

CONSULTATION PAPER
FOR DISCUSSION PURPOSES ONLY
Reform of the Securities Act, Cap. 318A



**FINANCIAL SERVICES
COMMISSION**

Event: 15th Anniversary Industry Stakeholder Consultation on Legislative Reform Project

Focus: Day 4: Securities Reform – Securities and Investment Funds Reform – Building Trust & Transparency

Date: April 16, 2026

Venue: Hilton, Barbados

Contents

EXECUTIVE SUMMARY	3
BACKGROUND & CONTEXT	4
Purpose of Reform	4
Key Contextual Factors Impacting the Sector	4
Summary of Gap Analysis & Benchmarking.....	5
Core Directions for Legislative and Regulatory Reform	6
ESG & Sustainable Finance.....	6
ESG Vision Statement.....	6
ESG as a Cross-Cutting Theme.....	7
Sector-Specific ESG Calibration: ESG as Market Integrity and Investor Confidence	7
Unifying Policy Approach	8
CONSULTATION QUESTIONS: Securities Reform	9
Pillar I: Revised Categories of Licences	9
Pillar II: Updated Licensing Processes, Licensing & Registration Requirements	9
Pillar III: Risk-Based, Modern Requirements for Participants	11
Pillar IV: Specified Prospectus/Disclosure Requirements	12
Pillar V: Updated Market Conduct Requirements and New Public Company Takeover Provisions	12
Pillar VI: Innovation.....	13
Pillar VII: Enhanced Intervention and Enforcement Powers	14
Other Legislative Considerations	14
Promoting Regional Harmonization:.....	14
Expansion, Consolidation and Modernisation of Definitions and Interpretation	14
Implementation and Transitional Considerations	14

EXECUTIVE SUMMARY

This Consultation Paper outlines overarching proposals for a reform of legislative framework for Barbados' securities sector. The objective is to establish a modern regime that supports the growth and efficiency of Barbados' capital market, facilitates the conduct of securities business from Barbados by international entities seeking to operate from Barbados, provides certainty regarding the requirements as it relates to foreign entities conducting limited business in Barbados, ensures investor protection, facilitates regional harmonisation, and aligns with the International Organisation of Securities Commissions (IOSCO) Principles for securities regulation.

The Commission actively participated in CARICOM's multi-year consultations on a Regional Common Securities Model Law. The Model Law is a strong base on which Barbados' securities laws may be based, thus the information outlined herein takes into consideration the Model Law, including its supporting Conduct of Business and Prospectus Disclosure Regulations (attached as **Appendix I** for reference purposes only) in addition to contributions from the industry in response to the Commission's earlier consultation outreach.

Key pillars of this reform include:

- **Revised Categories of Licenses:** To provide for the different types of licenses that will be required for each type of market participants
- **Updated Licensing Processes, Licensing & Registration Requirements:** To provide for new types of market participants, clarity regarding the registration requirements for different types of securities offers, and greater certainty regarding licensing requirements for persons undertaking limited securities business in Barbados. To provide for fast tracking of applications. Modernising the approach to licensing requirements.
- **Risk-Based, Modern Requirements for Participants:** To ensure that the requirements are suitable for the different forms of intermediaries.
- **Specified Prospectus/Disclosure Requirements for different types of Issuers:** To ensure that the most robust prospectus requirements are applied to public issuances of securities and prospectus requirements are otherwise aligned with the risks associated with the type of issuance.
- **Updated Market Conduct Requirements and New Public Company Takeover Provisions:** To strengthen the existing provisions applicable to market intermediaries such as broker-dealers and investment advisers. To provide greater clarity on the trigger for takeover bid provisions, take-over bid documentary requirements, enhanced disclosure requirements for acquirers.
- **Innovation:** To facilitate inclusion of innovative investment products in the regulatory framework and to have the capacity to do so within a safe framework e.g. using regulatory sandboxes. New Virtual Asset related Law.
- **Enhanced Intervention and Enforcement Powers:** Expanding administrative penalties and other enforcement powers.

The Consultation Paper also highlights some of the ancillary changes that are anticipated including the updates to the definitions and interpretation sections of the legislation, anticipated transition arrangements, and differentiating between registration vs licensing based on the regulated activities.

Relevant Amendments to the Financial Services Commission Act

Additionally, for completeness, the draft Financial Services Commission (Amendment) Bill, 2025 (the “FSCA Bill”) attached as **Appendix II** seeks to support the Commission’s ability to satisfy the requirements for becoming a signatory to the IOSCO MMoU and EMMoU, strengthening the Commission’s cross-border supervisory cooperation. This FSCA Bill would potentially impact the Securities sector by:

1. Expanding the powers of the Commission as it relates to access to information in various forms and the ability to share that information;
2. Enhancing the framework for cooperation with other regulatory authorities; and
3. Strengthening the confidentiality framework. In particular, the obligations relating to protection and proper use of confidential information are extended to former members and former employees of the Commission. The Bill also expands the circumstances in which confidential information may be disclosed, including to foreign regulatory authorities.

BACKGROUND & CONTEXT

Purpose of Reform

This reform initiative seeks to modernize Barbados’ securities legislative and regulatory framework to align with international standards, including those of the International Organization of Securities Commissions (IOSCO) and enhance Barbados’ competitiveness as a jurisdiction for international financial services. In doing so, the objective is to enable proportionate, risk-based regulation of market participants, while supporting innovation, including emerging financial products and structures; and strengthening investor protection and market integrity.

Key Contextual Factors Impacting the Sector

The current securities legislative framework has not kept pace with the evolution of global financial markets. While amended periodically since its enactment, it continues to limit implementation of proportionate, risk-based supervision; constrain the ability of regulators to respond to new business models; and create barriers to international cooperation. These limitations have also delayed Barbados’ ability to fully align with IOSCO standards, including participation in multilateral information-sharing frameworks.

Reform is, therefore, necessary to support greater regulatory flexibility, enhanced supervisory effectiveness, increased investor confidence, and the effective development of domestic and international capital markets.

In this context, key factors impacting the sector include:

- Increased global regulatory scrutiny and cooperation
- Competition from established offshore jurisdictions
- Growth in alternative and private investment structures
- Emergence of digital and virtual asset products
- Need for greater regulatory efficiency and clarity

Summary of Gap Analysis & Benchmarking

The Financial Services Commission has conducted a comparative review of Barbados' framework against leading jurisdictions and key findings include an over-reliance on entity-based licensing models; insufficiently differentiated regulatory treatment across activities; limited enforcement tools relative to peer jurisdictions; and gaps in cross-border cooperation mechanisms. More specifically, the existing framework reflects:

- **Dated Provisions:** The current legislation is dated and does not adequately, clearly or efficiently facilitate the regulation and supervision of newer forms of securities market participants and instruments. Further, prospectus and other related requirements do not reflect modern securities laws or the different types of securities issuances that may be undertaken. The list of types of securities instruments may be updated to reflect modern instruments and facilitate the addition of new forms of securities.
- **Clarity of Requirements:** There are several areas of legislation where existing and prospective participants in the market have expressed uncertainty regarding the requirements. This results in challenges for participants in ensuring compliance. It is also inconsistent with international best practices and principles regarding clear, transparent legislative and regulatory requirements.
- **Outdated Licensing and Ongoing Requirements:** The licensing requirements for market intermediaries, particularly brokers, traders, investment advisers and securities companies are highly prescriptive and include limited and outdated measures for demonstrating competence to conduct securities business. Filing and reporting requirements of issuers and market participants also need to be updated.
- **Inadequate takeover bid provisions:** Takeovers are regulated via regulations to the Companies Act, rather than the Securities Act. The provisions have resulted in uncertainty for companies and market participants on the trigger/threshold for takeovers and does not contain a number of the provisions which are part of the takeover laws of other jurisdictions, including provisions to monitor "creeping" i.e. incremental purchases of shares with the objective of acquiring a controlling interest.

- **Inadequate regulatory powers:** The existing Securities laws materially limit the Commission's ability to become a full signatory to the IOSCO MMoU and EMMoU. Strengthening the requisite powers provides the Commission with better tools to supervise the domestic market and protect investors, but also, in light of the cross-border nature of securities business and activities, enable the Commission to share information and cooperate with other regulators in the protection of the wider market. Expanding the powers of the Commission to incorporate additional administrative penalties is also needed to take necessary steps to enforce the legislation and protect the integrity of the securities sector.

Core Directions for Legislative and Regulatory Reform

See Appendix I and Appendix II.

ESG & Sustainable Finance

ESG Vision Statement

Barbados is committed to strengthening the resilience, integrity, and inclusiveness of its financial system through the integration of Environmental, Social, and Governance (ESG) considerations into its legislative and regulatory framework.

Global developments, including guidance from the Financial Stability Board and the United Nations Environment Programme Finance Initiative, have highlighted the growing importance of incorporating climate-related and broader sustainability risks into financial decision-making, governance practices, and supervisory approaches. Barbados recognizes the need to align with these evolving expectations while ensuring that reforms are appropriately calibrated to the domestic context.

This consultation therefore proposes the adoption of ESG as a cross-cutting principle across the non-bank financial services sector, with the following objectives:

- Strengthening the identification and management of climate-related and other long-term risks to support financial stability;
- Promoting financial inclusion and fair treatment of consumers;
- Enhancing governance, transparency, and accountability across regulated entities; and
- Supporting, where appropriate, the mobilization of capital toward sustainable and climate-resilient economic activity.

The proposed approach is grounded in proportionality and practicality, recognizing the diversity of institutions within the Barbadian financial system. ESG integration will be implemented on a phased basis,

supported by clear guidance and ongoing stakeholder engagement, to ensure that requirements are aligned with the size, complexity, and capacity of regulated entities.

Through this reform process, Barbados seeks to ensure that its financial sector remains resilient and well-regulated, while also positioning itself to respond effectively to emerging risks and opportunities in a rapidly evolving global environment.

ESG as a Cross-Cutting Theme

ESG considerations are increasingly central to financial sector development, shaping risk management, capital allocation, and regulatory expectations globally. For Barbados, ESG is not only a matter of international alignment but also a strategic national priority, given its vulnerability to climate change and its commitment to sustainable and inclusive growth. Global standards and guidance from bodies such as the Financial Stability Board (FSB), the International Association of Insurance Supervisors (IAIS), International Organisation of Securities Commissions (IOSCO), International Credit Union Regulators Network (ICURN) and the United Nations Environment Programme Finance Initiative are increasingly emphasizing:

- Integration of climate and broader ESG risks into financial decision-making;
- Enhanced disclosures, including climate-related and sustainability reporting; and
- Consideration of long-term systemic risks, particularly those related to climate change.

For Barbados, embedding ESG into legislative and regulatory reform supports multiple policy objectives:

- **Financial Stability:** Improving the identification and management of long-term and systemic risks, particularly climate-related risks
- **International Competitiveness:** Aligning with global expectations to maintain credibility and market access
- **Inclusive Growth:** Expanding access to financial services and supporting underserved communities
- **Climate Resilience:** Mobilizing capital toward adaptation and mitigation efforts

A key policy consideration is adopting a proportionate and phased approach, ensuring ESG requirements are:

- Commensurate with the size and complexity of regulated entities
- Operationally feasible for smaller institutions
- Supported by clear guidance and capacity-building initiatives

Sector-Specific ESG Calibration: ESG as Market Integrity and Investor Confidence

In the securities sector, the integration of Environmental, Social, and Governance (ESG) considerations is

increasingly central to maintaining market integrity, strengthening investor confidence, and aligning with evolving global regulatory expectations:

- **Environmental:** there is growing demand for ESG-aligned investment opportunities, requiring issuers and intermediaries to incorporate sustainability considerations into disclosures and decision-making.
- **Social:** social considerations focus on improving investor outcomes through enhanced financial literacy, transparent communication, and equitable access to investment opportunities.
- **Governance:** remains foundational, with emphasis on robust disclosure standards, transparency, ethical conduct, and the prevention of greenwashing.

Barbados has an opportunity to position its securities market by aligning disclosure frameworks with international best practices and strengthening product governance requirements. In this context, the regulatory focus will be on enhancing disclosure, ensuring the reliability of ESG-related information, and reinforcing investor protection within an increasingly sustainability-oriented market.

Unifying Policy Approach

Across all sectors regulated and supervised by the Commission, ESG integration would be anchored on three consistent principles:

1. **Proportionality:** requirements should reflect the size, complexity, and risk profile of entities.
2. **Phased Implementation:** the intention is to start with high-level principles and disclosures, with scope for gradual enhancement.
3. **Alignment with National Priorities:** ESG frameworks should support Barbados' broader goals, particularly:
 - (a) climate resilience
 - (b) financial inclusion
 - (c) sustainable economic development

CONSULTATION QUESTIONS: Securities Reform

Pillar I: Revised Categories of Licences

The existing Securities legislation terminology refers to registrants and the requirement to be registered. The overarching reforms across the sectors will refer to licencees and the requirements to be licensed. In respect of the issuance of securities however the existing language of registrant and requirement to register is maintained.

Multi-tiered license structures with main classes and sub-classes for specific types of market participants e.g. a market intermediary that is authorized to act as an investment adviser may be “Class 6C”; making provision for new types of Licencees and revised terminology for some existing regulated entities to match international terminology.

- **Market Intermediaries:** Licensed Broker-dealer, Investment adviser, Securities Underwriter/Arranger
- **Market Participants:** Licensed Marketplaces (including Securities Exchanges), Self-regulatory organisations, Custodians, Clearing Facilities
- **Issuers & Securities:** Registered Reporting Issuers and Registered Securities

CONSULTATION QUESTIONS

Licensing & Proportionality

1. Do the outlined license categories appropriately reflect the diversity of securities business activities?
2. Are there additional new categories of licencees/regulated activity that should be contemplated?
3. What are the administrative and other challenges that may arise in transitioning to the categories as outlined?
4. What are your views on referencing defined classes and sub-classes of licencees with respect to each type of authorized activity?

Pillar II: Updated Licensing Processes, Licensing & Registration Requirements

- **Clear restrictions – carrying on and holding oneself out as carrying on a regulated activity without a licence/authorization**
- **A model for Licensing Requirements which outlines primary criteria/principles for licensing:**
 - a. Fitness and Propriety

b. Demonstrating capacity to comply with legislative and regulatory requirements

Support the provisions stating the principles by outlining the ongoing supervisory requirements in a consolidated provision or series of provisions. E.g. minimum capital requirements where appropriate, ongoing capital requirements where appropriate, professional indemnity requirements for specified market participants, risk-based reporting and filing requirements, disclosure requirements, governance and risk management requirements are outlined holistically.

- **Business Plan** including 3-year financial projections for specified market participants e.g. broker-dealers, exchanges, custodians
- **Private Placements exempted from registration**
- **Foreign intermediaries undertaking limited securities business** e.g. providing investment advice in a limited capacity to specified types of investors exempted from licensing or limited registration/licensing requirement.
- **Expedited/Fast tracking of applications**
- **Permit individuals employed with companies and licensed to conduct specified activities to transfer to other companies without needing to go through a new licensing process**
- **Explicit power to permit individuals to voluntarily terminate their authorization** – under the existing securities laws a voluntary termination is processed as a revocation and requires the opportunity for a prior hearing which is unnecessary in the circumstances.
- **Provide greater clarity about the types of instruments recognised as securities through legislation, guidelines or other communication**
- **International Securities Market Issuers and Issuances**
- **Clarity on requirements for crowdfunding**

CONSULTATION QUESTIONS

Licensing Requirements

1. The model outlined is intended to ensure that all requirements/factors that impact licensing are comprehensively captured thus reducing inefficiencies in processing applications. What do you see as the positive and negative implications of using this approach?
2. What material concerns, if any, arise with respect to imposing capital requirements for custodians, exchanges and depositories?
3. Is the 3-year financial projections for business plans adequate or should it be increased?
4. Are there other areas that need to be included in the legislative reform that impact the licensing process?
5. What is a reasonable fee for fast tracking/expedited applications?
6. With consideration to ensuring that Barbados can meet its obligations to share information and cooperate with foreign regulators regarding securities activities taking place within or from its jurisdiction and the need to take a right-sized approach to licensing requirements, what treatment of

foreign intermediaries conducting limited activities best ensures protection of Barbados' reputation whilst facilitating this activity?

7. What are the challenges to be considered regarding registration and prospectus requirements for issuers on the International Securities Market?
8. In some jurisdictions e.g. the United States crowdfunding by a regulated (registered) person is exempted from registration subject to strict terms. What are the benefits and challenges of adopting a similar approach? (What is the level of market appetite/interest for facilitating crowdfunding?)

Pillar III: Risk-Based, Modern Requirements for Participants

- **Professional indemnity insurance requirement** in place of capital requirements for specified market intermediaries e.g. investment advisers
- **Replace the prescriptive and limited qualification requirements of the existing legislation** which are applicable to individuals currently authorised to act as brokers, investment advisers, dealers and traders with principles related to demonstrating competence and possessing relevant qualifications to conduct securities business
- **Risk-based capital requirements** for the different types of market participants
- **Updated market conduct requirements** for specified types of market participants e.g. investment advisers, broker-dealers
- **Audited financial statement requirements** for specified market participants e.g. broker-dealers, exchanges, custodians
- **Annual report including audited financial statements** – reporting issuers
- **Publication of annual report and interim financials requirements** – reporting issuers

CONSULTATION QUESTIONS

1. A comparison of minimum and ongoing capital requirements for market intermediaries across jurisdictions, including mature jurisdictions such as Canada highlights that Barbados' current requirements are much higher and not risk-based – What are your views on the appropriate level of capital requirements for the different types of regulated entities such as broker-dealers, exchanges, custodians?
2. What are your views on replacing prescriptive qualification requirements with a requirement to demonstrate competence and relevant qualifications? What further guidance or information would be required from the Commission under this approach?
3. What aspects of the existing and outlined reporting and filing requirements should be re-considered?

Pillar IV: Specified Prospectus/Disclosure Requirements

- **Clear requirements regarding the contents of prospectus documents** – legislation, regulations or guidelines
- **Clarity on the types of issuances that trigger prospectus requirements and those that do not**
- **Seek to ensure that the Companies Act and Securities legislation requirements for prospectus documents and filings are compatible**
- **Consideration of simplified prospectus documents under specified circumstances**

CONSULTATION QUESTIONS

1. What are the key prospectus requirements that should apply to issuers entering the junior market?
2. Balancing an interest in facilitating crowdfunding with the importance of investor protection, what are the key ongoing requirements that would support both objectives?

Pillar V: Updated Market Conduct Requirements and New Public Company Takeover Provisions

- **Replace existing Take-over Bid Regulations** with regulations issued pursuant to the Securities legislation. Include clear requirements on the trigger for a take-over bid and enhanced disclosure requirements e.g. creeping provisions. Enhance minority shareholder rights. Provisions which may enhance minority shareholder rights include:
 - Contractual rights permitting minority shareholders to join a transaction, selling their shares to the same buyer at the same price as the majority.
 - Provisions requiring an acquirer who reaches a certain threshold (e.g., over 50% or 30%) to make a bid for all remaining shares, ensuring minority shareholders can exit.
 - Provisions giving shareholders the right to request an independent valuation if buyout terms are deemed unfair.
 - Provisions that will permit a 90% majority to buy out remaining shareholders, subject to court oversight to prevent abuse.
 - Provisions specifying that all shareholders, regardless of size, must receive the same consideration in a takeover bid.
- **Update the market conduct requirements** applicable to market intermediaries and specified participants to ensure that they are sufficiently robust and align with international standards.

Key requirements that align with best practices include:

Reporting Issuers

- **Disclosure Obligations:** provide accurate, complete, and timely material information to the public, including financial statements, risk factors, and material events to avoid information asymmetry.
- **Anti-Manipulation:** prohibitions against from manipulating their own stock price, particularly during buy-back programs or offering periods.
- **Insider Trading & Confidentiality:** requirements to maintain strict confidentiality regarding material non-public information and establish procedures to prevent insider trading by corporate officers (requirements for insider lists, blackout periods).

Broker-dealers

- Requirements regarding acting in the best interest of (retail) investors, placing customer interests ahead of the firm's. This includes managing and disclosing conflicts of interest, exercising care in recommendations,
- Best Execution: Requirements to use reasonable diligence to ascertain the best market for a security and buy or sell in such a market so that the result to the customer is as favorable as possible.
- Supervision: Requirements to establish and maintain systems to supervise activities and compliance by persons working in or on behalf of the firm, including having written policies and procedures

Investment advisers

- Fiduciary Duty: Requirements to act in the best interest of clients, providing advice that is suitable and in the client's best interest based on their financial situation and objectives.
- Conflict of Interest Management: Requirements to disclose and manage all material conflicts of interest, including conflicts that may arise as a result of compensation structures or incentives to recommend specific securities

CONSULTATION QUESTIONS

1. What other factors should the Commission consider in respect of minority shareholder protections?
2. Are there any material concerns with introducing enhanced market conduct requirements?
3. What additional information or support would market intermediaries require from the Commission when introducing enhanced market conduct requirements?

Pillar VI: Innovation

- Regulatory sandbox for testing innovative securities instruments or offerings or new crowdfunding initiatives.
- Licensing and Supervision of VASPs Law (addressed in a standalone consultation paper)

CONSULTATION QUESTIONS

1. How can pilot programmes for the sandbox be structured to enable them to be successful?
2. What other factors should we contemplate?

Pillar VII: Enhanced Intervention and Enforcement Powers

- Suspension of voting rights in specified circumstances (e.g. where there is an acquisition of significant interest without approval)
- Removal, Disqualification or Substitution of directors, key managers or personnel e.g. due to fit and proper concerns or issues
- Expanded powers to support the Commission's ability to obtain and share information and to enable the Commission to become a full signatory to the IOSCO MMoU and a signatory to the EMMoU. – See **Appendix II – Draft FSCA Bill**

Other Legislative Considerations

Promoting Regional Harmonization:

The CARICOM Model Law provides an opportunity for greater harmonisation on regulatory requirements and regimes. For entities undertaking or seeking to conduct securities activities in multiple regional jurisdictions the benefits include reduced costs. From a regulator perspective common laws mitigate opportunities for regulatory arbitrage.

Expansion, Consolidation and Modernisation of Definitions and Interpretation

The definitions and interpretation provisions of the Securities Act are key to enabling users to confidently and efficiently navigate the legislation and understand the obligations to which they are subject. The definitions and interpretation provisions of the Securities Act will need to be amended to provide a modern, comprehensive foundation for the updated regulatory framework.

- Updated existing terms to align with internationally recognised insurance and supervisory terminology, ensure greater certainty with respect to meanings, and ensure consistency in terminology used throughout the legislation.

Implementation and Transitional Considerations

To give effect to the wide range of changes to the insurance legislation implementation and transitional provisions and arrangements may need to be put in place including:

- Taking a repeal and replacement approach rather than incremental amendments to the securities legislation;
- Consolidated transitional guidance for existing regulated persons;
- Transition periods, grandfathering arrangements and provisions
- Public guidance and communication strategy

CONSULTATION QUESTIONS

Other Legislative Considerations

1. What would be the material concerns/challenges with adopting or basing the new securities legislation on a regional securities model such as CARICOM's model?
2. Are there other general revisions to the legislation to be examined?
3. Are there areas of the legislative reform for securities that need to be further developed to facilitate international business?
4. What other areas do you want to have specific consultation on that we have not already covered?

APPENDIX I



Attachment I

**DRAFT CARICOM MODEL
SECURITIES MARKET LAW
(DECEMBER 2023 VERSION)**

For Consideration at the

**REGIONAL MEETING ON THE PROPOSED
CARICOM SECURITIES MARKET LEGISLATIVE
FRAMEWORK**

**Port-of-Spain, Trinidad and Tobago
19-22 March 2022**



DRAFT CARICOM MODEL SECURITIES MARKET LAW

**Proposed Regional Securities
Industry Law 2023**



DRAFT
MODEL SECURITIES MARKET LAW

Arrangement of Sections

Part I
Preliminary

Section

Division 1 – Short Title, Commencement and Purposes

1. Short Title
2. Commencement
3. Purposes

Division 2 - Definitions

4. Definitions.

Division 3 - Interpretation

5. Ownership and control of securities
6. Control of an issuer
7. Meaning of Financial Statements
8. Independent
9. Fit and proper determinations
10. Securities business
11. Conduct in [Member State]

Part II

The Securities Commission

12. The Commission – Continuation
13. Composition of the Commission
14. Appointment and term of office
15. Resignation
16. Termination
17. Compensation
18. Publication
19. Declaration of interest
20. Functions of the Commission
21. Powers of the Commission
22. Delegation to Commissioners and senior officers

-
23. General Manager
 24. Funds and Resources
 25. Borrowing powers
 26. Advances and Guarantees
 27. Repayment of interest
 28. Surplus funds
 29. Reserve fund
 30. Fees
 31. Balancing revenue and surplus
 32. Secretary and other officers
 33. Commission staff
 34. Appointment of experts
 35. Immunity
 36. Confidentiality
 37. Powers of Minister
 38. Accounts, auditor and audit
 39. Annual report
 40. Commission procedures
 41. Procedural and implementation rules
 42. Committees of the Commission

Part III

Assistance to Domestic, CARICOM and Overseas Regulatory Authorities and the Provision of Technical and Functional Cooperation

Division 1 - Interpretation

43. Interpretation

Division 2 – Assistance to Domestic Regulatory Authorities

44. Exercise of powers on behalf of domestic regulatory authorities
45. Confidentiality exception for disclosure to domestic regulatory authorities

Division 3 – Assistance to CARICOM or Overseas Regulatory Authorities

46. Circumstances for provision of assistance
47. Considerations for provision of assistance
48. Assistance that may be rendered

Division 4 – General

- 49. Authority to make rules and enter into Memoranda of Understanding
- 50. Offences
- 51. Immunities

Part IV

Investigations and Inspections

Division 1 – Investigations

- 52. Power to investigate
- 53. Powers to obtain information for investigations
- 54. Uncooperative witness liable for contempt

Division 2 – Inspections

- 55. Compliance inspections – licensees
- 56. Monitoring compliance with financial resources requirements
- 57. Power to require reports
- 58. Compliance inspection of other market participants
- 59. General
- 60. Participation of other regulatory authorities in inspections under this Part

Division 3 – Provision of Information Relating to Transactions

- 61. Provision of information relating to transactions

Division 4 – General

- 62. Liens
- 63. Information about documents not in person's possession
- 64. Confidentiality
- 65. Exemption
- 66. Privilege
- 67. Use of documents etc.
- 68. Offence: obstruction of investigations and inspections

Part V

Regulation of Marketplaces and Ancillary Facilities

- 69. Licensing
- 70. Conditions and restrictions on licensing
- 71. Approval of regulatory instruments.
- 72. Commission power to supervise
- 73. Delegation to self-regulatory organization
- 74. Voluntary surrender

75. Reporting to the Commission
76. Notices
77. Keeping and inspection of records
78. Offences

Part VI

[Licensing of Intermediaries and Others] [Licensing of Securities Business]

79. Persons to be licensed by the Commission
80. Licensing requirement -broker-dealer and investment adviser
81. Grant of broker-dealer license
82. Application for broker-dealer license
83. Investment advisers
84. Grant of investment adviser license
85. Application investment adviser license
86. Grant of compliance officer license
87. Application for compliance officer license
88. Accreditation of compliance officer
89. Grant of principal license
90. Application for principal license
91. Accreditation of Principals
92. Duties of Principal
93. Grant of representative license
94. Application for representative license
95. Accreditation of representatives
96. Power of Commission to impose conditions
97. Revocation and suspension of license
98. Offence

Part VII

Conduct of Securities Business

99. Duties to clients
100. Responsibility for actions of persons acting on behalf of market intermediary
101. Contravention is actionable
102. Issue of contract note
103. Clients' accounts
104. Customer's Property
105. Supervisory personnel

- 106. Prohibition
- 107. Offence

Part VIII
Securities Exchanges

- 108. Restriction on establishment of securities exchanges
- 109. [Named securities exchange] deemed licensed
- 110. Application for Securities Exchange License
- 111. Grant of Securities Exchange License
- 112. Alteration of facts disclosed in application
- 113. General conditions
- 114. Commission's authority on receipt of notice
- 115. Power of Commission to impose conditions
- 116. Suspension and revocation of securities exchange license
- 117. Duties of holder of securities exchange license
- 118. Rules of securities exchange
- 119. Amendments to rules of securities exchange
- 120. Fixing of trading and position limits
- 121. Power of Commission to issue directions to securities exchange
- 122. Power of Commission to require amendment to rules
- 123. Securities exchange to assist the Commission
- 124. Disciplinary action over members of a securities exchange
- 125. Closure of securities exchange in emergency
- 126. Self-Regulatory Organization

Part IX
Clearing Facilities

- 127. Interpretation
- 128. Licensing of clearing facilities
- 129. Application for clearing facility license
- 130. Grant of clearing facility license
- 131. Rules of clearing facility
- 132. Approval of amendments to rules of clearing facility
- 133. Power of the Commission to require amendment to rules
- 134. Alteration of facts disclosed in application
- 135. General conditions
- 136. Commission's authority on receipt of notice
- 137. Power of Commission to impose conditions
- 138. Revocation and suspension of license

-
- 139. Power of Commission to issue directions
 - 140. Duty to assist Commission
 - 141. Proceedings of clearing facility take precedence over laws of insolvency
 - 142. Duty to report on completion of default proceedings
 - 143. Net sum payable on completion of default proceedings
 - 144. Enforcement of judgements over property subject to market charge
 - 145. Participants to be party to certain transaction as principal
 - 146. Securities deposited with clearing facility
 - 147. Preservation of rights
 - 148. [Named clearing agency] deemed licensed

Part X
Un-certificated Securities

- 149. Transfer of un-certificated securities

Part XI
General Requirements Applicable to Licensees

Division 1 - General

- 150. Books and Records – General Standards
- 151. Financial resources requirements
- 152. Failure to comply with financial resources requirements
- 153. Register of licensees
- 154. Notification of change in particulars
- 155. Reporting to the Commission
- 156. Insurance requirement
- 157. Contingency fund and settlement assurance fund

Division 2 - Auditors

- 158. Auditor to be appointed
- 159. Notification of appointment of change of auditor
- 160. Reports of auditor
- 161. Additional powers of Commission in respect of auditors
- 162. Power of Commission to appoint auditor

Part XII
Distributions and Prospectuses

- 163. Application
- 164. Interpretation
- 165. Prospectus required

-
- 166. Receipt for preliminary prospectus
 - 167. Selling activities before issue of receipt for prospectus
 - 168. Defective preliminary prospectus
 - 169. Delivery of prospectus
 - 170. Amendments
 - 171. Certificates
 - 172. Expert's consent
 - 173. Issue of receipt
 - 174. Special provisions for CARICOM issuers
 - 175. Special provisions for approved foreign issuers
 - 176. Advertising
 - 177. Resale of securities acquired under an exemption
 - 178. Lapse date
 - 179. Post distribution statement
 - 180. Offence

Part XIII
Continuing Obligations of Reporting issuers

- 181.. General standards of disclosure
- 182. Fair treatment of security holders
- 183. Duties of directors and officers
- 184. Timely disclosure of material changes
- 185. Auditors and audits
- 186. Financial statements – annual audited
- 187. Financial statements – interim statements
- 188. Annual reports and other information
- 189. Delivery of continuous disclosure documents to security holders
- 190. Proxies and Proxy Solicitation
- 191. Exemptions for CARICOM issuers
- 192. Exemptions for certain foreign issuers
- 193. Offence

