[Date of Assent - 26th July, 2024]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Securities Industry Act, 2024.

(2) This Act shall come into operation on such day as the Minister, by notice published in the *Gazette*, may appoint and the Minister may cause different provisions of this Act to come into operation on different days by notice published in the *Gazette*.

2. Purposes of Act.

The purposes of this Act are to —

(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;

(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.

3. Interpretation.

In this Act, unless the context otherwise requires —

"address" includes a physical address or email address;

"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 registered quotation and trade reporting system or a registered 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 or derivative 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 public issuer with securities listed or traded on a marketplace, where the services facilitate or are ancillary to the operations of that marketplace, clearing facility, registrant or public issuer;

"Anti-Terrorism Act" means the Anti-Terrorism Act, 2018 *(No. 27 of 2018)*;

"approved auditor" means an auditor approved by the Commission, in the prescribed manner, to act for a regulated person or public issuer;

"approved foreign issuer" means a foreign issuer that —

(a) is a public issuer, or equivalent, under the securities legislation of a recognised 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 significant 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;

"benchmark" means a price, estimate, rate, index or value that is —

(a) determined from time to time by reference to an assessment of one or more underlying interests;

(b) made available to the public, either free of charge or on payment; and

(c) used for reference for any purpose including —

(i) determining the interest payable, or other sums that are due, under a contract, derivative, instrument or security;

(ii) determining the value of a contract, derivative, investment fund, instrument or security of the price at which it may be traded; or

(iii) measuring the performance of a contract, derivative, investment fund, instrument or security; or

(iv) any other use by an investment fund;

"benchmark administrator" means a person that administers a benchmark;

"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;

"capital markets business" has the meaning assigned to it in section 6;

"capital markets instruments" means securities, derivatives and such other instruments and interests that the Commission may prescribe as capital market instruments;

"**Carbon Credit Trading Act**" means the Carbon Credit Trading Act, 2022 (*No. 36 of 2022*);

"clearing facility" means —

(a) with respect to securities, a person that —

(i) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades or other transactions in securities;

(ii) provides a centralised facility for the clearing of trades or other transactions in securities, including facilities for comparing data respecting the settlement of trades or other transactions in securities; or

(iii) provides a centralised facility as a depository of securities,

but does not include a person who is prescribed, or is within a class of persons who are prescribed, not to be a clearing facility; and

(b) with respect to derivatives, a person that provides a centralised facility for the clearing and settlement of trades in derivatives that —

(i) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing facility for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations arising from a derivative or a trade in a derivative; or

(iii) otherwise provides clearing services or arrangements that mutualise or transfer among its participants the credit risk arising from such contracts, instruments or transactions executed by the participants,

but does not include a person who is prescribed, or is within a class of persons who are prescribed, not to be a clearing facility;

"Commission" means the Securities Commission of The Bahamas as continued under section 10;

"commodity" includes —

(a) any agricultural product, forest product, product of the sea, mineral, metal, or hydrocarbon fuel, whether in the original or processed state;

(b) any good, article, service, right or interest of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

(c) the currency of any jurisdiction;

(d) a gem, gemstone, or other precious stone; or

(e) any other prescribed good, article, service, right or interest;

but does not include any good, article, service, right or interest, or a class of any of those prescribed not to be a commodity;

"company" means a body corporate incorporated or registered under the laws of The Bahamas or of any other jurisdiction;

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

"control block holder" means a person that —

(a) holds more than thirty per centum 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;

"counsel" means counsel and attorney as defined in section 2 of the Legal Profession Act *(Ch. 64)*;

"custodial services" includes —

(a) holding, possessing or controlling any assets that include capital markets instruments in safekeeping or segregation for the benefit of another person, whether on trust, or under a custodial agreement or other arrangement;

(b) acting as a custodian or depository of an investment fund; or

(c) carrying out such other activities as may be prescribed;

"custodian" means a person providing custodial services with respect to securities or other property;

"DARE Act" means the Digital Assets and Registered Exchanges Act, 2024;

"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 the Act, with the exception of a final decision; 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;

"derivative" means an instrument or interest set out in Part 1B of the *First Schedul*e;

"digital asset" has the meaning assigned to it in section 2 of the DARE Act;

"director" means a director of a company 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, by or on behalf of a control block holder, in a previously issued security of an issuer;

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

(e) a trade described in an order made under section 198(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 109;

"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) 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;

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

(a) maintains or provides —

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

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

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security or derivative on a continuous or reasonably continuous basis;

(c) sets requirements governing the conduct of marketplace participants; and

(d) disciplines marketplace participants for breaches of its rules;

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

"expert" means –

(a) a person who is knowledgeable in a financial market, that knowledge being obtained from either education or personal experience; or

(b) a lawyer, auditor, engineer, accountant, valuator, appraiser 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 by this Act;

"final decision" means any decision reached by the Commission at the conclusion of a hearing under section 167 and any decision made in the context of such hearing;

"financial institution" has the same meaning as assigned to it in the Financial Transactions Reporting Act;

"financial markets" means the markets regulated by the Commission under –

(a) this Act;

(b) the Investment Funds Act;

(c) the DARE Act;

(d) the Carbon Credit Trading Act;

(e) the Financial and Corporate Service Providers Act;

"Financial Transactions Reporting Act" means the Financial Transactions Reporting Act, 2018 *(No. 5 of 2018)*;

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

"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 jurisdiction" means a jurisdiction other than The Bahamas;

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

"former Act" means the Securities Industry Act *(Ch. 363)*;

"generally accepted accounting principles" means —

(a) the International Financial Reporting Standards as set by the International Financial Reporting Board;

(b) the International Standards on Auditing issued by the International Auditing and Assurance Standards Board; or

(c) as prescribed;

"generally accepted auditing standards" means —

(a) the International Financial Reporting Standards as set by the International Financial Reporting Board;

(b) the International Standards on Auditing issued by the International Auditing and Assurance Standards Board; or

(c) as prescribed;

"hearing panel" means a panel of the Commission established under section 20 to hear disciplinary proceedings;

"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's 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 assigned to it in section 3 of the Investment Funds Act;

"Investment Funds Act" means the Investment Funds Act, 2019 *(No. 2 of 2019)*;

"investment fund administrator" has the meaning given in the Investment Funds Act;

"issuer" means a person that —

(a) has a security outstanding; or

(b) proposes to issue a security;

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

"law administered by the Commission" means —

(a) this Act;

(b) the Digital Assets and Registered Exchange Act;

(c) the Financial and Corporate Services Providers Act;

(d) the Investment Funds Act;

(e) the Carbon Credit Trading Act;

(f) in respect to the powers bestowed to the Commission in respect of persons registered or licensed with the Commission —

(i) the Financial Transactions Reporting Act;

(ii) the Anti-Terrorism Act;

(g) any other law which the Commission is empowered to administer or enforce;

"market participant" means —

(a) a person registered under Part VI;

(b) a registrant;

(c) a person exempted from a requirement to be registered under Part VI or VII;

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

(e) a custodian of assets of a registrant or a client of a registrant or of any other person;

(f) a public issuer;

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

(h) a person that distributes capital markets instruments in reliance on an exemption under this Act;

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

(j) a person that the Commission has ordered is exempt from a provision of this Act;

(k) a rating organisation;

(l) a person described in an order made under subsection 198(2); or

(m) any person that, at any time within the prior six years, was a person described in any of paragraphs (a) to (l) of this definition;

but does not include a person —

(aa) described in an order made under section 198(1); or

(bb) within a prescribed class of persons;

"marketplace" means —

(a) an exchange;

(b) a quotation and trade reporting system;

(c) an ATS;

(d) a person not included in paragraphs (a), (b or (c) that —

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

(ii) brings together the orders for securities or derivatives 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

(e) a person described in an order made under section 198(2),

but does not include a person —

(aa) described in an order made under section 198(1); or

(bb) within a prescribed class of persons;

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

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

"Minister" means the Minister of Finance;

"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; or

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

(i) in making a decision to trade a capital market instrument; 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 95 would apply but for the availability of one or more of the exemptions contained in this Act;

"officer" in respect of the Commission, an issuer, a registrant or any other person means an employee working in an executive capacity;

"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 foreign jurisdiction that exercises functions corresponding to any function of the Commission;

"party related to an investment fund" has the meaning assigned to it in section 3 of the Investment Funds Act;

"person" includes an individual, company, partnership, trust, association and any other organised or incorporated group of persons, and the personal or other legal representative of any person to whom the context can apply;

"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;

"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;

"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;

"promoter" means a person that takes the initiative in founding or organising an issuer or carries on such other activities as may be prescribed;

"public issuer" means an issuer that —

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

(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 an 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;

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

(e) is described in an order made under section 198(2);

but does not include an issuer —

(aa) described in an order made under section 198(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 as prescribed;

"purchase" includes —

(a) in respect of securities, 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;

(b) in respect of derivatives, entering into, making a material amendment to, or otherwise acquiring a derivative and a novation of a derivative, other than a novation with a clearing facility, is deemed to be the purchase and sale of a derivative;

"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 an exchange, ATS or a registrant;

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

"recognised foreign jurisdiction" means an foreign jurisdiction recognised under section 201;

"recognised foreign exchange" means an exchange located in a foreign jurisdiction recognised under section 201;

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

"registered exchange" means an exchange registered under Part VI of the Act;

"registered firm" means a person registered under section 71(1) to carry on capital markets business in The Bahamas;

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

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

"regulated activity" means an activity set out in Part 2 of the *First Schedule*;

"regulated person" means a registrant or a person registered under Part VI of the Act;

"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 person registered under Part VII;

"related financial instrument" means —

(a) an instrument, agreement, security or derivative the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security; or

(b) any other instrument, agreement or understanding that affects, directly or indirectly, a person's economic interest in respect of a security;

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

"reserve fund" means the fund established by the Commission under section 28;

"sale" includes —

(a) in respect of securities, 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; and

(b) in respect of a derivative, making a material amendment to, terminating, assigning or otherwise disposing of a derivative and a novation of a derivative, other than a novation with a clearing facility;

"securities" means the assets, rights or interests specified in Part 1A of the *First Schedul*e;

"securities legislation" when used in connection with the laws of a foreign jurisdiction includes the laws governing securities and derivatives in that jurisdiction;

"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 or derivatives;

"selling security holder" means a control block holder on whose behalf a distribution is being made;

"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 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;

"spot contract" means a contract or arrangement for the sale or purchase of any underlying interest at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the underlying interest immediately or within a period which must not be longer than the period determined by the market convention for delivery of the underlying interest;

"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 derivatives, or submitting, disseminating or displaying orders on such ATS, including a client, member user or participant in the ATS;

"take-over bid" has the prescribed meaning;

"trade" includes —

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

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

(c) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative, or

(d) a novation of a derivative, other than a novation with a clearing agency;

"trade repository" means a person that centrally collects and maintains reports of completed trades of derivatives or any other transactions or class of transactions that the Commission may prescribe;

"underlying interest" means in relation to a derivative or a spot contract —

(a) a commodity;

(b) any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, or a group or groups of such financial instruments;

(c) the credit of any person; or

(d) an arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed to be an underlying interest in relation to a derivatives contract or a spot contract,

but does not include —

(aa) any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is prescribed not to be an underlying interest in relation to a derivative or a spot contract; or

(bb) any digital asset;

"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.

4. Ownership and control of capital market instruments.

In this Act —

(a) a person owns a capital markets instrument if the capital markets instrument is beneficially owned by the person;

(b) a person controls a capital markets instrument if —

(i) the person, directly or indirectly, directs the trading or voting of the capital markets instrument;

(ii) the capital markets instrument is owned by an issuer that the person controls; or

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

5. Control of an issuer.

(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 the business and affairs of the issuer.

(2) Where the person or persons own or control more than fifty percent of the outstanding voting securities of an issuer, such person or persons are deemed to control the issuer.

(3) Where the person or persons own or control more than thirty percent of the outstanding voting securities of an issuer, such person or persons are presumed to control the issuer.

(4) The power under subsection (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.

6. Capitals markets business and regulated activity.

(1) In this Act, **"capital markets business"** means engaging in one or more regulated activities in the course of business and includes entering or offering to enter into an agreement the making or performance of which by either party constitutes a regulated activity.

(2) An activity is a **"regulated activity"** if —

(a) it is an activity of a kind specified in Part 2 of the *First Schedule* or one that falls within a class of activities so specified; and

(b) it is not excluded by Part 3 of the *First Schedule*.

(3) Without prejudice to the generality of section 177(1), the Commission may, by rule, amend the *First Schedule* by deleting or amending any of the provisions or adding new provisions.

7. Carrying on capital markets business in The Bahamas.

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

(a) is incorporated, established or registered under any law in The Bahamas and carries on capital markets business in any jurisdiction;

(b) carries on capital markets business in any jurisdiction from within The Bahamas;

(c) from any jurisdiction outside The Bahamas, solicits capital market business from any person in The Bahamas; or

(d) engages in an activity the doing of which constitutes the carrying on by such person of capital markets 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 capital markets business in or from The Bahamas; or

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

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

(a) generally to all regulated activities;

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

(c) in relation to a particular regulated activity.

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

8. References.

Any reference in this Act —

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

(b) 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

ADMINISTRATION

9. Interpretation of Part II.

In this Part —

"authorised person" means any person licensed, registered or approved or required to be licensed, registered or approved or exempted from being licensed, registered or approved under a law administered by the Commission;

"financial year" means the financial year year of the Commission, which is the period twelve months beginning on 1st January in any year; and

"resolution authority" means the authority which is responsible for the resolution of financial markets, including carrying out resolution planning functions.

10. Continuation of the Commission.

(1) The body corporate known as the Securities Commission of The Bahamas, and continued under section 10 of the former Act, is hereby continued.

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

(3) The Commission shall —

(a) consist of a Chairman, a Deputy Chairman and such other members as the Minister may from time to time appoint; and

(b) have a maximum of eight members, including the Chairman, Deputy Chairman, and those appointed *ex-officio* under subsection (6).

(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) The Executive Director of the Commission shall be an *ex-officio* member of the Commission.

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

(8) The other members of the Commission shall hold office for a term of three years and shall be eligible for re-appointment for four additional terms.

(9) No member, including the Chairman, shall be eligible for reappointment if he has been a member for a cumulative period of fifteen years or more.

(10) 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.

(11) The Minister shall appoint new members of the Commission on the advice of the Commission and the financial markets.

(12) A member may at any time resign his membership by notice in writing addressed to the Minister.

(13) 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 the member's 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.

(14) A member shall be paid such remuneration and allowances in respect of the member's office as the Minister, on recommendation from the Commission may determine from time to time.