Part XIV
Governance of Reporting Issuers

- 194. Governance of reporting issuers

Part XV
Listing and Trading of CARICOM and Foreign Securities and Licensing and Exchange
Membership of CARICOM and Foreign Market Participants

- 195. Application
- 196. Application of other Parts

Division 1

- 197. Listing and trading CARICOM and foreign securities
- 198. Simplified listing and membership procedures for CARICOM securities and broker-dealers
- 199. Integration of CARICOM capital markets

Division 2

- 200. Approval of the Commission required
- 201. Disclosure obligations of foreign listed companies
- 202. Disclosure of shareholdings of directors and significant security holders
- 203. Application of Part IV, XVIII and XIX
- 204. Transfer and ownership of foreign securities
- 205. Custodian and securities registries for foreign securities
- 206. Simplified listing and membership procedures in certain cases

Part XVI
Market Misconduct

- 207. Definitions
- 208. Market manipulation
- 209. False trading and market rigging—creating a false or misleading appearance of active trading etc.
- 210. False trading and market rigging—artificially maintaining etc. trading price
- 211. Misleading or deceptive conduct
- 212. Misleading the Commission
- 213. Dissemination of information about illegal transactions
- 214. Dissemination of information containing a misrepresentation
- 215. Dishonest conduct
- 216. Prohibited representations
- 217. Prohibition on purchasing or selling of securities by certain persons
- 218. Front running
- 219. Defences - belief that other party knows information

-
- 220. Defences - automatic or predetermined trade
 - 221. Defences – trading as agent
 - 222. Defences - trade or recommendation by individual with no inside or material order information
 - 223. Exemptions and modifications
 - 224. Offence

Part XVII
Reporting by Security Holders of Reporting Issuers

- 225. Application
- 226. Initial insider report
- 227. Notice to reporting issuer
- 228. Deemed beneficial ownership
- 229. Disclosure of beneficial interest in share capital
- 230. Notice requirements
- 231. Register of security holders.
- 232. Offence

Part XVIII
Enforcement

- 233. Compliance orders
- 234. Orders in the public interest
- 235. Temporary orders
- 236. Appointment of person
- 237. Application to court
- 238. Administrative penalty
- 239. Removal of benefits
- 240. Payment of costs
- 241. Order to freeze property
- 242. Hearings
- 243. Limitation period
- 244. Directors and officers

Part XIX
Civil Liability

- 245. Interpretation
- 246. Liability for misrepresentation in prospectus – damages

-
- 247. Action by security holders for rescission for misrepresentation in prospectus
 - 248. Due diligence defence
 - 249. General
 - 250. Liability for misrepresentation in other offering documents
 - 251. Civil liability for trading contrary to section 217
 - 252. Civil liability for market misconduct offences
 - 253. Commission may seek leave to bring action or appear or intervene in an action
 - 254. Standard of reasonableness

Part XX
General Provisions

- 255. Regulations
- 256. Publication of proposed regulations
- 257. Rule-making process
- 258. Regulations prevail over rules
- 259. Power to vary Commission rule
- 260. Power to remove exemption contained in Commission rule
- 261. Guidelines
- 262. Consultation on proposed Guidelines
- 263. Review of Commission's decision
- 264. Administrative proceedings and reviews
- 265. Review of decisions of persons licensed under Part V
- 266. Appeals to [High] [Supreme] Court
- 267. Filing of documents and public availability
- 268. Verification
- 269. Register as evidence
- 270. Discretionary exemptions
- 271. Designation orders
- 272. Conditions on decisions
- 273. Discretion to revoke or vary decision
- 274. General offences
- 275. Liability of senior officer
- 276. Costs
- 277. Referral to the Director of Public prosecutions
- 278. Notice of adverse report

-
- 279. Recognition of foreign jurisdictions and foreign securities exchanges
 - 280. Commission to keep register
 - 281. Stamp Duty Exemption

Part XXI
Transition Provisions and Repeal

- 282. Definitions
- 283. Securities exchanges licensed under the former Act
- 284. Clearing facilities licensed under the former Act
- 285. Registries and depositories licensed under the former Act
- 286. Broker-dealers, and underwriters
- 287. Investment advisers
- 288. Licensed individuals
- 289. Principals
- 290. Interim financial statement requirements
- 291. Insider reporting obligations
- 292. Savings
- 293. Repeal

Schedule 1 Regulations
Schedule 2 Securities Related Definitions

**DRAFT CARICOM
MODEL SECURITIES MARKET LAW**

**Part I
Preliminary**

Division 1 – Short Title, Commencement and Purposes

- | | | |
|--------------|----|--|
| Short Title | 1. | This Act may be cited as the Securities Act, 20xx. |
| Commencement | 2. | [Insert appropriate words]. |
| Purposes | 3. | The purposes of this Act are to – <ul style="list-style-type: none">(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 [Member State] and CARICOM;(c) promote the emergence of an integrated capital market within CARICOM;(d) reduce systemic risk;(e) 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(f) promote public understanding of the financial system, including awareness of the benefits and risks of different kinds of investment or other financial dealing.(g) protect the integrity of the capital markets in [Member State] and in CARICOM against any abuses arising from financial crime, market misconduct and other unfair and improper practices;(h) create and promote conditions that facilitate the orderly development of the capital markets in [Member State] and in CARICOM;(i) collaborate with regulatory authorities in CARICOM with the goal of promoting and developing an integrated CARICOM securities market. |

Division 2 – Definitions

4. In this Act –
- “accredited investor” means any person who comes within any of the following categories, or whom the issuer or selling security holder reasonably believes comes within any of the following categories, at the time of the sale of securities to that person

-
- (a) any bank licensed under the [named Act] or licensed and operating outside of [Member State], whether acting in its individual or fiduciary capacity;
 - (b) any registered firm or company registered to conduct securities business and operating outside of the [Member State], acting for its own account;
 - (c) any insurance company registered under the Insurance Act or licensed and operating outside of [Member State];
 - (d) any investment fund licensed or registered under the [Collective Investment Scheme Act] [Securities Act] or regulated and operating outside of [Member State];
 - (e) any employee benefit plan if the investment decision is made by a plan fiduciary, which is a bank or trust company licensed under the [named Act], an insurance company registered under the [Insurance Act], or a registered firm, or if the employee benefit plan has total assets in excess of [US\$X,000,000];
 - (f) any director, senior officer or general partner of the issuer of the securities being offered or sold, or any director, senior officer or general partner of a general partner of that issuer;
 - (g) any individual whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds [US\$X00,000];
 - (h) any individual who had an individual income in excess of [US\$X00,000] in each of the two most recent years or joint income with that person's spouse in excess of [US\$X00,000] in each of those years and has a reasonable expectation of reaching the same income level in the current year;
 - (i) any person, other than an individual, with total assets in excess of [US\$X00,000];
 - (j) any entity in which all of the equity owners are accredited investors;
 - (k) the government of any Member State or any public authority established in a Member State;
 - (l) the government of any foreign jurisdiction, or any agency of that government;
 - (m) any person purchasing on behalf of an account that is managed on a fully discretionary basis by that person, if that person is registered or authorized to carry on business as an adviser managing securities on a discretionary basis under the laws of [Member State] or a CARICOM or foreign jurisdiction;
 - (n) any person residing outside of [Member State] who qualifies as an accredited investor (however defined) or has similar status, under the securities legislation of that person's country of residence, or who meets the criteria specified in paragraph (g) or (h) and is otherwise lawfully entitled to purchase the securities under the securities laws applicable to such purchase;
 - (o) an approved retirement scheme, approved superannuation fund, or specified pension fund, as defined by [named Act]; or
 - (p) any person that is recognized or designated by the [CARICOM responsible person] as an accredited investor;
- "affiliate" means, in relation to an issuer, another issuer if –
- (a) one of them is the subsidiary of the other; or
 - (b) the same person controls each of them;

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

- (a) is not a quotation and trade reporting system or a securities exchange; and
- (b) does not –
 - (i) require an issuer to enter into an agreement to have its securities traded on the marketplace;
 - (ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;
 - (iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace; and
 - (iv) discipline subscribers other than by exclusion from participation in the marketplace;

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

"approved auditor" means an individual auditor or audit firm recognized by the Commission to act on behalf of a person registered under Part IV and VI of the Act or as a reporting issuer;

"approved CARICOM issuer" means a CARICOM issuer that is a reporting issuer under the securities laws of any CARICOM Member State;

"approved CARICOM prospectus" means a prospectus issued by a CARICOM issuer for which a receipt has been issued by the competent authority in a Member State;

"approved foreign issuer" means a foreign issuer –

- (a) that is a reporting issuer (or equivalent) under the securities laws of a recognized foreign jurisdiction;
- (b) that has been for the three years immediately preceding the relevant date a reporting issuer (or equivalent) under the securities laws of a recognized foreign jurisdiction; and
- (c) that is subject to foreign disclosure requirements;

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

"approved representative" means a representative of a market intermediary who has been licensed by the Commission;

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

- (a) 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;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate, in which that person has a substantial beneficial interest or in respect of which he serves as a trustee, legal representative or in a similar capacity; or

(d) a relative of that person or of the spouse or a cohabitant as defined in the [named Act];

“bank” has the meaning assigned to it in the [Banking Act/Financial Institutions Act];

"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”, in relation to a security, means entitlement to the benefits of ownership of the security and includes direct ownership, ownership through a trustee, legal representative, agent or other intermediary, and a person shall be deemed to have beneficial ownership of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the underlying security, or an option or right to purchase the underlying security or securities convertible into the underlying security—

(a) under all circumstances; or

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

"broker-dealer" means a person that is licensed or required to be licensed by the Commission to carry on business, or who holds himself out as conducting such business activities set out in Schedule 2;

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

“business day” means any day on which institutions licensed under the [Banking Act/Financial Institutions Act] are open for the conduct of business in [Member State].

“CARICOM” means the Caribbean Community, including the CARICOM Single Market and Economy established under the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas, on 5 July 2001;

“CARICOM issuer" means an issuer that is a national of a Member State and organized under the laws of any CARICOM Member State;

“CARICOM prospectus” means a prospectus issued by a CARICOM issuer;

“CARICOM regulatory authority” means the authority or authorities responsible for regulating, overseeing and supervising the securities market in a Member State;

"clearing facility" means a person that –

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

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

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

(d) acts as a market intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities;

(e) provides centralised facilities for the clearing of trades and other transactions in securities, including facilities for comparing data in respect of the terms of settlement of a trade or transaction; or

(f) provides centralised facilities as a depository of securities,

but does not include a market intermediary or financial institution acting exclusively in the ordinary course of its customary business;

"collective investment scheme"¹ includes any scheme in whatever form, whether in [Member State] or elsewhere, whereby members of the public are invited or permitted to invest money or any other property—

(a) in a portfolio of assets managed as a whole by or on behalf of the operator of the scheme; and

(b) on terms on which those investors, being two or more in number, and in which they hold a participating interest in, receive profits or income arising out of, or share in the risks and benefits of the scheme;

"Commission" means the Securities Commission of [Member State];

"company" means any corporation or other incorporated person;

"Consolidated Fund" means the fund established by [section X] of the Constitution;

"control block holder" means a person that –

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

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

"custodian" means a person to whom securities are entrusted for safe keeping;

"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 this Act; or

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

"derivative" means an option, swap, futures contract, forward contract, or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to, or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing);

¹ Note that the Eastern Caribbean Securities Market (ECSM) has, via the Investment Funds Act 2019, introduced new collective investment scheme legislation to govern investment fund business. It overhauls the regulatory regime for collective investment schemes and specifically reforms the current Part IX of the ECSM Securities Act 2001 and the Collective Investment Scheme Regulations 2001/2002.

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

"distribution" means a trade –

- (a) in securities of an issuer that have not previously been issued;
- (b) by or on behalf of an issuer, in previously issued securities of an issuer that have been redeemed, repurchased or otherwise re-acquired by the issuer;
- (c) in previously issued securities of an issuer by a control block holder;
- (d) within a prescribed class of trades; or
- (e) described in an order made under section 271;

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

- (a) the date the distribution ceased; or
- (b) the lapse date of the prospectus under section 178;

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

- (a) an electronic communication as defined in [name of legislation if applicable];
- (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;
- (f) any other instrument determined by the Commission to be of relevance for its usage as a document;

"domestic regulatory authority" means an authority in [Member State] that exercises regulatory, supervisory, enforcement or similar functions and includes –

- (a) authorities that regulate or supervise financial institutions;
- (b) securities exchanges;
- (c) self-regulatory organizations;
- (d) law enforcement agencies;
- (e) any relevant governmental or regulatory agencies not mentioned in paragraph (a) to (d); and
- (f) any other authority, as prescribed;

"General Manager" means the chief executive officer of the Commission;

"expert" means an attorney-at-law, accountant, engineer, valuator or any other person whose profession or reputation gives authority to a statement made by the person;

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

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

"filing" means the submission of a document or instrument to the Commission pursuant to a requirement under this Act;

"financial institution" means a bank, a credit union, an insurance company, a trust company or a company carrying on business of a financial nature as defined in [applicable Act];

"foreign issuer" means an issuer other than a CARICOM Issuer;

"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 a CARICOM Member State;

"hold" in relation to property includes the control of its disposal but does not include the mere receipt and dispatch or delivery of a cheque or other order made payable to another person.

"home Member State" means:

(a) for all CARICOM issuers of securities, the Member State where the issuer has its registered office, or the Member State where the securities are intended to be distributed for the first time after the date of entry into force of these Regulations, at the choice of the issuer or the offeror;

(b) for all issuers of securities incorporated in a foreign jurisdiction, the Member State where the securities are intended to be distributed for the first time after the date of entry into force of this Act;

"IFRS" means International Financial Reporting Standards issued by the International Accounting Standards Board and as adopted by [name of local accounting body];

"insider" means –

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

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

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

"investment advice" means advice with respect to an investment in, or the purchase, sale or holding of, a security;

"investment adviser" means a person that carries on the business of giving investment advice² or who holds himself out as conducting such business;

"investment contract" includes any contract, transaction, plan or scheme, whether or not evidenced by any document, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;

"investment decision" means a decision to purchase, hold or sell securities;

"issuer" means a person that –

- (a) has a security outstanding; or
- (b) proposes to issue a security;

"issuer bid" has the prescribed meaning;

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

"licensed" means licensed under this Act unless otherwise stated;

"licensed clearing facility" means a clearing facility licensed under Part IX of the Act;

"licensed securities exchange" means a securities exchange licensed under Part VIII of the Act;

"licensee" means a person licensed under this Act;

"limited offering" means a distribution where –

- (a) following the completion of such distribution, the number of security-holders of the issuer is not greater than thirty-five persons exclusive of directors, officers and employees or former directors, officers and employees of the issuer and its affiliates; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by a person licensed under Part V, Part VI or Part VIII.

"market intermediary" means a broker-dealer or an investment adviser, licensed by the Commission;

"market participant" means –

- (a) a marketplace;
- (b) a self-regulatory organization;
- (c) an ancillary facility;
- (d) a clearing facility;

² Ideally, Member States should establish a separate regime to regulate collective investment funds (See ECCU). In the absence of such a regime, all securities will be registered under the Securities Act.

- (e) a market intermediary³;
- (f) a licensee or a person required to be licensed under the Act;
- (g) a compensation, contingency or similar fund formed to compensate clients of intermediaries;
- (h) a custodian of assets
- (i) a client of a market intermediary;
- (j) a reporting issuer;
- (k) a transfer agent or registrar for securities of a reporting issuer;
- (l) a collective investment scheme;
- (m) a partner, principal, representative, director, officer or significant security holder of a person referred to in this definition;
- (n) a person that the Commission has ordered is exempt from a provision of this Act;
- (o) a rating organization;
- (p) a compliance officer;
- (q) an auditor of a licensee; or
- (r) a person described in an order made under subsection 271(2);

but does not include a person –

- (i) described in an order made under subsection 271(1); or
- (ii) within a prescribed class of persons;

"marketplace" means –

- (a) a securities exchange, a quotation and trade reporting system, or an ATS;
- (b) a person not included in paragraph (a) that –
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
 - (ii) brings together the orders for securities of multiple buyers and sellers; and
 - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or
- (c) a person described in an order made under subsection 271(2);

but does not include a person –

- (i) described in an order made under subsection 271(1); or

³ A decision to be taken on whether a market intermediary, which is currently defined as a broker dealer or an investment, should be included here. The concern is that a market intermediary is usually more broadly defined to include all entities involved in trading, clearing, settlement or the custody of securities.

(ii) within a prescribed class of persons;

“material change” means a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity;

“material fact” means, when used in relation to the affairs of an issuer or its securities, a fact or a series of facts, the disclosure of which would be considered important to a reasonable investor in making an investment decision;

"material information" means, in relation to securities of a reporting issuer, any material fact or material change;

"material non-public information" means material information that has not been generally disclosed;

“Member State” means a country that is a member of CARICOM;

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

"misrepresentation" means –

- (a) an untrue statement of material information; or
- (b) an omission to state material information that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstance in which it is made;

"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 165 would apply but for the availability of one or more of the exemptions contained in this Act or regulations.

"officer" means an individual working in an executive capacity for the Commission, an issuer, a market intermediary or any other person;

"order" means, unless otherwise stated therein, an order or decision of the Commission;

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

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

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

“principal” means an individual designated by a market intermediary to be responsible for the supervision of the securities business undertaken by the [market intermediary] and includes the chief executive officer, senior broker-dealer, head of the trading desk, or any other individual who performs functions similar to those normally performed by an individual occupying any such office, and does not include a compliance officer;

"prospectus" means a document containing such information as prescribed by the [regulations] made under this Act;

"proxy" means a completed and signed form of proxy by means of which a security holder 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 organizing an issuer;

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

- (a) publish in a daily newspaper of general circulation in [Member State];
- (b) print in a periodical regularly published by the Commission;
- (c) post on the Commission's website;
- (d) publish in the Gazette; or
- (e) any other method of publication of the proposed rule or regulation as determined by the Commission;

"purchase" includes

- (a) any acquisition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise; and
- (b) any act, advertisement, conduct or negotiation, directly or indirectly done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

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

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

"recognized foreign jurisdiction" means a foreign jurisdiction recognized under section 279;

"recognized foreign securities exchange" means a securities exchange located in a foreign jurisdiction recognized under section 279;

"records" means –

- (a) books of accounts, bank accounts, and other bank records, correspondence, notes, memoranda and any other books, accounts, documents, data or information relating to the property or affairs of a person; or
- (b) data or information prepared or maintained in a bound or loose-leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form within a reasonable time;

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

“regulatory authority” ” includes a domestic, CARICOM and overseas regulatory authority;

“regulatory instrument” means a by-law, rule or other similar instrument of a marketplace, clearing facility or self-regulatory organization;

“relative”, in respect of any person, means the spouse, a cohabitant as defined in the [named Act], parent, grandparent, brother, sister, children, the children of a cohabitational relationship, adopted children and step-children of the person;

“reporting issuer” means an issuer that –

- (a) has filed a prospectus for which the Commission has issued a receipt under Part XII;
- (b) has completed a takeover, business combination or other reorganization, involving an exchange of securities in which one of the parties was a reporting issuer;
- (c) has issued a security that –
 - (i) was listed for trading on a securities exchange licensed by 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 licensed marketplace licensed under Part V or Part VIII;
- (d) [was a reporting issuer or deemed a reporting issuer under the former Act, at the time that Act was repealed;] or
- (e) is described in an order made by the Commission,

but does not include an issuer –

- (i) described in an order made under subsection 271(1);
- (ii) that is a collective investment scheme⁴;
- (iii) or within a prescribed class of issuers;

"representative" means, when used in relation to a market intermediary, an individual employed by, and who acts for or on behalf of the market intermediary in the carrying out of the market intermediary's securities business;

"reserve fund" means the fund established by the Commission under section 29;

"sale" includes—

- (a) a disposition of a security for valuable consideration, whether the terms of payment are on margin, installment, or otherwise; and
- (b) any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of paragraph (a);

⁴ The issuer of a collective investment fund may be excluded if a collective investment regime is in operation. It is to be noted that the Securities Act of Trinidad and Tobago does not require the issuer of a government entity or international entity to be a reporting issuer. This is questionable since government bonds are registered with the TTSEC and information must be filed routinely by the government.

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

“security” means the assets, rights or interests specified in Part I of Schedule 2;

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

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale;

"self-regulatory organization" means a person, that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of, its members and their representatives with a view to promoting the protection of investors and the public interest;

"senior officer" means the members of the board of directors of an entity, the managing director; the chief executive officer; the chief operating officer, the deputy managing director, the president, the vice president, the secretary, the treasurer, the chief financial officer, the financial comptroller, the general manager, deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer, and chief risk officer of an entity or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any such office;

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

- (a) owns or controls 10% or more of any class of the person's voting securities, excluding any securities that the security holder, if a market intermediary, holds in the course of a distribution; or
- (b) is able to affect materially the control of the person, whether alone or by acting in concert with another person;

“sponsored broker-dealer” means an individual who is licensed under section 80(6) to conduct business in securities in [Member State] on behalf of a broker-dealer (or the equivalent or similar) who is licensed under the securities legislation of a recognised foreign jurisdiction;

[“sponsored investment adviser” means an individual who is licensed under section 80(6) to provide investment advice in [Member State] on behalf of an investment adviser (or the equivalent or similar) who is licensed under the securities legislation of a recognised foreign jurisdiction;]

"spouse" means a person who-

- (a) is married to another person, and is not living separate and apart from that person; or
- (b) is living and cohabiting with another person in a marriage-like relationship for at least 3 years;

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

"subscriber", when used in relation to an ATS, means any person that has entered into a contractual agreement with an ATS to access such ATS for the purpose of effecting

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

"take-over bid" has the meaning given to it in the take-over regulations;

"trade" includes –

- (a) any purchase or sale of a security for valuable consideration;
- (b) any participation as a market intermediary or agent in any transaction in a security; or
- (c) any act, advertisement, solicitation, conduct or negotiation, directly or indirectly in furtherance of any activity referred to in paragraphs (a) or (b);

"underwriter" means a broker dealer 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—

- (i) 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
- (ii) 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.

Division 3 – Interpretation

Ownership and control of securities

5. In this Act, –

- (a) a person owns a security if the person is the registered owner of the security or the security is beneficially owned by the person;
- (b) a person controls a security if –
 - (i) the person, directly or indirectly, directs the trading or voting of the security;
 - (ii) the security is owned by an issuer that the person controls; or
 - (iii) the security is owned by an affiliate of the person or by an issuer that the person controls.

Control of an issuer

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

-
- (2) Where the person or persons own or control more than fifty percent of the outstanding securities carrying voting rights in an issuer, such person or persons are deemed to control the issuer.
- (3) Where the person or persons own or control more than thirty percent of the outstanding securities carrying voting rights in 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.
- Meaning of Financial Statements 7. (1) Financial statements referred to in this Act must be prepared in accordance with IFRS and contain at least –
- (a) a balance sheet;
 - (b) a statement of retained earnings;
 - (c) a statement of income;
 - (d) a statement of changes in financial position;
 - (e) a cash flow statement;
 - (f) accompanying notes; and
 - (g) any other financial statement.
- (2) Financial statements need not be designated by the names set out in paragraphs (a) to (e) of subsection (1).
- Independent 8. (1) A person is "independent" of another person if he has no material business or personal relationship with that other person that could reasonably be perceived to impair his judgment regarding matters relating to that other person.
- (2) It is a question of fact if a person is independent.
- (3) A person is not independent if he or an immediate family member –
- (a) is a director, officer, employee, shareholder or partner of the other person;
 - (b) is a partner or employee of such person; or
 - (c) has a material financial interest in that other person.
- Fit and proper determinations 9. (1) In considering whether an applicant is a fit and proper person for the purposes of any provision of this Act, the Commission shall, in addition to any other matter that the Commission may consider relevant, have regard to –
- (a) financial status or solvency;
 - (b) the educational or other qualifications or experience, having regard to the nature of the functions that, if the application is granted, the person will perform;
 - (c) the ability to carry on the regulated activity competently, honestly and fairly; and
 - (d) the reputation, character, reliability and financial integrity of –

- (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company and any director, significant security holder, chief executive officer and any other officer of the company.
- (2) Without limiting the generality of subsection (1), the Commission may, in considering whether a person is a fit and proper person, take into account –
- (a) a decision made in respect of the person by the Commission, any other domestic regulatory authority or overseas regulatory authority;
 - (b) any information in the possession of the Commission, whether provided by the person or not, relating to –
 - (i) the person;
 - (ii) any other person who is or is to be employed by or associated with the person for the purposes of the regulated activity for which the license is granted or the application is made;
 - (iii) any other person who will be acting for or on behalf of the person in relation to the regulated activity; and
 - (iv) where the person is a company in a group of companies –
 - (A) any other companies in the same group of companies; or
 - (B) any significant security holder, director or officer of any other company in the group of companies;
 - (c) where the consideration relates to a license under the Act, whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements; and
 - (d) the state of affairs of any other business that the person carries on or proposes to carry on.
- (3) For the purposes of sub-section (2), "regulated activity" means the activity carried on or proposed to be carried on by the person that requires a license under the Act.

Securities
business

10. (1) For the purposes of this Act, a person carries on securities business if that person is engaged in the course of business, in any one or more of the securities activities set out in Part 2 of Schedule 2.
- (2) For the purpose of this Act, a person engages in securities business if that person enters or offers to enter into an agreement the making or performance of which by either party constitutes a securities activity.
- (3) The activities set out in Part 3 of Schedule 2 do not constitute securities business for the purposes of this Act.
- (4) Without prejudice to the generality of subsection 257, the Commission may, by rule, amend Schedule 2 by deleting or amending any of the provisions or adding new provisions.

-
- Conduct in [Member State]
11. For the purposes of this Act, an activity shall be presumed to occur in [Member State] in the absence of evidence to the contrary where –
- (a) in the case of an act, advertisement, solicitation, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, solicitation, conduct or negotiation is –
 - (i) made by mail or courier, telephone or facsimile transmission, with or to a person in [Member State], whether or not solicited by such person;
 - (ii) made by electronic correspondence, where the recipient of the e-mail correspondence is in [Member State], and the sender has knowledge that the recipient of such electronic correspondence is in [Member State], or after reasonable inquiry, should have known, that the recipient of such ~~e-mail~~ electronic correspondence is in [Member State], whether or not solicited by such person; or
 - (iii) in the case of securities offerings made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in [Member State], unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the offering is qualified to be made, and reasonable precautions are taken to ensure that no actual sales occur to persons in [Member State] unless done in compliance with this Act; or
 - (b) the purchaser of the security is in [Member State].

Part II
The Securities Commission

- | | |
|--------------------------------|---|
| The Commission - Continuation | 12. The [_____ Securities Commission], a body corporate established under the former Act, is continued. |
| Composition of the Commission | 13. The members of the Commission shall consist of a Chairman, a Deputy Chairman and such number of other persons, being not more than seven, as [the Minister/President] may from time to time determine. |
| Appointment and term of office | 14. (1) The [Minister/President] shall appoint all the Commissioners and shall appoint one of their number to be its Chairman.
(2) The Commissioners shall be selected from among persons who appear to the [Minister/President] to have wide experience and ability in law, finance, investment, commerce or administration, one of whom shall be an attorney-at-law of at least ten years standing.
(3) The [Governor or Deputy Governor of the Central Bank] shall be an ex-officio member of the Commission.
(4) The Chairman shall hold office for four years but shall be eligible for re-appointment.
(5) The Deputy Chairman and the other Commissioners shall hold office for such period, not exceeding three years, as the Minister/President may direct in the instrument appointing such Commissioner, and shall be eligible for re-appointment.
(6) A Commissioner shall not hold office for more than two consecutive terms.
(7) Where a Commissioner is, by reason of illness, absent from [Member State], or otherwise unable to perform his functions as Commissioner, or where an office of Commissioner is vacant, the [Minister/President] may appoint some suitable person as a Commissioner to act temporarily in place of that Commissioner during his illness, absence or incapability, or until the office is filled, as the case may be. |
| Resignation | 15. (1) The Chairman of the Commission may resign his membership by notice in writing addressed to the [Minister/President].
(2) A Commissioner, other than the Chairman may at any time resign his membership by notice in writing addressed to the [Minister/President] and transmitted through the Chairman. |
| Termination | 16. A Commissioner may be removed from membership of the Commission by the [Minister/President], where he –
(a) becomes a person of unsound mind;
(b) is absent from three consecutive meetings of the Commission without the permission of the [Minister/President] or without reasonable cause;
(c) is guilty of misconduct in relation to his duties as a Commissioner;
(d) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty; |

-
- (e) is declared bankrupt in accordance with the law of [Member State] or any other country;
- (f) is a professional and is disqualified or suspended from practicing his profession in [Member State] or in any other country by an order of any competent authority made in respect of him personally;
- (g) is unable to perform his functions because of illness or for any other reason; or
- (h) contravenes this Act.
- Compensation 17. A Commissioner shall be paid such remuneration and allowances in respect of the Commissioner's office as the [Minister/President] may determine from time to time.
- Publication 18. The appointment, termination, death or resignation of any Commissioner shall be published promptly in the Gazette.
- Declaration of interest 19. (1) In carrying out the Commissioner's duties and activities, the Commissioner shall act honestly, fairly and with integrity and in the best interests of the Commission.
- (2) A Commissioner who is in any way interested, whether directly or indirectly, in any transaction or arrangement with the Commission or in which the Commission is interested or whose material, pecuniary or proprietary interest in a company, partnership, undertaking or other business is likely to be affected by a decision of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts comes to his knowledge.
- (3) A Commissioner with an interest in a matter shall not take part in any deliberations or vote on that matter and shall leave the room during such deliberations.
- (4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if the Commissioner, the Commissioner's spouse or child, or any other relative that resides in the same dwelling as the Commissioner, or the Commissioner's nominee, is a security holder or partner in, or an officer or director of, an issuer having an interest or being involved in a matter before the Commission.
- Functions of the Commission 20. (1) The functions of the Commission are to –
- (a) advise the Minister on all matters relating to the capital markets and its participants in [Member State] and in CARICOM;
- (b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;
- (c) reduce systemic risk;
- (d) foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;
- (e) protect the integrity of the capital markets in [Member State] and in CARICOM against any abuses arising from financial crime, market misconduct and other unfair and improper practices;
- (f) promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;

- (g) create and promote conditions that facilitate the orderly development of the capital markets in [Member State] and in CARICOM;
 - (h) collaborate with regulatory authorities in CARICOM with the goal of promoting and developing an integrated CARICOM securities market; and
 - (i) perform any other function conferred or imposed on it by this Act or Parliament.
- (2) In the exercise of its functions the Commission shall satisfy itself that the provisions of the [insert relevant anti-money laundering legislation] and any other Act or regulation which confers a responsibility on the Commission, are being complied with.

Powers of the Commission

21. For the purpose of the discharge of its functions the Commission has power, subject to this Act, to –
- (a) regulate and govern the capital markets and its participants;
 - (b) make rules providing for such matters as may be necessary or expedient for giving effect to such purposes, functions and responsibilities;
 - (c) deal with such matters as may be referred to it by any person from time to time;
 - (d) authorize and regulate intermediaries, marketplaces, and other market participants with a view to maintaining proper standards of conduct and professionalism in the capital markets;
 - (e) monitor the solvency of licensees and take measures to protect the interests of clients and others where the solvency of any such person is in doubt;
 - (f) regulate issuers distributing their securities to the public, including reporting issuers and collective investment schemes;
 - (g) adopt measures to supervise and minimise any conflict of interests that may arise in the case of market participants;
 - (h) regulate take-over bids;
 - (i) take enforcement action against any person for failing to comply with this Act;
 - (j) recommend regulations to the Minister and formulate rules;
 - (k) publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act;
 - (l) co-operate with and provide assistance to regulatory authorities in [Member State] or elsewhere;
 - (m) make any order which the Commission may make under this Act; and
 - (n) do all things, and take all actions, which may be necessary or expedient or are incidental to the discharge of any function or power given to the Commission.