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

11. Procedures of the Commission.

(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 member 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 member 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 member under subsection (2) 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 VI;

(d) of conduct governing the activities of members, 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.

12. Executive Director.

(1) The Minister shall appoint an Executive Director on the recommendation of the Commission.

(2) The Executive Director shall hold office for five years and shall be eligible for re-appointment for two additional terms on the recommendation of the Commission.

(3) The remuneration, allowances and other terms and conditions in respect of the Executive Director's office shall be as the Commission may determine.

(4) The Minister may terminate the appointment of the Executive Director on the recommendation of the Commission if the Commission is satisfied that the person —

(a) has become bankrupt or made arrangements with their creditors;

(b) is incapacitated by physical or mental illness;

(c) 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

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

13. Declaration of interest.

(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 of interest that a reasonable person may consider sufficiently material to affect a member's judgment.

(3) A member with an interest in a matter shall declare such interest immediately, and not take part in any deliberations or vote on that matter.

(4) For the purposes of this section, a member shall be deemed to have an interest in a matter if the member, a family member of the member, or the member's nominee, is a security holder or partner in, or an officer or director of, a company having an interest or being involved in a matter before the Commission.

14. Functions and powers of the Commission.

(1) The Commission shall perform all functions and exercise all powers conferred on it by any law administered by the Commission.

(2) Without limiting subsection (1), the functions of the Commission are to —

(a) maintain surveillance over the financial markets and ensure orderly, fair and equitable dealings on these financial markets;

(b) foster timely, accurate, fair and efficient disclosure of financial and other information to the public and other participants in the financial markets;

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

(d) act as the resolution authority for entities under the jurisdiction of the Commission in the financial markets;

(e) promote investor education and other conditions that facilitate innovation and development of the financial markets within The Bahamas;

(f) promote the stability of the financial markets;

(g) cooperate with and provide assistance to domestic regulatory authorities and overseas regulatory authorities;

(h) perform any other function conferred or imposed on it by the laws administered by the Commission or by Parliament; and

(i) advise the Minister on all matters relating to the financial markets under the Commission's jurisdiction and the participants in those markets.

(3) Without limiting subsection (1), for the purpose of the discharge of its functions the Commission has power to —

(a) regulate and govern the financial markets under its jurisdiction, the provision of services in those financial markets and their participants;

(b) do all things, and take all actions, which may be necessary or expedient or are incidental to maintaining proper standards of conduct and professionalism in the financial markets;

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

(d) authorise, regulate and supervise persons subject to licensing, registration or approval under any law administered by the Commission;

(e) monitor the financial position and solvency of authorised persons and take measures to protect the interests of clients and others where the financial position of any such person is in doubt;

(f) monitor risks to the financial system and take actions to mitigate and manage any systemic risks within the Commission's jurisdiction;

(g) regulate the offering of capital markets instruments to the public, including by public issuers, issuers of digital assets and investment funds and set initial and continuing disclosure requirements for these entities;

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

(i) regulate take-over bids and other types of bids;

(j) supervise financial market participants with respect to compliance with any law administered by the Commission and take enforcement action against any person for failing to comply;

(k) cooperate with and provide assistance to domestic regulatory authorities and overseas regulatory authorities;

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

(m) publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application, or enforcement of any law administered by the Commission;

(n) make any order which the Commission may make under a law administered by the Commission;

(o) exercise any other power conferred or imposed on it by the laws administered by the Commission or by the Parliament;

(p) 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 under a law administered by the Commission;

(q) do, in The Bahamas or elsewhere all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and performance of its functions under this Act or any law administered by the Commission.

15. Crisis management and resolution powers of Commission.

(1) The Commission may implement crisis management measures and exercise resolution powers that are geared towards —

(a) ensuring financial stability and the continuity of systemically important financial services, including payment, clearing and

settlement functions, as may be considered necessary in any particular circumstance;

(b) ensuring the continuity of essential functions and services in relation to authorised persons and other persons by adopting such measures as may be prescribed;

(c) effecting the closure and orderly winding-down of the whole or part of an authorised person or other person so as to minimise or prevent loss to investors; and

(d) imposing a moratorium on such payments and activities as may be prescribed.

(2) Additional crisis management measures to be undertaken and resolution powers to be exercised may be prescribed.

16. Delegation.

(1) The Commission may, by order in writing, delegate any responsibility, power or function conferred on it by any law administered by the Commission, except the power to make rules and to hear appeals within its jurisdiction, to the Executive Director or any officer employed by the Commission.

(2) The Executive Director may, by order in writing, 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 by the Executive Director is permitted.

17. Secretary and other officers.

(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.

18. Commission staff.

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

(2) Except as provided in any contract of employment with the Commission, the Minister may grant to any employee of the Commission for 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 *(Ch. 43)* as if reference in that Act to —

(a) the "Governor-General" was a reference to the Commission;

(b) the "public service" was a reference to service in the Commission; and

(c) a "public officer" was a reference to such an employee.

(3) For the purpose of subsection (2) 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, **"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 (2), shall be charged on and paid out of the funds of the Commission or the Consolidated Fund.

19. Appointment of experts.

(1) The Commission may appoint 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.

20. Commission may establish panels.

(1) The Commission may establish panels to address a matter referred to it by the Commission and such panels shall comprise three or more persons appointed by the Commission, of whom —

(a) one or more of whom may be a member;

(b) one or more of whom may be a qualified person who is not a member.

(2) The Commission may refer a matter to a panel established pursuant to subsection (1), and may, by order in writing, delegate any of its powers to that panel.

(3) 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.

(4) 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.

(5) An approved settlement agreement in a matter involving disciplinary proceedings before a panel shall not be subject to appeal or a review under section 187.

21. Confidentiality.

(1) The persons specified in subsection (2) shall not disclose any information relating to —

(a) the affairs of the Commission;

(b) any application made to the Commission;

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

(d) the affairs of any other person,

that the person has acquired in the performance of that person's duties or in the exercise of the Commission's functions under this Act or any other law administered by the Commission.

(2) Subsection (1) shall apply to the Commission and any person that is or has been —

(a) any member, officer, employee, agent or adviser of the Commission;

(b) any member of a committee or panel of the Commission;

(c) any person appointed under Part V to conduct an inspection or investigation on behalf of the Commission;

(d) any person appointed under Part XVII to advise a regulated person on its affairs or to take control of the affairs of a regulated person;

(e) any person who acts on behalf of the Commission; or

(f) any person appointed by the Minister under section 23(4).

(3) Subsection (1) does not apply to a disclosure —

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

(b) necessary for fulfilling functions and duties required or permitted by this Act or any written law;

(c) made with the voluntary consent of the person to whom the disclosed information relates;

(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 person to whom the information relates to be ascertained;

(f) made 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, a member or an employee of the Commission of that person's duties; or

(g) made for the purposes of any legal proceedings in connection with —

(i) the winding-up or dissolution of a market participant; or

(ii) the appointment or duties of a receiver of a market participant.

(4) A person who contravenes or fails to comply with subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or both.

22. Immunity and indemnity.

(1) No civil or criminal liability shall attach to the Commission, or any person specified in section 21(2) 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 any other law administered by the Commission.

(2) The Commission may indemnify a person referred to in section 21(2), against the cost of defending his actions while discharging his functions.

(3) No civil or criminal liability shall attach to a registered exchange or registered self-regulatory organisation, or any director, officer, employee or an agent of the registered 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 exchange or registered self-regulatory organisation under this Act; or

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

23. Powers of Minister.

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

(2) The Commission shall give effect to directions given by the Minister in accordance with subsection (1).

(3) The Minister may request any information about the activities, operations and financial affairs of the Commission, other than regarding a request for information under sections 40 or 41, and the Commission shall promptly give the Minister the requested information.

(4) The Minister may appoint 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.

(5) The members and employees of the Commission shall give the person appointed by the Minister under subsection (4) the assistance and co-operation necessary to enable that person to conduct the examination.

FINANCIAL PROVISIONS

24. Funds and resources.

Subject to section 31, 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.

25. Borrowing powers.

(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.

26. Advances and guarantees.

(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 43 of the Public Debt Management Act, 2021 *(No. 6 of 2021*) 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.

27. Repayments.

(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.

28. Reserve fund.

(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.

29. Surplus funds.

(1) The Commission may transfer up to seventy-five per centum of any surplus funds to the reserve fund established under section 28.

(2) Any surplus funds in excess of the amount referred to in subsection (1), may, with the approval of the Minister, be carried to the reserve fund or invested in government securities.

(3) Any government securities held by the Commission under subsection (2) may be sold by the Commission.

(4) In this section, **"surplus funds"** means all funds standing to the credit of the Commission that are not required for any current purpose.

30. Balancing revenue and surplus.

(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 28 and 29 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 28 and 29 for that year shall be applied by the Commission for the purposes of the Commission.

31. Authority to set fees.

(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 any law administered by the Commission.

(2) Notwithstanding the provisions of any other law —

(a) the fees payable to the Commission under any law administered by the Commission;

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

(3) Funds received by the Commission under —

(a) sections 158, 159,161 or section 163; or

(b) 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, charitable objectives or capital projects specified by the Commission to be funded out of the reserve fund.

(4) Notwithstanding subsection (2), when ordered to do so by the Minister, the Commission shall pay into the Consolidated Fund such of its surplus 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 make allowances 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.

32. Account, auditor and audit.

(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.

33. Annual report.

(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 statements 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).

PART III – MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET

34. Interpretation of Part III.

For the purposes of this Part —

"market actor" includes an investor, issuer, investment fund, registrant, party related to an investment fund and any other person licensed, registered or approved under a law administered by the Commission;

"systemic risk in the capital market" means a situation when one or more of the following events occur or is likely to occur —

(a) financial distress in a significant market actor or in a number of market actors;

(b) an impairment in the orderly functioning of the capital market; or

(c) an erosion of public confidence in the integrity of the capital market.

35. Information for systemic risk.

(1) The Commission may, by notice in writing, require any person to submit to the Commission any information or document which the Commission considers necessary for the purposes of monitoring, mitigating or managing systemic risk in the capital market.

(2) Any person who is required to submit any information or document under this section shall provide such information or document notwithstanding any obligation under any law, any rule of law, any contract, agreement or arrangement whether express or implied, or any rule of professional conduct to the contrary.

(3) Any person who fails to comply with the notice issued under subsection (1) commits an offence and shall, on summary conviction, be liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

36. Power of Commission to issue directives for systemic risk.

(1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital markets, the Commission may issue a directive in writing requiring any person to take such measures as the Commission may consider necessary.

(2) In exercising its power under subsection (1), the Commission shall take into consideration the interests of financial stability and reputational damage.

(3) Before issuing a directive under subsection (1), the Commission shall give the person an opportunity to make representations.

(4) Notwithstanding subsection (3), the Commission may issue a directive under subsection (1), without first giving the person an opportunity to make representations if, in the Commission's opinion, any delay in issuing such directive would aggravate systemic risk in the capital market.

(5) Where a directive is issued pursuant to subsection (4), the person shall be given an opportunity to make representations as soon as practicable after the directive has been issued.

(6) When a person is given an opportunity to make representations under subsection (5), a directive issued under subsection (1), may be amended or modified.

(7) Any person who fails to comply with the directive issued under subsection (1), without reasonable excuse, commits an offence and shall, on summary conviction, be liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

37. Arrangements with other supervisory authorities.

(1) Notwithstanding any provision in the laws administered by the Commission, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital markets or contributing to financial stability —

(a) provide assistance to any supervisory authority or Government agency responsible for promoting financial stability;

(b) obtain any information or document from, or share any information or document with, any supervisory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; or

(c) enter into arrangements to cooperate with other supervisory authorities and co-ordinate stability measures with such supervisory authorities.

(2) Where the Commission shares any information or document under paragraph (1)(b) —

(a) with any supervisory authority or Government agency responsible for promoting financial stability in The Bahamas, such information or document shall not be disclosed to any person except with the written consent of the Commission; or

(b) with any supervisory authority outside The Bahamas, such information or document shall be shared on the appropriate undertaking by the supervisory authority to protect the confidentiality of such information or document and the purposes for which the information or document may be used.

(3) For the purposes of this section, **"supervisory authority"** means any authority, body, agency or entity within The Bahamas or in a foreign jurisdiction —

(a) responsible for monitoring, mitigating and managing systemic risk in the capital markets or promoting financial stability; or

(b) responsible for the supervision or oversight of capital market intermediaries or participants.

PART IV – ASSISTANCE TO DOMESTIC AND FOREIGN REGULATORY AUTHORITIES

INTERPRETATION

38. Interpretation of Part IV.

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, document, book or record 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 or derivatives in the foreign jurisdiction of the overseas regulatory authority.

ASSISTANCE TO DOMESTIC REGULATORY AUTHORITIES

39. Exercise of powers on behalf domestic regulatory authorities.

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

(2) Notwithstanding subsection 21(1), the Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under this Act to any other domestic regulatory authority where the Commission considers such information —

(a) may be relevant to the functions of such other domestic regulatory authority; or

(b) as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

ASSISTANCE TO OVERSEAS REGULATORY AUTHORITIES

40. Conditions for provision of assistance.

(1) The Commission may provide the assistance referred to in section 41 to a 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 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 is 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 41 from an overseas regulatory authority, the Commission may 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 this Act;

(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.

41. Assistance to be rendered.

(1) Notwithstanding subsection 21(1), the provisions of any written law or any requirement imposed thereunder, or any rule of law, any contract, or any rule of professional conduct, 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) Without limiting the generality of subsection (1), the material the Commission may order to be furnished under subsection (1) includes —

(a) auditing information including audit working papers, communications, and other information relating to the audit or review of financial statements;

(b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the name and address of subscribers, payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and

(c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the name and address of subscribers, payment details, length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.

(3) 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 written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) 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.

(5) 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 professional legal adviser —

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

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

(c) by any person —

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

(ii) for the purpose of those proceedings.

(6) 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.

(7) 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.

GENERAL

42. Authority to enter memoranda of understanding.

(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 this Act, 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.

43. Offences under Part IV.

(1) It is an offence, punishable on summary conviction to a fine not exceeding one hundred thousand dollars, for any person, in response to an order made under this Part, to —

(a) without reasonable excuse refuse or fail to comply with the order;

(b) knowingly provides the Commission with any false or misleading information or material in any form, including any document; or

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

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

(e) knowingly makes a statement to the Commission that is false or misleading in a material particular.

(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 ten thousand dollars for every day on which the offence is continued.

PART V – INVESTIGATIONS, INSPECTIONS AND GENERAL ACCESS TO INFORMATION

INVESTIGATIONS

44. Power to investigate.

(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 any law administered by the Commission;

(b) for the administration of any law administered by the Commission; 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 written law or any requirement imposed thereunder or any rule of law, exercise any of its powers under sections 44 and 45 for the purposes of conducting an investigation under subsection (1).

45. Powers to obtain information for investigation.

(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 under oath or affirmation confirming the truth of the statements made by the person;

(b) enter, during normal business 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 provided, produced or obtained under this section;

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

(2) The material the Commission may order to be furnished under subsection (1) includes —

(a) auditing information including audit working papers, communications, and other information relating to the audit or review of financial statements;

(b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the name and address of subscribers, payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and

(c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the name and address of subscribers, payment details, length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.

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

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

(5) The assistance sought under subsection (4) 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 a manner as the Commission may require.

(6) 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 the investigation is completed.

46. Uncooperative witness liable for contempt.

On application by the Commission to the court, a person summoned under section 45 is liable to be committed for contempt, as if in breach of an order or judgment 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.

INSPECTIONS

47. Compliance inspections – regulated persons.

(1) At any time, the Commission may conduct an on-site or off-site inspection of the business, conduct, financial affairs, books, records and other documents of a regulated person for the purpose of —

(a) determining if the person is complying with any law administered by the Commission; or

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

(2) The Commission may, by notice 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, and the notice shall provide the person under inspection with a reasonable period of time for that production.

(4) After receiving a notice under subsection (3), a person must, within the period 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 material the Commission may order to be furnished under subsection (3) includes auditing information including, audit working papers, communications, and other information relating to the audit or review of financial statements.

(6) The Commission may enter, during normal business hours, the business premises of such person 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.

(7) The Commission may require a person under inspection to give an explanation of or further particulars regarding any information or document provided, produced or obtained under this section.

(8) If a person, acting on behalf of the Commission, enters premises under subsection (6) the person must present proof of his or her authority to do so.

(9) Any information or document removed under subsection (6) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.

(10) After the conclusion of an inspection of a person under this section, a report shall be prepared setting out the findings of that inspection.

48. Power to require review reports.

(1) The Commission may, by notice in writing, require a regulated person to provide the Commission with a review report, on any matter or aspect thereof, about which the Commission has required or could require the regulated person to provide information under section 47.

(2) The review report referred to in subsection (1), shall be prepared —

(a) on such terms as may be specified in the notice;

(b) by the person's approved auditor, or by an accountant or other person with relevant professional skill;

(c) at the expense of the regulated person.

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

49. Compliance inspection of other market participants.

(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 any law 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, inspect the business of a market participant, other than a regulated person, or 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, and the notice

shall provide the person under inspection with a reasonable period of time for that production.

(4) After receiving a notice under subsection (3), a person must, within the period 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 material the Commission may order to be furnished under subsection (3) includes auditing information including audit working papers, communications, and other information relating to the audit or review of financial statements.

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

(10) After the conclusion of an inspection of a market participant under this section, a report shall be prepared setting out the findings of that inspection.

50. Participation of other regulatory authorities in inspections under this Part.

(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, in particular, 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 securities, derivatives or other financial markets businesses under a law administered by the Commission.

51. Commission to make recommendation based on report.

The Commission shall consider and make recommendations on any information or report prepared under sections 47, 48 and 49.

52. Commission may recover costs for inspections.

(1) The Commission shall assess charges to recover the cost of any inspection performed under sections 47, 48 and 49.

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

PROVISION OF OTHER INFORMATION TO THE COMMISSION

53. Provision of ownership and transaction-related information.

(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 this Act, the Financial Transactions Reporting Act or the Anti-Terrorism Act, 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 capital markets instruments;

(c) a person that the Commission has reasonable cause to believe has acquired or disposed of any capital markets instruments, 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 capital markets instruments 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 capital markets instruments 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 capital markets instruments;

(c) the particulars of the capital markets instruments and the consideration given or received; and

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

54. General authority to access records and to request information.

(1) The Commission shall be entitled at all reasonable times to examine a regulated person by exercise of its authority to have access to or to request the books, records or any information of or from that regulated person for the purpose of —

(a) satisfying itself that the provisions of this Act are being complied with;

(b) satisfying itself that the provisions of the Financial Transactions Reporting Act and Anti-Terrorism Act are being complied with;

(c) assisting in the administration of the securities legislation in another jurisdiction; or

(d) assisting in the administration of this Act.

(2) After the conclusion of any examination conducted under subsection (1), the Commission may prepare a report on its findings.

(3) In any case where the Commission is unable to conduct an examination described in subsection (1), it may appoint an auditor, at the expense of the regulated person or market participant, to conduct such examination and to report thereon to the Commission.

(4) The Commission may assess charges to recover the cost of such examination.

(5) If requested to do so by the Commission, a regulated person shall give the Commission access to or provide at any reasonable time all records relating to the regulated person.

(6) The material the Commission may order be furnished under subsection (5) includes auditing information including audit working papers, communications, and other information relating to the audit or review of financial statements.

(7) The Commission may copy or take an extract of a document it is given access to or provided with in accordance with this section.

(8) If requested to do so by the Commission, a regulated person shall give the Commission such information or such explanation in respect of the

regulated person as the Commission may reasonably request to enable the Commission it to carry out its duties under this Act.

55. Powers to require information.

(1) The Commission may by order, direct a market participant to prepare and submit to the Commission, information in such manner as the Commission thinks fit, of any matter concerning the business or affairs of the market participant, including matters relating to the market participant's clients.

(2) Any information required by the Commission pursuant to subsection (1) shall be —

(a) in a form and contain such detail as may be required by the Commission in the direction issued under subsection (1); and

(b) prepared and submitted for the period and within the time frame as set out in the order.

(3) Any information required by the Commission under subsection (1) may be —

(a) used for the purpose of analysing and developing relevant statistical data for use by the Commission or for public dissemination;

(b) used for the purpose of facilitating the supervisory functions of the Commission;

(c) used for the purpose of meeting any obligation or undertaking of the Commission by virtue of its membership or association of any institution or organisation or of implementing any domestic or internationally established standard or commitment; or

(d) applied for some other purpose consistent with the duties and functions of the Commission.

(4) A market participant shall ensure that the information provided to the Commission is accurate and complete.

(5) Where a market participant fails to comply with subsections (2) or (4) or contravenes any provision of the order, the market participant is liable to such administrative penalty as the Commission may impose under section 158.

(6) An administrative penalty paid to the Commission under subsection (5) shall be paid to the Commission.

56. Information about documents not in person's possession.

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.

57. Use of documents, etc.

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

58. Offence of obstruction of investigations and inspections.

(1) A person who —

(a) without reasonable cause refuses or 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;

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

(d) 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; or

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

commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars.

(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 ten thousand dollars for every day on which the offence is continued; or

(b) on conviction on information to a fine of ten thousand dollars for every day on which the offence is continued or to a term of imprisonment of five years or to both such fine or 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 VI – REGULATION OF MARKETPLACES ETC.

59. Registration of marketplace, clearing facility, etc.

(1) No person shall carry on business as a marketplace, clearing facility, or trade repository 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 any of the following persons to register under this Part and may prescribe the requirements applicable to such persons —

(a) a self-regulatory organisation;

(b) an ancillary facility;

(c) a benchmark administrator;

(d) a rating organisation.

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

(4) The Commission may, on application for registration under this section, 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.

60. Conditions and restrictions on registration.

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

61. Renewal of registration under Part VI.

(1) 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 65.

(2) A person registered under this Part shall on an annual basis, renew their registration by submitting to the Commission on or before the 31st day of January of each year —

(a) the prescribed Annual Update and Declaration Form; and

(b) the prescribed annual registration fee.

(3) If a person registered under this Part fails to submit all documents and fees required under subsection (2) on or before the 31st day of January, the person shall be required to pay an additional fee equal to ten per centum of the annual fee for each month or part thereof during which any document required under subsection (2) remains unsubmitted, and the annual fee and any additional fee required under subsection (2) remains unpaid, up to the 1st day of April of the relevant year.

(4) Where a person registered under this Part has failed to submit the documents required under subsection (2) and pay the prescribed annual registration fee and any additional fee required under subsection (2) on or before the 1st day of April of the relevant year, the Commission may revoke the registration.

(5) The Commission may, for good cause, waive any prescribed annual registration or additional fee imposed under subsections (2) and (3).

(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 apply for review under section 187.

62. Approval of regulatory instruments.

A person registered under this Part who is desirous of adopting, amending or repealing a regulatory instrument shall apply in writing to the Commission for approval so to do and no adoption, amendment or repeal shall be effective without the approval of the Commission.

63. Commission's powers.

(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, with respect to —

(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) the provision of information to a trade repository or benchmark administrator;

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

(g) an issuer whose securities are traded or quoted on a marketplace; or

(h) a derivative or class of derivatives that are traded on a marketplace.

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

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

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

64. Delegation of power to registered exchange or self regulatory organisation.

(1) Subject to subsection (2), the Commission may, by written order, delegate to a registered exchange or registered self-regulatory organisation, any of the powers conferred on it by this Act including —

(a) the authority to adopt and enforce regulatory instruments for the conduct of their members; and

(b) the responsibility to regulate their members' compliance with the provisions of those rules and of this Act.

(2) The Commission shall not delegate its power to make regulations and to hear appeals within the Commission's jurisdiction.

(3) Any delegation order issued under this section shall be published by the Commission.

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

(5) The delegation under this section by the Commission of any power of the Commission does not —

(a) absolve the Commission of its ultimate authority to regulate the activities of the registered exchange, registered self-regulatory organisation, and any of their members;

(b) preclude the Commission from the performance of the delegated power.

65. Surrender of registration.

(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), and without providing an opportunity to be heard or make representations, suspend or impose any condition or restriction on the registration that the Commission deems appropriate.

66. Auditors and audit.

(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 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; or

(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).

(4) The Commission may, where the report of the auditor required by subsection (1) is qualified in any respect or the report required by subsection (1) discloses that there are material weaknesses, 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, deficiencies in or non-compliance are rectified.

(5) The auditor shall provide notice to the Commission immediately if in the course of performing the duties required by subsection (1), the auditor comes to the view that —

(a) a matter is present that could give rise to a qualification in the audit report on the financial statements; or

(b) that there is a material weakness, deficiency in or non-compliance with any of the prescribed requirements.

(6) The notice required under subsection (5) shall be in prescribed form and a copy of the notice must be delivered promptly to the registered firm.

67. Reporting to the Commission.

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

(a) annual financial statements in respect of the person's financial 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.

68. Notice of prescribed event to be given to Commission.

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

(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.

69. Voluntary liquidation.

(1) A person registered under this Part shall not go into voluntary liquidation without the prior approval of the Commission.

(2) If proceedings for an involuntary liquidation are commenced against a person registered under this Part, the Commission shall be immediately notified in writing by the affected person or by one of its partners, directors or officers.

70. Prohibition to operate unregistered marketplace, clearing facility, etc.

(1) No person shall —

(a) establish or maintain, or assist in establishing or maintaining, a marketplace, clearing facility or trade repository in The Bahamas; or

(b) conduct business on or with a marketplace, clearing facility or trade repository in The Bahamas,

other than one registered in accordance with this Act.

(2) Any person who contravenes subsection (1), commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred fifty

thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

PART VII – REGISTRATION OF PERSONS CARRYING ON CAPITAL MARKETS BUSINESS

71. Registration of persons in capital markets business.

(1) No person may carry on any capital markets business in or from The Bahamas, or purport to do so, unless that person is registered with the Commission to carry on that business.

(2) Subsection (1) shall not apply to any person excluded under Part 4 of the *First Schedule* or exempt from registration by regulation or order in the circumstances and to the extent as may be specified.

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

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

(b) makes a representation that the person is carrying on capital markets business; or

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

(4) The categories of registration and the applicable terms, conditions and requirements for registration including for any ancillary services provided, shall be as prescribed.

(5) The terms, conditions and requirements for each prescribed category may, without limitation, impose provisions that differ by —

(a) the type of regulated activity carried on or proposed to be carried on;

(b) the securities or class of securities in which the person carries on or proposes to carry on a regulated activity;

(c) the derivatives or class of derivatives in which the person carries on or proposes to carry on a regulated activity;

(d) the characteristics of the clients of the person; or

(e) such other basis as is prescribed.

(6) An application for registration under this Part shall be in the prescribed manner and form.

(7) The Commission may, on application for registration under this section, 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.

(8) 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 apply for a review under section 187 of that decision.

72. Registration of representative.

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

(a) that individual has been registered with the Commission as a representative for that capital markets business; and

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

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

(a) an employee performing functions which are solely administrative in nature, including, technology support, facilities support, human resources management and clerical support; or

(b) any prescribed person.

(3) The termination of the employment of a 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.

(4) An application for registration under this Part shall be in the prescribed manner and form.

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

(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 apply for a review under section 187 of that decision.

73. Conditions and restrictions on registration under Part VII.

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

74. Renewal of registration under Part VII.

(1) A registration under this Part is effective until —

(a) it is revoked;

(b) it expires;

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

(d) the Commission accepts a surrender of registration under section 76.

(2) A person registered under this Part shall renew their registration on an annual basis by submitting to the Commission on or before the 31st day of January of each year —

(a) the prescribed Annual Update and Declaration Form;

(b) the prescribed annual registration fee; and

(c) where applicable, a current copy of the person's professional indemnity insurance policy.

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

(4) If a person registered under this Part fails to submit all documents and fees required under subsection (2) on or before the 31st day of January, the person shall be required to pay an additional fee equal to ten per centum of the annual fee for each month or part thereof during which any document required under subsection (2) remains unsubmitted, and the annual fee and any additional fee imposed under this subsection remains unpaid, up to the 1st day of April of the relevant year.

(5) Where a person registered under this Part has failed to submit the documents required under subsection (2) and pay the prescribed annual registration fee and any additional fee imposed under subsection (4) on or before the 1st day of April of the relevant year, the Commission may revoke the registration.

(6) The Commission may, for good cause, waive any prescribed annual registration fee or additional fee imposed under subsection (4).

(7) 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 apply for a review under section 187 of that decision.

75. Notice of prescribed event to be given to Commission.

(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.

76. Voluntary surrender of registration.

(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 or make representations, suspend or impose any condition or restriction on the registration that the Commission deems appropriate.

77. Effect of criminal convictions.

(1) Where a registrant is convicted in The Bahamas or elsewhere of a criminal offence involving fraud or dishonesty, such registrant 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 registrant'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.

78. Commission approval required for voluntary liquidation.

(1) A registered firm shall not go into voluntary liquidation without the prior approval of the Commission.