Delegation to Commissioners and senior officers

22. (1) The Commission may, by order, delegate any responsibility, power or function conferred on it by this Act or the regulations to any –
- (a) Commissioner; or
 - (b) senior officer of the Commission.
- (2) Notwithstanding subsection (1), the Commission shall not delegate its powers to

-
- (a) make rules or orders; or
- (b) hear appeals.
- (3) A delegation pursuant to subsection (1) shall not preclude the exercise by the Commission of any power, duty, function or responsibility so delegated.
- (4) All decisions made, and minutes of all meetings held by a delegatee under subsection (1) shall be recorded in writing.
- (5) A delegatee shall forthwith notify the Commission of every decision made by him.
- (6) The Commission may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Commission shall, within thirty days of the decision, notify the delegatee and the person directly affected by the decision, of the date, time and venue of the hearing to review the decision.
- General Manager 23. The Commission shall appoint a General Manager who shall –
- (a) hold office on such terms and conditions as the Commission determines; and
- (b) perform the duties assigned by the Commission or by any written law.
- Funds and Resources 24. Subject to section 31, the funds and resources of the Commission shall consist of –
- (a) such sums as may be appropriated by Parliament;
- (b) all fees and other sums from time to time paid to or received by the Commission from its operations;
- (c) all sums from time to time borrowed by or advanced to the Commission under this Part; and
- (d) all other sums or other property as from time to time may in any manner be lawfully paid to or vested in the Commission whether or not for any matter incidental to its functions.
- Borrowing powers 25. (1) Subject to this section, the Commission may borrow sums required by it to meet any of its obligations or discharge any of its functions and may, in respect of any borrowing, issue debentures in such forms as the Commission may determine.
- (2) Any borrowing of the Commission pursuant to subsection (1) shall be subject to the approval of the Minister as to the amount to be borrowed, the source of the borrowing and the terms on which the borrowing may be effected.
- (3) An approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.
- Advances and Guarantees 26. (1) The Minister may at the request of the Commission make advances to the Commission for the purpose of enabling the Commission to defray expenditures properly chargeable to its capital account, including provision of working capital.
- (2) 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 authorized borrowings of the Commission made under this Part.

-
- | | |
|-----------------------|--|
| Repayment of interest | 27. 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 fulfillment of any guarantee given under this Part and payments of interest on any outstanding sum so issued at such rate as the Minister may direct, and different rates of interest may be directed for different periods. |
| Surplus funds | 28. (1) Subject to subsection (2), all sums standing to the credit of the Commission and not required for any current purpose (in this Part referred to as "surplus funds") may from time to time either be carried to any reserve fund established under section 29.

(2) No surplus funds are to be carried to the reserve fund or invested in securities under subsection (1) without the consent of the Minister. |
| Reserve fund | 29. (1) The Commission may 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) The Commission may withdraw any funds from the reserve fund for the purpose of exercising its duties under the Act.

(3) The funds in the reserve fund may be deposited in a bank appointed by the Commission on such terms and conditions as may be determined by the Commission, or be invested by the Commission in government securities approved by the Minister; and the Commission may from time to time with the approval of the Minister, sell any or all of such securities. |
| Fees | 30. (1) [Notwithstanding the provisions of any other law –

(a) the fees payable to the Commission under this Act;

(b) the revenue from the exercise of a power conferred or the discharge of a duty imposed on the Commission under this Act; 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 this Act.]

(2) Funds received by the Commission under –

(a) subsection 238(1) or section 239; 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.

(3) When ordered to do so by the Minister, the Commission shall pay into the Consolidated Fund such of its surplus or reserve funds as the Minister requires, other than an amount held pursuant to subsection (2).

(4) In determining the amount of a payment to be made under subsection (3), the Minister shall allow reserves for the future needs of the Commission as the Minister considers |

appropriate, and shall ensure that the payment will not impair the Commission's ability to pay its liabilities, meet its obligations as they become due or fulfill its contractual commitments.

- | | | |
|-------------------------------|-----|--|
| Balancing revenue and surplus | 31. | <p>(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.</p> <p>(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.</p> |
| Secretary and other officers | 32. | The Commission shall appoint a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions. |
| Commission staff | 33. | The Commission may employ any person the Commission considers necessary to perform its duties and exercise its powers under this Act on such terms and conditions as it may approve. |
| Appointment of experts | 34. | <p>(1) The Commission may appoint, hire or retain, on such terms and conditions as it may determine, an expert to assist it in any manner that it considers necessary.</p> <p>(2) Where the Commission appoints an expert to advise it on the development of specific policies, regulations or other regulatory proposals of the Commission, the expert shall formulate and report his views to the Commission in writing and the Commission may, if it thinks fit, make it available to the public.</p> |
| Immunity | 35. | No action or other proceedings for damages shall be instituted against the Commission, a Commissioner, the General Manager, an employee or an agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a function or power of the Commission under this Act or the regulations made under this Act. |
| Confidentiality | 36. | <p>(1) The Commission or any Commissioner, officer, employee, agent or adviser of the Commission who discloses any information relating to –</p> <ul style="list-style-type: none"> (a) the affairs of the Commission; (b) any application made to the Commission; (c) the affairs of a market participant; (d) a request for assistance from a domestic, CARICOM or overseas regulatory authority; <p style="text-align: center;">or</p> <ul style="list-style-type: none"> (e) the affairs of a client of a licensee; <p>that the person has acquired in the course of that person's duties or in the exercise of the Commission's functions under this or any other law, commits an offence and shall be liable on summary conviction to a fine not exceeding [\$00,000] or to imprisonment for a term not exceeding three years, or to both.</p> <p>(2) Subsection (1) shall not apply to a disclosure –</p> <ul style="list-style-type: none"> (a) lawfully required or permitted by any court of competent jurisdiction within [Member State]; |

- (b) for the purpose of assisting the Commission to exercise any function conferred on it by this Act;
- (c) in respect of the affairs of a market participant or of a client of a licensee, with the consent of the market participant or client, as the case may be, which consent has been voluntarily given;
- (d) where the information disclosed is or has been available to the public from any other source;
- (e) where the information disclosed is in a manner that does not enable the identity of any market participant or of any client of a licensee to which the information relates to be ascertained;
- (f) to a person with a view to the institution of, or for the purpose of –
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside [Member State], relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of the person's professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a Member or employee of the Commission of that person's duties; or
- (g) in any legal proceedings in connection with –
 - (i) the winding-up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.

Powers of
Minister

37. The Minister may give the Commission directions in writing for the discharge of its functions where the Minister is of the opinion that such directions are necessary or advisable to ensure that [Member State] complies with its obligations under CARICOM and international treaties and agreements, and the Commission shall give effect to such directions.

Accounts,
auditor and
audit

38. (1) The Commission shall keep proper accounts of all transactions and shall prepare annual financial statements in accordance with generally accepted accounting principles. The financial statements must 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.
- (2) The Commission shall appoint one or more approved auditors to audit the financial statements of the Commission for each fiscal year.

Annual report

39. (1) The Commission shall, as soon as practicable after the end of each financial year and in any event not later than the expiry of the third month following the end of the financial 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 in Parliament.

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

Commission
procedures

40. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and time and on such days as the Chairman may determine.
- (2) The Chairman, or in his absence the Deputy Chairman, or in the absence of both of them, such other person as authorized by the Chairman, shall preside at all meetings of the Commission.
- (3) A quorum for a meeting of the Commission shall consist of the person authorized under subsection (2) to preside at the meeting of the Commission and two other members.
- (4) The decisions of the Commission shall be by a majority of votes and in any case in which the voting is equal, the Chairman or the Deputy Chairman presiding at the meeting has a casting vote, in addition to an original vote.

Procedural and
implementation
rules

41. The Commission may make rules for procedural and implementation matters –
- (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 persons licensed under Parts V;
 - (d) with the approval of the Minister, establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable; and
 - (e) for the better carrying out of the purposes and provisions of this Act and any regulations made under this Act.

-
- Committees of
the Commission
42. (1) Subject to subsection (4), where under this Act, the regulations, or any other written law, the Commission is empowered or required to perform any function, the Commission may, by resolution appoint, for the purpose of doing anything required or deemed expedient or necessary for the purpose of performing such function, a Committee of the Commission and the performance by the panel of any such thing shall be deemed to be done and performed by the entire Commission.
- (2) A Committee shall be composed of three or more persons appointed by the Commission, at least one of whom shall be a Commissioner.
- (3) Without prejudice to the generality of subsection (1) and subject to subsection (4), where any power or function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act or the regulations assigned to the Commission, such investigation or hearing may be conducted by a Committee of the Commission or a panel appointed under this section and shall be fully, duly and validly conducted as if conducted by the entire Commission.
- (4) A Committee appointed under this section shall, upon the completion of the power or function for which it was so appointed, report in writing to the Commission thereon and the performance by the Committee of that power or function and any act or thing done by it in relation thereto shall be complete and shall be a decision or due exercise by the Commission of the power or function in question when, and not before the Commission by resolution adopts the recommendation or the decisions by the Committee, whereupon that power or functions shall be deemed to have been performed by the Commission itself.

Part III

Assistance to Domestic, CARICOM and Overseas Regulatory Authorities and the Provision of Technical and Functional Cooperation

Division 1 – Interpretation

- Interpretation 43. In this Part, unless the context otherwise requires —
- "designated third party", in relation to a CARICOM Member State or foreign jurisdiction, means –
- (a) any person or body responsible for supervising the overseas regulatory authority in question;
 - (b) any authority of the CARICOM Member State or foreign jurisdiction responsible for carrying out the supervision, investigation or enforcement in question; or
 - (c) any authority of the CARICOM Member State or foreign jurisdiction, other than the requesting CARICOM Member State or 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 CARICOM Member State or 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 CARICOM Member State or foreign jurisdiction of the regulatory authority concerned;
- "material" includes any information, document in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes the power to require the production of a copy of it in legible and intelligible form;
- "supervision", in relation to a CARICOM or 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 CARICOM or overseas regulatory authority; or
 - (b) the issue of or trading in securities in the CARICOM Member State or foreign jurisdiction, of the CARICOM regulatory authority or overseas regulatory authority respectively.

Division 2 – Assistance to Domestic Regulatory Authorities

- Exercise of powers on behalf of domestic regulatory authorities 44. 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.

- Confidentiality exception for disclosure to domestic regulatory authorities
45. (1) Notwithstanding the provisions of subsection 36(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 may be relevant to the functions of such other domestic regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.
- (2) The Commission may enter into memoranda of understanding with a domestic regulatory authority in furtherance of the purposes of this Division or any matter under this Division.
- (3) The Commission may enter into memoranda of understanding with a domestic, CARICOM or overseas regulatory authority in furtherance of the purposes of any written law that is administered or supervised by the Commission in relation to the prevention of money laundering and combating the financing of terrorism.

Division 3 – Assistance to CARICOM or Overseas Regulatory Authorities

- Circumstances for provision of assistance⁵
46. In deciding whether to provide assistance referred to in section 48 from a CARICOM or overseas regulatory authority, the Commission may have regard to the following -
- (a) the assistance is intended to enable the CARICOM or overseas regulatory authority, or any designated third party, to carry out the supervision, investigation or enforcement to which the request relates;
- (b) the CARICOM or 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 CARICOM or overseas regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the CARICOM Member State or foreign jurisdiction in accordance with paragraph (d)) any material received pursuant to the request;
- (d) The CARICOM or overseas regulatory authority has given a written undertaking to obtain the prior consent of the Commission before disclosing to a designated third party any material received pursuant to the request, and to make such disclosure only in accordance with such conditions as may be imposed by the Commission;
- (e) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means; and
- (f) the rendering of assistance will not be contrary to the public interest of [Member State] or the interest of the investing public.
- Considerations for provision of assistance
47. (1) In deciding whether to grant a request for assistance referred to in section 48 from a CARICOM or overseas regulatory authority, the Commission may also have regard to the following –

⁵ Concern that that the provisions for the exchange of information and regulatory cooperation may be inconsistent with IOSCO requirements. IOSCO objects to the exercise of discretion in the sharing of information. Where Member States do not wish to use the Model Law provisions, they may opt to use the language preferred by IOSCO.

- (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 Member State], have constituted a breach of this Act;
 - (b) whether the CARICOM or 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 CARICOM or overseas regulatory authority for similar assistance; and
 - (c) whether the CARICOM or 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 CARICOM or overseas regulatory authority has requested.
- (2) Where a CARICOM or overseas regulatory authority fails to comply with a requirement of the Commission under subsection (1) or (2), the Commission may refuse to provide the assistance sought.

Assistance that
may be rendered

48. (1) Notwithstanding subsection 36(1), the provisions of any prescribed written law or any requirement imposed thereunder, or any rule of law, the Commission may, in relation to a request by a CARICOM or an overseas regulatory authority for assistance –
- (a) transmit to the CARICOM or overseas regulatory authority any material in the possession of the Commission that is requested by the authority;
 - (b) direct any person to furnish to the Commission any material that is requested by the CARICOM or overseas regulatory authority, that the Commission may then transmit to that authority;
 - (c) direct any person to give the Commission assistance in connection with a request made by a CARICOM or overseas regulatory authority; or
 - (d) direct any person to make an oral statement to the Commission on any information requested by the CARICOM or overseas regulatory authority, record such statement, and transmit the recorded statement to the authority.
- (2) A direction under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.
- (3) A person shall not be required under this section to disclose information or to produce a document, which the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.
- (4) For the purposes of this section, information is subject to legal professional privilege if it is communicated or given to the legal adviser –
- (a) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person –
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

- (5) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (6) Where the person in possession of any document required to be produced under this Part claims a lien on the document –
 - (a) the requirement to produce the document shall not be affected by the lien;
 - (b) no fees shall be payable for or in respect of the production; andthe production shall be without prejudice to the lien.
- (7) The Commission shall keep confidential, information it has received from a CARICOM or overseas regulatory authority, unless authorised under this Act or the Court otherwise directs.

Division 4 – General

Authority to
make rules and
to enter into
Memoranda of
Understanding

49. (1) The Commission may, in the exercise of its cooperative and supervisory functions and to promote the integration of CARICOM securities markets, make rules for –
 - (a) the purpose of assisting a CARICOM regulatory authority to carry out its supervision, investigation or enforcement functions; or
 - (b) the purpose of assisting in consolidated supervision with such CARICOM regulatory authority.
- (2) The Commission may, in the exercise of its cooperative functions, enter into memoranda of understanding with CARICOM or overseas regulatory authorities for –
 - (a) the purpose of assisting a CARICOM or 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 CARICOM or overseas regulatory authority, or any designated third party; or
 - (c) such other purposes as the Commission may deem fit.
- (3) A memorandum of understanding between the Commission and a CARICOM or overseas regulatory authority may not call for assistance beyond that which is provided for under this Act, or relieve the Commission of any of its obligations under this Part.
- (4) The Commission shall notify the Ministry of Finance of each memorandum of understanding that it enters into.
- (5) The Commission shall notify the competent authorities of CARICOM Member States of each memorandum of understanding and promptly publish the memorandum of understanding on its website.

- Offences under this Part
50. Any person who –
- (a) without reasonable excuse refuses or fails to comply with an order under section 48;
 - (b) in purported compliance with an order under section 48, furnishes to the Commission any material known to the person to be false or misleading in a material particular; or
 - (c) in purported compliance with an order made under section 48, makes a statement to the Commission that is false or misleading in a material particular,
- commits an offence and shall be liable on summary conviction to a fine not exceeding [\$00,000] or to imprisonment of two years, or to both and, in the case of a continuing offence, to a further fine not exceeding [\$00,000] for every day or part of a day during which the offence has continued.
- Immunities
51. (1) No civil or criminal proceedings, other than proceedings for an offence under section 50, shall lie against any person for –
- (a) furnishing to the Commission or transmitting any material to the Commission or CARICOM or overseas regulatory authority if the person had furnished or transmitted that material in good faith in compliance with an order made under this Part;
 - (b) making a statement to the Commission in good faith and in compliance with an order made under this Part; or
 - (c) doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with such an order.
- (2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or material imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Part IV

Investigations and Inspections

Division 1 – Investigations

- Power to investigate
52. (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 this Act;
 - (b) to determine if a person may have committed a breach of trust, fraud or misconduct –
 - (i) in dealing in securities;
 - (ii) in the management of investment in securities; or
 - (iii) in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any security;

-
- (c) to determine if the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b) is not in the interest of the investing public or the public interest; or
- (d) for the administration of this Act.
- (2) The Commission may appoint any person to exercise the powers of the Commission under this section.
- (3) The Commission may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.
- Powers to obtain information for investigation 53. (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) summon by written notice such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;
- (b) enter, during reasonable hours, the business premises of such person for the purpose of –
- (i) inspecting and copying information or documents stored in any form on such premises; and
- (ii) removing from the premises any information or documents.
- (c) require such person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require;
- (d) require such person to produce, or procure the production of, specified documents or documents of a specified description;
- (e) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (c) and (d);
- (f) require such person to give the Commission all assistance in relation to the investigation that the person is reasonably able to give.
- (2) If a person, acting on behalf of the Commission, enters premises under subsection (1)(b), the person must present proof of his or her authority to do so.
- (3) Any information or document removed under subsection (1)(b) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.
- Uncooperative witness liable for contempt 54. On application by the Commission to the court, a person summoned under section 53 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.

Division 2 – Inspections

- Compliance inspections – licensees
55. (1) At any time, the Commission may conduct an on-site or off-site inspection of the business of a licensee for the purpose of determining if the person is complying with –
- (a) this Act; or
 - (b) any other written law that is administered by the Commission under which the Commission exercises functions.
- (2) The Commission may, in writing, appoint any person to exercise the powers of the Commission under this section.
- (3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.
- (5) The Commission may enter, during reasonable hours, the business premises of 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.
- (6) The Commission may require a person under inspection to give an explanation of or further particulars regarding any information or document produced under subsection (4).
- (7) If a person, acting on behalf of the Commission, enters premises under subsection (5) the person must present proof of his or her authority to do so.
- (8) Any information or document removed under subsection (5) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.
- Monitoring compliance with financial resources requirements
56. To ascertain whether or not a licensee complies with the requirements made under section 152, the Commission or a person authorized by the Commission may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.
- Power to require reports
57. (1) The Commission may require a licensee to provide the Commission with a report, in such form as may be specified in the notice, by the person's approved auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the licensee to provide information under section 55.
- (2) The report shall be prepared at the expense of the licensee.
 - (3) The person appointed to make a report required under this section must be a person approved by the Commission, such approval to be given prior to the appointment.

- (4) The person appointed by a licensee to make the 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 licensee; 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.

Compliance
inspection of
other market
participants

58. (1) The Commission may inspect the business of a market participant, other than a licensee, for the purpose of determining if the person is complying with: –
 - (a) this Act; or
 - (b) any other written law that is administered by the Commission under which the Commission exercises functions.
- (2) The Commission may appoint any person to exercise the powers of the Commission under this section.
- (3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents, that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

General

59. (1) After the conclusion of an inspection of a licensee under section 55 or a market participant under section 58, a report shall be prepared setting out the findings of that inspection.
- (2) The Commission shall consider and make recommendations on any information or report prepared under this Division.
- (3) The Commission may charge a fee as prescribed for an inspection conducted under this section.
- (4) Upon application, the Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

- Participation of other regulatory authorities in inspections under this Part
60. (1) Subject to subsection (2), the Commission may, upon the request of a regulatory authority, permit the authority to take part in a compliance inspection undertaken by the Commission under this Part.
- (2) The Commission shall not permit a regulatory authority to take part in a compliance inspection under subsection (1) unless it is of the opinion that the participation of the regulatory authority is reasonably required –
- (a) for the effective supervision of a licensee; or
- (b) for the purposes of the regulatory functions of the regulatory authority.
- (3) In deciding whether to permit a regulatory authority to take part in a compliance inspection under subsection (1), the Commission may take into account, in particular, whether the 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.

Division 3 – Provision of Information Relating to Transactions

- Provision of information relating to transactions
61. (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, require –
- (a) a person registered as the holder of securities in a register kept by or on behalf of an issuer;
- (b) a person that the Commission has reasonable cause to believe holds any securities;
- (c) a person that the Commission has reasonable cause to believe has acquired or disposed of any securities, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise; or
- (d) a licensee through which the Commission has reasonable cause to believe any securities have been acquired, disposed of, dealt with or traded
- to furnish to the Commission any of the information specified in subsection (2) within the time and in the form specified.
- (2) The information specified for the purposes of subsection (1) are –
- (a) particulars that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom the securities in question are held, or have been acquired, disposed of, dealt with or traded (as the case may be);

- (b) the instructions given to or by the person referred to in paragraph (a) or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, or trading of or in respect of the securities;
- (c) the particulars of the securities and the consideration given or received; and
- (d) any other information in the possession of the person as the Commission may specify.

Division 4 – General

- | | |
|--|---|
| Liens | <p>62. Where the person in possession of any document required to be produced under this Part claims a lien on the document –</p> <ul style="list-style-type: none"> (a) the requirement to produce the document shall not be affected by the lien; (b) no fees shall be payable for or in respect of the production; and (c) the production shall be without prejudice to the lien. |
| Information about documents not in person's possession | <p>63. 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 –</p> <ul style="list-style-type: none"> (a) where that document may be found; and (b) the identity of the person who last had custody of that document. |
| Confidentiality | <p>64. An order under this Part shall have effect notwithstanding any obligations as to confidentiality or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.</p> |
| Exemption | <p>65. (1) Any person who complies with a requirement imposed by the Commission in the exercise of its powers under this Part shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.</p> <p>(2) A person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made or purporting to have been made under any provision of this part for the inspection, copying or production of information or documents.</p> |
| Privilege | <p>66. (1) A person shall not be required under this Part to disclose information or to produce a document that the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.</p> <p>(2) For the purposes of this Part, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the legal adviser–</p> <ul style="list-style-type: none"> (a) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client; (b) by, or by a representative of, a person seeking legal advice from the adviser; or (c) by any person – |

- (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (3) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

Use of
documents etc.

67. (1) 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.
- (2) Any book, record or other document required to be kept under this Act shall be kept for a period of at least six years or as otherwise prescribed.

Offence:
obstruction of
investigations
and inspections

68. (1) A person who without reasonable cause –
- (a) fails to comply with a requirement of the Commission under this Part;
 - (b) with intent to avoid the provisions of this Part falsifies, destroys, mutilates, defaces, hides or removes a document; or
 - (c) willfully 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 for a first offence to a fine not exceeding [\$00,000] or to imprisonment for two years, or to both and, in the case of a continuing offence to a further fine not exceeding [\$00,000] for each day during which the offence continues;
- (2) A person contravenes this section if the person knows or reasonably should know that a hearing, inspection or investigation is to be conducted and the person takes any action referred to in subsection (1) before the hearing, inspection or investigation.

Part V

Regulation of Marketplaces and Ancillary Facilities

- Licensing
69. (1) A person shall not carry on business as a marketplace or ancillary facility unless licensed under this Part.
- (2) If the Commission considers it in the public interest to do so, the Commission may require a self-regulatory organization to apply for a licence under this Part.
- (3) An application for a licence under this Part shall be made to the Commission in the prescribed form and shall be accompanied by such fees as may be prescribed.
- (4) On application, the Commission may licence the person if the Commission is satisfied that all prescribed requirements have been fulfilled and to do so would be in the public interest.
- (5) A licence is effective until –
- (a) it is revoked by the Commission;
 - (b) it expires;
 - (c) the conditions for continuing the license have not been met; or
 - (d) the Commission accepts a surrender of the licence under section 74.
- (6) The Commission may revoke a licence pursuant to subsection 5(a) if –
- (a) the licensee goes into liquidation or is ordered to be wound up;
 - (b) a receiver or manager of all or a substantial part of the property of the company is appointed;
 - (c) the licensee ceases to carry on the business for which it is licensed;
 - (d) it has reason to believe that the company, or any of its directors or employees, has not performed its or his duties honestly and fairly;
 - (e) the licensee contravenes or fails to comply with any condition applicable in respect of the license;
 - (f) the licensee is in breach of this Act or any regulation made under this Act;
 - (g) where applicable, the company does not continue to employ at least one person who holds the appropriate representative license granted under this Act;
 - (h) the licensee fails to pay its annual license fee as prescribed on or before the anniversary of the day of the grant of its license; or
 - (i) by reason of any other circumstances, the company is no longer a fit and proper person to be licensed.
- (7) Where the Commission refuses to grant a license under this Part, the applicant shall be provided with notice in writing of the reasons for the refusal and the applicant may request a review of the Commission's decision under section 263.
- (8) Any licensee as a securities exchange or a clearing facility with the Commission on the date that this Act comes into force shall be deemed to be licensed under this Part as of that date.

-
- (9) Any licensee as a securities exchange under Part VIII or a clearing facility under Part IX shall be deemed to be licensed under this Part.
- (10) A person shall not carry on business as an ATS unless licensed under this Part.
- Conditions and restrictions on licensing 70. (1) The Commission may grant or renew a license under this Part subject to such other terms, conditions or restrictions as it deems fit.
- (2) The Commission may, at any time, by notice in writing to the holder of a license, vary any term, condition or restriction or impose such further term, condition or restriction as it deems fit.
- Approval of regulatory instruments 71. (1) A licensee under this Part that wishes to make an amendment to its rules shall submit a draft of the proposed amendment to the Commission for approval.
- (2) The Commission shall, within thirty days, of receipt of the proposed amendment by notice in writing to the holder of the license approve the amendment or disapprove the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have force and effect.
- Commission power to supervise 72. If the Commission considers it in the public interest to do so, the Commission may make a decision about a licensee under this Part, including a decision about –
- (a) the person's regulatory instruments;
 - (b) the person's procedures or practices;
 - (c) the business or regulatory services provided by the person;
 - (d) trading or quotation activity on a marketplace;
 - (e) a security or class of securities traded or quoted on a marketplace; or
 - (f) an issuer whose securities are traded or quoted on a marketplace,
- to ensure the provisions of this Act are being complied with.
- Delegation to self-regulatory organization 73. (1) The Commission may, by written order, delegate to a licensed securities exchange, ancillary facility or licensed self-regulatory organization, any of the powers conferred on it by this Act, including the authority to adopt and enforce rules for the conduct of their members and the responsibility to regulate their members' compliance with the provisions of those rules and of this Act.
- (2) Any order of delegation issued under subsection (1) shall be published.
- (3) The Commission may withdraw, add or vary any powers delegated under subsection (1) as it deems necessary.
- (4) Notwithstanding any delegation under subsection (1), the Commission shall continue to have full authority to regulate the activities of the licensed marketplace or licensed ancillary facility and any of its clients, participants and subscribers.
- Voluntary surrender 74. (1) If a licensee under this Part applies to the Commission to surrender its license, the Commission may accept the surrender unless the Commission considers it prejudicial to the public interest to do so.

-
- (2) On receiving an application under subsection (1), the Commission may, without providing an opportunity to be heard, suspend or impose any condition or restriction on the licensee that the Commission deems appropriate.
- Reporting to the Commission 75. Within the prescribed periods, a licensee under this Part shall deliver to the Commission –
- (a) annual financial statements in respect of the year along with the report of the auditor;
 - (b) interim financial statements and other information as may be prescribed; and
 - (c) all reports or other information and documents as the Commission may prescribe.
- Notices 76. (1) An applicant for a license under this Part and a licensee under this Part shall provide the Commission notice in writing of the occurrence of any prescribed event within the time periods prescribed.
- (2) Upon receipt of a notice under subsection (1), the Commission may review the person's application or license and may take any action that the Commission deems appropriate.
- Keeping and inspection of records 77. (1) A licensee to which this Part refers, shall –
- (a) make and keep such information and documents in such form and for such periods –
 - (i) as are reasonably necessary in the conduct of its business and operations, including to document compliance with all requirements imposed by statute or regulation on the market participant; and
 - (ii) as may be prescribed; and
 - (b) file with or deliver to the Commission any prescribed document or report.
- (2) The Commission may require a market participant to disseminate to the public any report filed with the Commission under paragraph (1)(b).
- (3) In addition to subsection (1), a licensed marketplace shall keep a record of each trade executed through its facilities showing the time when it took place and any other prescribed information.
- (4) A market participant shall deliver to the Commission a copy of, or an extract from, any information or document kept under this section upon receipt of a request from the Commission.
- Offences 78. (1) A person may not establish or maintain, or assist in establishing or maintaining, a marketplace in [Member State] or ancillary facility or conduct business on or with a marketplace or ancillary facility in [Member State] other than one licensed 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 of [\$00,000] or to imprisonment for two years, or to both.

Part VI

[Licensing of Intermediaries and Others] [Licensing of Securities Business]

- | | |
|--|---|
| Persons to be licensed by the Commission ⁶ | <p>79. (1) Subject to this Act, a person shall not carry on business or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of –</p> <ul style="list-style-type: none"> (a) a broker-dealer; (b) an investment adviser;⁷ (c) a principal of a market intermediary; (d) a representative of a market intermediary; or (e) a compliance officer, <p>unless that person is licensed, or deemed to be licensed, as such, in accordance with this Act and, except for persons deemed licensed, the person has received written notice of the grant of license from the Commission to do so by the Commission under this Part.</p> <p>(2) The Commission may make rules for the grant of expedited licenses to persons that are already subject to regulation in accordance with this Part in a CARICOM Member State.</p> <p>(3) The Commission may issue a licence to any person to carry out any other approved securities business.</p> |
| Licensing requirement – broker-dealer and investment adviser | <p>80. (1) Subject to subsection (2), a person may not carry on any of the securities business activities set out in Part II of Schedule 2 unless that person is -</p> <ul style="list-style-type: none"> (a) licensed as a broker-dealer with the Commission to carry on business; or (b) exempt from being licensed. <p>(2) A person who carries on the business of providing investment advice only, shall be licensed as an investment adviser.</p> <p>(3) A person licensed under this Act as a broker-dealer may act as an underwriter with respect to a distribution of securities unless the regulations provide otherwise.</p> <p>(4) The persons specified in Part 4 of Schedule 2 are not required to be licensed to conduct securities business.</p> <p>(5) For the purposes of subsection (1), a person may be considered to be conducting securities business where that person –</p> <ul style="list-style-type: none"> (a) uses one or more words which connote securities business, either in English or in any other language, in the description or title under which the person carries on business; (b) makes a representation in a document or in any other manner that the person is carrying on securities business; or |

⁶ Categories of entities to be licensed differ in Member States.

⁷ This refers to anyone who acts as an investment adviser. Ideally an investment adviser for a CIS should be regulated under a CIS regime. In the absence of such a regime, all the market actors who are part of the investment fund industry including the Investment Adviser, should be licensed and regulated under the Securities Act.