(2) If proceedings for an involuntary liquidation are commenced against a registered firm, the Commission shall be immediately notified in writing by the registered firm or by one of its partners, directors or officers.

79. Continued jurisdiction after surrender or revocation.

A regulated person whose registration has been voluntarily surrendered or revoked by the Commission, shall continue to be subject to the jurisdiction of the Commission for any actions that took place prior to the effective date of surrender or revocation, provided any regulatory action by the Commission is filed within one year after the effective date of the surrender or revocation.

80. Offence under Part VII.

(1) No person shall —

(a) carry on capital markets business or purport to do so without having been registered to do so with the Commission under this Part; and

(b) make a misrepresentation in any filing, application, submission, notification, or other document required to be filed, delivered or notified to the Commission under this Part.

(2) No regulated person shall carry on capital markets business or purport to do so otherwise than in accordance with the terms and conditions imposed by the Commission under section 73.

(3) Any person who contravenes subsection (1) or (2), commits an offence and shall be liable on summary conviction to a fine of up to one hundred fifty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

PART VIII – CONDUCT OF CAPITAL MARKETS BUSINESS

81. Duties to clients.

A registered firm, and its officers, directors, partners and employees 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.

82. Information to be given to a person who invests in capital market instruments.

(1) The Commission may prescribe the nature and details to be given by a registered firm to a person who trades or proposes to trade in any capital markets instrument and may include information that —

(a) explains the key characteristics of the capital market instrument;

(b) explains the nature of the obligations assumed by the parties dealing in the capital markets instrument;

(c) sets out the risks associated with the capital markets instrument;

(d) sets out the essential terms of the capital markets instrument.

(2) The information required under subsection (1) shall be provided by the registered firm to its clients in accordance with the prescribed requirements.

83. Auditor.

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

(2) The auditor shall —

(a) examine, in accordance with generally accepted auditing standards, the annual financial statements and other regulatory filings of the registered firm and shall provide the Commission with the prescribed reports on the affairs of the registered firm; 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 prescribed requirements.

(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 material weaknesses, 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, deficiencies in or non-compliance are rectified.

(4) The auditor shall provide notice to the Commission immediately if in the course of performing the duties required by subsection (2), the auditor comes to the view that —

(a) a matter is present that could give rise to a qualification in the audit report on the financial statements; or

(b) that there is a material weakness, deficiency in or non-compliance with any of the prescribed requirements.

(5) The notice required under subsection (4) shall be in prescribed form and a copy of the notice must be delivered promptly to the registered firm.

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

(a) provide 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).

(7) 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 (6).

84. Reporting to the Commission.

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

(a) the annual audited financial statements in respect of the registered firm's financial year prepared and certified as prescribed, along with the report of the auditor;

(b) a copy of the report of the auditor on results of the procedures performed by the auditor as required by section 83(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.

85. Responsibility for actions of persons acting on behalf of registered firm.

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

86. Keeping of records and dissemination of documents.

(1) A registrant shall —

(a) make and keep such information and documents —

(i) including information and documents to demonstrate compliance with all requirements imposed by any written law on the registrant, as are reasonably necessary in the conduct of its business and operations; and

(ii) in such form and for such periods as may be prescribed; and

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

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

(3) A registrant 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.

87. Ownership prohibition.

(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.

88. Short selling prohibition.

(1) No person shall sell securities unless, at the time when he sells them —

(a) he has, or where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he has, or where his is selling as agent, his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of the securities.

(2) For the purposes of subsection (1), a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him, or in accordance with his directions, shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person.

(3) Subsection (1), shall not apply in relation to a sale of securities of such class or category, or which is transacted in such manner or under such circumstances, as may be prescribed.

(4) A person who contravenes subsection (1), commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART IX – TRADING IN DERIVATIVES

89. Trades of derivatives.

(1) Every registered firm or counterparty to a trade of a derivative and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed relating to derivatives transactions and the participants in those transactions.

(2) Without limiting the generality of subsection (1), the prescribed conditions, restrictions and requirements may require prescribed classes of derivatives to be —

(a) traded in a marketplace or other approved trading platform;

(b) cleared through a central counterparty;

(c) subject to suitable margining and other risk management requirements;

(d) subject to the requirement that transactions be reported to a registered trade repository or a trade repository in a recognised foreign jurisdiction.

90. Disclosure documents.

(1) A person must not enter into a transaction for a derivative of a prescribed type unless a disclosure document has been prepared, filed and sent in accordance with the regulations.

(2) A person must not enter into a prescribed transaction for a derivative unless a disclosure document has been prepared, filed and sent in accordance with the regulations.

91. Derivatives transaction not void for non-compliance.

Unless the terms of the derivative provide otherwise, a derivative transaction is not void, voidable, or unenforceable, and no counterparty to the transaction is entitled to rescind the transaction, solely by reason that the transaction failed to comply with this Act.

92. Order to exempt trade, derivative or person, etc.

(1) If the Commission considers that to do so would not be prejudicial to the public interest, the Commission may order that —

(a) a trade, intended trade, derivative or person; or

(b) a class of trades, intended trades, derivatives or persons,

is exempt from one or more of the requirements of this Part or the regulations relating to this Part.

(2) An order under subsection (1), may be made on application by an interested person or on the Commission's own motion.

PART X – COMPENSATION FUND

93. Compensation funds.

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 XI – DISTRIBUTIONS AND PROSPECTUSES

94. Interpretation of Part XI.

(1) In this Part —

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

"foreign prospectus" means a prospectus or other initial disclosure 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.

95. Prospectus required.

(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.

96. Other forms of prospectus.

The Commission may prescribe alternative forms of prospectus or other initial disclosure documents that may be used by prescribed persons in meeting the requirements in this Part and any such document that complies with the applicable regulations shall —

(a) for the purposes of section 95(2), be considered to provide sufficient disclosure of all material facts relating to the securities issued or proposed to be distributed under the prospectus; and

(b) constitute compliance with this Part, upon the Commission issuing a receipt for that prospectus or initial disclosure document, constitute compliance with this Part.

97. Receipt for preliminary prospectus.

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

98. Selling activities before issue of receipt for prospectus.

(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 100 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.

99. Defective preliminary prospectus.

The Commission may, if it appears to it that a preliminary prospectus does not substantially comply with the prescribed requirements, order without giving notice that the activities permitted by section 98 shall cease until a revised preliminary prospectus satisfactory to the Commission is filed and forwarded to each recipient of the defective preliminary prospectus.

100. Issuer to send prospectus to person expressing interest.

(1) An issuer, selling security holder or registrant that 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 that 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.

101. Amendments.

(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 given 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 that sent a preliminary prospectus to a person under section 100(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 that sent a prospectus to a purchaser under section 100(2) shall send to each purchaser an amended prospectus immediately after a receipt is issued by the Commission for the amended prospectus.

102. Certificates.

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

103. Expert's consent.

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.

104. Issue of receipt.

(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 give the issuer or selling security holder notice in writing of the reasons for the refusal and the issuer may apply for a review under section 187 of 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.

105. Exempt distributions.

The requirement to file a prospectus under section 95 does not apply to a distribution —

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

(b) of securities issued by an entity of which the Government of The Bahamas is the majority shareholder;

(c) of securities issued by a private company;

(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 reorganization 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.

106. Exemptions for approved foreign issuers.

(1) An issuer that is an approved foreign issuer may satisfy the requirements of sections 95, 100, 101, 102 and 103 by —

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

(b) delivering to each purchaser in The Bahamas —

(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.

107. Distributions made outside The Bahamas.

(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.

108. Resale restrictions.

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

109. Lapse date.

(1) Subject to subsection (2), in this section **"lapse date"** means for a distribution to which section 95 or 106 applies, the date that is twelve 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 95 or 106 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.

110. Unlawful distribution.

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 commits an offence and shall be liable to a fine of one thousand dollars 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 not exceeding thirty thousand dollars or to imprisonment for six months, or to both such fine and imprisonment; or

(b) on conviction on information to a fine not exceeding seventy thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

PART XII – CONTINUING OBLIGATIONS OF PUBLIC ISSUERS

111. General standards of public disclosure.

(1) A public issuer must disclose to the public the prescribed information about its business operations and capital markets instruments.

(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 public issuer's business or affairs which is not public knowledge, which —

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

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

(c) might reasonably be expected materially to affect market activity in and the price of its capital markets instruments;

(d) may significantly affect its ability to meet its commitments; or

(e) is otherwise prescribed.

(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 public issuer's activities.

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

112. Timely disclosure of material changes.

(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, it may, after giving the public issuer an opportunity to be make representations —

(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) Notwithstanding any permitted non-disclosure under subsection (2), or (3) (b), the public issuer shall 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 with knowledge of the undisclosed material change are purchasing or selling capital markets instruments of the issuer.

(7) For the purposes of this section, a **"material change**" means any change in any material information regarding the public issuer or such other matters as may be prescribed.

113. Auditors and audits of public issuers.

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

114. Filing of financial statements and other reports.

(1) Every public issuer shall, within one hundred twenty days after the end of the issuer's financial year or such other prescribed period, file with the Commission annual audited 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 and the public issuer shall, upon filing the annual audited financial statements and auditor's report with the Commission, cause the financial statements to be posted on the company's website or published in a daily newspaper of general circulation in The Bahamas.

(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 provide notice to the Commission immediately if in the course of performing the duties required by subsection (2), the auditor comes to the view that a matter is present that could give rise to a qualification in the audit report on the financial statements.

(5) The notice required under subsection (4) shall be in the prescribed form and a copy of the notice must be delivered promptly to the public issuer.

(6) 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.

(7) 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.

115. Delivery of continuous disclosure documents to security holders.

(1) A public issuer shall, as soon as practicable after filing with the Commission, send to each security holder, at no cost to the security holder, the —

(a) annual audited 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 materials set out in subsection (1) shall be sent to the security holder's preferred delivery address or the last address of the security hold or shown on the securities register of the public issuer.

(3) 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 public issuer that the security holder does not wish to receive the documents.

116. Proxies and proxy solicitation.

(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) sending 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) sending a form of proxy to a security holder under subsection (2);

but does not include —

(i) sending 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) a registrant sending 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) 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.

117. Exemptions for certain foreign issuers.

A public issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 116, provided that it —

(a) complies in all respects with the 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 legislation of the recognised foreign jurisdiction if such security holder were resident in that foreign jurisdiction.

118. Contravention or misrepresentation by public issuer.

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 commits an offence and is liable —

(a) on summary conviction to a fine not exceeding thirty thousand dollars or to imprisonment for six months, or to both such fine and imprisonment;

(b) on conviction on information to a fine not exceeding seventy-five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

PART XIII – GOVERNANCE OF PUBLIC ISSUERS

119. Governance of public issuers.

(1) 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.

(2) 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.

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

120. Separation of role of chairman and chief executive officer of public issuer.

The person appointed Chairman of the board of directors of a public issuer may not, at the same time, also serve as Chief Executive Officer of that public issuer.

PART XIV – TAKE – OVER BIDS

121. Take-over bids.

A person shall not make a take-over bid or other type of bid as prescribed for a public issuer, except in accordance with the prescribed requirements.

PART XV – MISCONDUCT

MARKET MANIPULATION

122. Market manipulation.

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 or derivatives on a registered marketplace; or

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

123. False trading and market rigging – creating a false or misleading appearance of active trading, etc.

(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 or derivatives on a registered marketplace; or

(b) with respect to the market for, or the price for trading in, securities or derivatives 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 or derivatives 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 or derivatives that does not involve any change in the beneficial ownership of the securities or derivatives;

(b) makes an offer to sell any of those securities or derivatives 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 or derivatives 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 or derivatives 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 or derivatives 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 or derivatives on a registered marketplace 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 or derivatives does not involve a change in the beneficial ownership if —

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

(b) an associate of such a person;

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

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

(a) a reference to the making of an offer to purchase or sell securities or trade derivatives; 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 or trade derivatives.

124. False trading and market rigging – artificially maintaining, etc., trading price.

(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 or derivatives on a registered marketplace or recognised foreign exchange being maintained, inflated or depressed; or

(b) fluctuations in the price for trading in securities or derivatives on a registered marketplace or recognised foreign exchange.

(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.

125. Dissemination of information about illegal transactions.

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 or derivatives on a registered marketplace or recognised foreign exchange 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 or derivatives, if —

(a) the transaction, or thing done, constitutes or would constitute a contravention of section 122, 123, 124 or 130; 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.

126. Prohibition on purchasing or selling of securities or related financial instruments by certain persons.

(1) A person in a special relationship —

(a) with the public issuer; and

(b) who has inside information about the public issuer;

must not —

(i) trade any security of the public issuer; or

(ii) enter into a transaction involving a related financial instrument of a security of the public issuer.

(2) 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.

(3) 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 related financial instrument of a security of the public issuer.

(4) Any person who contravenes this section commits an offence and shall be liable on conviction on information to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for two years or to both, and if the Supreme Court so directs, pay a penalty not to exceed twice the amount of the unlawful gains made or losses avoided by the person.

127. Front running.

(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, derivative or underlying interest of a derivative on behalf of the investment portfolio;

(ii) the intention of a registrant trading on behalf of an investment portfolio to trade a security, derivative or underlying interest of a derivative 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, derivative or underlying interest of a derivative; and

(b) if disclosed, would reasonably be expected to affect the market price of the security, derivative or underlying interest of the derivative.

(2) If a person knows of material order information, the person must not enter into a transaction involving —

(a) a security that is the subject of the material order information;

(b) a related financial instrument of a security referred to in paragraph (a);

(c) a derivative that is the subject of the material order information; or

(d) a derivative that has an underlying interest that is the subject of the material order information.

(3) A person that knows of material order information must not inform another person of that information unless it is necessary in the course of the person's business.

(4) A person that knows of material order information must not recommend or encourage another person to enter into a transaction involving –

(a) a security that is the subject of the material order information;

(b) a related financial instrument of a security referred to in paragraph (a);

(c) a derivative that is the subject of the material order information; or

(d) a derivative that has an underlying interest that is the subject of the material order information.

128. Manipulation of price of derivatives and cornering.

A person must not, directly or indirectly —

(a) manipulate or attempt to manipulate the price of a derivative traded on a registered marketplace, or of any underlying interest of such derivative; or

(b) corner, or attempt to corner, any underlying interest of derivative.

129. Penalty for misconduct.

(1) Any person who contravenes a provision under this Part, other than under sections 126 or 136, commits an offence and shall be liable —

(a) on summary conviction to a fine not exceeding seventy-five thousand dollars, or to imprisonment for one year, or to both;

(b) on conviction upon information to a fine not exceeding one hundred and fifty thousand dollars, or to imprisonment for two years or to both.

(2) Any person who is guilty of an offence under this Part, other than under section 126 or 136, 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 made or loss avoided.

MISREPRESENTATION AND MISLEADING CONDUCT

130. Misleading or deceptive conduct.

(1) A person must not engage in conduct, in or from The Bahamas, in relation to capital markets business, a security, or a derivative, 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 or derivative includes any of —

(a) trading in a security or a derivative;

(b) issuing a security;

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

(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).

131. Misleading the Commission.

A person must not, in purported compliance with any requirement imposed by or under this Act, 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.

132. False or misleading statements.

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 derivatives; or

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

133. Inducing persons to deal.

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

(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.

134. Dishonest conduct.

(1) A person shall not, in the course of carrying on a capital markets business in or from The Bahamas, engage in dishonest conduct in relation to capital markets business, a security, or a derivative.

(2) For the purposes of this section, **"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.

135. Prohibited representations.

(1) Except as prescribed, no person, for the purpose of inducing another person to trade in a security or a derivative, shall make any representation, written or oral, that any person will —

(a) resell or repurchase such security;

(b) refund all or any of the purchase price of such security;

(c) refund any amount paid for a derivative; or

(d) assume all or part of an obligation under a derivative.

(2) Subsection (1) does not apply to a security that that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase.

(3) Subsection (1) does not apply to a derivative if the terms of the derivative —

(a) provide for a refund or a right to a party to require a refund; or

(b) provide a right to a party to assume all or part of an obligation under a derivative.

(4) No person, for the purpose of inducing another person to trade in a security or derivative, shall make any representation, written or oral, relating to the future value or price of such security or derivative.

(5) Except as prescribed, no person, for the purpose of inducing another person to trade in a security or derivative, shall make any representation, written or oral, that such security or derivative will be listed on any exchange.

136. Tipping off.

(1) In this section, **"subject person"** means the person about whom the Commission makes an inquiry for the purposes of an investigation or to fulfil a request for assistance.

(2) No authorised person or any of its directors, officers, employees, or agents shall disclose any information to a subject person or any of that person's associates, where the information relates to —

(a) a request for assistance from any domestic regulatory authority or overseas regulatory authority regarding a subject person; or

(b) an investigation by the Commission under this Act or any other written law regarding a subject person.

(3) The non-disclosure obligation in subsection (1), applies notwithstanding any obligation under any contract, agreement or arrangement, whether express or implied, that the authorised person may have to the subject person.

(4) A person who contravenes or fails to comply with this section, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

DEFENCES

137. Defences – belief that other party knows information.

(1) A person does not contravene section 126(2), 127(2)(a) or 127(2)(b) if, at the time the person enters into the transaction, the person reasonably believes that the other party to the transaction knows the inside information or material order information.

(2) A person does not contravene section 126(3), 127(2)(c) or 127(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 enter into the transaction.

138. Defences – automatic or predetermined trade.

A person does not contravene section 126(2), 127(2)(a) or 127(2)(b) if the person —

(a) enters into the transaction 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) enters into the transaction 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.

139. Defences – trading as agent.

A person does not contravene section 126(2), 127(2)(a) or 127(2)(b) if the person entered into the transaction —

(a) as agent under the specific unsolicited instructions of the person's principal;

(b) as agent under specific instructions that the agent solicited from the person's 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 fulfill a written legal obligation of the other person.

140. Defences – trade or recommendation by individual with no inside or material order information.

A person does not contravene section 126(2), 127(2)(a), 127(2)(b) or 127(2)(d) if —

(a) the person is not an individual; and

(b) the individual making the transaction 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 not have that information.

GENERAL

141. Exemptions and modifications.

(1) The Commission may prescribe that —

(a) a person or class of persons is exempt from all or specified provisions of this Part;

(b) a security or a class of securities are exempt from all or specified provisions of this Part;

(c) a derivative or class of derivatives are exempt from all or specified provisions of this Part; or

(d) 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 as they apply to references in this Part.

PART XVI – REPORTING BY SECURITY HOLDERS OF PUBLIC ISSUERS

142. Application of Part XVI.

The provisions of this Part shall apply with necessary modifications to partnerships, limited partnerships, trusts, joint ventures, syndicates, and other public issuers, as the case may be.

143. Initial insider report.

(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 an interest in, or right or obligation associated with, a related financial instrument of a security of the public issuer,

shall, 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 or related financial instruments 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 or related financial instruments 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 or related financial instrument of the public issuer;

(b) the insider enters into a transaction involving a security or related financial instrument 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 or related financial instrument involved in the transaction,

the insider shall, 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 or related financial instruments that are beneficially owned by an affiliate or associate of that insider.

144. Disclosure of beneficial interests.

(1) A public issuer may require any person that is a holder of its securities or related financial instruments —

(a) to indicate in writing the capacity in which the person holds the securities or related financial instruments of the public issuer; and

(b) if the person holds the securities or related financial instruments 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, 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 or related

financial instruments 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, 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) A public issuer may require any holder of its securities or related financial instruments 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 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.

145. Public issuer to keep register of its security holders.

A public issuer shall keep or arrange to have kept a register containing the prescribed information about its security holders.

146. Contravention of this Part or making false statement by insider or public issuer.

(1) Any person who —

(a) contravenes any provision of this Part; or

(b) 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,

commits an offence.

(2) A person who commits an offence under subsection (1), shall be liable –

(a) on summary conviction to a fine not exceeding thirty thousand dollars or to imprisonment for six months, or to both such fine and imprisonment; or

(b) on conviction on information, to a fine not exceeding seventy-five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

PART XVII – ENFORCEMENT

147. Compliance directions.

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 —

(a) this Act;

(b) the Financial Transactions Reporting Act; or

(c) the Anti-Terrorism Act,

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.

148. Orders in the public interest upon a settlement or after a hearing.

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) the Act or a Commission decision; or

(ii) the regulatory instruments or a decision of a person registered under Part VI;

(b) order a person, a class of persons, or all persons to cease trading —

(i) a security, a class of securities or all securities; or

(ii) a derivative, a class of derivatives or all derivatives;

(c) order that any or all of the exemptions in the Act 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 regulated person, or representative of a regulated person;

(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;

(vii) acting in a management or consultative capacity in connection with activities in the derivatives market; or

(viii) promoting the trading of a derivative or of derivatives 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 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 a public issuer;

(o) apply to the Supreme Court for an order that the person be wound up by the Supreme 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;

(s) order a person to pay a fine not exceeding three hundred thousand dollars for each contravention of the Act;

(t) impose any sanctions or remedies that are available to the Commission under the Financial Transactions Reporting Act or the Anti-Terrorism Act; or

(u) impose any other sanctions or remedies as the justice of the case may require.

149. Orders in the public interest without a hearing.

The Commission may make an order under section 148(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 or derivatives;

(b) has been found by a court to have contravened the securities legislation of any jurisdiction; or

(c) has been found by an overseas regulatory authority to have contravened the securities legislation of that jurisdiction.

150. Orders made for thirty days.

(1) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to make representations, make an order under section 148, other than an order under section 148(h), (i) or (j), that is effective for not more than 30 days.

(2) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to make representations, extend an order made under subsection (1), for up to fifteen additional days until the Commission makes a final decision after —

(a) a hearing has been held; or

(b) an opportunity to make representations has been provided.

151. Service of order and notice of hearing.

(1) Where the Commission makes an order under sections 148, 149 and 150(1) the Commission must send the order to each person named in the order.

(2) An order sent in accordance with section 150(1) or (2) must be accompanied by a notice of hearing or notice of opportunity to make representations.

152. Person appointed to advise or administer the affairs of the regulated person.

(1) A person appointed under section 148(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.

(2) A person appointed under section (148)(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 best interest of the clients, investors and creditors of the regulated person.

(3) The powers referred to in subsection (2) include the power to terminate the business of the regulated person if it is judged to be insolvent.

(4) A person appointed in respect of a regulated person under section 148(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.

(5) If a person appointed under subsection 148(l) or (m) —

(a) fails to comply with an obligation under subsection (4); 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 assess the charges payable to such appointed person up to the date of the revocation of the appointment.

(6) On receipt of any information or report pursuant to subsection (4) 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;

(b) apply to the Supreme Court for an order to wind up, dissolve, liquidate or otherwise terminate, as appropriate, the regulated person upon such terms and conditions as the Supreme Court thinks fit; or

(c) take such action in respect of the appointment or continued appointment of the person appointed under section 148(l) or (m) as the Commission considers appropriate.

(7) If the Commission takes action under subsection (6) 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 set out in section 148 or section 149.

153. General penalty.

A person who contravenes or fails to comply with any provision of this Act, other than an offence under Part XV for which no penalty is provided, shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term of two years or to both such fine and term of imprisonment.

154. Power of Commission to conduct investigations and hearings and impose sanctions.

The Commission may, where it appears that a person has breached a provision of this Act, the Financial Transactions Reporting Act, the Anti-Terrorism Act, or the Proceeds of Crime Act, or failed to comply with a requirement, directive or order given by the Commission —

(a) conduct an investigation;

(b) conduct a hearing under section 167 or such other hearings as may be prescribed; and

(c) impose one or more of the sanctions, remedies or other relief as may be prescribed by this Act, the Financial Transactions Reporting Act or the Anti-Terrorism Act.

155. Application to court.

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 or the opportunity to make representations, apply to the court for an order —

(a) to enforce a directive or order made by the Commission under the Act;

(b) for a market participant to be wound up, dissolved, liquidated, or otherwise terminated, as appropriate; or

(c) take any other action as the Commission considers necessary.

156. Criminal complaint.

Where the Commission reasonably suspects that an offence has been committed under this or any other law administered by the Commission, the Commission may refer the matter to either the Commissioner of Police.

157. Administrative penalties does not preclude criminal prosecution.

(1) If the breach of a provision is also an offence, a penalty for the breach shall not preclude a prosecution for the offence or a liability for an additional fee, late filing fee or a surcharge under a law administered by the Commission for the breach, and *vice versa*.

(2) The Commission shall have regard to the amount of the following in fixing the amount of the penalty for the breach —

(a) any fine imposed on conviction for the offence; or

(b) the fee or surcharge.

158. Power to impose an administrative penalty for a contravention.

(1) Notwithstanding any other penalties that may be imposed under any law, where the Commission is satisfied that an act or conduct by a person constitutes a contravention of the Act, that person may be subject to an administrative penalty imposed by the Commission without a hearing to a maximum of —

(a) for a company, three hundred thousand dollars for each contravention set out in the notice;

(b) for an individual, two hundred fifty thousand dollars for each contravention set out in the notice.

(2) Where the Commission decides to impose an administrative penalty on a person under subsection (1), it shall, after taking into account the matters specified in subsection (8), fix the amount of the administrative penalty up to the maximum specified for the contravention as provided in the *Third Schedule*.

(3) Where the Commission proposes to impose an administrative penalty on a person for a contravention under this section, the Commission shall send a notice of proposed penalty to the person stating —

(a) each contravention in respect of which it proposes to impose the penalty;

(b) the amount of the proposed penalty for each contravention; and

(c) the entitlement of the person to make representations to the Commission in accordance with subsection (4).

(4) Where a person receives a notice of a proposed penalty, it may, within twenty-one days of the date of the notice, make representations to the Commission as to why it should not be required to pay the administrative penalty or as to why the proposed penalty should be reduced and the Commission shall consider any representations received.

(5) The Commission may at any time prior to issuing the final penalty notice under subsection (6), withdraw a notice of proposed penalty and substitute a new notice of proposed penalty for a different amount.

(6) Following the expiry of twenty-one days from the date of the notice of the proposed penalty, the Commission may, by final penalty notice in writing, impose an administrative penalty on the person in an amount not exceeding the amount stated in the notice of the proposed penalty.

(7) A person that receives a final penalty notice shall pay the penalty stated in the notice to the Commission within thirty days of receipt of the notice or such other time as the Commission may order.

(8) In determining the administrative penalty to be imposed on a person under this section, the Commission —

(a) shall take into account the following matters —

(i) the nature, seriousness and duration of the contravention;

(ii) whether the person has previously contravened this Act or any other law administered by the Commission;

(iii) whether the contravention was deliberate or reckless or caused by the negligence of the person;

(iv) whether any loss or damage has been sustained by third parties as a result of the contravention; and

(v) the ability of the person to pay the penalty, including any profit gained or loss avoided by the person as a result of the contravention;

(vi) the level of cooperation of the person with the Commission;

(vii) any potential systemic consequences of the contravention; and

(b) may take into account such other matters as it considers appropriate.

(9) This section does not apply to contraventions that are late filings or late payments as set out in section 159.

159. Power to impose administrative penalties for late filings and late payments.

(1) Any person in breach of any provision of this Act solely by reason of failing to —

(a) file with or deliver to the Commission a document or notice within the prescribed time period; or

(b) pay any fee, charge or penalty payable or before the date upon which the fee, charge or penalty is due for payment,

shall be subject to an automatic penalty not exceeding one thousand dollars, or as prescribed, for every day after the day the document or fee, charge or penalty was due to be filed with or paid to the Commission.

(2) Where the Commission decides to impose a late payment penalty on a person under subsection (1), it shall send a penalty notice to the person stating —

(a) the late filing or fee, charge or penalty in respect of which the penalty is imposed; and

(b) the amount of the proposed penalty calculated in accordance with the *Fourth Schedule*.

(3) A person that receives a penalty notice under this section shall pay the penalty stated in the notice to the Commission within thirty days of receipt of the notice or such other time as the Commission may order.

(4) Where the Commission, in accordance with a power granted under this Act, extends the time for the filing of any document, notifying of any matter or payment of any fee, charge or penalty, the last day of the final extension given by the Commission shall be regarded as the last date for the filing of the document or the making of the notification.

(5) In determining whether a late penalty is payable by a person, a fee, charge or penalty is deemed not to have been paid until it is paid in full.

160. Appeal against administrative penalty.

(1) Where a person is aggrieved by a decision of the Commission under section 158 or 159 to impose an administrative penalty on the person, or by the amount of such administrative penalty, the person may, within thirty days of receiving the penalty notice, apply to —

(a) the Commission for a review under section 184 where the decision was made by the Executive Director, an officer or any employee exercising delegated authority from the Commission; or

(b) to the court for a review under section 187 where the decision was made by the Commission.

(2) An application for review of a decision of the Commission to impose an administrative penalty does not operate as a stay on the obligation of the person to pay the penalty as required under section 158 or 159.

161. Miscellaneous provisions concerning administrative penalties.

(1) This section applies to administrative penalties imposed under section 158 and 159.