- (c) otherwise holds itself out as carrying on securities business.
- (6) Notwithstanding subsections (1) and (2), a sponsored broker-dealer or sponsored investment adviser may carry on business, or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer or investment adviser for a period not exceeding an aggregate of ninety days in any one calendar year, where such sponsored broker-dealer or sponsored investment adviser is registered in the manner prescribed.
- Grant of broker-dealer license 81. (1) The Commission may grant a broker-dealer license to a company which applies in the prescribed manner and pays the prescribed fee.
- (2) A license granted under this section shall specify the securities business activity that the broker-dealer is permitted to undertake and shall be restricted to such business as so specified.
- (3) The Commission shall refuse to grant a broker-dealer license unless the applicant —
- (a) is a company;
 - (b) employs at least one individual who is licensed as a principal under section 89;
 - (c) employs at least one individual who is licensed as a representative under section 93;
 - (d) employs or engages at least one person who is licensed as a compliance officer under section 86;
 - (e) has the prescribed minimum paid-up capital and is able to meet the prescribed minimum net liquid capital requirement in cash or readily marketable securities;
 - (f) complies with the insurance requirement under section 156;
 - (g) satisfies the Commission that it is a fit and proper person to be licensed as a broker-dealer;
 - (h) will be able, if licensed, to comply with the financial resources requirements that may apply to it;
 - (i) is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act and regulations, including having appropriate and sufficient systems and controls to perform its functions and manage its risks prudently; and
 - (j) has specified premises under section 82(1)(e) that are suitable for keeping records or other documents.
- (4) The initial requirements for licensing and such other requirements imposed by the Act or the Commission from time to time shall continue to be met by the person throughout the period of licensing under the Act.
- (5) The Commission –
- (a) shall not refuse an application for a license without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a license, shall notify the applicant in writing of the refusal and the reason for such refusal and the applicant may request a review of the Commission's decision under section 263.
- Application for broker-dealer license 82. (1) An application for a broker-dealer license shall be made in the prescribed form and accompanied by the prescribed fee, and shall –
- (a) give the Commission information it reasonably requires –

- (i) about the services which the applicant will hold itself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business; and
 - (iii) to enable the Commission to consider the matters referred to in subsections (3) of section 81;
- (b) nominate as a principal at least one individual and an alternate, who will actively participate in, and who will be responsible for the supervision of, its business;
 - (c) nominate as representative at least one individual who will act for or on behalf of the broker-dealer in its business;
 - (d) nominate as compliance officer a person who will ensure that broker-dealer conducts its business in compliance with the laws of Member State; and
 - (e) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept or at which it proposes to carry on business.
- (2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Investment
advisers

- 83. (1) An investment adviser shall not operate other than in accordance with its license.
- (2) An investment advisor shall not hold the property of any other person.

Grant of
investment
adviser license

- 84. (1) The Commission may grant an investment adviser license to an individual or a company who applies in the prescribed manner and pays the prescribed fee.
- (2) The Commission shall refuse to grant an investment adviser license unless the applicant
 - (a) in the case of a company, employs at least one individual who is licensed as a principal under section 89;
 - (b) in the case of a company, employs at least one individual who is licensed as a representative under section 93;
 - (c) in the case of a company, employs at least one individual who is licensed as a compliance officer under section 86, or in the case of an individual, engages the services of an independent person to perform the function of a compliance officer and who is licensed as a compliance officer under section 86;
 - (d) has the prescribed minimum paid up capital;
 - (e) complies with the insurance requirement under section 156;
 - (f) satisfies the Commission that the applicant is a fit and proper person to be licensed as an investment adviser;
 - (g) will be able, if licensed, to comply with the financial resources requirements made under section 151, that will apply to him;

- (h) is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act and regulations, including having appropriate and sufficient systems and controls to perform its functions and manage its risks prudently; and
 - (i) has specified premises under section 85(1)(d) that are suitable for keeping records or other documents.
- (4) The initial requirements for a license and such other requirements imposed by the Act or the Commission from time to time shall continue to be met by the person throughout the period of licensing under the Act.
- (5) The Commission –
- (a) shall not refuse an application for a license without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a license, shall notify the applicant in writing of the refusal and the reasons for it and the applicant may file an appeal under section 263.

Application
investment
adviser license

85. An application for an investment adviser license shall be made in the prescribed form and accompanied by the prescribed fee, and shall -
- (a) give the Commission information it reasonable requires -
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant's company proposes to carry on and to which the application relates;
 - (iii) to enable the Commission to consider the matters referred to in subsections (3) of section 84; and
 - (b) nominate as a principal one individual and an alternate who will actively participate in, and who will be responsible for the supervision of its business;
 - (c) nominate as representative one individual and an alternate who will act for or on behalf of the applicant in its business; and
 - (d) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept or at which it proposes to carry on business. (2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Grant of
Compliance
officer license

86. (1) The Commission may grant a compliance officer license to an individual who applies in the prescribed manner and pays the prescribed fee.
- (2) A compliance officer is prohibited from performing the functions of a principal, a registered representative, or such other functions which conflicts with his duties as a compliance officer.
- (3) The Commission shall refuse to grant a compliance officer license unless the applicant –
- (a) is an individual who is at least 21 years of age or such age as prescribed;
 - (b) has the relevant educational or other qualifications to receive a license;

-
- (c) satisfies the Commission that the applicant is a fit and proper person to be licensed as a compliance officer; and
 - (d) supplies the Commission with the information that it requires to assess whether the applicant is a fit and proper person.
- (4) The Commission –
- (a) shall not refuse an application for a license without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a license, shall notify the applicant in writing of the refusal and the reasons for such refusal.
- Application for compliance officer license 87. (1) An application for a compliance officer license shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires –
- (a) about the business which the applicant’s company proposes to carry on and to which the application relates; and
 - (b) to enable the Commission to consider the matters referred to in subsection (2) of section 86;
- (2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.
- Accreditation of compliance officer 88. (1) A compliance officer is accredited to a market intermediary for the purposes of this Part only if
- (a) the license of the compliance officer states that he is accredited to the licensee; and
 - (b) the compliance office is recorded as being accredited in the register maintained under section 153.
- (2) The Commission shall not issue a compliance officer license unless both the compliance officer and the licensee have notified the Commission in writing that he is, or is to be, accredited.
- (3) If a licensee or compliance officer notifies the Commission in writing that the accreditation of the compliance officer has been terminated—
- (a) the Commission may amend the register of licensees accordingly; and
 - (b) the representative shall return his license to the Commission within seven days of the Commission requiring him to do so.
- (4) Where a compliance officer is not an employee of the licensee, such compliance officer can provide services only to the licensee to which it is accredited.
- Grant of principal license 89. (1) The Commission may grant a principal license to an individual who applies in the prescribed manner and pays the prescribed fee.
- (2) The Commission shall refuse to grant a principal license unless the applicant –
- (a) is an individual who is at least 21 years of age or such age as prescribed; and
 - (b) satisfies the Commission that the applicant–

- (i) has sufficient educational or other qualifications or experience;
- (ii) has sufficient authority within the company; and
- (iii) is a fit and proper person,

to supervise the business for which the company that has nominated him is licensed or is applying to be licensed.

(3) The Commission –

- (a) shall not refuse an application for a license without first giving the applicant an opportunity of being heard; and
- (b) if it refuses an application for a license, shall notify the applicant in writing of the refusal and the reasons for such refusal.

(4) In this Part, a reference to “principal” includes a person appointed as an alternate to the principal.

Application for
principal license

90. (1) An applicant for a principal’s license shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires –
- (a) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (b) about the business which the applicant’s company proposes to carry on and to which the application relates; and
 - (c) to enable the Commission to consider the matters referred to in subsection (3) of section 87;
- (2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Accreditation of
Principals

91. (1) A principal is accredited to a market intermediary for the purposes of this Part only if -
- (a) the license of the principal states that he is accredited to the market intermediary; and
 - (b) the principal is recorded as being accredited in the register maintained under section 153.
- (2) The Commission shall not issue a principal license unless both the principal and the market intermediary have notified the Commission in writing that he is, or is to be, accredited.
- (3) If a market intermediary or principal notifies the Commission in writing that the accreditation of the principal has been terminated -
- (a) the Commission may amend the register of licensees accordingly; and
 - (b) the principal shall return his license to the Commission within seven days of the Commission requiring him to do so.

Duties of
Principal

92. A principal shall be responsible for the supervision of the securities business undertaken by the market intermediary to which the principal is accredited to ensure it is carried out in compliance with the law, which responsibility may not be delegated.

-
- Grant of representative license
93. (1) The Commission may grant a representative license to an individual who applies in the prescribed manner and pays the prescribed fee.
- (2) The Commission shall refuse to grant a representative license unless the applicant –
- (a) is an individual who is at least 18 years of age or such age as prescribed;
 - (b) has the relevant educational or other qualifications to receive a license;
 - (c) satisfies the Commission that the applicant is a fit and proper person to be licensed as a representative; and
 - (d) supplies the Commission with the information that it requires to assess whether the applicant is a fit and proper person.
- (3) The Commission –
- (a) shall not refuse an application for a license without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a license, shall notify the applicant in writing of the refusal and the reasons for such refusal.
- Application for representative license
94. (1) An application for a representative license shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires –
- (a) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (b) about the business which the applicant's company proposes to carry on and to which the application relates; and
 - (c) to enable the Commission to consider the matters referred to in subsection (2) of section 93.
- (2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.
- Accreditation of representatives
95. (1) A representative is accredited to a market intermediary for the purposes of this Part only if -
- (a) the license of the representative states that he is accredited to the licensee; and
 - (b) the representative is recorded as being accredited in the register maintained under section 153.
- (2) The Commission shall not issue a representative license unless both the representative and the licensee have notified the Commission in writing that he is, or is to be, accredited.
- (3) If a licensee or representative notifies the Commission in writing that the accreditation of the representative has been terminated –
- (a) the Commission may amend the register of licensees accordingly; and
 - (b) the representative shall return his license to the Commission within seven days of the Commission requiring him to do so.

-
- Power of Commission to impose conditions
96. (1) Any license granted by the Commission under this Part may contain such reasonable conditions it considers necessary.
- (2) Conditions may be of general or special application and may make different provision for different cases or classes of cases.
- (3) In the case of a condition of special application to a particular license the condition shall be for a specified period of time.
- (4) The Commission may, by written notice served on the holder of the license, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Commission shall not impose them without first giving the licensee an opportunity of being heard.
- (5) A person to whom a license is granted shall not, when conducting business for which a license is required, use a name other than the name specified in the license.
- Revocation and suspension of license
97. (1) The Commission may revoke a license granted to an individual under this Part if that individual –
- (a) is shown by certified medical evidence to be mentally or physically incapable of performing the activities to which the license relates;
- (b) is adjudged a bankrupt, in [Member State] or elsewhere;
- (c) is convicted, whether in [Member State] or elsewhere, of fraud or any other offence involving dishonesty;
- (d) is convicted of an offence under this Act or regulations made under this Act;
- (e) contravenes or fails to comply with any condition applicable in respect of the license;
- (f) ceases to carry on the business for which that individual is licensed;
- (g) is the holder of a representative license and the license of the licensee to whom that individual is accredited is revoked or suspended;
- (h) fails to pay the annual license fee as prescribed on or before the anniversary of the day of the grant of the license; or
- (i) by reason of any other circumstances, is no longer a fit and proper person to hold a license.
- (2) The Commission may revoke a license granted to a company under this Part if -
- (a) the company goes into liquidation or is ordered to be wound up;
- (b) a receiver or manager of all or a substantial part of the property of the company is appointed;
- (c) the company ceases to carry on the business for which it is licensed;
- (d) it has reason to believe that the company, or any of its directors or employees, has not performed its or his duties honestly and fairly;
- (e) the company contravenes or fails to comply with any condition applicable in respect of the license;
- (f) the company is in breach of this Act or any regulation made under this Act;

- (g) where applicable, the company does not continue to employ at least one person who holds the appropriate representative license granted under this Act;
 - (h) the company fails to pay its annual license fee as prescribed on or before the anniversary of the day of the grant of its license; or
 - (i) by reason of any other circumstances, the company is no longer a fit and proper person to be licensed.
- (3) The Commission may, if it thinks it necessary –
 - (a) as a matter of urgency for the protection of investors, or
 - (b) as a result of any investigation under this Act or regulations made under this Act; suspend a license granted under this Part for the period, or until the happening of an event, as the Commission considers appropriate.
 - (4) The Commission may revoke a license at the request of the licensee.
 - (5) A person whose license is revoked or suspended under this Act shall be notified accordingly by the Commission and shall, for the purpose of this Act, be deemed not to be licensed from the date of notification of revocation or suspension, as the case may be.
 - (6) The suspension or revocation of a license under this Part does not operate so as to –
 - (a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose license has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the license; or
 - (b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.
 - (7) A licensee whose license has been suspended or revoked shall not be allowed to retain any benefits charged or payable on any dealing in securities during the time the license is suspended or revoked.
 - (8) The Commission shall not revoke a license without first giving the holder of the license an opportunity of being heard.
 - (9) If a license is suspended under this Part and has not been reinstated, the license is revoked on the second anniversary following the date of suspension.

Offence

98. (1) Any person who carries on business requiring the grant of a license under this Part without holding such a license, or other than in accordance with his license, commits an offence and is liable on summary conviction –
 - (a) in the case of an individual, to a fine of [\$00,000] or to imprisonment for two years, or to both;
 - (b) in the case of a company, to a fine of [\$00,000]; and
 if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding [\$00,000] for every day that the offence continues after conviction.
- (2) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission, any monies received or the

monetary equivalent of any assets obtained as a result of carrying on securities business without a license.

Part VII

Conduct of Securities Business

- | | | |
|---|------|---|
| Duties to clients | 99. | In the conduct of securities business, a market intermediary, its officers, directors, principals, representatives, compliance officers, employees and agents shall at all times act – <ul style="list-style-type: none"> (a) honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market; and (b) with due skill, care and diligence, in the best interests of its clients and the integrity of the market. |
| Responsibility for actions of persons acting on behalf of market intermediary | 100. | <ul style="list-style-type: none"> (1) A market intermediary shall be responsible for all acts and omissions of each partner, director, officer, representative, compliance officer, employee and agent acting on its behalf. (2) A party related to a market intermediary shall be responsible for all acts and omissions of each partner, director, officer, representative, employee and agent acting on its behalf. |
| Contravention is actionable | 101. | Where any contract for the sale or purchase of securities is entered into in contravention of a regulation made under this Part, the contravention is actionable at the suit of any customer who suffers loss as a result of the contravention, without prejudice to the rights to go before the Commission or any other right. |
| Issue of contract note | 102. | A broker-dealer shall, in respect of every contract for the purchase, sale or exchange of securities entered into by it (whether as principal or agent), issue a contract note in the prescribed manner. |
| Clients' accounts | 103 | A broker-dealer shall establish and keep in a financial institution one or more trust accounts or such other accounts as the Commission may determine or as prescribed. |
| Customer's Property | 104 | <ul style="list-style-type: none"> (1) Money or other property held by a market intermediary on account of a customer shall not be available for payment of the debts of the licensee or liable to be paid or taken in execution under an order or process of any court against the market intermediary. (2) A market intermediary shall ensure the segregation and safekeeping of customers' money or securities held on behalf of customers. (3) A market intermediary who holds securities or assets for other persons shall account for them in the manner prescribed. |
| Supervisory personnel | 105. | A market intermediary shall be responsible for supervising anyone acting on its behalf, whether licensed or not, and shall maintain adequate supervisory personnel. |
| Prohibition | 106. | <ul style="list-style-type: none"> (1) A market intermediary may not – <ul style="list-style-type: none"> (a) become a significant security holder of any issuer that is not a market intermediary other than in the usual course of the business of trading in securities; |

- (b) acquire any shares, debentures or other interest in any other market intermediary; or
 - (c) permit anyone to become a significant security holder of the market intermediary; without the prior notification to the Commission.
- (2) Where a person becomes a significant security holder under a will or by intestacy, such a person shall notify the Commission within one month of this fact coming to his knowledge.
 - (3) Failure to comply with this section shall render the license of the market intermediary revocable by the Commission.

- | | | |
|---------|------|--|
| Offence | 107. | <ol style="list-style-type: none"> (1) Any person who contravenes a provision under this Part, other than under section 102, commits an offence and shall be liable on summary conviction to a fine of [\$00,000], or to imprisonment for one year, or to both; (2) Any person who contravenes section 102 commits an offence and shall be liable on summary conviction to a fine of [\$00,000], or to imprisonment for two years, or to both. |
|---------|------|--|

Part VIII

Securities Exchanges

- | | | |
|--|------|--|
| Restriction on establishment of securities exchanges | 108. | <ol style="list-style-type: none"> (1) A person shall not establish or operate a securities exchange [in Member State] except under and in accordance with a securities exchange license granted by the Commission under this Act. (2) A person shall not assist any other person in the operation of a securities exchange unless that other person is the holder of a securities exchange license granted by the Commission under this Act. |
| [Named securities exchange] deemed licensed | 109. | <ol style="list-style-type: none"> (1) With effect from the commencement of this Act, the [<i>insert name of securities exchange</i>] shall, subject to subsection (3), be deemed to be licensed under this Part. (2) The [named securities exchange] shall, not later than twelve months after the commencement of this Act or within such longer period as the Commission will allow – <ol style="list-style-type: none"> (a) take such steps as are necessary to ensure that it satisfies the conditions specified in subsection 111(2); (b) notify the Commission in writing of the steps so taken; and (c) apply for a securities exchange license under section 110. (3) If the [named securities exchange] fails to take action in accordance with subsection (2) within the time limited by or under that subsection, [the named securities exchange] shall cease to be deemed to be licensed on the expiration of that period. |
| Application for Securities Exchange License | 110. | <ol style="list-style-type: none"> (1) Only a company whose sole activity is the operation of a securities exchange may apply to the Commission for a securities exchange license. (2) An application under subsection (1) shall be made in the prescribed form and accompanied by the prescribed fee. (3) At any time after receiving an application the Commission may require the applicant to furnish additional information. |

Grant of
Securities
Exchange
License

111. (1) Upon receipt of an application duly made under section 110, the Commission may grant a securities exchange license if it is satisfied that –
- (a) it is appropriate to do so in the public interest, or for the proper regulation of markets in securities; and
 - (b) the applicant satisfies the conditions specified in subsection (2).
- (2) The conditions to be satisfied by the applicant are that –
- (a) the applicant's activities be limited to the operation of a securities exchange;
 - (b) the applicant can provide and maintain, to the satisfaction of the Commission, adequate and properly equipped facilities or systems for the conduct of the business of a securities exchange;
 - (c) the applicant is fit and proper;
 - (d) the applicant shall have not less than three members who are engaged in the business of dealing in securities independently of and in competition with each other;
 - (e) the rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities or systems will be conducted in an orderly manner and so as to accord proper protection to investors;
 - (f) the applicant has made such arrangements as the Commission considers satisfactory for –
 - (i) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions;
 - (ii) market surveillance;
 - (iii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations made under this Act; and
 - (iv) investigating complaints in respect of business transacted by any of its members;
 - (g) the applicant must have default rules which, where a member of the securities exchange appears to be unable, or likely to become unable, to meet its obligations in respect of one or more market contracts, enable action to be taken to close out its position in respect of all unsettled market contracts to which it is a party; and
 - (h) the applicant is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act, including –
 - (i) appropriate and sufficient systems and controls to perform its functions and manage its risks prudently; and
 - (ii) observing standards of solvency and levels of capital as required;
- (3) The initial requirements for licensing and such other requirements imposed by the Act or the Commission from time to time shall continue to be met by the person throughout the period of licensing under the Act.

Alteration of
facts disclosed
in application

112. An applicant for a license under this Part shall forthwith give written notice to the Commission of –
- (a) any proposed alteration to; or

(b) the occurrence of any event which it knows affects or may affect, material information supplied to the Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

- | | |
|--|---|
| General conditions | <p>113. It shall be a condition of every securities exchange license granted under this Part that –</p> <ul style="list-style-type: none"> (a) the license is personal to the applicant and is not transferable; (b) the securities exchange shall forthwith give written notice to the Commission of – <ul style="list-style-type: none"> (i) any proposed alteration to; or (ii) the occurrence of any event which it knows affects or may affect in a material respect, <p style="margin-left: 40px;">any matter in respect of which it was required to supply information to the Commission;</p> (c) the consent of the Commission shall be obtained prior to the making of any change in the constitution or control of the securities exchange; and (d) the securities exchange shall not carry on, or hold itself out as carrying on, any business other than that of providing services as a securities exchange. |
| Commission's authority on receipt of notice | <p>114. Upon receipt of a notice under section 112 or 113, the Commission may review the person's fitness for licensing and take appropriate action as a result, including imposing conditions on the person's license or denying licensing.</p> |
| Power of Commission to impose conditions | <p>115. (1) Any license granted by the Commission may contain such reasonable conditions it considers necessary.</p> <p>(2) Conditions may be of general or special application and may make different provision for different cases or classes of cases.</p> <p>(3) In the case of a condition of special application to a particular license the condition shall be for a specified period of time.</p> <p>(4) The Commission may, by written notice served on the holder of the license, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Commission shall not impose them without first giving the licensee an opportunity of being heard.</p> <p>(5) A person to whom a license is granted shall not, when conducting business for which a license is required, use a name other than the name specified in the license.</p> |
| Suspension and revocation of securities exchange license | <p>116. (1) The Commission may suspend a securities exchange license granted under section 111 if the company –</p> <ul style="list-style-type: none"> (a) temporarily ceases to operate the securities exchange; (b) goes into receivership; (c) contravenes a provision of this Act; (d) is operating in a manner detrimental to the public interest; |

- (e) fails to provide the Commission with information lawfully required;
 - (f) fails to comply with a lawful direction of the Commission; or
 - (g) fails to pay its annual license fee as prescribed on or before the anniversary of the day of the grant of its license.
- (2) The Commission may revoke a securities exchange license granted under section 111 if the company –
- (a) ceases to operate the securities exchange;
 - (b) is being wound up, compounds or compromises with its creditors;
 - (c) contravenes a provision of this Act;
 - (d) is operating in a manner detrimental to the public interest;
 - (e) fails to continue to comply with the conditions specified in section 111(2);
 - (f) fails to pay its annual license fee as prescribed on or before the anniversary of the day of the grant of its license; or
 - (g) requests the Commission to do so.
- (3) The Commission shall not revoke or suspend a securities exchange license without first giving the holder of the license an opportunity of being heard.

Duties of
holder of
securities
exchange
license

117. (1) A holder of a securities exchange license shall ensure, so far as is reasonably practicable, an orderly and fair market in the securities that are traded through its facilities.
- (2) In performing its duties under subsection (1), the holder of a securities exchange license shall –
- (a) act in the interests of the investing public; and
 - (b) ensure that such interests prevail where they conflict with any other interests the company is required to serve under any other law.
- (3) The holder of a securities exchange license shall ensure that members comply with its rules, this Act and regulations made under this Act.
- (4) The holder of a securities exchange license shall provide and maintain at all times to the satisfaction of the Commission –
- (a) adequate and properly equipped premises for the conduct of its business;
 - (b) competent personnel for the conduct of its business;
 - (c) automated or other systems with adequate capacity, facilities to meet emergencies and security arrangements.
- (5) The holder of a securities exchange license shall notify the Commission immediately if it becomes aware –
- (a) that a member is unable to comply with any financial resources requirements made under section 152; or
 - (b) of a financial irregularity or other matter which in the opinion of the holder of the securities exchange license may indicate that the financial standing or integrity of a

member is in question, or that a member may not be able to meet that member's legal obligations.

- | | |
|--|--|
| Rules of securities exchange | 118. (1) Subject to the approval of the Commission, the holder of a securities exchange license shall make rules for the proper and efficient regulation, operation, governance, management and control of the securities exchange.

(2) Without limiting the general effect of subsection (1), the holder of a securities exchange license shall make rules –

(a) in respect of applications for listing and the requirements for listing;

(b) regarding rules of governance and changes thereto;

(c) regarding agreements to be entered into between the securities exchange and other persons for listing securities and enforcing those agreements;

(d) regarding the cancellation and withdrawal of the listing of securities and the suspension of dealings in them;

(e) obliging a person to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed for the listing or continued listing of securities; and

(f) regarding the penalties and sanctions which the holder of the securities exchange license may impose for a breach of the rules of the securities exchange. |
| Amendments to rules of securities exchange | 119. (1) A securities exchange that wishes to make any amendment to its rules shall submit a draft of the proposed amendment to the Commission for approval.

(2) The Commission shall, within thirty days, of receipt of the proposed amendment by notice in writing to the holder of the securities exchange license approve the amendment or disapprove the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have force and effect. |
| Fixing of trading and position limits | 120. (1) The Minister may, on the recommendation of the Commission, make regulations prescribing limits on the amount of trading which may be done, or positions which may be held, by a member of a securities exchange.

(2) Subsection (1) does not prohibit the Minister on the recommendation of the Commission from fixing different trading or position limits for different types of transactions, or from exempting specified transactions.

(3) Without limiting the general effect of subsection (1), the Minister may, on the recommendation of the Commission, make regulations to prohibit a person from –

(a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or

(b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit. |
| Power of Commission to issue directions | 121. Where the Commission is satisfied that it is necessary for the protection of investors or for the proper regulation of a securities exchange, the Commission may issue directions to the holder of a securities exchange license with respect to – |

- to securities exchange
- (a) trading on or through its facilities generally or with respect to the trading of a particular security;
 - (b) the manner in which the securities exchange carries on any aspect of its business, including the manner of reporting off-market trades by members; or
 - (c) any other matter that the Commission considers necessary for the effective administration of this Act,
- and the holder of the securities exchange license shall comply with the direction.
- Power of Commission to require amendment to rules
122. (1) Where the Commission considers it necessary for the protection of investors, it may by notice in writing require the holder of a securities exchange license to make or to amend or repeal any rule and, on the Commission specifying the amendments and the dates those amendments shall have force and effect, the securities exchange shall comply with the requirement as soon as practicable after receipt of the notice from the Commission.
- (2) Without limiting the generality of subsection (1), the Commission may by notice in writing require the holder of a securities exchange license to change the rules of governance to ensure its fair administration or to make the rules of governance conform to the requirements of, or otherwise further the purposes of this Act.
- Securities exchange to assist the Commission
123. The holder of a securities exchange license shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and providing information in respect of dealings in securities or any other specified information as the Commission may require for the proper administration of this Act.
- Disciplinary action over members of a securities exchange
124. (1) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member in accordance with its rules, the securities exchange shall, within seven days of taking such action, give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of any fine, and the period of any suspension.
- (2) Any action taken by a securities exchange under subsection (1) shall be without prejudice to the power of the Commission to take such action as it sees fit with regard to the member or the license held by the member.
- Closure of securities exchange in emergency
125. (1) The Commission may, after consulting the holder of a securities exchange license, direct it to close its market for a period not exceeding five trading days.
- (2) The Commission may give the direction under subsection (1) if it is of the opinion that the orderly transaction of business on the securities exchange is being, or is likely to be, prevented because –
- (a) of an impending emergency or natural disaster or where such emergency or disaster has occurred in [Member State]; or
 - (b) there exists an economic or financial crisis, whether in [Member State] or elsewhere, or any other circumstance, which is likely to prevent orderly trading on the securities exchange.
- (3) The Commission may, on consultation with the Minister, extend the direction for further periods not exceeding ten trading days.

Self-
Regulatory
Organization

126. (1) A Securities Exchange is deemed under this Act to be a self-regulatory organization and shall set standards for and monitor the conduct of its members relating to trading in, and advising on securities.
- (2) The rules of governance of a securities exchange shall contain provisions –
- (a) for the protection of investors and the public interest;
 - (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate, process information about, and facilitate trades in securities;
 - (c) ensuring representation of its members on the board of the applicant;
 - (d) for the imposition of reasonable fees and charges for the use of its facilities and services;
 - (e) relating to the disciplining of a member or employee of a member who is in breach of its rules of governance or this Act and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of, or exclusion from employment;
 - (f) specifying the procedure required to implement disciplinary proceedings, refusal of membership, prohibition from employment, or prohibition or limitation of access to services furnished by it or its members; and
 - (g) for such other matters as may be prescribed.

Part IX Clearing Facilities

Interpretation

127. (1) In this Part -
- “default proceedings” means any proceedings or other action taken by a clearing facility under its default rules;
- “default rules”, for a clearing facility, means the rules of the clearing facility required by section 131;
- “defaulter” means a participant who is the subject of any default proceedings;
- “market charge” means a charge, whether fixed or floating, granted in favour of a clearing facility –
- (a) over property, specified in subsection (2), held by or deposited with the clearing facility; and
 - (b) to secure liabilities arising directly with the clearing facility facilitating the settlement of a market contract;
- “market collateral” means property, specified in subsection (2), held by or deposited with a clearing facility to secure liabilities arising directly with the clearing facility facilitating the settlement of a market contract;
- “market contract” means a contract subject to the rules of a clearing facility entered into by the clearing facility with a participant under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of a securities exchange;

“participant” means a person who, under the rules of a clearing facility, may participate in one or more of the services provided by the clearing facility in its capacity as a clearing facility;

“relevant office-holder” means –

- (a) the [Official Receiver/Liquidator] appointed under the [applicable bankruptcy or insolvency Act];
- (b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
- (c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or
- (d) a person appointed under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

“settlement”, in relation to a market contract, includes partial settlement;

- (2) Property which may be subject to a market charge, or provided as market collateral, is –
 - (a) money, letters of credit, bankers’ drafts, certified cheques, and any similar instruments;
 - (b) securities;
 - (c) futures contracts, and any similar financial contracts.
- (3) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge shall be a market charge in so far as it has effect for that specified purpose.
- (4) Where collateral is granted partly for the purpose specified in the definition of “market collateral” and partly for other purposes, the collateral is market collateral in so far as it has been provided for that specified purpose.
- (5) References in this Part to the law on insolvency include references to every provision made by or under –
 - (a) the [applicable bankruptcy or insolvency Act];
 - (b) the [Companies Act]; and
 - (c) any other enactment which is concerned with or in any way related to the insolvency of a person.
- (6) References in this Part to settlement in relation to a market contract are references to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

Licensing of clearing facilities

- 128. (1) A person shall not establish or operate a clearing facility except under and in accordance with a clearing facility license granted by the Commission under this Act.
- (2) A person shall not assist any other person in the operation of a clearing facility unless that other person is the holder of a clearing facility license.
- (3) Subject to the provisions of this Part, the Commission may license a company to operate a clearing facility, which shall be the company’s sole activity, where it is satisfied that it is appropriate –
 - (a) in the interests of the investing public; and

-
- (b) for the proper regulation of services for the clearing and settlement of transactions in securities contracts on a securities exchange.
- Application for clearing facility license 129. (1) Only a company may apply to the Commission for a license to operate a clearing facility.
- (2) An application under subsection (1) shall –
- (a) be made in the form prescribed by the Commission and shall be completed in accordance with any direction specified in the form;
- (b) be accompanied by a copy of the applicant’s rules; and
- (c) be accompanied by particulars of the securities exchange, together with a letter of confirmation from the securities exchange, with which the applicant proposes to make clearing arrangements.
- (3) At any time after receiving an application and before determining it the Commission may require the applicant to furnish additional information.
- (4) Any information to be furnished to the Commission under this section shall, if it so requires, be in such form or verified in such manner as the Commission may specify.
- Grant of clearing facility license 130. (1) On receipt of an application duly made in accordance with section 129 the Commission may grant a license to operate a clearing facility if it is satisfied that –
- (a) it is appropriate to do so in the public interest;
- (b) the applicant is fit and proper;
- (c) the applicant has financial resources sufficient for the proper performance of its functions;
- (d) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;
- (e) the applicant is able to provide clearing services which would enable a securities exchange to ensure the performance of transactions effected on the market;
- (f) the applicant is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act, including –
- (i) appropriate and sufficient systems and controls to perform its functions and manage its risks prudently;
- (ii) observing standards of solvency and levels of capital as required; and
- (iii) maintaining the appropriate insurance coverage to address the risks of the business undertaken; and
- (g) the default rules of the applicant satisfy the requirements of section 131.
- (2) The initial requirements for licensing and such other requirements imposed by the Act or the Commission from time to time shall continue to be met by the person throughout the period of licensing under the Act.
- Rules of clearing facility 131. (1) For the purposes of section 130, the rules of a clearing facility shall include provisions –
- (a) where a participant appears to be unable, or likely to become unable, to meet the obligations in respect of one or more market contracts, to enable action to be taken to close out the participant’s position in relation to all unsettled market contracts to which the participant is a party;

- (b) where the clearing facility determines that the activities of a participant presents or is likely to present unreasonable risk to the clearance and settlement systems to cease to act for the participant;
 - (c) to enable the settlement of all of the contracts by providing for there to be payable by or to the participant a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the participant under or in respect of the contract concerned;
 - (d) to enable all sums of money payable by or to the participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum, if any, payable by or to the participant;
 - (e) if any net sum referred to in paragraph (c) is payable by the participant, to provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realisation of such property) so as to produce a further net sum, if any, payable by or to the participant;
 - (f) if any net sum referred to in paragraph (c) is payable to the participant, to provide that all property of the participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral), as the case may be; and
 - (g) to provide for the certification by the clearing facility of any net sum referred to in paragraph (c) payable to the participant, or of any further net sum referred to in paragraph (d) payable by or to the participant, as the case may be, or if there is no such sum, the certification by the clearing facility of that fact.
- (2) Where a clearing facility takes default proceedings, all subsequent action taken under its rules for settlement of market contracts to which the defaulter is a party are to be treated as taken under the default rules.

Approval of
amendments to
rules of
clearing facility

132. (1) A clearing facility shall submit to the Commission –
- (a) all proposed rules and amendments to rules of the clearing facility; and
 - (b) explanations of the purpose and likely effect, including the effect on the investing public of all proposed rules or amendments to rules,
- in sufficient detail to enable the Commission to decide whether to approve such rules or refuse to approve them.
- (2) The proposed rules of a clearing facility or an amendment to its rules shall not have effect unless the Commission has approved them in writing.
 - (3) The Commission shall, within thirty days after receiving the proposed rules or amendments for approval, give notice in writing to the clearing facility that –
 - (a) it approves them; or
 - (b) it refuses to approve them.
 - (4) The Commission shall not refuse a proposed rule or an amendment to a rule without first giving the clearing facility an opportunity of being heard.

-
- | | |
|---|---|
| Power of the Commission to require amendment to rules | 133. Where the Commission considers it necessary for the protection of investors, it may by notice in writing require the holder of a clearing facility license to make or to amend or repeal any rule and, on the Commission specifying the amendments and the dates those amendments shall have force and effect, the clearing facility shall comply with the requirement as soon as practicable after receipt of the notice from the Commission. |
| Alteration of facts disclosed in application | 134. An applicant for a license under this Part shall forthwith give written notice to the Commission of – <ul style="list-style-type: none"> (a) any proposed alteration to; or (b) the occurrence of any event which it knows affects or may affect, material information supplied to the Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission. |
| General conditions | 135. It shall be a condition of every clearing facility license granted under this Part that – <ul style="list-style-type: none"> (a) the license is personal to the applicant and is not transferable; (b) the clearing facility shall forthwith give written notice to the Commission of – <ul style="list-style-type: none"> (i) any proposed alteration to; or (ii) the occurrence of any event which it knows affects or may affect in a material respect, any matter in respect of which it was required to supply information to the Commission; (c) the consent of the Commission shall be obtained prior to the making of any change in the constitution or control of the clearing facility; and (d) the clearing facility shall not carry on, or hold itself out as carrying on, any business other than that of providing clearing and settlement services. |
| Commission's authority on receipt of notice | 136. Upon receipt of a notice under section 134 or 135, the Commission may review the person's fitness for licensing and take appropriate action as a result, including imposing conditions on the person's license or denying licensing. |
| Power of Commission to impose conditions | 137. <ul style="list-style-type: none"> (1) Any license granted by the Commission may contain such reasonable conditions it considers necessary. (2) Conditions may be of general or special application and may make different provision for different cases or classes of cases. (3) In the case of a condition of special application to a particular license the condition shall be for a specified period of time. (4) The Commission may, by written notice served on the holder of the license, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Commission shall not impose them without first giving the licensee an opportunity of being heard. (5) A person to whom a license is granted shall not, when conducting business for which a license is required, use a name other than the name specified in the license. |

-
- Revocation and suspension of license
138. (1) The Commission may at any time revoke or suspend a clearing facility license granted under this Part if it appears to the Commission that the holder of the clearing facility license –
- (a) has ceased to operate a clearing facility;
 - (b) has failed to comply with any obligation to which it is subject under this Act; or
 - (c) is operating in a manner detrimental to the public interest.
- (2) Where the Commission suspends a license, the suspension may be for the period, or until the happening of an event, the Commission considers appropriate.
- (3) The Commission shall not revoke or suspend a clearing facility license without first giving the holder of the license an opportunity of being heard.
- Power of Commission to issue directions
139. Where the Commission is satisfied that it is necessary for the protection of investors or for the proper regulation of a clearing facility, the Commission may issue directions –
- (a) with respect to the manner in which the clearing facility carries on any aspect of its business; or
 - (b) with respect to any other matter that the Commission considers necessary for the effective administration of this Act,
- and the clearing facility shall comply with the direction.
- Duty to assist Commission
140. Notwithstanding any other law, a clearing facility shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and the provision of information in respect of securities transactions or any other specified information as the Commission may require from time to time.
- Proceedings of clearing facility take precedence over laws of insolvency
141. (1) The following shall not be to any extent invalid at law for inconsistency with the law for distributing the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person –
- (a) a market contract;
 - (b) the rules of a clearing facility for the settlement of a market contract;
 - (c) proceedings or other action taken under the rules of a clearing facility for the settlement of a market contract;
 - (d) a market charge;
 - (e) the default rules of a clearing facility; or
 - (f) default proceedings.
- (2) A person acting under the laws of insolvency may not exercise any power to prevent or interfere with –
- (a) the settlement of a market contract under the rules of a clearing facility; or
 - (b) default proceedings.
- Duty to report on completion of default proceedings
142. (1) A clearing facility shall, upon completion by it of default proceedings, make a report on such proceedings stating in respect of each defaulter –

-
- (a) the net sum, if any, certified by the clearing facility to be payable by or to the defaulter; or
- (b) that no sum is payable.
- (2) A clearing facility which has made a report pursuant to subsection (1) shall supply the report to –
- (a) the Commission;
- (b) any relevant office-holder in relation to –
- (i) the defaulter to whom the report relates; or
- (ii) that defaulter’s estate;
- (c) if there is no relevant office-holder referred to in subsection (b), the defaulter to whom the report relates.
- (3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.
- (4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), the office-holder or defaulter shall, at the request of a creditor of the defaulter to whom the report relates –
- (a) make the report available for inspection by the creditor;
- (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.
- (5) In subsections (2), (3) and (4), “report” includes a copy of a report.
- Net sum payable on completion of default proceedings 143. (1) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of the [applicable bankruptcy or insolvency Act] or the Companies Act, be provable in the bankruptcy or winding up or, as the case may be, shall be payable to the relevant office-holder under the [applicable bankruptcy or insolvency Act] or in the case of a winding-up order under the [Companies Act].
- (2) This section applies to any net sum certified under section 142(1)(a) by a clearing facility, upon the completion by it of any default proceedings, to be payable by or to a defaulter.
- Enforcement of judgements over property subject to market charge 144. (1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgement or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the clearing facility concerned.
- (2) Where by virtue of this section a person would not be entitled to enforce a judgement or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgement or order shall not extend to that property.
- Participants to be party to certain 145. Where a participant –
- (a) in his capacity as such enters into any transaction (including a market contract) with a clearing facility; and

- transaction as principal (b) but for this subsection, would be a party to that transaction as agent, then as between the clearing facility and any other person (including the participant and the person who is his principal in respect of that transaction), the participant is for all purposes (including any action, claim or demand, either civil or criminal) –
- (i) deemed not to be a party to that transaction as agent; and
 - (ii) deemed to be a party to that transaction as principal,
- notwithstanding any other enactment or rule of law.
- Securities deposited with clearing facility 146. (1) An action, claim or demand, either civil or criminal, for a right, title or interest held by any person in securities deposited by a participant with a clearing facility in accordance with the rules of the clearing facility, does not lie, and may not be commenced or allowed, against the clearing facility or its nominees, notwithstanding any other enactment or rule of law.
- (2) The operation of subsection (1) in respect of securities deposited with a clearing facility is subject to any modifications and exclusions provided in the rules of the clearing facility.
- Preservation of rights 147. (3) Except to the extent that it expressly provides, this Part does not operate to limit, restrict or otherwise affect –
- (a) a right, title, interest, privilege, obligation or liability of a person;
 - (b) an investigation, legal proceeding or remedy in respect of the right, title, interest, privilege, obligation or liability.
- [Named clearing facility] deemed licensed 148. (1) With effect from the commencement of this Act, the [*insert name of clearing facility*] shall, subject to subsection (3), be deemed to be licensed under this Part.
- (2) The [named clearing facility] shall, not later than twelve months after the commencement of this Act or within such longer period as the Commission will allow –
- (a) take such steps as are necessary to ensure that it satisfies the licensing conditions specified under section 130;
 - (b) notify the Commission in writing of the steps so taken; and
 - (c) apply for a license as a clearing facility under section 129.
- (3) If the [Named clearing facility] fails to take action in accordance with subsection (2) within the time limited by or under that subsection, [the named clearing facility] shall cease to be deemed to be licensed on the expiration of that period.

Part X Un-certificated Securities

- Transfer of un-certificated securities 149. (1) Notwithstanding the provisions of the Companies Act, the ownership of corporate securities issued by reporting issuers may, subject to the provisions of this Part, be evidenced and transferred without a written instrument.
- (2) The Minister may, on the recommendation of the Commission, make regulations –
- (a) providing for procedures for recording and transferring title to securities;

- (b) providing for the regulation of those procedures and the persons responsible for or involved in their operation;
 - (c) containing such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented;
 - (d) providing for the transmission of title to securities by operation of law;
 - (e) including such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.
- (3) Regulations may make provision with respect to the persons responsible for the operation of the new procedures –
- (a) as to the consequences of their insolvency or incapacity;
 - (b) as to the transfer from them to other persons of their functions in relation to the new procedures.
- (4) Regulations may make different provisions for different cases.

Part XI

General Requirements Applicable to Licensees

Division 1 - General

Books and
Records –
General
Standards

150. (1) Every licensee shall make and keep such books, records and documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.
- (2) The records required to be maintained under this section shall at all reasonable times be open to inspection by the Commission or by an auditor appointed by the Commission.
- (3) A licensee shall file with or deliver to the Commission any prescribed document or report.
- (4) A licensee 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.
- (5) A licensee to whom the financial resources requirements made under section 151 apply shall keep its records in sufficient detail to establish readily whether or not the financial resources requirements are being complied with.
- (6) The books and records required to be kept in accordance with the Act [and regulations] shall be kept in English—
- (a) in [Member State]; or
 - (b) where the licensee is domiciled in a jurisdiction outside of [Member State], such books and records may be kept in a designated CARICOM or foreign jurisdiction, subject to the approval of the Commission and on such terms and conditions as the Commission may require; and

(c) for a period of six years.

Financial
resources
requirements

151. A licensee is required to maintain at all times adequate financial resources to –
- (a) meet its business commitments;
 - (b) withstand the risks to which its business is subject; and
 - (c) meet the prescribed requirements.

Failure to
comply with
financial
resources
requirements

152. (1) If a licensee becomes unable to comply with the financial resources requirements made under section 151 that are applicable to it, the licensee shall immediately notify the Commission of such inability.
- (2) Where the Commission becomes aware of an inability by a licensee to comply with financial resources requirements the Commission may, whether or not notice has been given under subsection (1) –
- (a) suspend the license; or
 - (b) permit the licensee to carry on business on the conditions, if any, the Commission imposes.
- (3) The duties of a licensee under subsection (1) shall arise as soon as it becomes aware, or should, with the exercise of reasonable diligence, have become aware, of its inability to comply with the financial resources requirements and in relation to paragraph (a) of subsection (1), must be exercised within twenty-four hours after such awareness.
- (4) A licensee that is a company is deemed to be aware of an inability to comply with the financial resources requirements if a director or officer of it is so aware or would, with the exercise of reasonable diligence, have been aware of the inability.
- (5) A licensee who contravenes subsection (1) commits an offence.

Register of
licensees

153. (1) The Commission shall maintain a register of persons holding licenses granted under the Act in the form it considers most appropriate.
- (2) For each licensee, the register shall record –
- (a) the name and address of the licensee;
 - (b) the date on which the license was granted;
 - (c) the type of business permitted by the licence;
 - (d) any conditions attached to the licence;
 - (e) the name and address of every approved representative, principal and compliance officer;
 - (f) the name and address of every manager and officer;
 - (g) the location of the premises at which the books, records and documents of the licensed business are kept;
 - (h) the location of every office of the licensee in [Member State] and elsewhere;
 - (i) in the case of a company licensee, the name of the principal, the name of each director and of the secretary of the company, and the names and respective shareholdings of each shareholder;

-
- (j) any disciplinary action against the licensee;
 - (k) any order of suspension or revocation; and
 - (l) such other particulars as the Commission considers necessary in the interest of the investing or general public.
- (3) For each licensed principal, representative or compliance officer, the register shall record –
- (a) his name;
 - (b) the date on which the license was granted;
 - (c) the name and address of the market intermediary to whom he is accredited;
 - (d) any order of revocation or suspension; and
 - (e) such other particulars as the Commission considers desirable in the interest of the investing or general public.
- (4) The register shall, during usual office hours, be open to inspection by members of the public.
- Notification of change in particulars 154. (1) A licensee, including a principal, representative or compliance officer, shall as soon as is practicable and in any event within seven days give notice in writing to the Commission where –
- (a) the licensee ceases to carry on the business to which its license relates;
 - (b) a representative or principal cease to be employed by the licensee to whom that individual is accredited;
 - (c) any proposed alteration to or the occurrence of an event which it knows affects or may affect any matter particulars of which are required by section 153 to be entered in the register of licensees;
 - (d) such other matters as may be prescribed.
- (2) The Commission shall be notified of any change in control of a licensee that is a company.
- (3) The Commission shall be notified as soon as reasonably practicable of any changes in the constitution of the company.
- (4) A licensee who fails to comply with this section commits an offence.
- Reporting to the commission 155. Within the prescribed periods, a licensee shall deliver to the Commission –
- (a) the annual financial statements in respect of the year along with the report of the auditor;
 - (b) a copy of the report of the auditor on results of the procedures performed by the auditor as required by subsection 160(1)(b);
 - (c) interim financial statements and other information as the Commission may specify; and
 - (d) all reports or other information as the Commission may specify.
- Insurance requirement 156. Every licensee, other than a person required to be licensed under section 86, section 89 and section 93, shall, to the satisfaction of the Commission effect policies of insurance on terms as

may be ordered by the Commission for the purpose of indemnifying such licensee against any liability that may be incurred as a result of any act or omission of the licensee or any of its directors, officers or employees.

- | | | |
|--|------|--|
| Contingency fund and settlement assurance fund | 157. | <ul style="list-style-type: none"> (1) A securities exchange shall establish and maintain a contingency fund in the prescribed manner. (2) A clearing agency shall establish and maintain a settlement assurance fund, in the prescribed manner, to address the failure by any of its participants to deliver securities or monies required by the rules of governance of the clearing agency. |
|--|------|--|

Division 2 - Auditors

- | | | |
|--|------|---|
| Auditor to be appointed | 158. | <ul style="list-style-type: none"> (1) Within one month after becoming licensed under this Act a licensee shall appoint an auditor who is acceptable to the Commission. (2) A person shall not be qualified for appointment as an auditor under subsection (1) unless he is an accountant and is a current member in good standing with [local accounting body or such equivalent body] and is independent of the licensee to be audited. |
| Notification of appointment or change of auditor | 159. | <ul style="list-style-type: none"> (1) A licensee shall notify the Commission any change in the licensee's auditors within five business days of the change and shall indicate the reason for the change. (2) Where an auditor resigns or is removed by a licensee, a notice to that effect sent to the Commission under subsection (1) shall contain either - <ul style="list-style-type: none"> (a) a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission; or (b) a statement signed by the auditor of such circumstances as are mentioned in (a). (3) For the purposes of this section, a failure to appoint an auditor at the end of his term of office shall be deemed to be removal of that auditor. |
| Reports of auditor | 160. | <ul style="list-style-type: none"> (1) The auditor shall— <ul style="list-style-type: none"> (a) make an examination of the annual financial statements and other regulatory filings of the licensee in accordance with IFRS and shall prepare a report on the audit in accordance with IFRS; (b) issue a report annually on whether or not the business of the licensee has been conducted in accordance with the provisions of this Act and prescribed requirements; (c) submit to the Commission such other financial statements or reports as may be required by the Commission. (2) Where in the course of an audit an auditor forms the view that a matter that could give rise to a qualification in the audit report on the financial statements or that a material deficiency, weakness or non-compliance should be reported to the Commission, the auditor shall notify the Commission immediately and a copy of the notice must be delivered promptly to the licensee. (3) Where the report of the auditor is qualified in any respect, discloses that there are any material weaknesses or deficiencies in or non-compliance with any prescribed |

requirements, the Commission may take any action that is deemed necessary, until the matters giving rise to the qualified audit report are resolved or the matters giving rise to the weaknesses or deficiencies in or non-compliance are rectified.

- (4) Where in the course of an audit an auditor has reason to believe that a crime involving fraud, theft or any other offence involving dishonesty or money laundering or the financing of terrorism has been, is being or is likely to be committed, the auditor shall without delay report the matter to the Commission and the Commission shall take any action that is deemed necessary.

Additional powers of Commission in respect of auditors

161. (1) The Commission may require the auditor of a licensee 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 licensee;
 - (c) carry out any other examination or establish any procedure in any particular case;
 - (d) provide 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.
- (2) The person licensed 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 (1).

Power of Commission to appoint auditor

162. (1) Where the Commission is satisfied that a report has not been filed pursuant to section 160(2) and 160(4) it may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.
- (2) The licensee shall remunerate the auditor in respect of the discharge of such duties as the Commission may impose under subsection (1).

Part XII

Distributions and Prospectuses⁸

Application 163. This Part shall not apply to securities that are issued by a collective investment scheme.

Interpretation 164. (1) In this Part –

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

"foreign prospectus" means a prospectus or other offering document to be used in connection with a distribution of securities that has become final for the purposes of a distribution in the

⁸ The Jamaica Companies' Act also contains provisions that deal with the distribution of securities and the regulation for prospectuses, shareholder voting rights and proxies.

recognised foreign jurisdiction, not including a CARICOM Member State, and includes any supplement or amendment to the document;

“preliminary prospectus” includes a term sheet drawn up as prescribed, to conduct the activities permitted by section 167 in relation to debt securities.

- (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.

Prospectus required	165.	<p>(1) A person shall not 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.</p> <p>(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.</p>
Receipt for preliminary prospectus	166.	The Commission shall issue a receipt for a preliminary prospectus within the prescribed time upon the filing of the preliminary prospectus.
Selling activities before issue of receipt for prospectus	167.	<p>(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 170 are met, it is permissible to –</p> <ul style="list-style-type: none"> (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. <p>(2) No binding agreement to purchase the securities may be entered into until the Commission issues the receipt for the prospectus.</p>
Defective preliminary prospectus	168.	If it appears to the Commission that a preliminary prospectus does not substantially comply with the prescribed requirements, the Commission may, without giving notice, order that the activities permitted by section 167 shall cease until a revised preliminary prospectus satisfactory to the Commission is filed and forwarded to each recipient of the defective preliminary prospectus.
Delivery of prospectus	169.	An issuer, selling security holder or broker-dealer who solicits a sale of securities or receives an expression of interest, order or subscription from a person for a security offered in a distribution during the period before the issue of a receipt for the prospectus, shall send to such person the preliminary prospectus or amended preliminary prospectus, as the case may be, and in accordance with the prescribed requirements.
Amendments	170.	If, after a receipt is obtained for a preliminary prospectus and before the receipt for the prospectus is obtained or during the distribution period, there is a change in material

information the issuer shall file with the Commission an amended preliminary prospectus or amended prospectus containing the particulars of the change in material information in accordance with the prescribed requirements.

- | | | |
|---|------|--|
| Certificates | 171. | A prospectus or amended prospectus filed with the Commission shall contain certificates in the prescribed form signed by the prescribed persons. |
| Expert's consent | 172. | The Commission shall not issue a receipt for a prospectus that includes an expert's report unless the prescribed requirements have been met regarding the expert's consent. |
| Issue of receipt | 173. | <p>(1) Subject to subsection (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.</p> <p>(2) The Commission shall refuse to issue a receipt for a prospectus in prescribed circumstances.</p> <p>(3) The Commission shall not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.</p> <p>(4) The Commission may, in connection with the issuance of a receipt for a prospectus, impose any condition which in the opinion of the Commission is necessary for the protection of investors.</p> <p>(5) The Commission may make rules for the issue of a receipt for a CARICOM prospectus for which a receipt has already been issued by the competent authority in a CARICOM Member State.</p> |
| Special provisions for CARICOM issuers | 174. | <p>(1) An issuer that is a CARICOM issuer may satisfy the requirements of sections 165, 169, 170, 171 and 172 by –</p> <p style="margin-left: 40px;">(a) filing with the Commission the prescribed documents; and</p> <p style="margin-left: 40px;">(b) delivering to each purchaser in [Member State] –</p> <p style="margin-left: 80px;">(i) the approved CARICOM prospectus; and</p> <p style="margin-left: 80px;">(ii) any other prescribed document.</p> <p>(2) Where a CARICOM issuer files with the Commission the documents required under subsection (1) the Commission shall issue a receipt for such CARICOM prospectus unless the Commission determines it is not in the public interest to do so.</p> |
| Special provisions for approved foreign issuers | 175. | <p>(1) An issuer that is an approved foreign issuer may satisfy the requirements of sections 165, 169, 170, 171 and 172 by –</p> <p style="margin-left: 40px;">(a) filing with the Commission the prescribed documents; and</p> <p style="margin-left: 40px;">(b) delivering to each purchaser in [Member State] –</p> <p style="margin-left: 80px;">(i) the foreign prospectus; and</p> <p style="margin-left: 80px;">(ii) any other prescribed document.</p> <p>(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.</p> |

-
- | | | |
|--|------|--|
| Advertising | 176. | The information contained in an advertisement shall not be inaccurate, or misleading and shall be consistent with the information contained in the prospectus and published in accordance with the regulations. |
| Resale of securities acquired under an exemption | 177. | The regulations may provide that the first trade in a security previously distributed under an exemption from the prospectus requirement is deemed to be a distribution unless it is carried out in accordance with the regulations. |
| Lapse date | 178. | <p>(1) Subject to subsection (2), in this section "lapse date" means for a distribution to which section 165, 173, or 174 applies, the date that is 12 months after the date the Commission issued the receipt for the prospectus, including a prospectus issued by a CARICOM Member State or foreign prospectus.</p> <p>(2) The Commission may order that the period specified in subsection (1) shall be reduced to not less than six months.</p> <p>(3) No distribution of a security to which section 165, 173, or 174 applies shall continue after the lapse date unless a new prospectus including a prospectus issued by a CARICOM Member State or foreign prospectus that complies with this Part is filed and the Commission issues a receipt for the document.</p> |
| Post distribution statement | 179. | <p>(1) A person who distributes a security –</p> <p style="padding-left: 40px;">(a) under a prospectus which has been filed with the Commission and receipt obtained therefor under this Act; or</p> <p style="padding-left: 40px;">(b) pursuant to an exemption from the requirement to file a prospectus with the Commission and obtain a receipt therefor,</p> <p style="padding-left: 40px;">shall within ten days of the completion of the distribution file a distribution statement in respect of the securities distributed with the Commission in the prescribed form.</p> <p>(2) Where the period of distribution of securities exceeds ten days in length, an issuer shall comply with subsection (1) within ten days of the first distribution of securities thereunder notwithstanding that such distribution may not be complete, and thereafter shall file a distribution statement with the Commission in respect of the remaining securities distributed within ten days of the completion of the distribution.</p> |
| Offence | 180. | <p>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 [\$00,000] for every day, or part thereof, from the date of the first solicitation in connection with the distribution until a receipt has been issued for a prospectus by the Commission and shall be further liable –</p> <p style="padding-left: 40px;">(a) on summary conviction to a fine of [\$00,000] or to imprisonment for six months, or to both;</p> <p style="padding-left: 40px;">(b) on conviction on information to a fine of [\$00,000] or to imprisonment for one year, or to both.</p> |

Part XIII**Continuing Obligations of Reporting issuers**

- | | | |
|---------------------------------------|------|---|
| General standards of disclosure | 181. | <p>(1) Information disclosed to the public by a reporting issuer must –</p> <ul style="list-style-type: none">(a) include all material information;(b) not contain a misrepresentation; and(c) present a balanced view of the issuer's activities. <p>(2) The Commission may prescribe the method to be used by the reporting issuer to disclose information to the public.</p> <p>(3) An issuer shall immediately notify the Commission if it no longer satisfies the requirements to be a reporting issuer, and the Commission shall make an order stating that the issuer is no longer a reporting issuer.</p> |
| Fair treatment of security holders | 182. | <p>A reporting issuer must treat its security holders in a fair and equitable manner.</p> |
| Duties of directors and officers | 183. | <p>Every director and officer of a reporting issuer, in exercising their powers and discharging their duties, shall –</p> <ul style="list-style-type: none">(a) act honestly and in good faith with a view to the best interests of the issuer; and(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. |
| Timely disclosure of material changes | 184. | <p>(1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall—</p> <ul style="list-style-type: none">(a) within three days of the occurrence of the material change, file with the Commission the required report disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer;(b) forthwith, and in any event within seven days of the occurrence of the material change, publish a notice in such form as the Commission may require in two daily newspapers of general circulation in [Member State] or as otherwise determined by the Commission and such notice shall be authorised by a senior officer and shall disclose the nature and substance of the material change; and(c) within seven days of the occurrence of the material change file a copy of the notice published in paragraph (b) with the Commission. <p>(2) Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that—</p> <ul style="list-style-type: none">(a) the disclosure required by subsection (1)(b) would be unduly detrimental to its interests; or(b) the disclosure required by subsection (1)(b) would be unwarranted, and the reporting issuer shall forthwith comply with subsection (1)(a) and notify the |

Commission in writing of the material change and of the reasons why it is of the opinion that there should not be a notice as contemplated in subsection (1)(b).

- (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 reporting issuer, it may, after giving the reporting issuer an opportunity to be heard—
 - (a) require disclosure to the public of the material change in accordance with subsection (1); or
 - (b) permit non-disclosure of the material change by the reporting issuer until such time as the Commission may determine.

Auditors and audits	185.	Every reporting issuer shall appoint an approved auditor who shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements of the reporting issuer and shall provide the Commission with the prescribed reports on the financial affairs of the issuer.
Financial statements – annual audited	186.	<ol style="list-style-type: none"> (1) Every reporting issuer shall, within 90 days after the end of its financial year or such other prescribed period, file with the Commission annual financial statements prepared in accordance with generally accepted accounting principles. (2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer. (3) Where the report of the auditor required by subsection (2) is qualified in any respect, the Commission may take any action that is deemed necessary, until the matters giving rise to the qualified audit report are resolved. (4) Where in the course of performing the duties required by subsection (2) the auditor comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements is present, the auditor shall provide notice to the Commission immediately in the prescribed form and a copy of the notice must be delivered promptly to the reporting issuer.
Financial statements – interim statements	187.	Every reporting issuer shall file with the Commission interim financial statements prepared in accordance with generally accepted auditing standards, within thirty days or such other prescribed period after the end of the financial period to which it relates.
Annual reports and other information	188.	<p>Every reporting issuer shall, within the prescribed period, file with the Commission –</p> <ol style="list-style-type: none"> (a) a copy of its annual report containing such information as the Commission may specify; and (b) all reports or other information and documents as the Commission may specify.
Delivery of continuous disclosure documents to security holders	189.	<ol style="list-style-type: none"> (1) As soon as practicable after filing with the Commission, a reporting issuer shall send to each security holder, at the address provided to the reporting issuer as the preferred delivery address of the security holder or at the last address of the security holder shown on the securities register of the reporting issuer and at no cost to the security holder, the – <ol style="list-style-type: none"> (a) annual financial statements and the report of the auditor;

- (b) interim financial statements;
 - (c) annual report; and
 - (d) any other prescribed report or document.
- (2) The obligation to send documents to security holders under subsection (1) does not apply –
- (a) to documents published as prescribed; or
 - (b) if a security holder has informed the issuer that the security holder does not wish to receive the documents.

Proxies and
Proxy
Solicitation⁹

190. (1) In this section "solicit" and "solicitation" includes –
- (a) a request for a proxy, whether or not accompanied by or included in a form of proxy;
 - (b) a request to execute or not to execute a form of proxy or to revoke a proxy;
 - (c) the sending of a form of proxy or other communications to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
 - (d) the sending of a form of proxy to a security holder under subsection (2);
- but does not include –
- (i) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a security holder;
 - (ii) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
 - (iii) the sending by a licensee of documents to a beneficial owner;
 - (iv) the solicitation by a person in respect of securities of which the person is the beneficial owner; or
 - (v) other prescribed activities.
- (2) A reporting 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 –

⁹ In some jurisdictions, the Companies Act also treats with proxies and proxy solicitation (e.g Jamaica).

-
- (a) require a reporting issuer to file with the Commission draft copies of any documents that the issuer intends to send to security holders under this section prior to any sending, within such time limit as may be prescribed; and
- (b) may review any proxy materials or any other communications to security holders and require modifications to the documents or delay any mailing or security holder meeting as a result of its review.
- Exemptions for CARICOM issuers¹⁰
191. A reporting issuer that is an approved CARICOM issuer is exempt from the requirements of this Part, other than section 290, provided that it –
- (a) complies in all respects with the disclosure requirements of its home Member State regarding –
- (i) the disclosure of material changes 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 regulatory authority in the home Member State in respect of the items described in paragraph (a); and
- (c) sends to each security holder resident in [Member State], at the latest address shown on the securities register of the reporting issuer and at no cost to the security holder, the documents that such security holder would be entitled to receive under securities laws of the home Member State if such security holder were resident in that home Member State.
- Exemptions for certain foreign issuers
192. A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 290, provided that it –
- (a) complies in all respects with the foreign disclosure requirements of its recognized foreign jurisdiction regarding –
- (i) the disclosure of material changes 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 recognized foreign jurisdiction in respect of the items described in paragraph (a); and
- (c) sends to each security holder resident in [Member State], at the latest address shown on the securities register of the reporting issuer and at no cost to the security holder, the documents that such security holder would be entitled to receive under securities laws of the recognized foreign jurisdiction if such security holder were resident in that foreign jurisdiction.

¹⁰ NB. The registration of mutual funds and other funds will fall under Securities Act. However, a collective investment regime is usually enacted to provide specific regulation of persons and businesses operating in this market segment.