(2) All notices shall be in writing.

(3) The imposition by the Commission of an administrative penalty with respect to a contravention does not limit the power of the Commission to take any other enforcement action against the person with respect to that contravention, except that where the Commission imposes an administrative penalty on a regulated person, it shall not revoke the person's registration in reliance on the same contravention.

(4) Where a person has, by reason of committing more than one contravention, become liable to more than one penalty, the Commission may compound the penalties.

(5) The Commission may agree to the payment of an administrative penalty in instalments over such period of time and subject to such conditions as it considers appropriate.

(6) Where a person fails to pay a penalty within the period prescribed by the Commission —

(a) the fine shall attract interest at the rate of twelve per centum per annum from the date after it became due until the date the fine is paid;

(b) the Commission may recover the fine, including interest, by instituting civil proceedings against the person before the court; and

(c) the Commission may apply to the court under section 155 for an order to wind up the person.

(7) Any administrative penalty shall be paid to the Commission for use by the Commission as required by section 31(3).

(8) The Commission may impose an administrative penalty on a person notwithstanding the fact that the registration, approval or other authorisation of that person has been revoked.

162. Administrative penalty notices.

(1) Subject to subsection (2), for the purposes of sending —

(a) a notice of proposed penalty under section 158(3);

(b) a final penalty notice under section 158(6); or

(c) a penalty notice under section 159(2),

to a person, the Commission may, send the notice to the person at their physical address or email address or as otherwise prescribed.

(2) If the Commission does not have a valid physical address or email address to which to send a notice, it may publish the notice in the Gazette and on the Commission's website.

(3) A notice published on the Commission's website pursuant to subsection (2) shall be deemed to be received by the person to whom it relates from the date it is posted on the Commission's website.

163. Removal of benefits.

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, profit made or loss avoided, as a result of a contravention of this Act, plus a penalty not to exceed twice the amount obtained or payment or loss avoided.

164. Payment of costs.

(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 19 or section 44(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 incurred by the Commission.

165. Order to freeze property.

(1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of this Act 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, derivatives or other property of the person named in the order to hold them; or

(b) a person —

(i) not to withdraw any funds, securities, derivatives or other property from any person having them on deposit, under control or for safekeeping; or

(ii) to hold all funds, securities, derivatives 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) The Commission may, in exercising its powers under this section, seek the assistance of the Attorney General or the Director of Public Prosecutions.

(3) The assistance sought under subsection (2) shall be —

(a) for the purpose of extending the asset freeze order; and

(b) provided in such a manner as reasonably necessary.

(4) 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.

(5) Unless expressly stated, an order made under subsection (1) does not apply to funds, securities, derivatives or other property at a clearing facility, or to securities in the process of transfer by a transfer agent.

(6) Any person subject to an order made under this section, or any extension of that order, that fails to comply with the terms of that order shall be subject to an administrative penalty imposed by the Commission under section 158.

166. Assistance to overseas regulator – freeze orders.

The Commission may, if it considers it in the public interest and to assist in the administration of the securities legislation of another jurisdiction, assist an overseas regulatory authority obtaining an order from the court to direct a person —

(a) having on deposit or under its control or for safekeeping any funds, securities, derivatives or property of any person to retain those funds, securities, derivatives or property;

(b) to refrain from withdrawing any funds, securities, derivatives, or property from another person or company who has them on deposit, under control or for safekeeping; or

(c) to maintain funds, securities, derivatives or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities, derivatives or property.

167. Hearings.

(1) The Commission shall provide, at a hearing, 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.

(2) The notice to be provided under subsection (2) shall include the prescribed information.

(3) 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.

(4) Notwithstanding subsection (3), 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.

(5) On application by the Commission to the court, a person summoned under subsection (3) is liable to be committed for contempt, as if in breach of an order or judgment 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.

(6) A hearing under this section shall be open to the public unless the Commission directs otherwise.

(7) 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.

(8) Counsel may advise a witness at a hearing under subsection (1).

(9) 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.

(10) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(12) 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; and

(b) make available, 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.

168. Publication of decisions and penalties.

(1) The Commission shall publish any decision imposing a penalty on a person for any breach of this Act as soon as practicable after the person on whom the penalty was imposed has been informed of that decision.

(2) The publication shall include the final decision and reasons, or a summary of the decision and reasons, and the identity of the persons responsible.

(3) The Commission may omit or redact the name or other identifying information of an affected person from the publication of a decision.

169. Limitation periods.

No proceedings against any person for a breach of or failure to comply with any of the provisions of this Act may be commenced after the expiry of six years from the day upon which the breach or non-compliance was, or ought to have been, discovered.

170. Directors and officers.

(1) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, 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 XVIII – CIVIL LIABILITY FOR MISREPRESENTATIONS

171. Interpretation of Part XVIII.

In this Part, **"prospectus"** means a prospectus filed under section 95 or a foreign prospectus filed under section 106, together with any amendment to those documents filed under Part XI.

172. Liability for misrepresentation in prospectus – damages.

(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 selling security holder;

(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 103 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 selling security holder, 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 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; or

(b) 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, or valuation —

(A) was competent to make it;

(B) had consented as required under section 103; and

(C) had not withdrawn that consent.

(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.

173. Action by security holders for rescission for misrepresentation in prospectus.

(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, that purchaser shall have no right of action for damages against the issuer or underwriter under section 172.

(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.

174. Due diligence defence.

A person is not liable under section 172 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.

175. General provisions for civil liability.

(1) The rights of action for damages or rescission conferred by sections 172 and 173 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 172 or 173, 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 172 or 173 if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(4) The amount recoverable under section 172 or 173 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 XIX – GENERAL PROVISIONS

176. Regulations.

(1) The Minister may, after consultation with the Commission, make regulations necessary or expedient for carrying out the purposes of this Act and giving effect to the functions and responsibilities of the Commission.

(2) 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) amending or repealing a rule made by the Commission.

177. Rules.

(1) In carrying out the purposes of this Act and its functions and responsibilities under this Act, 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 application of the Act generally or with respect to —

(a) a person or class of persons;

(b) a security or class of securities;

(c) a derivative or class of derivatives; or

(d) a trade or class of trades.

178. Rule-making process.

(1) The Commission shall, at least sixty days before the proposed effective date of the rule, publish —

(a) a copy of any rule or amendment to 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 rule in final form, 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 shall furnish the Minister with a copy of the final rule or amendment without delay and where no objection to the rule or amendment was delivered to the Minister, subsection (7) shall apply.

(6) 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.

(7) 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.

(8) If the Commission amends or revokes a rule, it must, without delay —

(a) publish notice of the amendment or revocation; and

(b) give written notice to the Minister.

(9) Notices given under subsection (8) must include details of the amendment or revocation.

179. Regulation prevails over rule.

If a rule made by the Commission conflicts with a regulation made by the Minister, the regulation made by the Minister prevails.

180. Power to vary Commission rules.

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 177, as it applies to a person, trade, security or derivative, or a class of persons, trades, securities or derivatives.

181. Power to remove exemption contained in Commission rule.

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 177 does not apply to

a person, trade, security or derivative, or a class of persons, trades, securities or derivatives.

182. Guidelines.

The Commission may publish guidelines regarding any regulations or rules made pursuant to this Act, or of any provisions of this Act, provided however that such guidelines shall not be taken as having the force of law.

183. Power to amend forms.

The Commission may, by order, for general or specific application, amend or replace any prescribed form, including by amending the attachments that must be provided with such form.

184. Review of delegated decisions.

(1) Any person directly affected by a decision of the Executive Director, an officer or any employee exercising delegated authority from the Commission may request and be entitled to a hearing and review of that decision by the Commission.

(2) The right to a review in subsection (1) shall be exercised by notice in writing sent as prescribed by mail or email to the Commission within thirty days after the sending of the notice of the decision by the Executive Director, officer or employee.

(3) 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.

(4) Notwithstanding the fact that a person requests a hearing and review under this section , the decision under review takes effect immediately, but the Commission may grant a stay, subject to such conditions as the Commission may require, until disposition of the hearing and review.

185. Review of decisions of persons registered under Part VI.

(1) Any person who is aggrieved by any act or omission of a person registered under Part VI, 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 44 and 45 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 VI 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 VI shall, if the Commission proceeds to a judgment 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 judgment upon the complaint, been informed in writing to that effect.

186. Appeals from hearing decisions.

(1) A person directly affected by a final decision of the Commission or a hearing panel, other than those stated not to be subject to appeal, may appeal to the Supreme Court in accordance with the Supreme Court Act *(Ch. 53)* within thirty days after of the making of the final decision or the issuing of the reasons for the final decision whichever is later in time.

(2) The Commission may appeal a decision of a hearing panel to the Supreme Court in accordance with the Supreme Court Act *(Ch. 53)* within thirty days after of the making of the final decision or the issuing of the reasons for the final decision whichever is later in time.

(3) Notwithstanding the fact that an appeal is taken under this section, the final decision appealed from takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the appeal.

(4) The Secretary shall certify to the Supreme Court —

(a) the final decision of the Commission or hearing panel, together with a statement of reasons for that decision;

(b) the record of the proceedings before the Commission or hearing panel; and

(c) all written submissions to the Commission or other material that is relevant to the appeal.

(5) 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 this Act and as the court considers proper, having regard to the material and submissions before it and to this Act, and the Commission shall make such decision or do such act accordingly.

(6) Notwithstanding 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.

187. Judicial review of other Commission decisions.

(1) A person directly affected by a decision of the Commission, other than a final decision or a decision stated not to be subject to appeal, may apply to the Supreme Court for judicial review of that decision in accordance with the Rules of The Supreme Court within thirty days after the making of the decision or the issuing of reasons for the decision whichever is later in time.

(2) Notwithstanding the fact that an application for judicial review is taken under this section, the decision under review takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the application.

(3) Where a judicial review takes place under this section, the court may make such orders as are set out in the Supreme Court rules of court for a judicial review.

(4) Notwithstanding an order of the court on a judicial review, 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.

188. Financial statement requirements.

(1) Unless otherwise permitted, all financial statements required under this Act shall be prepared in accordance with generally accepted accounting principles.

(2) Unless otherwise permitted, all audits required to be performed under this Act shall be conducted in accordance with generally accepted auditing standards.

189. Filing of documents and public availability.

(1) All documents or information required to be filed with, delivered 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 on the 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 submitted, delivered, furnished or provided to the Commission by this Act, the document or information shall not be disclosed under subsection (2) unless the Commission determines that such disclosure is in the public interest.

190. Secrecy.

An order under this Act shall have effect notwithstanding any provisions in any written law or any requirement imposed thereunder, any rule of law, any contract, or any rule of professional conduct, that impose obligations as to secrecy or other restrictions upon the disclosure of information or material.

191. Immunities.

(1) No civil or criminal proceedings, other than proceedings for an offence under sections 43 or 58, 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 Act;

(b) making a statement to the Commission in good faith and in compliance with an order made under this Act; 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 written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(3) 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 Act for the inspection, copying or production of information or documents.

192. Privilege.

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

(2) For the purposes of this Act, 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.

(4) A professional legal adviser who refuses to disclose, furnish or transmit any material that contains any privileged communication shall nevertheless be obliged to give the name and address, if he knows them, of the person to whom, or by or on behalf of whom, the privileged communication was made.

193. Liens.

Where the person in possession of any document required to be produced under this Act 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.

194. Keeping of records and dissemination of documents.

(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 any written law 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 document or 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.

195. Verification.

The Commission may by notice in writing require the person furnishing any information to the Commission to verify the information by oath or affirmation and the notice shall provide the person with a reasonable period of time to comply with this requirement.

196. Register as evidence.

Where it is provided in the Act 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 the Act shall be prima facie evidence of the contents thereof.

197. Discretionary exemptions.

(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 VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of this Act.

(2) Exemptions granted under subsection (1) shall be published by the Commission on its website.

198. Designation orders.

(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 or make representations, order that —

(a) an issuer, or an issuer within a class of issuers, is not a public issuer;

(b) a person is not an insider;

(c) a trade or trade within a class of trades is not a distribution;

(d) a person, or a person within a class of persons, is not a market participant or a marketplace;

(e) a right or obligation, or a right or obligation within a class of rights or obligations, is not a security; or

(f) a contract or instrument, or class of contracts or instruments is not a derivative;

(g) a derivative or class of derivatives is not a security;

(h) an interest or instrument or class of interests or instruments is not a capital instrument;

(i) a digital asset is not a security; or

(j) a person or class of persons is not an accredited investor.

(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;

(b) a person is an insider;

(c) a person, or a person within a class of persons, is a market participant or a marketplace;

(d) a trade, or a trade within a class of trades, is a distribution;

(e) a right or obligation, or a right or obligation within a class of rights or obligations, is a security;

(f) a contract or instrument, or class of contracts or instruments is a derivative;

(g) a derivative or class of derivatives is a security;

(h) an interest or instrument or class of interests or instruments is a capital instrument;

(i) a digital asset is a security; or

(j) a person or class of persons is an accredited investor.

199. Conditions on decisions.

The Commission may impose terms, conditions, requirements and restrictions in any decision it makes, as the Commission deems fit.

200. Discretion to revoke or vary decision.

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.

201. Recognition of foreign jurisdictions and foreign exchanges.

For the purposes of this Act, 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 exchange established and operated in a recognised foreign jurisdiction, if the Commission is of the view that the exchange meets the criteria prescribed.

202. Commission to keep register.

(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 this Act.

(2) The Commission shall make the register available to the public on the prescribed terms.

203. Stamp duty exemption.

Notwithstanding any provision of the Stamp Act *(Ch. 370)* 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 exchange.

204. Consequential amendments.

The enactments specified in Column 1 of the Table in the *Fifth Schedule* are amended to the extent specified in Column 2 of that Schedule

PART XX – TRANSITION PROVISIONS AND REPEAL

205. Interpretation of Part XX.

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.

206. Existing unregistered market participations newly subject to registration under the Act.

A person who, immediately before the effective date, was carrying on securities or capital markets 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 capital markets 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.

207. Securities exchanges registered under the former Act.

Every securities exchange registered with the Commission under the former Act is deemed to be registered as an exchange under section 59 of this Act with effect from the effective date.

208. Clearing facilities registered under the former Act.

Every clearing facility registered with the Commission under the former Act is deemed to be registered as a clearing facility under section 59 of the Act with effect from the effective date.

209. Registered firms under the former Act.

Every person or company registered with the Commission under the former Act to carry on a securities business set out in Column 1 is deemed to be registered under section 69 of this Act to carry on the capital markets business set out in Column 2 below with effect from the effective date.