- Offence 193. A reporting 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 commits an offence and is liable –
- (a) on summary conviction to a fine of [\$00,000] or to imprisonment for six months, or to both;
 - (b) on conviction on information to a fine of [\$00,000] or to imprisonment for one year, or to both.

Part XIV

Governance of Reporting Issuers

- Governance of reporting issuers 194. For the purposes of this Act, a reporting issuer shall comply with all prescribed requirements regarding the governance of reporting 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 directors;
 - (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 committee 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 reporting issuer, including the minimum requirements for such a code; and
 - (d) procedures to regulate conflicts of interest between the interests of the reporting issuer and those of a director or officer of the reporting issuer.

Part XV

Listing and Trading of CARICOM and Foreign Securities and Licensing and Exchange

Membership of CARICOM and Foreign Broker-Dealers

- Application 195. In this Part “foreign” does not include Member States of CARICOM.
- Application of other Parts 196. Except as expressly exempted or modified by the provisions of this Part, the provisions of all other Parts of this Act shall apply *mutatis mutandis* to the listing and trading of foreign securities.

Division 1

- Listing and trading CARICOM and foreign securities 197. The securities of a CARICOM or foreign company, or a CARICOM or foreign government may be listed and traded on a securities exchange licensed under this Act as provided in this Part.

-
- Simplified listing and membership procedures for CARICOM securities and broker-dealers¹¹
198. (1) A licensed securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified listing procedures for CARICOM securities that are already listed on a CARICOM securities exchange if the licensed securities exchange determines that CARICOM securities exchange has suitable listing, compliance and regulatory standards and practices and the Commission accepts that determination.
- (2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for CARICOM broker-dealers that are already subject to regulation in a CARICOM Member State.
- Integration of CARICOM capital markets
199. The Commission may make rules governing –
- (a) listing and trading of securities;
 - (b) licensing and or registration of market intermediaries;
 - (c) membership and participation in marketplaces;
 - (d) mutual recognition protocols; and
 - (e) such other related matters;
- to facilitate the integration of capital markets within CARICOM.

Division 2

- Approval of the Commission required
200. (1) A licensed securities exchange may list or trade foreign securities with the approval of the Commission in particular cases or classes of cases.
- (2) The Commission may license or register a foreign company as a broker-dealer, or investment adviser [in particular cases or classes of cases] [or any other approved class of business].
- (3) A foreign broker-dealer regulated by a foreign regulatory authority seeking to trade securities on a licensed securities exchange may be granted an exemption from the requirement to be licensed under Part VI, provided that it –
- (a) restricts its activities in [Member State] to trading securities on its own account, or on behalf of foreign persons, on the licensed securities exchange;
 - (b) meets the securities exchange’s requirements for membership as set out in its rules; and
 - (c) meets the requirements prescribed by the Commission to be registered.
- (4) The Commission may grant an exemption from the one or more of the requirements of Parts VI of the Act to a foreign broker-dealer who registers with the Commission pursuant to subsection (3).
- (5) A foreign broker-dealer regulated by a foreign regulatory authority wishing to carry on business in [Member State] or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer beyond those activities listed in subsection (3), must be licensed by the Commission under Part VI.
- (6) A foreign broker-dealer dealing in securities in [Member State] under subsection (5) shall have an agent resident in [Member State].

¹¹ Relevant for mutual recognition.

-
- (7) A foreign investment adviser regulated by a foreign regulatory authority must be licensed by the Commission as an investment adviser under Part VI if the adviser conducts business or holds itself out as conducting business in a Member State.
- (8) A principal of a foreign broker dealer regulated by a foreign regulatory authority must be licensed by the Commission as a principal under Part VI, if he conducts business or holds himself out as conducting business in a Member State.
- (9) A representative of a foreign broker dealer regulated by a foreign regulatory authority must be licensed by the Commission as a representative under Part VI if he conducts business or holds himself out as conducting business in a Member State.
- Disclosure obligations of foreign listed companies 201. The initial and continuing disclosure obligations of foreign securities listed and traded on a licensed securities exchange shall be in accordance with this Act and as prescribed.
- Disclosure of shareholdings of directors and significant security holders 202. Part XVII shall apply to foreign securities listed or traded on a licensed securities exchange unless the Commission determines that the regulatory measures in the jurisdiction of incorporation of the foreign issuer, its directors and shareholders are adequate to protect the interests of the investing public.
- Application of Part IV, XVIII and XIX 203. The powers of the Commission under Parts IV, XVIII and XIX of the Act shall apply –
- (a) in the case of foreign securities listed or traded on a licensed securities exchange, to the acts of the issuer within [Member State] or to transactions effected on or information provided to, that securities exchange or the Commission; and
 - (b) in the case of a foreign broker-dealer, foreign investment adviser or the principal or representative of that person, to acts of the licensee within [Member State] or to transactions effected on, or information provided to, a licensed securities exchange.
- Transfer and ownership of foreign securities 204. Notwithstanding any other provision of any law to the contrary –
- (a) the exclusive method of transferring the ownership of foreign securities listed and traded on a licensed securities exchange shall be a transfer made in accordance with the rules and procedure of a clearing agency licensed by the Commission; and
 - (b) the exclusive method of determining the ownership of foreign securities listed and traded on a licensed securities exchange shall be records of a securities registry licensed by the Commission.
- Custodian and securities registries for foreign securities 205. (1) Foreign securities listed and traded on a licensed securities exchange may be held by a foreign custodian pursuant to a written contract between the foreign custodian and a custodian licensed under Part V.
- (2) Foreign securities listed and traded on a licensed securities exchange may be registered with a foreign securities registry pursuant to a written contract between the foreign registry and a securities registry licensed under Part V.
- (3) A licensed securities exchange may, by rules, determine the form and content of the contracts referred to in subsections (1) and (2).

- Simplified listing and membership procedures in certain cases
206. (1) A licensed securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified listing procedures for foreign securities that are already listed on a foreign securities exchange if the licensed securities exchange determines that foreign securities exchange has suitable listing, compliance and regulatory standards and practices and the Commission accepts that determination.
- (2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for foreign broker-dealers that are already subject to regulation in a suitable jurisdiction if that jurisdiction is recognized for the purposes of this Part by the Commission as having suitable standards, compliance practices and regulatory supervision of its broker-dealers.

Part XVI

Market Misconduct

- Definitions
207. In this Part –
- "dishonest" means –
- (a) dishonest according to the standards of ordinary people; and
 - (b) known by the person to be dishonest according to the standards of ordinary people.
- Market manipulation
208. A person must not take part in, or carry out whether directly or indirectly in a transaction or series of transactions that has or is likely to have the effect of –
- (a) creating an artificial price for trading in securities on a licensed marketplace; or
 - (b) maintaining a price for trading in securities on a licensed marketplace at a level that is artificial, whether or not it was previously artificial.
- False trading and market rigging—creating a false or misleading appearance of active trading etc.
209. (1) A person must not do, or omit to do, an act if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance –
- (a) of active trading in securities on a licensed marketplace; or
 - (b) with respect to the market for, or the price for trading in, securities on a licensed marketplace.
- (2) For the purposes of subsection (1), a person is taken to have created a false or misleading appearance of active trading in particular securities on a licensed marketplace if the person –
- (a) enters into, or carries out, either directly or indirectly, any transaction of purchase or sale of any of those securities that does not involve any change in the beneficial ownership of the products;
 - (b) makes an offer to sell any of those securities at a specified price and has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to purchase the same number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to sell; or
 - (c) makes an offer to purchase any of those securities at a specified price and has made or proposes to make, or knows that another person acting jointly or in concert with

him has made or proposes to make, an offer to sell the same number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to purchase.

- (3) The circumstances in which a person creates a false or misleading appearance of active trading in particular securities on a licensed 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 does not involve a change in the beneficial ownership if –
 - (a) a person who had an interest in the securities before the purchase or sale; or
 - (b) another person acting jointly or in concert with such person;

has an interest in the securities after the purchase or sale.
- (5) The reference in paragraph (2)(a) to a transaction of purchase or sale of securities includes –
 - (a) a reference to the making of an offer to purchase or sell securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to buy or sell securities.

- | | | |
|--|------|--|
| False trading and market rigging—artificially maintaining etc. trading price | 210. | <ol style="list-style-type: none"> (1) A person must not enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in – <ol style="list-style-type: none"> (a) the price for trading in securities on a licensed marketplace being maintained, inflated or depressed; or (b) fluctuations in the price for trading in securities on a licensed marketplace. (2) In determining whether a transaction is fictitious or artificial for the purposes of subsection (1), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive. |
| Misleading or deceptive conduct | 211. | <ol style="list-style-type: none"> (1) A person must not engage in conduct, in or from [Member State] in relation to securities business or a security that is misleading or deceptive or is likely to mislead or deceive. (2) The reference in subsection (1) to engaging in conduct in relation to a security includes any of – <ol style="list-style-type: none"> (a) trading in a security; (b) issuing a security; (c) publishing a notice in relation to a security; (d) making, or making an evaluation of, an offer under a take-over bid or a recommendation relating to such an offer; or (e) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of paragraphs (b) to (d). |
| Misleading the Commission | 212. | <p>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 is</p> <p>–</p> |

-
- (a) false;
- (b) misleading in a material particular; or
- (c) fails to state a fact that is required to be stated or that is necessary to make the statement not misleading.
- Dissemination of information about illegal transactions 213. A person must not circulate or disseminate, or be involved in the circulation or dissemination of, any statement or information to the effect that the price for trading in securities on a licensed marketplace will, or is likely to, rise or fall, or be maintained, because of a transaction, or other act or thing done, in relation to those securities, if –
- (a) the transaction, or thing done, constitutes or would constitute a contravention of section 208, 209, 200 or 201; 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 authorizing the circulation or dissemination of, the statement or information.
- Dissemination of information containing a misrepresentation 214. A person shall not disclose, circulate or disseminate or authorize the disclosure, circulation or dissemination of information to induce another person to buy, sell or otherwise trade in securities, whether or not such purchase, sale or trade is with such person, where the information contains a misrepresentation, and the person does not care whether the statement or information contains a misrepresentation, or the person knows or ought reasonably to have known, that the statement or information contains a misrepresentation.
- Dishonest conduct 215. A person must not, in the course of carrying on a securities business in or from [Member State], engage in dishonest conduct in relation to securities business or a security.
- Prohibited representations 216. (1) Except as prescribed, a person, for the purpose of inducing another person to trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall not make any representation, written or oral, that any person –
- (a) will resell or repurchase such security; or
- (b) will refund all or any of the purchase price of such security.
- (2) A person, for the purpose of inducing another person to trade in a security, shall not make any representation, written or oral, relating to the future value or price of such security.
- (3) Except as prescribed, a person, for the purpose of inducing another person to trade in a security, shall not make any representation, written or oral, that such security will be listed on any securities exchange.
- Prohibition on purchasing or selling of securities by certain persons 217. (1) In this section –
- "person in a special relationship" means, in relation to a reporting issuer, –
- (a) an insider, officer, employee, affiliate or associate of the reporting 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 reporting issuer;
 - (d) a person that is proposing to –
 - (i) become a party to a reorganization or business combination with the reporting issuer; or
 - (ii) acquire a substantial portion of the property of the reporting issuer;
 - (e) a person engaging in or proposing to engage in any business or professional activity with or on behalf of the reporting 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 material non-public 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 material non-public information from another person –
 - (i) who, at the time, was a person in a special relationship under this definition, including this paragraph; and
 - (ii) whom the person knew or reasonably should have known was a person in a special relationship;
- (2) A person that –
- (a) is in a special relationship with the reporting issuer; and
 - (b) has knowledge or possession of material non-public information about the reporting issuer;
- must not –
- (a) trade any security of the reporting issuer; or
 - (b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the reporting issuer, until such information has been published.
- (3) A reporting issuer, or a person in a special relationship with a reporting issuer, must not inform another person of material non-public information about the reporting issuer unless it is necessary in the course of the reporting issuer's or the person's business.
- (4) A reporting issuer, or a person in a special relationship with a reporting issuer, who has knowledge or possession of material non-public information about the reporting issuer, must not recommend or encourage another person to –
- (a) trade a security of the reporting issuer; or
 - (b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the reporting issuer, until such information has been published.

Front running 218. (1) In this section, "material order information" means information that –

- (a) relates to –
 - (i) the intention of a person responsible for making decisions about an investment portfolio to trade a security on behalf of the investment portfolio;
 - (ii) the intention of a broker-dealer trading on behalf of an investment portfolio to trade a security on behalf of the investment portfolio; or
 - (iii) an unexecuted order, or the intention of any person to place an order, to trade a security; and
 - (b) if disclosed, would reasonably be expected to affect the market price of the security.
- (2) If a person knows of material order information, the person must not –
- (a) trade a security that is the subject of the information;
 - (b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a);
 - (c) inform another person of the material order information, unless it is necessary in the course of the person's business; or
 - (d) recommend or encourage another person to –
 - (i) trade the security referred to in paragraph (a); or
 - (ii) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a).

Defences -
belief that
other party
knows
information

219. (1) A person does not contravene subsection 217(2), 218(2)(a) or 218(2)(b) if, at the time the person trades the security, the person reasonably believes that the purchaser or seller of the security knows the material non-public information or material order information.
- (2) A person does not contravene subsection 217(3), 217(4), 218(2)(c) or 218(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 material non-public information or material order information; or
 - (b) recommends or encourages the other person to trade the security.

Defences -
automatic or
predetermined
trade

220. A person does not contravene subsection 217(2), 218(2)(a) or 218(2)(b) if the person –
- (a) trades the security under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining the material non-public information or material order information; or
 - (b) trades the security as a result of a written legal obligation –
 - (i) imposed on the person; or
 - (ii) that the person entered into before obtaining the material non-public information or material order information.

-
- Defences – trading as agent
221. A person does not contravene subsection 217(2), 218(2)(a) or 218(2)(b) if the person trades –
- (a) as agent under the specific unsolicited instructions of the principal;
 - (b) as agent under specific instructions that the agent solicited from the principal before obtaining the material non-public 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.
- Defences - trade or recommendation by individual with no inside or material order information
222. A person does not contravene subsection 217(2), 217(4), 218(2)(a), 218(2)(b) or 218(2)(d) if –
- (a) the person is not an individual; and
 - (b) the individual making the trade or recommendation on behalf of the person does not have material non-public information or material order information, and is not acting on the advice or recommendation of an individual who does have that information.
- Exemptions and modifications
223. (1) The Commission may prescribe that –
- (a) a person or class of persons is exempt from all or specified provisions of this Part; or
 - (b) a security or a class of securities are exempt from all or specified provisions of this Part; or
 - (c) this Part applies as if specified provisions were omitted, modified or varied as prescribed.
- (2) For the purpose of this section, the provisions of this Part include the definitions in the Act or regulations as they apply to references in this Part.
- Offence
224. (1) Any person who contravenes a provision under this Part, other than under section 217, commits an offence and shall be liable –
- (a) on summary conviction to a fine of [\$00,000], or to imprisonment for one year, or to both;
 - (b) on conviction upon information to a fine of [\$00,000], 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 217, shall return any gains made or loss avoided from contravention of the sections, and if the court so directs, pay a penalty not to exceed twice the amount of such gains or loss avoided.
- (3) Any person who contravenes section 217 commits an offence and shall be liable on conviction on information to a fine of [\$00,000], or to imprisonment for two years, or to both, and if the court so directs, pay a penalty not to exceed twice the amount of the unlawful gains made or losses avoided by the person.

Part XVII**Reporting by Security Holders of Reporting Issuers**

- Application 225. The provisions of this Part shall apply *mutatis mutandis* to partnerships, limited partnerships, trusts, joint ventures, syndicates, and other reporting issuers, as the case may be.
- Initial insider report 226. (1) An insider of a reporting issuer who –
- (a) owns or controls a security of the reporting issuer; or
 - (b) owns or controls, or has entered into a transaction involving, a security the value of which is derived from or varies materially with the value or market price of a security of the reporting issuer,
- must, within the prescribed time, file a report with the Commission in the prescribed form disclosing the insider's direct or indirect beneficial ownership or control of securities of the reporting issuer.
- (2) If an insider of a reporting issuer filed or was required to file a report under subsection (1) and –
- (a) there is a change in the insider's beneficial ownership or control of a security of the reporting issuer, or of a security the value of which is derived from, or varies materially with, the value or market price of a security of the reporting issuer;
 - (b) the insider enters into a transaction involving a security of the reporting issuer or a security the value of which is derived from, or varies materially with, the value or market price of a security of the reporting issuer; or
 - (c) there is a change in a transaction referred to in paragraph (b) or subsection (1)(b), or a change in the security involved in the transaction;
- (3) the insider must, within the prescribed time, file a report with the Commission in the prescribed form disclosing the change or transaction.
- (4) For the purposes of this section, a person who owns or controls a security includes the beneficial owner of the securities.
- Notice to reporting issuer 227. Any person who files a report with the Commission under this section must immediately send a copy of that report to the reporting issuer.
- Deemed beneficial ownership 228. For the purposes of this section, an insider shall be deemed to beneficially own securities that are beneficially owned by an affiliate or associate of that insider.
- Disclosure of beneficial 229. (1) A reporting issuer may require any person that is a holder of its securities –
- (a) to indicate in writing the capacity in which the person holds the securities of the reporting issuer; and
 - (b) if the person holds the securities otherwise than as beneficial owner, to indicate so far as it lies within the person's knowledge, any other person who has an interest in

interest in share capital ¹²		<p>them (either by name and address or by other particulars sufficient to enable that other person to be identified) and the nature of that other person's interest.</p> <p>(2) Where a reporting issuer is informed, in response to a notice given under this section, that any other person has an interest in the securities of the reporting issuer, the reporting issuer may require that other person –</p> <p style="padding-left: 20px;">(a) to indicate the capacity in which that person holds that interest; and</p> <p style="padding-left: 20px;">(b) if that person holds it otherwise than as beneficial owner, to indicate so far as it lies within the person's knowledge, the person who has an interest in the issuer (either by name and address or by other particulars sufficient to enable that person to be identified) and the nature of that person's interest.</p> <p>(3) Any reporting issuer may require any holder of its securities to indicate, whether any of the voting rights carried by any securities of the reporting 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.</p> <p>(4) Where a reporting 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 reporting 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.</p> <p>(5) A reporting issuer shall keep a record of –</p> <p style="padding-left: 20px;">(a) each demand made under this section; and</p> <p style="padding-left: 20px;">(b) the information received in response to each demand.</p> <p>(6) The Commission may require that a reporting issuer deliver to the Commission a copy of the record kept by the reporting issuer under subsection (5).</p>
Notice requirements	230.	<p>(1) All notices sent by a reporting issuer under this section may require that a response be returned with 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.</p> <p>(2) All notices and responses under this section shall be in writing.</p>
Register of security holders.	231.	<p>A reporting issuer shall keep a register containing the prescribed information about its security holders.</p>

¹² FATF Recommendation 25 requires the disclosure of beneficial ownership information to the competent authority and that this information must be made available to other competent authorities. Some advanced countries have gone further and established a public registry of beneficial ownership information while others have opted to make this information available to the competent authorities. In the Caribbean, beneficial ownership must be disclosed to the Company Registrar as well as the Securities Regulator.

- Offence 232. Any person who commits a breach of any section in this Part or, in complying with any section in the 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 and shall be liable –
- (a) on summary conviction to a fine of [\$00,000] or to imprisonment for six months, or to both;
 - (b) on conviction on information to a fine of [\$00,000] or to imprisonment for one year, or to both.

Part XVIII

Enforcement

- Compliance orders 233. 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 this 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.
- Orders in the public interest 234. (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement with the person or after a hearing –
- (a) order a person to comply with –
 - (i) this Act or a Commission decision, or
 - (ii) the rules or a decision of a person licensed under Part VI;
 - (b) order a person, a class of persons or all persons to cease trading a security, a class of securities or all securities;
 - (c) order that any or all of the exemptions in this 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 market intermediary, or representative;
 - (iii) acting as an auditor of a market participant;
 - (iv) acting in a management or consultative capacity in connection with activities in the securities market; or
 - (v) promoting the trading of a security or of securities generally;
 - (e) issue a censure or reprimand;
 - (f) impose conditions or restrictions on a license, or suspend or revoke a license;
 - (g) restrict the trading or advising activities of a market intermediary or a person exempt from licensing;
 - (h) order a person to change a document;
 - (i) order a person to publish information or a document;
 - (j) order a person not to publish information or a document;

- (k) order a person that is a market participant to make changes to its practices and procedures;
 - (l) appoint a person to advise a licensee on the proper conduct of its affairs and to report to the Commission thereon;
 - (m) appoint a person to assume control of a licensee'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 market intermediary;
 - (ii) investors or creditors of a collective investment scheme; or
 - (iii) investment funds administered by a collective investment scheme administrator or creditors of a collective investment scheme administrator;
 - (o) apply to the court for an order that the person be wound up by the court;
 - (p) order that a distribution of securities cease and that any subscription funds collected be repaid to subscribers;
 - (q) order the disgorgement of profits or other unjust enrichment plus a penalty not to exceed [twice] the amount of such profits or unjust enrichment;
 - (r) order restitution; or
 - (s) impose any other sanctions or remedies as the justice of the case may require.
- (2) The Commission may make an order under subsection (1) (a) to (g) against a person, without a hearing, if the person –
- (a) has been convicted in any jurisdiction of a criminal offence arising from a transaction, business or course of conduct related to securities;
 - (b) has been found by a court to have contravened the securities laws of any jurisdiction; or
 - (c) has been found by a CARICOM or overseas regulatory authority to have contravened the securities laws of that jurisdiction.

Temporary
orders

235. (1) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, make an order under subsection (1), other than an order under subsection (1)(h), (i) or (j), that is effective for not more than 15 days.
- (2) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, extend an order made under subsection (3) until the Commission makes a final decision after –
- (a) a hearing under subsection (1) is held; or
 - (b) an opportunity to be heard under subsection (2) is provided.
- (3) If the Commission makes an order under this section, the Commission must send the order to each person named in the order.

-
- (4) If the Commission sends an order made under subsection (3) or (4), the Commission must send a notice of hearing, or a notice of opportunity to be heard, with the order.
- Appointment of person 236. (1) A person appointed under subsection 234 (1)(l) or (m) is appointed at the expense of the relevant licensee and any expenses reasonably incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the licensee.
- (2) A person appointed under subsection 234(1)(m) has all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver), to administer the affairs of the relevant licensee in best interest of the clients, investors and creditors of the licensee.
- (3) The powers referred to in subsection (2) include the power to terminate the business of the licensee if it is judged to be insolvent.
- (4) A person appointed in respect of a licensee under subsection 234 (1)(l) or (m) shall –
- (a) supply the Commission with such information in respect of the licensee, 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 licensee and where appropriate make recommendations in respect of the licensee; 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 (1)(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 licensee satisfactorily,
- the Commission may revoke the appointment and appoint some other person in the person's place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment.
- (6) On receipt of any information or report pursuant to subsection (4) in respect of a licensee, the Commission may –
- (a) require the licensee to reorganize its affairs in a manner specified by the Commission; or
 - (b) apply to the Court for an order to wind up, dissolve, liquidate or otherwise terminate (as appropriate) the licensee upon such terms and conditions as the Court thinks fit;
 - (c) take such action in respect of the appointment or continued appointment of the person appointed under subsection (1)(l) or (m) as the Commission considers appropriate.
- (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 licensee or
 - (b) take any other action set out in subsection (1) or (2).

-
- | | | |
|--------------------------|------|---|
| Application to court | 237 | Notwithstanding any other provision, if the Commission considers it in the public interest to do so, the Commission may, at any time and without a hearing, apply to the court for an order to take any action as it considers necessary. |
| Administrative penalty | 238. | <ol style="list-style-type: none">(1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement or after a hearing, order a person that has breached any provision of this Act to pay the Commission an administrative penalty of not more than [\$00,000] for each contravention.(2) Any person in breach of any provision of a securities law solely by reason of failing to file with or deliver to the Commission a document within the required time period, shall be subject to an automatic penalty of up to [\$00,000], or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document was filed. |
| Removal of benefits | 239. | If the Commission considers it in the public interest to do so, the Commission may, after a hearing, order a person to pay to the Commission any amount obtained, or payment or loss avoided, as a result of a contravention of this Act, plus a penalty not to exceed [twice] the amount obtained or payment or loss avoided. |
| Payment of costs | 240. | <ol style="list-style-type: none">(1) Subject to subsection 3, the Commission may 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 –<ol style="list-style-type: none">(a) costs incurred in respect of services provided by persons appointed or engaged under section 34 or subsection 52(2);(b) costs of matters preliminary to the hearing;(c) costs for time spent by the Commission or the staff of the Commission;(d) any fee paid to and costs of a witness; and(e) costs of legal services provided to the Commission. |
| Order to freeze property | 241. | <ol style="list-style-type: none">(1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of this Act or to assist in the administration of the securities legislation of another jurisdiction, by order for a period not to exceed five days, direct –<ol style="list-style-type: none">(a) a person having on deposit, under control or for safekeeping any funds, securities or other property of the person named in the order to hold them; or(b) a person –<ol style="list-style-type: none">(i) not to withdraw any funds, securities or other property from any person having them on deposit, under control or for safekeeping; or(ii) to hold all funds, securities or other property of a client of that person, or of others, in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under an enactment of [Member State]. |

-
- (2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the Commission order shall remain in effect until the judge determines otherwise.
- (3) Unless expressly stated, an order made under subsection (1) does not apply to funds, securities or other property at a clearing facility, or to securities in the process of transfer by a transfer agent.
- Hearings 242. (1) Unless otherwise provided for in this Act, the Commission shall, before making an order, provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any interested market participant including a –
- (a) statement of the time, place and purpose of the hearing;
 - (b) reference to the authority under which the hearing is to be held;
 - (c) concise statement of the allegations of fact and law; and
 - (d) statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.
- (2) The Commission may –
- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in the person's possession or under the person's control, whether they are located in or outside [Member State]; and
 - (b) compel a person to give evidence on oath or affirmation orally or in writing.
- (3) Notwithstanding subsection (2), persons giving evidence before the Commission shall not be compelled to incriminate themselves, and every person shall be entitled to all privileges that a witness giving evidence before a court is entitled to in respect of the evidence given by the person to the Commission.
- (4) On application by the Commission to the court, a person summoned under subsection (1) is liable to be committed for contempt, as if in breach of an order or 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.
- (5) A hearing under this section shall be open to the public unless the Commission directs otherwise.
- (6) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to the procedural rules made by the Commission under this Act, may present evidence and argument and may cross-examine witnesses at the hearing.
- (7) Counsel may advise a witness at a hearing under subsection (1).
- (8) The Commission may admit as evidence any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any

fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

- (9) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.
- (10) The Commission shall –
- (a) make a final decision in writing and state the findings of fact on which it is based and the reasons for it;
 - (b) send a copy of the final decision and reasons to each person given notice under subsection (1) and to each person who appeared at the hearing; and
 - (c) publish a copy of the final decision and reasons or a summary of the decision and reason in a periodical published by the Commission, on its website or in a daily newspaper circulating in [Member State] but the Commission may omit the name of an affected person from a decision so published.

- | | | |
|------------------------|------|--|
| Limitation periods | 243. | No proceedings against any person for a breach of any of the provisions of this Act, or for a failure to comply with any of their provisions may be commenced after the expiration of six years from the day upon which the breach or non-compliance was or ought to have been discovered. |
| Directors and officers | 244. | <p>(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 authorized, permitted or acquiesced in the offence also commits the offence and is liable to the penalty specified for it.</p> <p>(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.¹³</p> |

Part XIX

Civil Liability

- | | | |
|---|------|---|
| Interpretation | 245. | <p>In this Part –</p> <p>"prospectus" includes a CARICOM prospectus filed under section 174 or a foreign prospectus filed under section 175, together with any amendment to those documents filed under Part XII.</p> |
| Liability for misrepresentation: prospectus – damages | 246. | <p>(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 –</p> <ol style="list-style-type: none"> (a) the issuer or the control block holder on whose behalf the distribution is made; (b) a person who is the chief executive officer, chief financial officer or a director of the issuer at the time the prospectus was filed; |

¹³ Should this be a defence?

-
- (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 reporting 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 172 of the Act 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) A person, other than the issuer or the control block holder on whose behalf the distribution is made, is not liable under sub-regulation (1) who –
- (a) 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) 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) 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) A person is not liable under sub-regulation (1) –
- (a) where the misrepresentation is contained in a part of the prospectus made on the authority of an expert or based on an expert's report, if the person had reasonable grounds to believe and did believe, up to the time the prospectus was filed that –
 - (i) there was no misrepresentation;
 - (ii) the language in the prospectus fairly represented and was a correct and fair copy of, or extract from, the expert's report; and
 - (iii) the expert making the statement or preparing the report, opinion, valuation
 - (A) was competent to make it;
 - (B) had consented as required under section 172 of the Act; and
 - (C) had not withdrawn that consent; or
 - (b) where the misrepresentation is contained in what purports to be a statement made by a public official or a copy of, or extract from, a public official document, if the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document and the person had reasonable grounds for believing it to be true.
- (4) The liability of all persons referred to in sub-regulation (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 sub-regulations (4) and (5), no underwriter is liable for more than the total public offering price represented by the portion of the distribution of securities underwritten, or sold by or to, the underwriter.

- | | | |
|---|------|--|
| Action by security holders for rescission for misrepresentation in prospectus | 247. | <p>(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 has 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.</p> <p>(2) If the purchaser elects to exercise a right of action for rescission against the issuer, selling security holder or underwriter under this section, such person shall have no right of action for damages against such issuer, selling security holder or underwriter under section 246.</p> <p>(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.</p> |
| Due diligence defence | 248. | <p>A person is not liable under section 246 or section 247 for a misrepresentation in a prospectus if the person proves that the person –</p> <p>(a) made all inquiries that were reasonable in the circumstances; and</p> <p>(b) after doing so, believed on reasonable grounds that the statement was not a misrepresentation.</p> |
| General | 249. | <p>(1) The rights of action for damages or rescission conferred by sections 246 and 247 shall be in addition to and without derogation from any other right the purchaser may have at law.</p> <p>(2) In an action brought under section 246 or 247, 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.</p> <p>(3) A person shall not be liable under section 246 or 247 if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.</p> <p>(4) The amount recoverable under section 246 or 247 by a purchaser shall not exceed the aggregate price paid by that purchaser for the securities under the offering.</p> |
| Liability for misrepresentation in other offering documents | 250. | <p>(1) Subject to this section, where an offering document, other than a prospectus, contains a misrepresentation, a purchaser who purchased a security in reliance on the offering document has a right of action for damages against the issuer and the selling security holder on whose behalf the distribution is made.</p> <p>(2) For the purposes of this section, “offering document” means any document purporting to describe the business and affairs of an issuer which has been prepared for delivery to and</p> |

review by a prospective purchaser so as to assist such purchaser in making an investment decision, but does not include a prospectus or general advertisement.

- (3) In this section, a purchaser who receives an offering document whether prior to or following the purchase of a security shall be deemed to have relied on the offering document in making his investment decision.

Civil liability
for trading
contrary to
section 217

251. (1) Subject to this section, a purchaser of a security has —
- (a) a right of action for damages against the seller and such seller shall be liable for any losses or damages sustained; or
 - (b) a right of action for rescission against the seller for rescission of the transaction, where the seller has made the sale to the purchaser contrary to section 217.
- (2) Subject to this section, a seller of a security has—
- (a) a right of action for damages against the purchaser and such purchaser shall be liable for any losses or damages sustained; or
 - (b) A right of action for rescission against the purchaser for rescission of the transaction, where the purchaser has made the purchase from the seller contrary to section 215(3) A person may bring an action under subsection (1) or (2) in respect of a contravention referred to in subsection (1) or (2) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.
- (4) Every person who is a director, senior officer or employee of a reporting issuer that trades contrary to section 100 is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the contravention of section 100, unless the person proves that he reasonably believed that the material non-public information had been published.
- (5) A person shall not be liable under this section if the person bringing the action violated section 100 in respect of the trade that is the subject of the action.

Civil liability
for market
misconduct
offences

252. (1) Subject to this section—
- (a) a person who contravenes sections 208, 209, 210, 211, 212, 213, 214, 215, 216 and 218 whether or not he also incurs any other liability, shall be liable to pay compensation by way of damages to any other person for any loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention; and
 - (b) each person who sustained a loss as a result of the contravention by a person of sections 208, 209, 210, 211, 212, 213, 214, 215, 216 and 218 whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention, has a right of action under paragraph (a) against the contravening person.
- (2) A person may bring an action under subsection (1) in respect of a contravention set forth in subsection (1)(a) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

- Commission may seek leave to bring action or appear or intervene in an action
253. (1) The Commission may apply to a judge of the High Court for leave to bring an action under this Part in the name and on behalf of an issuer or a security holder and the court may grant leave on any terms that he considers proper if the judge is satisfied that –
- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;
 - (b) the issuer or security holder has failed or is unable to commence an action; and
 - (c) the Commission has given sixty days written notice to the issuer or security holder who has refused or failed to commence an action.
- (2) The Commission may apply to a judge of the High Court for leave to appear or intervene in an action under this Part and the judge may grant leave on such terms as he considers appropriate.
- (3) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a regular periodical published by it, or in two daily newspapers of general circulation in [Member State].
- Standard of reasonableness
254. 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 XX

General Provisions

- Regulations
255. The Minister may, after consultation with the Commission, make regulations on the recommendation of the Commission in respect of any of the matters set forth in Schedule 1 to this Act.
- Publication of proposed regulations
256. (1) The Commission shall publish in the *Gazette*, a daily newspaper of general circulation in [Member State], its website, or any regular periodical published by the Commission, at least thirty days before the proposed effective date thereof –
- (a) a copy of any regulation that it proposes to recommend to the Minister;
 - (b) a concise statement of the substance and purpose of the proposed regulation; and
 - (c) a reference to the authority under which the regulation is proposed.
- (2) After a proposed regulation is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed regulation.
- (3) The Commission, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed regulation.
- (4) The Commission is not required to comply with subsections (1) and (2) if –
- (a) all persons who will be subject to the regulation are named and the information required by subsection (1)(a) to (c) is sent to each of them;

- (b) the regulation 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 regulation makes no material substantive change in an existing regulation; or
 - (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.
- (5) Any person may petition the Commission to recommend the making, amendment or revocation of a regulation.

Rule-making
process

257.

- (1) The Commission shall publish, in a daily newspaper of general circulation in [Member State], in any regular periodical published by the Commission or on its website, at least sixty days before the proposed effective date thereof
- (a) a copy of any rule that it proposes to make; and
 - (b) a concise statement of the substance and purpose of the proposed rule.
- (2) After a proposed rule is published in accordance with subsection (1), the Commission shall give interested parties a reasonable opportunity to make written representations with respect to the may make rules for the issue proposed rule.
- (3) The Commission shall publish each final rule, with any amendments that the Commission deems appropriate to make as a result of the public comment process under this section, as prescribed on or before its effective date.
- (4) The Commission is not required to comply with subsections (1) and (2) if
- (a) all persons who will be subject to the rule are named and the information required by subsections (1)(a) and (b) is sent to each of them;
 - (b) the rule only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
 - (c) the rule makes no material substantive change in an existing rule;
 - (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or
 - (e) the Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1) and (2) would be prejudicial to the public interest.
- (5) The Commission must give a copy of any final rule to the Minister without delay.
- (6) A rule, or any amendment to a rule, shall be effective if the Commission has provided the Minister with a copy of the rule or amendment and the Commission has not received an objection to the rule or amendment from the Minister within thirty days after the rule or amendment was delivered to the Minister.
- (7) Where the Minister objects to a rule or any amendment to a rule, the Commission shall be provided with notice in writing of the reasons for the objection.
- (8) A rule, or any amendment to a rule, shall be effective on the date it is published in the Gazette or such later date as may be specified in the rule or amendment.

- (9) If the Commission alters or revokes a rule, it must
 - (a) publish notice of the alteration or revocation;
 - (b) give written notice to the Minister without delay; and
 - (c) include in such notices details of the alteration or revocation.

Regulations prevail over rules	258.	If a rule made by the Commission conflicts with a regulation made by the Minister, the regulation made by the Minister prevails.
Power to vary Commission rule	259.	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 257 as it applies to a person, trade or security, or a class of persons, trades or securities.
Power to remove exemption contained in Commission rule	260.	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 257 does not apply to a person, trade or security, or a class of persons, trades or securities.
Guidelines	261.	The Commission may publish guidelines regarding any regulations 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.
Consultation on proposed Guidelines	262.	<ol style="list-style-type: none"> (1) Before making or amending Guidelines referred to in section 261, the Commission shall issue draft Guidelines or draft amendments thereof and shall consult with market participants and other relevant stakeholders who may be affected by the draft Guideline or amendment. (2) Where, in the opinion of the Commission, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Commission shall proceed to issue the Guidelines or amendment thereof, without following the process referred to in subsection (1), which Guidelines shall be effective for ninety days, unless replaced by Guidelines issued pursuant to subsection (1).
Review of Commission's decision	263.	<ol style="list-style-type: none"> (1) Any person directly affected by a decision of the Commission may, within fourteen days of the decision, apply to the Commission for a review of that decision by notice in writing sent by registered mail to the Commission. (2) Within seven days of the receipt of an application under subsection (1), the Commission shall notify the applicant of the date, time and venue of the hearing to review the decision. (3) Upon a 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 review under subsection (1), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the review.

-
- Administrative proceedings and reviews 264. (1) Any person directly affected by a decision of a delegatee of the Commission, other than a person licensed under Part V, may, within fourteen days of the decision, apply to the Commission for a review of that decision by notice in writing sent by registered mail to the Commission.
- (2) Within seven days of the receipt of an application under subsection (1), the Commission shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.
- (3) Upon reviewing the decision of a delegatee, the Commission may by order vary or confirm the decision under review or make such other decision as it considers proper.
- (4) Notwithstanding the fact that a person requests a hearing and review under subsection (1), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.
- Review of decisions of persons licensed under Part V. 265. (1) Any person who is aggrieved by any act or omission of a person licensed under Part V, may lodge a complaint in respect of that act or omission with the Commission.
- (2) The Commission may investigate and adjudicate upon the complaint lodged under subsection (1)¹⁴.
- (3) 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 licensed under Part V of any sum by way of restitution or as compensation for any loss suffered by the complainant.
- (4) Subject to subsection (5), the person who has lodged a complaint against a person licensed under Part V shall, if the Commission proceeds to a judgement on the complaint, be precluded from pursuing the complaint or making it the basis of any suit, action or proceeding in any court of law.
- (5) A person shall not be precluded under subsection (5), unless the person, has, before the Commission proceeds to any hearing of and judgement upon the complaint, been informed in writing to that effect.
- Appeals to [High] [Supreme] Court 266. (1) A person directly affected by a final decision of the Commission, other than those stated not to be subject to appeal, may appeal to the [High Court] [Supreme Court] [in accordance with the Civil Procedure Rules] within thirty days after the later of the making of the final decision or the issuing of the reasons for the final decision.
- (2) Notwithstanding the fact that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the [High Court] [Supreme Court] may grant a stay until disposition of the appeal.
- (3) The Secretary shall certify to the [High Court] [Supreme Court] –
- (a) the decision of the Commission, together with a statement of reasons for that decision;
- (b) the record of the proceedings before the Commission; and

¹⁴NB. Complaints with cross-border elements can be addressed by Rules and MOUs between Commissions under section 49.

-
- (c) all written submissions to the Commission or other material that is relevant to the appeal.
- (4) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorised and empowered to do under 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.
- (5) 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.
- Filing of documents and public availability. 267. (1) All documents or information required to be filed with, delivered to or provided to the Commission shall be submitted to the Commission in the prescribed manner.
- (2) Subject to subsection (3), the Commission –
- (a) shall make all documents or information required to be filed with it available for public inspection; and
- (b) may make all documents or information filed with it available to the public by posting such documents to the Internet website of the Commission.
- (3) The Commission may hold in confidence all or part of a document or information referred to in subsection (1), if it considers that –
- (a) a person whose information appears in the document or information would be unduly prejudiced by disclosure of the information; and
- (b) the person's privacy interest outweighs the public's interest in having the information disclosed.
- (4) Where a document or information is not expressly required to be filed, but is required to be delivered or provided to the Commission by 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.
- Verification 268. The Commission may by notice in writing require the person furnishing any information to the Commission to verify, within a reasonable period as specified in the notice, the information by oath or affirmation.
- Register as evidence 269. Where it is provided in this 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 license or certificate issued under this Act shall be prima facie evidence of the contents thereof.
- Discretionary exemptions 270. (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission may exempt a person, trade or security, or a class of persons, trades or securities, from a provision in Parts V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV, XV, XVI, XVII of this Act.
- (2) Exemptions granted under subsection (1) shall be published by the Commission on its website.

-
- | | | |
|---------------------------------------|------|--|
| Designation orders | 271. | (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission may, without providing an opportunity to be heard, order that –
(a) an issuer, or an issuer within a class of issuers, is not a reporting issuer;
(b) a person, or a person within a class of persons, is not a market participant or a marketplace; or
(c) a right or obligation, or a right or obligation within a class of rights or obligations, is not a security.
(2) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, order that –
(a) an issuer, or an issuer within a class of issuers, is a reporting issuer; or
(b) a person, or a person within a class of persons, is a market participant or a marketplace; or
(c) a trade, or a trade within a class of trades, is a distribution. |
| Conditions on decisions | 272. | The Commission may impose terms, conditions, requirements and restrictions in any decision it makes, as the Commission deems fit. |
| Discretion to revoke or vary decision | 273. | 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. |
| General Offences | 274. | (1) A person who contravenes or fails to comply with any other provision of this Act, where the provision does not expressly create an offence or provide for a penalty, commits an offence and is liable on summary conviction —
(a) in the case of an individual, to a fine of [\$000,000] or to imprisonment for two years, or to both;
(b) in the case of a company, to a fine of [\$000,000]; and
if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding [\$000,000.00] for every day that the offence continues after conviction.
(2) A person who contravenes an order of the Commission commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars or to imprisonment for two years, or to both.
(3) An auditor who knowingly or recklessly makes or provides a false or misleading audit report in respect of financial statements which are required to be filed under this Act commits an offence and is liable on summary conviction to a fine of [\$000,000.00] and to imprisonment for five years.
(4) Where an auditor is convicted of an offence under subsection (3), the Commission may order, under section 234, and in addition to any other order that the Commission may make, that the auditor be prohibited from being the auditor of a market participant for a period not exceeding five years. |
| Liability of senior officer | 275. | (1) Notwithstanding any other provision of this Act, where a company has been convicted of an offence under this Act, then any senior officer who knowingly or recklessly |

authorised, permitted or acquiesced in the offence also commits the offence and is liable to the penalty specified for it.

- (2) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, then any supervisor of the individual who knowingly or recklessly authorised, permitted or acquiesced in the offence also commits the offence and is liable to the penalty specified for it.
- (3) The appointment of a liquidator, receiver or receiver-manager does not absolve any senior officer of a company or supervisor of an individual convicted of any offence under this Act from liability arising from willful neglect, fraudulent transactions, misuse of client or investor funds or from any breach of the provisions of this Act.
- (4) The directors of a broker-dealer or a reporting issuer whose securities are listed on a securities exchange in [Member State], shall notify the Commission of any developments that pose material risks to the broker-dealer or a reporting issuer.
- (5) A director of a broker-dealer or a reporting issuer whose securities are listed on a securities exchange in [Member State], who—
 - (a) resigns;
 - (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or
 - (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office upon his resignation or removal from office or because his term of office has expired or is about to expire,

may submit to the broker-dealer or reporting issuer, and shall submit to the Commission, a written statement giving the reasons for his resignation or departure from office, or, where applicable, the reasons that he opposes any proposed action or resolution.

Costs	276.	<ol style="list-style-type: none"> (1) A person convicted of an offence under this Act is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence. (2) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness. (3) The Commission may apply to the High Court to review the certificate under the [applicable Rules of the Court] as if the certificate were a bill of costs, and the Court shall review the costs and may vary them if it considers them unreasonable or not related to the investigation. (4) After review, the certificate may be filed in the High Court and may be enforced against the person convicted as if it were an order of the High Court.
Referral to the Director of Public Prosecutions	277.	Subject to section 278, nothing in this Act prevents the Commission from referring any matter to the Director of Public Prosecutions.
Notice of adverse report	278.	No report concluding that a person to whom this Act applies has failed without reasonable justification to fulfil a duty or obligation under this Act shall be made until reasonable

notice has been given to such person of the alleged failure and the person has been allowed full opportunity to be heard either in person or by an attorney-at-law.

Recognition of foreign jurisdictions and foreign securities exchanges	279.	For the purposes of this Act, the Commission may, if it is in the public interest to do so, recognize a – <ul style="list-style-type: none"> (a) foreign jurisdiction, if the Commission is of the view that the jurisdiction meets the criteria prescribed; and (b) foreign securities exchange established and operated in a recognized foreign jurisdiction, if the Commission is of the view that the securities exchange meets the criteria prescribed.
Commission to keep register	280.	<p>(1) The Commission shall maintain a register that shall contain the prescribed information about current and former licensees, reporting issuers and any other person required to be licensed with or otherwise approved by the Commission under this Act.</p> <p>(2) The Commission may make the register available to the public on the prescribed terms.</p>
Stamp Duty Exemption	281.	Notwithstanding any provision of the Stamp Act or any other law to the contrary, stamp duty shall not be payable in respect of the transfer in [Member State] of any CARICOM securities listed on a licensed marketplace.
<p>Part XXI</p> <p>Transition Provisions and Repeal</p>		
Definitions	282.	<p>In this Part –</p> <p>"effective date" means the date when this Act comes into force;</p> <p>"relevant period" means the period between the effective date and the transition date;</p> <p>"transition date" means the day that is the first anniversary of the effective date.</p>
Securities exchanges licensed under the former Act	283.	Every securities exchange licensed with the Commission under the former Act is deemed to be licensed as a securities exchange under sections 68 and 108 of the Act and deemed a market place under Part V of this Act with effect from the effective date.
Clearing facilities licensed under the former Act	284.	Every clearing and settlement facility licensed with the Commission under the former Act is deemed to be licensed as a clearing facility under sections 69 and 108 of the Act and deemed an ancillary facility under Part V of this Act with effect from the effective date.
Registries and depositories licensed under the former Act	285.	Every registry, depository and custody facility licensed with the Commission under the former Act is deemed to be licensed as an ancillary facility under sections 69 of the Act with effect from the effective date.
Broker-dealers, and underwriters	286.	Every company licensed with the Commission under the former Act as a securities company, broker-dealer, or underwriter is deemed to be licensed under section 80(1)(a), of the Act with effect from the effective date.

Investment advisers	287.	Every person or company licensed with the Commission under the former Act as a investment adviser is deemed to be licensed under section 80(1)(b) of the Act with effect from the effective date.
Licensed individuals	288.	Every individual licensed with the Commission under the former Act as a trader, dealer, stockbroker or associated person is deemed to be licensed under subsection 80(1)(e) of the Act as a representative with effect from the effective date.
Principals	289.	Every individual licensed with the Commission under the former Act as a principal is deemed to be licensed under subsection 80(1)(d) of the Act as a principal with effect from the effective date.
Interim financial statement requirements	290.	The obligations on a reporting issuer to prepare and file interim financial statements with the Commission under subsection 184 and to send interim financial statements to the issuer's security holders under section 189 shall not take effect until the issuer's first financial year that begins after the transition date.
Insider reporting obligations	291.	The reporting obligations on insiders of reporting issuers under section 226 of the Act shall not take effect until the day that is 90 days after the effective date.
Savings	292.	Any authority, approval or exemption granted by the Commission under the former Act which is in force immediately before the effective date – <ul style="list-style-type: none">(a) shall be deemed to continue as if granted by the Commission under the Act; and(b) in the case of a grant for a specific period, shall be deemed to remain in force for so much of that period as falls after the effective date.
Repeal	293.	The Securities Industry Act, _____ is repealed.

SCHEDULE 1

The Minister may, on the recommendation of the Commission, make Regulations –

- (a) prescribing requirements in respect of applications for licenses and the renewal, amendment, expiration or surrender of licenses and in respect of the suspension, revocation, cancellation or reinstatement of licenses of intermediaries, marketplaces and self-regulatory organizations;
- (b) prescribing categories or sub-categories of intermediaries, classifying intermediaries into categories or sub-categories and prescribing the conditions of a license, or other requirements for intermediaries or any category or sub-category, including—
 - (i) standards of practice and business conduct of intermediaries in dealing with their customers and clients and prospective customers and clients;
 - (ii) standards of conduct in relation to a customer of a market intermediary to prevent conflicts of interest or ensure the fair treatment of customers;
 - (iii) standards for the conduct of a market intermediary in relation to the custody or lending of any money or security held for a customer;
 - (iv) requirements in respect of membership by a market intermediary in a self-regulatory organization;
 - (v) standards of conduct of a market intermediary who is not a member of a self-regulatory organization;
 - (vi) the making, keeping and retention of books and records by a market intermediary, including the keeping and filing of a record of trades executed by the market intermediary through the facilities of a marketplace;
 - (vii) requirements for a market intermediary to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained;
 - (viii) requirements and standards of conduct for intermediaries to document and record cash transactions, and to comply with money laundering laws;
 - (ix) standards for the conduct of a market intermediary who exercises investment discretion with respect to a customer account, including disclosure to the customer of the policies and practices relating to the payment of commissions for trades in securities;
 - (x) minimum and ongoing capital requirements for intermediaries; and
 - (xi) filing information in respect of missing, lost, counterfeit or stolen securities or securities which are in the custody or control of the market intermediary, or are his responsibility;
- (c) prescribing the terms and conditions of policies of insurance and the amount of such insurance which intermediaries shall be required to obtain and maintain indemnifying such market intermediary against any liability that may be incurred as a result of any act or omission of the market intermediary or any of its officers or employees;
- (d) extending any requirements prescribed for intermediaries to unlicensed directors, partners, salespersons, employees, and senior officers of intermediaries;
- (e) prescribing requirements in respect of the residence in [Member State] of intermediaries;

-
- (f) prescribing requirements for persons in respect of calling at, telephoning or delivering correspondence to, or otherwise communicating by any means, including electronic means, at residences for the purposes of trading in securities or providing investment advice;
 - (g) prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by intermediaries or providing for exemptions from or varying the requirements under the Act in respect of the disclosure or furnishing of information to the public or the Commission by intermediaries;
 - (h) providing for exemptions from the license requirements under the Act or for the removal of exemptions from those requirements;
 - (i) prescribing requirements in respect of the books, records and other documents required to be kept by intermediaries, marketplaces, and self-regulatory organizations, including the form in which and the period for which the books, records and other documents are to be kept;
 - (j) regulating all aspects of the listing or trading of securities on a marketplace including requiring reporting of trades and quotations;
 - (k) regulating marketplaces and self-regulatory organizations, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, guideline, interpretation or practice of the marketplace or self-regulatory organization;
 - (l) regulating all aspects of the operation in [Member State] of marketplaces and self-regulatory organizations which are organized under the laws of another jurisdiction;
 - (m) regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;
 - (n) prescribing categories or sub-categories of issuers for purposes of the prospectus requirements under the Act and classifying issuers into categories or sub-categories;
 - (o) varying the regulations to facilitate, expedite or regulate the distribution of securities or the issuing of receipts for prospectuses, including by establishing—
 - (i) requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference;
 - (ii) requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure or offering document;
 - (iii) requirements in respect of distributions of securities on a continuous or delayed basis;
 - (iv) provisions for the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary perspective, of modifying or superseding statements;
 - (v) requirements for the form of a prospectus certificate, including providing for alternative forms;
 - (vi) provisions for eligibility requirements to obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility; and
 - (vii) provisions for rights of investors;
 - (p) designating activities, including the use of documents or advertising, in which intermediaries or issuers are permitted to engage or are prohibited from engaging in connection with distributions;
 - (q) providing for exemptions from the prospectus requirements under the Act and the regulations and for the removal of exemptions from those requirements;

-
- (r) prescribing the circumstances in which the Commission must refuse to issue a receipt for a prospectus and prohibiting the Commission from issuing a receipt in those circumstances;
 - (s) prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of—
 - (i) an annual information form; and
 - (ii) supplemental analysis of financial statements;
 - (t) exempting reporting issuers from any requirement of the Act under circumstances that the Commission considers justify the exemption including that the reporting issuer is subject to oversight in an appropriate jurisdiction;
 - (u) requiring issuers or other persons to comply, in whole or in part, with continuous disclosure requirements under the Act made in respect thereof;
 - (v) regulating the distribution, sale and trading of asset-backed securities;
 - (w) prescribing requirements in respect of financial accounting, financial reporting and auditing for purposes of the Act, including—
 - (i) defining accounting principles and auditing standards acceptable to the Commission;
 - (ii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and *pro forma* financial statements;
 - (iii) standards of independence and other qualifications for auditors;
 - (iv) requirements respecting a change in auditors by a reporting issuer or an market intermediary; and
 - (v) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under the Act;
 - (x) regulating take-over bids and related party transactions including issuer bids, insider bids, and going-private transactions and varying the requirements of the Act in respect thereof, including—
 - (i) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all holders of securities of the class shall become mandatory and the conditions applying to such offers;
 - (ii) the requirements of the offeror and offeree issuers in respect of information to be published to securityholders of both issuers;
 - (iii) the requirements as regards equitable treatment of securityholders of the same class or cash alternatives in offers or both;
 - (iv) the timing of offer procedures and circulation of documentation;
 - (v) conditions observable in the dealing of securities by the offeror or by persons in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree issuer during the take-over period;
 - (vi) the minimum period within which an unsuccessful offer may not be renewed; and
 - (vii) requirements to protect minority interests;
 - (y) prescribing standards or criteria for determining when a material fact or material change has occurred or has been published;

-
- (z) prescribing time periods under or varying or providing for exemptions from any requirement related to trading on inside or material order information or market manipulation;
- (aa) regulating collective investment schemes and all aspects of the distribution and trading of the securities of collective investment schemes, including—
- (i) varying the prospectus requirements in the Act by prescribing additional disclosure requirements in respect of collective investment schemes and requiring or permitting the use of particular forms or types of prospectuses or additional offering or other documents in connection with the collective investment schemes;
 - (ii) prescribing permitted investment policy and investment practices for collective investment schemes and prohibiting or restricting certain investments or investment practices for collective investment schemes;
 - (iii) prescribing requirements governing the custodianship of assets of collective investment scheme;
 - (iv) prescribing minimum initial capital requirements for any collective investment schemes making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of collective investment schemes;
 - (v) prescribing matters affecting collective investment schemes that require the approval of security holders of the collective investment scheme or Commission, including, in the case of security holders, the level of approval;
 - (vi) prescribing requirements in respect of the calculation of the net asset value of collective investment schemes;
 - (vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to the securities of collective investment schemes;
 - (viii) regulating sales charges imposed on purchasers of securities of collective investment schemes, and commissions or sales incentives to be paid to intermediaries in connection with the securities of collective investment schemes;
 - (ix) prescribing procedures applicable to collective investment schemes and any other person in respect of sales and redemptions of collective investment scheme securities and payments for sales and redemptions; and
 - (x) prescribing requirements in respect of, or in relation to, promoters, managers, advisers or persons and companies who administer or participate in the administration of the affairs of collective investment schemes;
- (bb) prescribing requirements relating to the qualification of a market intermediary to act as an investment adviser to a collective investment scheme;
- (cc) varying the regulations with respect to CARICOM issuers and foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers, and the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions where the CARICOM issuers or foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes of the Act;
- (dd) requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents, instruments or information required under or governed by the Act or the regulations and all documents, instruments or information determined by the regulations to be ancillary to the documents;

-
- (*ee*) respecting the designation or recognition of any person, or jurisdiction if advisable for purposes of the Act, including self-regulatory organizations;
- (*ff*) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under the Act and the regulations, including the conduct of investigations and examinations and the conduct of hearings;
- (*gg*) prescribing the fees payable to the Commission, including those for filing, for applications for a license or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of the securities law of [Member State];
- (*hh*) establishing requirements for, and procedures in respect of the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of—
- (i) documents, instruments or information required under or governed by the Act or the regulations; and
 - (ii) documents, instruments or information determined by the regulations to be ancillary to documents required under or governed by the Act or the regulations;
- (*jj*) varying the regulations to permit or require the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of documents, instruments or information required under, or governed by, the Act or the regulations, or determined by the regulations to be ancillary to such documents, instruments or information;
- (*kk*) prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of the Act or the regulations;
- (*ll*) specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;
- (*mm*) varying the regulations to permit or require methods of filing or delivery, to or by the Commission, issuers, intermediaries, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by the securities laws of [Member State];
- (*nn*) providing for exemptions from or varying the requirements under the Act in respect of amendments to prospectuses, or prescribing circumstances under which an amendment to a prospectus must be filed;
- (*oo*) regulating trading in securities that have been distributed but are not listed on a marketplace;
- (*pp*) providing for standards in respect of the governance of intermediaries and reporting issuers including requirements for directors;
- (*qq*) establishing requirements for reporting issuers to appoint audit committees and prescribing requirements relating to their functions, responsibilities, composition, the independence of their members, the qualifications of their members and their review of an audit;
- (*rr*) prescribing, providing for exemptions from, or varying any or all of the time periods in the Act;
- (*ss*) prescribing requirements in respect of a fund to be maintained by a securities exchange or self-regulatory organization under the Act, including the—
- (i) participants in a fund;
 - (ii) contributors to a fund;
 - (iii) amount of contributions to a fund; and

- (iv) claimants, or class of potential claimants, in a fund, in addition to any other matter which may be prescribed under this Act;
- (tt) prescribing requirements regarding the establishment, maintenance and use of compensation funds for the protection of licensees and clients of licensee who may suffer loss as a result of the bankruptcy, insolvency or winding up of a licensee;
- (uu) prescribing the requirements for cooperation, exchange of information and assistance between and among Member States of CARICOM;
- (vv) prescribing the requirements for mutual recognition, assistance and cooperation between and among Member States of CARICOM; and
- (vw) prescribing the requirements for fostering the integration of capital markets of Member States of CARICOM.

SCHEDULE 2

Part 1 – Securities

1. “Security” includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person, or enterprise, and without limiting the generality of the foregoing, extends to –
 - (a) any bond, debenture, note or other evidence of indebtedness;
 - (b) any share, stock, unit, unit certificate, participation certificate, certificate of share or interest;
 - (c) any document, instrument or writing commonly known as a security;
 - (d) any document, instrument or writing evidencing an option, subscription or other interest in or to a security;
 - (e) any investment contract;
 - (f) any asset-backed security;
 - (g) any document, instrument or writing constituting evidence of any interest or participation in –
 - (i) a profit sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;
 - (h) any agreement under which the interest of the purchaser is valued for the purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;
 - (i) any futures contract;
 - (j) rights in, or options in respect of, any derivative; or
 - (k) any right to acquire or dispose of anything specified in paragraphs (a) to (j), but does not include –
 - (i) currency;
 - (ii) a cheque, bill of exchange, or bank letter of credit;
 - (iii) a certificate or document constituting evidence of any interest in a deposit account with –
 - (A) a financial institution;
 - (B) a credit union
 - (C) a building society;
 - (D) an insurance company;
 - (E) a contract of insurance; or
 - “(F) the Central Bank”.
2. "Option" means an agreement that provides the holder with the right, but not the obligation, to acquire or dispose of securities or any underlying security, asset, interest or instrument therein, including:
 - (a) a security falling within any other paragraph of this Schedule;

- (b) any currency [determinable by reference to a specified quantity of the underlying interest of the option];
- (c) any precious metal;
- (d) an option to acquire or dispose of a security falling within sub-paragraph (a), (b) or (c) of this paragraph;

on terms or at a price specified by or determinable by reference to the agreement, at or by a time specified by the agreement.

3. Futures contract includes rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes, and for the purposes of this definition-
- (a) a contract is deemed to be made for investment purposes if it is made or traded on a recognised securities exchange, or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
 - (b) A contract not falling within paragraph (a) is deemed to be made for commercial purposes if, under the terms of the contract, delivery is to be made within seven days.
 - (c) the following are indications that a contract not falling within paragraphs (a) or (b) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes -
 - (a) one or more of the parties is a producer of the commodity or other property or uses it in his business; or
 - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
 - (d) it is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.
 - (e) the following are indications that a contract is made for investment purposes –
 - (a) it is expressed to be as traded on a securities exchange;
 - (b) performance of the contract is ensured by a securities exchange or a clearing house; or
 - (c) there are arrangements for the payment or provision of margin.
 - (f) a price is to be taken to be agreed on when a contract is made –
 - (i) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (ii) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Part 2 - Securities Investment Business – Regulated Activities

The following activities are activities carried on in the course of securities investment business for the purposes of this Act –

1. Dealing in Securities

- (a) Buying, selling, subscribing for or underwriting securities as an agent.
- (b) Buying, selling, subscribing for or underwriting securities as principal where the person entering that transaction –
 - (i) holds himself out as willing, as principal, to buy, sell or subscribe for securities of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;
 - (ii) holds himself out as engaging in the business of underwriting securities of the kind to which the transaction relates; or
 - (iii) regularly solicits members of the public for the purpose of inducing them, whether as principals or agents, to buy, sell, subscribe for or underwrite securities and the transaction is, or is to be entered into, as a result of the person having solicited members of the public in that manner.

2. Arranging Deals in Securities

Making arrangements with a view to -

- (a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting securities; or
- (b) a person who participates in the arrangements buying, selling, subscribing for or underwriting securities.

3. Managing Securities

Managing securities belonging to another person in circumstances involving the exercise of discretion.

4. Advising on securities

Advising a person on securities if the advice is –

- (a) given to the person in his capacity as an investor or a potential investor or in his capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of doing any of the following (whether as principal or agent):
 - (i) buying, selling, subscribing for or underwriting a particular security; or
 - (ii) exercising any right conferred by a security to acquire, sell, subscribe for, underwrite or convert a security.

Part 3 - Excluded Activities

The activities specified in this Schedule are not considered securities investment business in the following circumstances –

1. Dealing in Securities

(1) *Securities evidencing indebtedness*

Where a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or his principal has made, granted or provided.

(2) *Issuing, redeeming or repurchasing securities*

Where a company, partnership or trust issues, redeems or repurchases any of its securities falling within paragraph 1 to 3 of Schedule 1.

(3) *Disposing of treasury shares:*

Where a company disposes of any of its treasury shares.

(4) *Sale of Goods and Supply of Services*

Where a person buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer and the supplier is acting –

- (a) as a principal; or
- (b) as an agent,

and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities.