Column 1	**Column 2**
Registration Category Under the Former Act	*Registration Category Under this Act*
Dealing in securities	Dealing in capital markets instruments
Arranging deals in securities	Arranging deals in capital markets instruments
Managing securities	Managing capital markets instruments

Providing advice on securities	Providing advice on capital markets

210. Registered individuals.

Every individual registered with the Commission under the former Act is deemed to be registered under section 72 of the Act as a representative with effect from the effective date.

211. Members of the Commission.

The appointment of any member of the Commission under the former Act shall continue under this Act for the duration of the term of that appointment.

212. Savings.

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 this 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.

213. Repeal.

The Securities Industry Act *(Ch. 363)* is hereby repealed.

FIRST SCHEDULE

PART 1 – CAPITAL MARKETS INSTRUMENTS

A - SECURITIES

In this Act, securities —

(a) includes any documents or instruments, or written or electronic records, evidencing any of the following securities and include any right to or interest in any security;

(b) does not include instruments or interests that are —

(i) described in an order made under section 198(1) not to be securities; or

(ii) within a class of instruments prescribed not to be securities.

1. Shares.

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 *(Ch. 312)*, as amended;

(d) interests in a limited partnership or an exempted limited partnership constituted under the laws of a jurisdiction other than The Bahamas.

(e) equity interests in a regulated or unregulated investment fund as defined in the Investment Funds Act, 2019.

2. Instruments creating or acknowledging indebtedness.

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.

3. Instruments giving entitlements to securities.

Warrants and other instruments entitling the holder to subscribe for securities falling within section 1 or 2.

4. Certificates representing certain securities.

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.

5. Other securities.

Any instrument or interest —

(a) described in an order made under section 198(2) to be securities; or

(b) within a prescribed class of instruments;

whether or not any of them relate to an issuer or proposed issuer.

B - DERIVATIVES

1. Interpretation.

In this Part, derivatives —

(a) means an option, swap, futures contract, forward contract, contract for difference, other financial or commodity contract or instrument, or prescribed instrument the market price, value, delivery obligations, payment obligations or settlement obligations of which are derived from, referenced to or based on an underlying interest;

(b) includes any documents or instruments, or written or electronic records, evidencing any of the following derivatives and includes any right to or interest in any derivative; and

(c) does not include an instrument or interest —

(i) the underlying interest of which is a digital asset or a derivative of a digital asset;

(ii) described in an order made under section 198(1) as not to be a derivative;

(iii) within a class of instruments prescribed not to be a derivative; or

(iv) that is a spot contract.

2. Prescribed derivatives.

Any instrument or interest —

(a) that is described in an order made under section 198(2) to be a derivative;

(b) within a class of instruments prescribed to be a derivative.

PART 2 - REGULATED ACTIVITIES

The following activities are regulated activities carried on in the course of capital markets business for the purposes of this Act

1. Dealing in capital market instruments.

(a) buying, selling, subscribing for or underwriting capital markets instruments as an agent; or

(b) buying, selling, subscribing for or underwriting capital markets instruments as principal where the person entering into that transaction –

(i) holds himself out as willing, as principal, to buy, sell or subscribe for capital markets instruments 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 capital markets instruments 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 capital markets instruments 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 an overseas regulatory authority in a recognised jurisdiction; or

(iv) as prescribed.

2. Arranging deals in capital market instruments.

Making arrangements with a view to –

(a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting capital markets instruments; or

(b) a person, who participates in the arrangements, buying, selling, subscribing for or underwriting capital markets instruments.

3. Managing capital market instruments.

Managing capital markets instruments belonging to another person in circumstances involving the exercise of discretion.

4. Advising on capital market instruments.

Advising a person on capital markets instruments 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 capital markets instrument; or

(ii) exercising any right conferred by a capital markets instrument to buy, sell, subscribe for, underwrite a capital markets instrument.

5. Providing margin financing.

Providing any credit facility, advance or loan to facilitate, directly or indirectly, —

(a) the purchase of securities or other prescribed capital market instruments listed or to be listed on a registered exchange or a recognized foreign exchange; or

(b) where applicable, the continued holding of securities or other prescribed capital markets instruments, whether or not the securities or prescribed capital market instruments are pledged as security for the credit facility, advance or loan, but does not include the provision of —

(i) any credit facility, advance or loan that forms part of an arrangement to underwrite or sub-underwrite securities or prescribed capital market instruments;

(ii) any credit facility, advance or loan to —

(A) a company that is registered to deal in securities or prescribed capital markets instruments; or

(B) a company that is registered to undertake margin financing;

(iii) any credit facility, advance or loan by a company to its directors or employees to facilitate the acquisition or holding of its own securities or prescribed capital markets instruments;

(iv) any credit facility, advance or loan by a financial institution for the purpose of facilitating purchases or holding of

securities or prescribed capital market instruments by the financial institution's clients; or

(v) any credit facility, advance or loan by an individual to a company in which that person holds 10% or more of its issued share capital to facilitate the acquisition or holding of securities or prescribed capital market instruments by that company.

PART 3 – EXCLUDED ACTIVITIES

The activities specified in this Part are not considered capital markets business in the following circumstances –

1. Dealing in capital markets instruments.

(a) 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.

(b) Issuing, redeeming or repurchasing securities:

Where an issuer issues, redeems or repurchases any of its securities falling within sections 1 to 3 of Part 1A.

(c) Risk management

Where a person buys, sells, subscribes for, enters into or underwrites capital markets instruments and —

(i) the transaction relates to derivatives securities falling within Part 1B;

(ii) none of the parties to the transaction are individuals;

(iii) 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

(iv) the relevant business is a business other than capital markets business carried on by —

(A) the person entering into the transaction;

(B) a company within the same group of companies as such person; or

(C) another person who is or is proposing to become a participant in a joint enterprise with such person.

(d) Disposal of goods or supply of services:

Where a person buys, sells, subscribes for or underwrites capital markets instruments 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 —

(i) as a principal; or

(ii) as an agent, and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of capital markets instruments and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite capital markets instruments.

(e) Incidental activity:

Where a person buys, sells, subscribes for or underwrites capital markets instruments in the course of carrying on any profession or business not otherwise constituting capital markets 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.

(f) Employee schemes:

Where an employer buys, sells, subscribes for or underwrites securities or related financial interests 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.

(g) Application of proprietary assets:

Where an issuer, acting as principal and dealing only on its own behalf buys, sells or subscribes for capital markets instruments by applying its proprietary assets, otherwise than as described in section 1(b) of Part 2.

(h) Dealing in investment funds:

Where a person carries out those securities activities specified in section I of Part 2 solely with respect to securities described in section l (e) of Part 1.

2. Arranging deals in capital markets instruments.

(a) 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.

(b) 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 capital markets 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.

(c) 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.

(d) Arrangements in connection with securities evidencing indebtedness:

Where a person makes arrangements in respect of a transaction referred to in section 1(1) of this Part.

(e) 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 capital markets instruments.

(f) Introducing:

Where a person makes arrangements to introduce a person to another person and –

(i) the person to whom introductions are to be made is a person referred to in Part 4; and

(ii) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to capital markets instruments generally or in relation to any class of capital markets instruments to which the arrangements relate.

(g) Arrangements for the issue of capital markets instruments:

Where a person makes arrangements in respect of a transaction referred to in sections 1(a) and 1(g) of this Part.

(h) 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.

(i) 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.

(j) Arranging deals in investment funds -

Where a person makes arrangements for, or with a view to, transactions in securities that are described in section I(e) of Part 1.

3. Managing capital markets instruments.

(a) Managing investment funds:

Where a person manages securities and —

(a) is incorporated in The Bahamas; and

(b) its sole capital markets business is the provision of management or advisory services to one or more investment funds licensed by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act, 2019.

(b) Disposal of goods or supply of services:

Where a person manages capital markets instruments 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.

4. Advising on capital markets instruments.

(a) Managing investment funds

Where a person advises on securities and —

(a) is incorporated in The Bahamas; and

(b) its sole capital markets business is the provision of management or advisory services to one or more investment funds licensed by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act, 2019.

(b) 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.

(c) Publications:

Where a person gives advice in any communications media and –

(i) 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 capital markets instruments; or

(ii) the person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting.

(d) Incidental activities:

Where a person gives legal, accounting or other advice and –

(i) the capital markets instruments related advice is given in the course of carrying on any profession or business not otherwise constituting capital markets business;

(ii) 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

(iii) is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

5. Providing margin financing.

(a) Underwriting financing:

Where a person provides a credit facility, advance or loan that forms part of an arrangement to underwrite or sub-underwrite securities or prescribed capital market instruments.

(b) Loans to registered firms:

Where a person provides a credit facility, advance or loan to —

(i) a company that is registered to deal in securities or prescribed capital markets instruments; or

(ii) a company that is registered to undertake margin financing.

(c) Loans to directors and employees:

Where a company provides a credit facility, advance or loan to its directors or employees to facilitate the acquisition or holding of its own securities or prescribed capital markets instruments.

(d) Bank loans to its customers to buy securities:

Where a bank or other prescribed financial institution provides a credit facility, advance or loan for the purpose of facilitating purchases or holding of securities or prescribed capital markets instruments by its clients.

(e) Loans to associated company:

Where an individual provides a credit facility, advance or loan to a company in which that individual hold ten per centum or more of its

issued share capital to facilitate the acquisition or holding of securities or prescribed capital markets instruments by that company.

PART 4 - EXCLUDED PERSONS

The persons specified in this Part are not required to be registered under the Act —

1. A company carrying on capital markets 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 capital markets business where the activities constituting such capital markets 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 capital markets business) carried on by them.

3. The Commission.

4. The Government of The Bahamas.

5. The Central Bank of The Bahamas.

6. A person carrying on capital markets 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 capital markets business otherwise than as part of any remuneration the person receives for acting in the capacity listed in paragraphs (a) to (g); and

      (ii) does not hold himself out as carrying on capital markets 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

(section 10)

1. Commission is a body corporate.

(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.

2. Seal.

(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.

3. Tax Liability of the Commission.

Nothing in this Act shall exempt the Commission from liability for any tax, duty, rate, levy or other charge whatsoever.

THIRD SCHEDULE

(section 158(2))

ADMINISTRATIVE OFFENCES

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
PART III – MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET			
35	Failure to comply with Commission request to provide information to the Commission for the purpose of managing systemic risks.	$50,000	$20,000
36	Failure to comply with Commission directive to take measures regarding the management of systemic risks.	$100,000	$20,000
PART IV - ASISTANCE TO DOMESTIC AND FOREIGN REGULATORY AUTHORITIES			
41(1)(b-d)	Failure to comply with the Commission's order for assistance.	$60,000	$10,000
PART V - INVESTIGATIONS, INSPECTIONS AND GENERAL ACCESS TO INFORMATION			
45(1)(a)(c)(d)	Failure to comply with Commission requirement to attend and provide a statement or give, provide or procure specified information or documents in an investigation.	$150,000	$15,000
47(3)(4)(7) 49(3)(4)(6)	Failure to comply with Commission requirement to produce information or documents, a class of information or document, or give an explanation or further particulars on information or documents provided, produced or obtained during an inspection.	$120,000	$20,000
48(1)(3)	Failure to comply with Commission requirement to provide a review report.	$80,000	$10,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
55(5)	Failure by market participant to comply with direction from the Commission to prepare and submit information.	$75,000	$8,000
58	Failure to comply with requirement of the Commission, falsifying, destroying, hiding, removal etc. of documents, or obstructing an inquiry by the Commission during investigations and inspections.	$100,000	$20,000
PART VI – REGULATION OF MARKETPLACES, ETC.			
59(1)	Carrying on business as a marketplace, clearing facility or trade repository without registration.	$175,000	$80,000
61(2)	Failure by person registered under Part VI to submit Annual Update and Declaration Form and other documents required in addition to the prescribed annual fee.	$30,000	$5,000
63(2)	Admitting an unregistered person to membership on an exchange.	$80,000	$15,000
63(3)	Permitting a person to become a security holder of the exchange without the approval of the Commission.	$80,000	$10,000
66	Failure by person registered under Part VI to appoint an approved auditor to examine annual financial statements and provide the prescribed reports to the Commission.	$100,000	$10,000
67	Failure by person registered under Part VI to deliver annual financial statements, auditors reports, interim financial statements etc. to the Commission.	$100,000	$10,000
68(1)	Failure by person registered under Part VI to provide the Commission with notice of the occurrence of a prescribed	$20,000	$3,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	event.		
69	Person registered under Part VI going into voluntary liquidation without the prior approval of the Commission.	$150,000	$15,000
70(1)	Establishing, maintaining, or assisting in establishing or maintaining an unregistered marketplace, clearing facility, or trade repository or conducting business on or with an unregistered marketplace, clearing facility, or trade repository.	$250,000	$25,000
PART VII – REGISTRATION OF PERSONS CARRYING ON CAPITAL MARKETS BUSINESSES			
71(1)	Carrying on, or purporting to carry on capital markets business in or from The Bahamas without registration.	$500,000	$250,000
71(4)	Acting as a representative of any capital markets business without registration as a representative for that business.	$100,000	$25,000
71(12), (13)	Failure by capital markets business to submit prescribed Annual Update and Declaration Form or insurance policy (as applicable), or any other prescribed document or pay the prescribed annual fee.	$80,000	$15,000
75(1)	Failure to provide the Commission with notice of the occurrence of a prescribed event.	$150,000	$50,000
78(1)	Registered firm going into voluntary liquidation without the prior approval of the Commission.	$300,000	$80,000
80(1)(a)	Carrying on capital markets business otherwise than permitted.	$250,000	$100,000
80(1)(c)	Person making a misrepresentation in any filing, application, notification, or other document required to be filed,	$250,000	$90,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	delivered or notified to the Commission under Part VII.		
PART VIII - CONDUCT OF CAPITAL MARKETS BUSINESS			
81	Failure by registered firm its officers, directors, partners or employees to act — i. honestly or fairly in conducting its business activities in the best interest of clients and the integrity of the market; or ii. with due skill, care and diligence in the best interest of clients and the integrity of the market.	$400,000	$100,000
82	Failing by registered firm to provide prescribed information and documents to person trading or proposing to trade in capital markets instruments	$80,000	$50,000
83(1),(2)	Failure by registered firm to appoint an approved auditor to examine financial statements and other regulatory filings and provide reports of the affairs of the registered firm.	$250,000	$80,000
83(4)	Failure by auditor to comply with requirement to provide notice where a matter is present that could give rise to a qualification in the audit report on financial statements or where there is material weakness, deficiency or non-compliance with prescribed requirements.	$150,000	$50,000
83(6)	Failure by auditor to provide additional information, or a report on an enlarged or extended audit scope or other examination or established procedure.	$80,000	$10,000
84	Failure by registered firm to deliver annual financial statements (prepared and certified as prescribed), the report	$100,000	$25,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	of the auditor, interim financial statements and any other report or information prescribed.		
86	Failure by registered firm to make and keep information and documents or provide a copy or extract from any information or document kept.	$250,000	$100,000
87	Failure by registered firm to obtain the prior approval before becoming a significant security holder of an issuer, acquiring shares, debentures or other interests in another registered firm or permitting any person to become a significant security holder of the registered firm (as applicable).	$100,000	$20,000
89	Sale of securities by person or by agent on behalf of person that does not have presently exercisable and unconditional right to vest the securities in another person.	$200,000	$150,000
PART IX – TRADING IN DERIVATIVES			
90	Failure to comply with the conditions, restrictions and requirements as prescribed relating to derivatives transactions.	$100,000	$20,000
90	Entering into a transaction for a prescribed derivative or prescribed transaction for a derivative without a disclosure document prepared, filed and sent in accordance with the regulations.	$100,000	$20,000
PART XI - DISTRIBUTIONS AND PROSPECTUSES			
95(1)	Trading in a security on own account or on behalf of any other person without filing a preliminary prospectus and prospectus with the Commission and obtaining a receipt from the Commission.	$250,000	$30,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
99	Failing to cease selling activities until a revised preliminary prospectus satisfactory to the Commission is filed and forwarded to recipients due to a defective preliminary prospectus.	$200,000	$20,000
100(1)	Failure by issuer, selling security holder or registrant to send preliminary prospectus or amended preliminary prospectus in sale of securities, prospectus or amended prospectus (as applicable).	$80,000	$10,000
100(4)	Failure by issuer or selling security holder to make copies of the preliminary prospectus and prospectus filed with the Commission available without charge.	$25,000	$5,000
101(1)	Failure by issuer to file amended preliminary prospectus or amended prospectus where there is a change in any material information.	$25,000	$5,000
101(3)	Failure to cease distribution of securities where amended prospectus required.	$100,000	$20,000
101(4), (5)	Failure by issuer, selling security holder or registrant to send amended preliminary prospectus to persons who received preliminary prospectus and amended prospectus to persons who received prospectus (as applicable).	$50,000	$10,000
109(3)	Failure to cease distribution of securities after lapse date and prior to new prospectus or new foreign prospectus filed with, and receipt issued by, the Commission.	$100,000	$20,000
110	Carrying out a distribution otherwise than in compliance with the Act.	$150,000	$25,000
PART XII – CONTINUING OBLIGATIONS OF PUBLIC ISSUERS			

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
111(1) – (3)	Failure by public issuer to disclose prescribed information on its business operations, capital markets instruments, business and affairs as prescribed.	$80,000	$15,000
112(1)	Failure by public issuer to issue a press release and file a report where a material change occurs in the affairs of the public issuer.	$90,000	$15,000
112(6)	Failure by public issuer to disclose material change where persons with knowledge of undisclosed material change are selling or purchasing capital markets instruments of the issuer.	$100,000	$20,000
113	Failure by public issuer to appoint approved auditor to examine annual financial statements and provide prescribed reports on financial affairs.	$150,000	$20,000
114	Failure by public issuer to file annual financial statement within 120 days after end of financial year.	$30,000	$5,000
114(4)	Failure by auditor to notify the Commission of matters giving rise to qualifications in audit report.	$50,000	$5,000
114(6)(7)	Failure by public issuer to file interim financial statements, annual report, and other reports or information as prescribed.	$60,000	$5,000
116(2)	Failure by public issuer to concurrently give notice of a meeting and send prescribed form of proxy and other prescribed documents.	$25,000	$3,000
116(3)	Failure to concurrently send a copy of each document sent under section 103(2) to the Commission.	$10,000	$2,500
117(b)	Failure by approved foreign issuer to file with the Commission, all	$25,000	$3,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	documents which it files with the overseas regulatory authority.		
118	Public issuer making a misrepresentation in a document to be filed with the Commission or sent to security holders.	$100,000	$30,000
PART XIII - GOVERNANCE OF PUBLIC ISSUERS			
119	Failure to comply with prescribed governance requirements including composition of the board, establishment of committees, establishment and enforcement of codes of conduct and ethics, and procedures to regulate conflicts of interests.	$150,000	$50,000
PART XV - MISCONDUCT			
122	Taking part in or carrying out, directly or indirectly a transaction or transactions which create or maintain an artificial price for trading in securities or derivatives. (Market manipulation).	$350,000	$150,000
123(1)	Creating or causing the creation of a false or misleading appearance of active trading or the market or price for trading in securities or derivatives.	$275,000	$100,000
124(1)	Entering into or engaging in a fictitious or artificial transaction which maintains, inflates, depresses or fluctuates the price for trading in securities or derivatives.	$250,000	$90,000
130(1)	Engaging in conduct that is misleading or deceptive or likely to mislead or deceive.	$300,000	$175,000
131	Knowingly or recklessly providing information that is false, misleading, or omits a required fact.	$275,000	$125,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
125	Circulating, disseminating or being involved in the circulation or dissemination of a statement or information which will, or is likely to cause the price for trading in securities or derivatives to rise or fall or be maintained.	$350,000	$175,000
132	Making a statement of disseminating information false in a material particular or that is materially misleading.	$250,000	$90,000
133	Inducing another person to trade in securities or derivatives in or from The Bahamas.	$300,000	$100,000
134	Engaging in dishonest conduct in relation to capital markets business, a security or derivative.	$400,000	$175,000
135(1)	Making of prohibited representations to induce another person to trade in a security or derivative.	$275,000	$60,000
126(1)	Persons in a special relationship with, or persons having inside information about the public issuer, trading a security of the public issuer or entering into a transaction involving a related financial instrument.	$350,000	$125,000
126(2)	A public issuer or person in a relationship with a public issuer informing another person of inside information about the public issuer.	$300,000	$125,000
127	Entering into a transaction knowing of, informing other persons of, or recommending and encouraging another person to enter into a transaction based on, material order information	$400,000	$175,000
128	Directly or indirectly manipulating or	$400,000	$130,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	attempting to manipulate the price of, or cornering or attempting to corner a derivative or any underlying interest.		
136	Disclosing to any person information that relates to a request for assistance from any regulatory authority or an investigation by the Commission about a subject person	$100,000	$75,000
PART XVI - REPORTING BY SECURITY HOLDERS OF PUBLIC ISSUERS			
143(1)	Failure by an insider with ownership or control of a public issuer to file a report in the prescribed form disclosing the direct or indirect beneficial ownership or control of securities or related financial instruments.	$250,000	$30,000
143(3)	Failure by insider of public issuer to file a report in the prescribed form disclosing changes in beneficial ownership or control and transactions, or changes in transactions securities or related financial instruments of the public issuer.	$150,000	$25,000
143(4)	Failure by insider to send a copy of the report required under section 128(3) to the public issuer.	$90,000	$15,000
144(5)	Failure by public issuer to keep record of each demand and information received in response to each demand regarding disclosure of beneficial interests.	$25,000	$5,000
144(6)	Failure by public issuer to deliver a copy of the record kept of demands regarding disclosure of beneficial interests.	$25,000	$5,000
145	Failure by public issuer to keep or arrange to have kept, a register containing the prescribed information	$100,000	$25,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	about its security holders.		
PART XVII - ENFORCEMENT			
147	Making a statement in compliance with a provision in Part XIV known to be false, recklessly making a statement which is false or failing to supply required particulars.	$250,000	$50,000
148(1) (a-k, p-u), 150(2)	Failure to comply with an order, including any extension of the order, made by the Commission in the public interest.	$300,000	$125,000
151(6)	Failure by a regulated person to reorganise its affairs as specified by the Commission.	$200,000	$40,000
158(7), 159(3)	Failure to pay penalty stated in penalty notice as prescribed.	$30,000	$5,000
159(1)	Failure to file with or deliver any document or notice within required time or pay any fee, charge or penalty before it is due for payment.	$25,000	$5,000
163	Failure to pay any amount obtained, profit made or loss avoided as a result of contravention of the Act, plus the prescribed penalty to the Commission where ordered.	$30,000	$7,5000
164(1)	Failure by a person subject to a hearing to pay the costs of the Commission's investigation, a hearing and related costs.	$25,000	$5,000
165(1)	Failure to comply with Commission directive to freeze property.	$350,000	$100,000
167(3)	Failure to comply with a subpoena, request or summons to attend a hearing, to testify, produce records relevant to a hearing or give evidence on oath orally or in writing.	$250,000	$25,000

Section contravened	Description of offence	Maximum Penalty (company)	Maximum Penalty (individual)
	PART XVII – GENERAL PROVISIONS		
194(1)	Failure by market participant to make and keep, or file with and deliver to the Commission, prescribed information and documents	$150,000	$25,000
194(2)	Failure by market participant to disseminate report or documents filed with the Commission under section 194 to the public	$50,000	$5,000

FOURTH SCHEDULE

(section 159)

ADMINISTRATIVE PENALTIES FOR LATE PAYMENT OR LATE FILING

(a) Automatic Administrative Penalties – Public Issuers

	Requirement	**Timeline to comply**	**Legislative Reference (SIA 2024 and SIR 2012)**	**Penalty for First Infraction***
Financial Reporting	Audited Financial Statements	Within 120 days of end of fiscal year end	Section 114 and Regulation 120	$200 each day that financials are outstanding
	Interim Financial Statements	Within 45 days of the end of each quarter of fiscal year	Section 1141(5) and Regulation 122	$100 each day report is outstanding
	Annual Report	Within 120 days of end of fiscal year end	Section 114(6)(a) and Regulation 122	$100 each day of non-compliance
	Management Discussion and Analysis	Concurrent with Annual Financial Statements	Section 114(6)(b) and Regulation 123	$100 each day of non-compliance
Material Change Reporting	Notice of material change of event**	File a report with the Commission within 5 days of change	Section 112 and Regulation 124	$100 each of day of non-compliance
	Notice of change in auditor	Within 10 days of change	Regulation 15	$100 each of non-compliance
Initial Public Offers	Prospectus and Prospectus Form	File prior to initial public offer	Section 95 and Regulation 95	$300 each day non-compliance
	Materials to be filed with Preliminary Prospectus	File together with submission of Preliminary Prospectus	Section 109, Section 1, Appendix B	$200 each day of non-compliance
Insider Reporting	File insider report	No later than the 5th day after the date of the event	Section 143 and Regulation 136	$200 each day of non-compliance

	Requirement	Timeline to comply	Legislative Reference (SIA 2024 and SIR 2012)	Penalty for First Infraction*
		triggering the obligation to file a report		
*** Note: Subsequent infractions of a filing requirement within the same calendar year will be referred for enforcement action.** **** Press release to be issued immediately**				

(b) Automatic Administrative Penalties Assessment – Persons Registered Under Part VI

	Requirement	Timeline to comply	Legislative Reference (SIA 2024 and SIR 2012)	Penalty for First Infraction*
Financial Reporting	Audited Financial Statements	Within 120 days of end of fiscal year end	Section 67(a) and Regulation 30	$200 each day that financials are outstanding
	Interim Financial Statements (Financial Operational Reports)	Within 30 days of the end of the first, second, third and fourth quarter of its fiscal year	Section 63(b) and Regulation 31	$100 each day financials are outstanding
Statutory Obligations	Notice of change in auditor	Within 10 days of change	Regulation 15	$100 each day of non-compliance
	Notice of change of information – post registration	Within 5 days of the change	Regulation 27(1) and 28	$100 each day of non-compliance
	Other material changes	Immediately	Regulations 27(2) and 28	$100 each day of non-compliance
	Issue or transfer of securities (approval	No less than 30 days before proposed	Regulation 34(2)	$200 each day of non-compliance

	required)	transfer		
***Note: Subsequent infractions a filing requirement within the same calendar year will be referred for enforcement action.**				

(c) Automatic Administrative Penalties Assessment – Registered Firms and Individuals

	Requirement	**Timeline to comply**	**Legislative Reference (SIA 2024 and SIR 2012)**	**Penalty for First Infraction***
Financial Reporting	Audited Financial Statements	Within 120 days of end of fiscal year end	Section 84 (a) and Regulation 49	$200 each day that financials are outstanding
Note: This specific filing requirement has been waived for joint licensees of the Central Bank of The Bahamas	Interim Financial Statements (Financial and Operational Reports)	Within 30 days of the end of the first, second, third and fourth quarter of its fiscal year.	Section 84(c) and Regulation 50.	$100 each day statements are outstanding
Statutory Obligations	Notice of change in auditor	Within 10 days of change	Regulation 15	$100 each day of non-compliance
	Firm — Notice of change of information — post registration	Immediately	Regulation 53(1) and 54	$100 each day of non-compliance
	Individual – notice of change of information – post registration	Immediately	Regulation 62	$100 each day of non-compliance
	Firm – Other material changes	Immediately	Regulations 53(2) and 54	$100 each day of non-compliance
	Employment of representative	Immediately	Regulation 47	$100 each day of non-compliance
	Resignation, Termination or Retirement of	Immediately	Regulation 48	$100 each of non-compliance

	Requirement	Timeline to comply	Legislative Reference (SIA 2024 and SIR 2012)	Penalty for First Infraction*
	registered individual			
*** Note: Subsequent infractions of a filing requirement within the same calendar year will be referred for enforcement action.**				

FIFTH SCHEDULE

Consequential Amendments

(section 204)

Column 1	Column 2
Enactment	**Extent of Amendment**
Companies Act *(Ch.308)*	Section 2 of the Companies Act is amended — (a) in the definition of "private company" by the deletion of the words "section 62" and the substitution therefor of the words "section 4"; (b) by the deletion and substitution of the term of "prospectus" and its accompanying definition as follows — ""**prospectus"** has the meaning assigned to it under section 4 of the Securities Industry Act, 2024;"; (c) by the deletion and substitution of the term "public company" and its accompanying definition as follows — ""**public company"** means any company that is not a private company;".
Financial and Corporate Services Providers Act, 2020 *(No. 27 of 2020)*	Section 2 of the Financial and Corporate Services Act, 2020 is amended — (a) in subsection (1), by the deletion of the term "trading in commodities and other financial instruments" and its accompanying definition;

	(b) in subsection (2)(b), by the deletion of sub-sub paragraph (x).
Proceeds of Crime Act, 2018 *(No. 4 of 2018)*	The First Schedule to the Act is amended by the deletion and substitution of paragraph (5) as follows — "(5) An offence under sections 122 to 136 of the Securities Industry Act, 2024.".