(5) *Risk Management*

Where a person buys, sells, subscribes for or underwrites securities and –

- (a) the transaction relates to one or more securities falling within paragraph 5, 6 or 7 of Schedule 1;
- (b) none of the parties to the transaction are individuals;
- (c) the sole or main purpose for which the person concerned enters into the transaction (either by itself or in combination with other such transactions) is to limit the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of any of the activities specified in Schedule 2 and which is not excluded by virtue of this Schedule; and
- (d) the relevant business is a business other than securities investment business carried on by –

- (i) the person entering the transaction;
- (ii) a company within the same group of companies as such person; or
- (iii) another person who is or is proposing to become a participator in a joint enterprise with such person entering the transaction.

(6) Dealing as agent in the course of a profession or non-securities investment business

Dealing in securities as an agent if –

- (a) the dealing is undertaken in the course of carrying on any business or profession which does not otherwise constitute securities investment business;
- (b) the dealing may reasonably be regarded as a necessary part of other services provided in the course of that business or profession; and
- (c) the person dealing as agent –
 - (i) does not receive or is not separately remunerated or rewarded in respect of his dealing as agent; and
 - (ii) does not hold himself out generally as providing the service of dealing as agent.

(7) *Employee share schemes*

- (a) Dealing by a company (“the first company”), with a company in the same group as the first company or a relevant trustee in shares in, or debentures of, the first company, for the benefit of, or holding the shares or debentures for the benefit of –
 - (i) the employees or former employees of the first company or a company in the same group as the first company; or
 - (ii) the spouses, widows, widowers or children, or step-children, under the age of eighteen years of the persons referred to in subparagraph (i).
- (b) For the purposes of subparagraph (a) –
 - (i) a “relevant trustee” is a person holding shares in, or debentures of, the first company as trustee for the purposes of the scheme specified in subparagraph (a); and
 - (ii) “share” and “debenture” includes any other instrument falling within paragraph 1 or 2 of Schedule 1, as the case may be, or, where relating to the share or debenture concerned, paragraph 3, 4 or 9.

(8) *Dealing as bare trustee*

Dealing in securities, as principal, which are, or are to be held, by a person as bare trustee for another person on the other person’s instructions where –

- (a) the dealing takes place in the course of a business that does not otherwise constitute securities investment business;
- (b) the person concerned does not receive any remuneration or reward, whether directly or indirectly, for the transaction that constitutes dealing in securities and, for the purposes of this subparagraph,

- (i) remuneration includes commission; and
 - (ii) no account shall be taken of any remuneration that the person receives separately for acting as bare trustee; and
- (b) the person does not otherwise provide, or hold himself out as providing, a service of dealing in securities.

(9) *Dealing as agent with or through licensee*

A person, who is not a licensee, entering into a transaction as agent for another person (“the client”) with or through a licensee if –

- (a) the agent does not receive from any person, other than the client, any remuneration or other reward for which he does not account to the client, arising out of his entering into the transaction; and
- (b) either –
 - (i) the transaction is entered into on advice given to the client by a licensee; or
 - (ii) it is clear, in all the circumstances, that the client is not seeking and has not sought advice from the agent as to the merits of the client’s entering into the transaction.

2. Arranging Deals in Securities

(1) *Arranging own deals*

Where a person makes arrangements relating to a transaction to which that person will himself be a party as principal or which will be entered into by that person as agent for one of the parties to the transaction.

(2) *Incidental activities*

Where a person makes arrangements and such arrangements are made in the course of carrying on any profession or business not otherwise constituting securities investment business and where the making of the arrangements is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(3) *Enabling parties to communicate*

Where a person makes arrangements to provide means by which one party to a transaction (or potential transaction) is able to communicate with other parties to the transaction or potential transaction.

(4) *Arrangements in connection with securities evidencing indebtedness*

Where a person makes arrangements in respect of a transaction referred to in paragraph 1(1).

(5) *Provision of Finance*

Where a person makes arrangements, the sole purpose of which is the provision of finance to enable a person to buy, sell, subscribe for or underwrite securities.

(6) *Introducing*

Where a person makes arrangements to introduce a person to another person, and –

- (a) the person to whom the introduction is to be made is a person referred to in [Part VI]; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to securities generally or in relation to any class of securities to which the arrangements relate.

(7) *Arrangements for issue of securities*

Where a person makes arrangements in respect of a transaction referred to in paragraphs 1(1) and 1(7).

(8) *Disposal of goods or supply of services*

Where a supplier makes arrangements made for, or with a view to, a transaction which is to be entered into by a customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(9) *Employee share schemes*

Arrangements made by a company (“the first company”), a member of the same group as the first company or a relevant trustee, if the arrangements are for, or with a view, to a transaction of an employee share scheme of the kind referred to in paragraph 1(7) of this Part.

3. Managing Securities

Where a person manages securities that are or are to be managed for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer.

4. Advising on securities

(1) *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.

(2) *Publications*

Where a person gives advice in any communication media and –

- (a) The principal purpose is not to induce persons to buy, sell, subscribe for or underwrite particular securities; or

- (b) The person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting.

(3) ***Incidental activities***

Where a person gives legal, accounting or other advice and the advice is given in the course of carrying on any profession or business not otherwise constituting securities investment business and 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 is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

Part 4 - Excluded persons

The persons specified in this Part are not required to be registered under the Act in the following circumstances:

1. A company carrying on securities business exclusively for one or more affiliated companies.
2. A person participating in a joint enterprise (and, where that person is a company, any other affiliated company) with a person carrying on the securities business where the activities constituting such securities business are to be carried on for the purposes of or in connection with that joint enterprise. For the purposes of this paragraph “joint enterprise” means an enterprise into which two or more persons enter for commercial reasons related to a business or businesses (other than securities business) carried on by them.
3. The following persons –
 - (a) Securities Exchange;
 - (b) the Commission;
 - (c) the Government of [Member State]; or
 - (d) the Central Bank of [Member state].
4. A person carrying on securities business only in the course of acting in any of the following capacities –
 - (a) director;
 - (b) partner;
 - (c) liquidator (including a provisional liquidator);
 - (d) trustee in bankruptcy;
 - (e) receiver of an estate or company;
 - (f) executor or administrator of an estate; or
 - (g) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust:

Provided that in each case such person –

- (i) is not separately remunerated for any of the activities which constitute the carrying on of securities business otherwise than as part of any remuneration the person receives for acting in that capacity; and
- (ii) does not hold himself out as carrying on securities business other than as a necessary or incidental part of performing functions in that capacity, or

- (iii) is acting on behalf of a company, partnership or trust that is otherwise registered or exempted from registration under this Act.



Attachment II

**DRAFT CARICOM
CONDUCT OF SECURITIES BUSINESS REGULATIONS
(DECEMBER 2023 VERSION)**

For Consideration at the

**REGIONAL MEETING ON THE PROPOSED
CARICOM SECURITIES MARKET
LEGISLATIVE FRAMEWORK**

**Port-of-Spain, Trinidad and Tobago
19-22 March 2024**

CARICOM Conduct of Securities Business Regulations

Revised as at: 11 December 2023

Table of Contents

<u>1. Citation</u>	1
<u>2. Interpretation</u>	1
<u>3. General standards of conduct</u>	1
<u>4. Material interest</u>	2
<u>5. Disclosure to clients</u>	2
<u>6. Clients’ understanding of risk</u>	2
<u>7. Clients’ rights</u>	3
<u>8. Client confidentiality</u>	3
<u>9. Issue of contract note</u>	3
<u>10. Reporting to clients – client account statements</u>	4
<u>11. Clients’ accounts</u>	4
<u>12. Segregation of client cash and assets</u>	5
<u>13. Know your client</u>	6
<u>14. Client account opening form and documentation</u>	6
<u>15. Suitability obligation</u>	7
<u>16. Fees and charges</u>	7
<u>17. Client order priority</u>	7
<u>18. Timely execution</u>	7
<u>19. Fair allocation</u>	7
<u>20. Best execution</u>	7
<u>21. Prompt delivery</u>	7
<u>22. Priority of client orders</u>	7
<u>23. Trading as principal</u>	8
<u>24. Discretionary trading</u>	8

<u>25.</u> Confirmation to be sent to client.....	8
<u>26.</u> Trading confirmation.....	9
<u>27.</u> Executing order, name or code.....	9
<u>28.</u> Trading listed securities	9
<u>29.</u> Trades conducted other than through a securities exchange	9
<u>30.</u> Improper use of client assets	10
<u>31.</u> Safeguarding of clients' investment.....	10
<u>32.</u> Forwarding documents to clients	10
<u>33.</u> Voting securities not beneficially owned.....	10
<u>34.</u> Supervision, compliance and risk management systems	10
<u>35.</u> Suspended or barred individuals	11
<u>36.</u> Complaints	11
<u>37.</u> CARICOM market intermediaries.....	11

CARICOM

CONDUCT OF SECURITIES BUSINESS REGULATIONS

- Citation 1. These Regulations may be cited as the Conduct of Securities Business Regulations XXXX.
- Interpretation 2. In these Regulations:
- "Act" means the Securities Act;
- "home Member State" means:
- (a) for all CARICOM issuers of securities, the Member State where the issuer has its registered office, or the Member State where the securities are intended to be distributed for the first time after the date of entry into force of these Regulations, at the choice of the issuer or the offeror;
 - (b) for all issuers of securities incorporated in a foreign jurisdiction, the Member State where the securities are intended to be distributed for the first time after the date of entry into force of these Regulations;
- General standards of conduct 3. In the conduct of securities business, a market intermediary, its officers, directors, principals, representatives, compliance officers, employees and agents shall at all times act according to the principles of best practice and, in particular, shall –
- (a) observe high standards of market conduct;
 - (b) seek from clients, information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the market intermediary to fulfil the market intermediary's responsibilities to the client;
 - (c) take reasonable steps to give every client the market intermediary advises, in a comprehensible way, any information needed to enable the client to make a balanced and informed investment decision;
 - (d) avoid any conflict of interest with clients and, where such a conflict unavoidably arises, ensure fair treatment to the client by complete disclosure or by declining to act;
 - (e) ensure that the interests of the market intermediary are not placed above those of the client;

- (f) protect by way of segregation and identification, those client assets for which the market intermediary is responsible;
- (g) maintain adequate financial resources and insurance cover to meet the business commitments of the market intermediary and withstand the risks to which the business is subject;
- (h) have appropriate and sufficient systems and controls in place to perform its functions and manage its risks prudently;
- (i) keep proper records and reconcile accounts regularly;
- (j) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, and establish and maintain well-defined compliance procedures; and
- (k) deal with the Commission in an open and co-operative manner.

- | | |
|--------------------------------|--|
| Material interest | <p>4. Where a market intermediary has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest in relation to the transaction, the market intermediary shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless the market intermediary has –</p> <ul style="list-style-type: none"> (a) fairly disclosed that material interest or relationship, as the case may be, to the client; or (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the client. |
| Disclosure to clients | <p>5. A market intermediary shall cause clients to be provided with sufficient and timely disclosure regarding –</p> <ul style="list-style-type: none"> (a) the market intermediary’s fees, commission and recoverable disbursements; (b) any risks associated with an investment strategy recommended to a client by the firm or individual; and (c) any other matter reasonably to be regarded as necessary to enable the client to make informed decisions regarding the securities business conducted with or through the market intermediary. |
| Clients’ understanding of risk | <p>6. A market intermediary shall not –</p> <ul style="list-style-type: none"> (a) recommend a transaction to a client, or effect a discretionary transaction with or for the client, unless it has taken all reasonable steps to enable the client to understand the risks involved; |

(b) mislead a client as to any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless the return is contractually guaranteed.

Clients' rights 7. A market intermediary shall not, in any written communication or agreement, seek to exclude or restrict –

(a) any duty or liability to a client which it has under any law or under any rules made by the Commission;

(b) any other duty to act with skill, care and diligence that is owed to a client in connection with the provision to the client of securities business services;

(c) any liability owed to a client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of securities business services.

Client confidentiality 8. (1) Subject to sub-regulation (2), all information in the possession of a market intermediary relating to a client must be kept confidential by it.

(2) A market intermediary may disclose information relating to a client when properly required to do so by the Commission, a clearing agency or the market supervision department of a securities market of which it is a member, or if it is ordered to do so by a court of competent jurisdiction.

Issue of contract note 9. (1) A broker-dealer shall, in respect of every contract for the purchase, sale or exchange of securities entered into by it (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with sub-regulation (2) and –

(a) where the contract was entered into by the broker-dealer as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or

(b) where the contract was entered into by the broker-dealer as principal, retain the contract note for itself.

(2) The contract note shall state whether it is in respect of a purchase, sale or exchange of securities and shall include –

(a) the name of the market intermediary and the address of the principal place at which it carries on business;

(b) where the market intermediary is acting as principal, a statement that it is so acting;

- (c) the name and address of any person to whom the market intermediary is required to give the contract note and, where different, the name of the person for whom the transaction was undertaken;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities that is the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of consideration under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission payable in respect of the contract;
- (i) the amount of stamp duty, if any, payable in connection with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement; and
- (k) any other information as may be prescribed to ensure that there is a complete audit trail for the execution of client instructions and the settlement of market transactions.

Reporting to clients – client account statements

- 10. (1) Unless otherwise expressly directed by the client in writing, a market intermediary shall send or deliver a statement of account to each client not less than once every three months showing any debit or credit balance and the details of securities held for or owned by the client.
- (2) The statement required by sub-regulation (1) shall list the securities held for or owned by the client and indicate clearly which securities are held for safekeeping and confirm whether they have been segregated from the assets of the market intermediary.
- (3) Unless otherwise expressly directed by the client in writing, a market intermediary managing client accounts on a discretionary basis shall send or deliver to each managed account client not less than once every three months, a statement of the portfolio of the client under the market intermediary's management.

Clients' accounts

- 11. (1) A broker-dealer shall establish and keep in a financial institution one or more trust accounts or such other accounts as the Commission may determine into which it shall, upon receipt pay—
 - (a) all amounts, less any commission and other proper charges, that are received from or on account of any person, other than another broker-dealer, for the purchase of securities; and

(b) all amounts, less any commission and other proper charges, that are received on account of any person, other than a broker-dealer, from the sale of securities and not paid to that person or as that person directs.

- (2) A broker dealer shall not withdraw money money from an account established under sub-regulation (1), except for the purpose of making a payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorised by law.
- (3) Nothing in this regulation shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in an account established under sub-regulation (1), or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into such account.
- (4) Payments made into client accounts for the purposes of sub-regulation (1)(a) and (b), shall be made within three business days of the transaction.
- (5) A broker-dealer that contravenes this regulation commits an offence and is liable on conviction on indictment to a fine of [\$00.000] and to imprisonment for two years, or to both.

Segregation of client cash and assets 12.

- (1) A market intermediary that holds client assets, including cheques and other similar instruments, shall hold the assets separate and apart from its own property and in trust for the client.
- (2) A market intermediary that holds cash on behalf of a client shall hold the cash separate and apart from the property of the firm in a designated trust account with a [bank/financial institution in Member State], or other deposit-taking institution outside [Member State] as may be approved by the Commission for this purpose.
- (3) Sub-regulation (2) shall not apply to a market intermediary if –
 - (a) the market intermediary holds a banking license under [Banking Act/ Financial Institutions Act];
 - (b) the services the market intermediary provides to the client include accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and the market intermediary employs those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the market intermediary.
- (4) A market intermediary may allow a registered marketplace or clearing facility to hold or control client cash for the purpose of –
 - (a) a transaction for the client with or through that marketplace or facility; or

(b) meeting the client's obligation to provide collateral for a transaction, provided that the client is notified that the cash may be so held or controlled.

(5) A market intermediary licensed solely as an investment adviser shall not keep securities for, or on behalf of, a client.

Know your client

13. (1) A market intermediary shall take reasonable steps to –
- (a) establish the identity of a client and, where there may be cause for concern, the reputation of the client;
 - (b) ascertain whether the client is an insider of a reporting issuer;
 - (c) ensure that it has sufficient personal and financial information about a client to enable it to meet its regulatory obligations when it –
 - (i) makes a recommendation to the client;
 - (ii) accepts an instruction to trade from the client;
 - (iii) makes a discretionary purchase or sale of a securities on behalf of the client; and
 - (d) establish the creditworthiness of a client, if the market intermediary is financing the client's acquisition of a security.
- (2) If the client is a company, to comply with the obligation under sub-regulation (1)(a), the market intermediary shall establish the nature of the client's business and the identity of any individual who is a significant security holder of the company.
- (3) The market intermediary must make reasonable efforts to keep the information required under this regulation up to date.

Client account opening form and documentation

14. (1) A market intermediary shall maintain account opening documentation for each client.
- (2) A market intermediary shall not execute any transaction for a client until it has in its possession a 'client account form' executed by the client and approved by the designated officer of the firm.
- (3) The client account form shall contain information concerning the client's identity, financial status, employment, education, investment objectives, ability to incur risk, status as an insider to any reporting issuers and any other information that may be considered reasonable by the firm in making an investment recommendation to the client.

Suitability obligation	15.	<p>(1) A market intermediary shall take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client given the client's financial circumstances, risk tolerance, investment knowledge, and investment needs and objectives.</p> <p>(2) If a client instructs a market intermediary to buy, sell or hold a security and in the market intermediary's opinion, acting reasonably, following the instruction would not be suitable for the client, the market intermediary shall inform the client of the market intermediary's opinion and shall not buy or sell the security unless the client instructs the market intermediary to proceed despite the market intermediary's opinion.</p>
Fees and charges	16.	<p>(1) A market intermediary's fees and charges shall not be unfair in their frequency or unreasonable in their amount having regard to all relevant circumstances.</p> <p>(2) A market intermediary shall before it provides securities business services to a client, disclose to the client –</p> <p style="padding-left: 40px;">(a) the basis or amount of its charges for the provisions of those services; and</p> <p style="padding-left: 40px;">(b) the nature and amount of any other remuneration receivable by it and attributable to the client.</p>
Client order priority	17.	A market intermediary shall deal with its client and own account orders fairly and in due turn.
Timely execution	18.	A market intermediary shall effect or arrange the execution of an order as soon as is reasonably practicable after it has agreed or decided in its discretion to effect or arrange a client order.
Fair allocation	19.	A market intermediary shall establish and maintain policies and procedures to ensure fairness in the allocation of investment opportunities among its clients.
Best execution	20.	A market intermediary shall take all reasonable steps to find and deal on the terms which are the best available to the client when dealing with or for a client.
Prompt delivery	21.	A market intermediary shall deliver funds or securities promptly to its clients and to other market intermediaries in accordance with the regulatory instruments of the applicable marketplace or clearing facility, or as may be prescribed.
Priority of client orders	22.	(1) A market intermediary shall give priority to orders for the accounts of clients of the market intermediary over all other orders for the same security at the same price.

(2) In this regulation "orders for the accounts of clients of the market intermediary" shall not include an order for an account in which the market intermediary or an officer, director or employee of the firm has an interest, direct or indirect, other than an interest in a commission or fee charged.

Trading as principal

23. (1) A market intermediary may only trade as principal if it is registered to carry on that securities business.
- (2) Where a market intermediary seeks to purchase securities as principal, and there is a competing bid on behalf of its client for the purchase of those securities which equals or is better than the bid made by the market intermediary, the competing client's bid shall be preferred to that made by the market intermediary.
- (3) Where a market intermediary seeks to sell securities as principal, and there is a competing offer on behalf of its client for the sale of those securities which equals or is better than the offer made by the market intermediary, the competing client's offer shall be preferred to that made by the market intermediary.
- (4) For the purposes of this regulation, trading as a principal includes trading on behalf of an affiliate of the market intermediary or any of its officers, directors or significant security holders.
- (5) Where a market intermediary purchases securities as a principal, it shall record such securities in a book of accounts separate from the book of accounts relating to securities held as an agent.

Discretionary trading

24. (1) A market intermediary other than a broker-dealer, may not execute any trade for a client unless the market intermediary has the client's prior authorization for the transaction.
- (2) A market intermediary that is licensed as a broker may only execute investment discretion over a client's account if –
- (a) the market intermediary has entered into a written agreement with the client granting such authority; and
- (b) the agreement has been signed and approved by a designated supervisor of the market intermediary prior to the first transaction for the client.

Confirmation to be sent to client

25. (1) A broker-dealer who trades in any security with or for a client shall send to that client within two business days after the completion of the trade, a written confirmation of the trade containing the information set out in regulation 26.
- (2) The Commission may determine that a broker-dealer who provides a service of a continuous nature may send, instead of a confirmation as referred to in sub-

regulation (1), a periodic statement at the end of each three-month period or at such other shorter period and containing such information as may be prescribed.

- | | | |
|---|-----|--|
| Trading confirmation | 26. | The confirmation of a trade required by regulation 25 shall contain the following information: <ul style="list-style-type: none">(a) the price at and the consideration for which the sale or purchase was effected;(b) the commission charged in connection therewith and any other charges incurred; and(c) the date on which the purchase or sale took place. |
| Executing order, name or code | 27. | Where a market intermediary that is a broker-dealer opens and trades on an account on behalf of a client and executes the orders of a client in its own name or identifies the client by means of a code or symbol, a market intermediary who transacts business with another market intermediary concerning those orders shall establish the credit worthiness of the other market intermediary but need not otherwise determine the suitability of a trade for the client of the other market intermediary. |
| Trading listed securities | 28. | (1) Subject to subsection (2), all trading within [Member State] in securities listed on a registered securities exchange located in [Member State] shall take place on that securities exchange.

(2) Subsection (1) shall not apply to – <ul style="list-style-type: none">(a) a trade by an executor, administrator or guardian or by an authorized trustee or assignee, an interim or official receiver or a custodian under the [Insolvency Act] [Bankruptcy Act], or by a receiver or a liquidator under the [Companies Act], or at a judicial sale; or(b) a trade by an owner of a security, for the owner's account, to an affiliate or an associate of the owner; or(c) a prescribed trade. |
| Trades conducted other than through a securities exchange | 29. | (1) Where a market intermediary participates in trades other than through the facilities of a securities exchange, such a market intermediary shall keep a record of all trades executed by any person other than through the facilities of a securities exchange and shall file with the Commission a report of the trades in such form as the Commission may determine and within the prescribed period.

(2) For the purposes of sub-regulation (1), the report, on the approved form, shall be filed with the Commission within ten business days following the end of each quarterly period in the financial year of the market intermediary. |

- Improper use of client assets 30. A market-intermediary shall not–
- (a) make improper use of a client’s securities or funds; or
 - (b) borrow, lend, pledge or otherwise use a client’s funds or securities without the client’s written authorization.
- Safeguarding of clients’ investment 31. A market intermediary who has custody of a client’s securities in connection with or with a view to securities business shall –
- (a) keep safe, or arrange for the safekeeping of, any documents evidencing title, relating to them; and
 - (b) ensure that any securities that it buys or holds for a client are properly registered in the client’s name.
- Forwarding documents to clients 32. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a market intermediary or its nominee, the firm shall send the client of the firm on behalf of whom the account is held a copy of any documents sent to the market intermediary or its nominee as registered security holder as soon as practicable after receipt, unless the client instructs the firm that the documents need not be sent.
- (2) A person who is required to send a document to registered security holders under the Act shall –
- (a) promptly provide the market intermediary with the number of copies of the document as requested by the firm to enable it to comply with sub-regulation (1); and
 - (b) shall pay or reimburse the market intermediary for the reasonable costs of complying with sub-regulation (1).
- Voting securities not beneficially owned 33. Voting securities of an issuer registered in the name of a market intermediary or in the name of the firm's nominee that are not beneficially owned by the market intermediary, shall be voted by the firm at any meeting of security holders of the issuer only as instructed by the beneficial owner.
- Supervision, compliance and risk management systems 34. (1) A market intermediary shall establish, maintain and apply a system of controls and supervision sufficient to –
- (a) provide reasonable assurance that the market intermediary and each individual acting on its behalf complies with the Act and these Regulations; and

- (b) manage the risks associated with its business in conformity with prudent business practices.
- (2) The system of controls referred to in sub-regulation (1) shall be documented in the form of written policies and procedures.
- Suspended or barred individuals 35. A market intermediary shall not permit –
- (a) any individual who is barred or suspended by the Commission or any domestic or overseas regulatory authority to share premises with the market intermediary or otherwise carry on business from the premises of the market intermediary; or
 - (b) any person to share premises with the market intermediary or otherwise carry on business from the premises of the market intermediary, if that person is carrying on a securities business, unless that person is appropriately licensed with the Commission.
- Complaints 36. A market intermediary shall establish effective complaints handling systems and procedures that ensure that –
- (a) complaints procedures are clearly disclosed and easily accessible to customers and that any appropriate remedial action on those complaints is promptly taken;
 - (b) a record of the details of a complaint, the market intermediary’s response and any actions taken as a result, is established and maintained; and
 - (c) each complaint is effectively and fairly resolved.
- CARICOM market 37. A market intermediary licensed or incorporated in a Member State other than the home Member State, shall comply with these Regulations and other prescribed requirements applicable to market intermediaries.



Attachment III

**DRAFT CARICOM PROSPECTUS
DISCLOSURE REGULATIONS
(DECEMBER 2023 VERSION)**

For Consideration at the

**REGIONAL MEETING ON THE PROPOSED
CARICOM SECURITIES MARKET
LEGISLATIVE FRAMEWORK**

**Port-of-Spain, Trinidad and Tobago
19-22 March 2024**

CARICOM Prospectus Disclosure Regulations

Revised as at: 11 December 2023



Table of Contents

PART I - PRELIMINARY	1
Citation.....	Error! Bookmark not defined.
<u>1. Citation</u>	1
Definitions and Interpretation.....	1
<u>2. Interpretation</u>	1
<u>3. Prospectus exemptions</u>	2
<u>4. Exemption for accredited investors</u>	3
<u>5. Exemption for rights offering</u>	3
<u>6. Offering memorandum and other disclosure documents</u>	4
<u>7. Sale by selling security holder on securities exchange</u>	4
<u>8. Sales to employees</u>	5
<u>9. Resale Restrictions</u>	5
<u>10. Asset-backed Securities</u>	6
PART II.....	6
DRAWING UP OF THE PROSPECTUS.....	6
<u>11. Content of prospectus</u>	6
<u>12. Prospectus summary</u>	6
<u>13. Base prospectus</u>	7
<u>14. Minimum information</u>	7
<u>15. Omission of information</u>	7
<u>16. Responsible persons</u>	8
<u>17. Validity of a prospectus and base prospectus</u>	8
<u>18. Incorporation by reference</u>	8
PART III.....	9
ARRANGEMENTS FOR APPROVAL AND PUBLICATION OF THE PROSPECTUS.....	9
<u>19. Delivery of prospectus</u>	9
<u>20. Approval of preliminary prospectus and prospectus</u>	9
<u>21. Publication of the prospectus</u>	10
<u>22. Amendments to the prospectus</u>	11
<u>23. Advertisements</u>	12
<u>24. Prospectus certificates</u>	12
<u>25. Expert's opinions</u>	13
<u>26. Experts' consents</u>	13

PART IV.....	14
MISCELLANEOUS PROVISIONS.....	14
<u>27.</u> Information to be filed.....	14
<u>28.</u> Issuers incorporated in foreign countries.....	14
<u>29.</u> CARICOM issuers.....	15
SCHEDULE.....	16
PROSPECTUS DISCLOSURE STANDARDS.....	16
PART A - PRELIMINARIES.....	16
1. Preliminary Information.....	16
PART B – SUMMARY OF PROSPECTUS.....	17
2. Information Summary.....	17
PART C – DETAILS OF THE DISTRIBUTION.....	18
4. Offer statistics and expected timetable.....	18
5. Key information.....	18
5. Information on the company.....	18
6. Operating and financial review and prospects.....	19
7. Senior Officers – Directors and senior management and employees.....	19
8. Major shareholders and related-party transactions.....	19
9. Financial information.....	20
10. Details of the distribution.....	20
11. Additional information.....	20

CARICOM
PROSPECTUS DISCLOSURE REGULATIONS

PART I - PRELIMINARY

1. These Regulations may be cited as the Prospectus Disclosure Regulations Citation
XXXX.

Definitions and Interpretation

2. (1) In these Regulations: Interpretation

"Act" means the Securities Act;

"approval" means the positive act at the outcome of the review of the prospectus by the home Member State's Commission which is evidenced by the issue of a receipt for the prospectus;

"base prospectus" means a prospectus containing all relevant information as specified in regulations 5, 7 and 16, concerning the issuer and the securities to distributed, and, at the choice of the issuer, the final terms of the offering.

"home Member State" means:

- (a) for all CARICOM issuers of securities, the Member State where the issuer has its registered office, or the Member State where the securities are intended to be distributed for the first time after the date of entry into force of these Regulations, at the choice of the issuer or the selling security holder;
- (b) for all issuers of securities incorporated in a foreign jurisdiction, the Member State where the securities are intended to be distributed for the first time after the date of entry into force of these Regulations;

"host Member State" means the State where a distribution is made, when different from the home Member State;

"offering memorandum" 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 165 of the Act would apply but for the

availability of one or more of the exemptions contained in the Act or Regulations.

"offering programme" means a plan which would permit the issuance of non-equity securities, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;

"securities issued in a continuous or repeated manner" means issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months;

(2) In these Regulations unless otherwise stated, a reference to a prospectus includes a preliminary prospectus and a prospectus in final form.

3. The obligation to publish a prospectus shall not apply to a distribution: Prospectus exemptions
- (a) of securities issued or guaranteed by the government of a CARICOM Member State or of a recognized foreign jurisdiction or an international agency;
 - (b) of securities issued by the Central Bank of a CARICOM Member State;
 - (c) of securities issued or guaranteed by a government entity of a CARICOM Member State or other recognized jurisdiction;
 - (d) of securities issued in a limited offering;
 - (e) of securities to fewer than fifty accredited investors;
 - (f) by an issuer of its own securities that are distributed to holders of its securities as a dividend;
 - (g) 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;
 - (h) 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;
 - (i) by an issuer pursuant to a prescribed take-over bid;
 - (j) by a person declared an exempt purchaser by order of the Commission who purchases as principal or as trustee for accounts fully managed by it;
 - (k) where the Commission, being satisfied that to do so would not be prejudicial to the public interest, makes an order exempting the distribution, and the order may be subject to any condition the Commission considers appropriate; or
 - (l) in such other prescribed circumstances;

where such distribution is made, where applicable, in conformity with section 165 of the Act.

4. (1) The requirement to file a prospectus under section 165 of the Act shall not apply to a distribution of securities of an issuer to an accredited investor, if – Exemption for accredited investors
- (a) each purchaser –
 - (i) has been provided with an offering memorandum and any other prescribed information; and
 - (ii) has provided the selling security holder with an affidavit attesting to the investor’s status as an accredited investor and acknowledging that the securities purchased are subject to restrictions on resale; and
 - (b) no advertisement or general public solicitation by the issuer, the selling security holder, any of their agents or any intermediary takes place.
- (2) The affidavit required by sub-regulation (1)(a)(ii) shall be retained by the selling security holder.
- (3) The exemption under sub-regulation (1) shall not be available for any selling security holder, if such selling security holder, any of its predecessors, affiliates, directors, senior officers, or significant security holders have been –
- (a) convicted of a criminal offence involving fraud or dishonesty triable on [information]; or
 - (b) the subject of any regulatory action involving a finding of fraud or dishonesty against that person;
- in [Member State] or any foreign jurisdiction.
5. (1) The requirement to file a prospectus under section 165 of the Act does not apply to a distribution of securities by an issuer, in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue, and issue of securities on the exercise of the right, if the issuer – Exemption for rights offering
- (a) files with the Commission a notice and the disclosure documents pursuant to sub-regulation (3) that are to be sent to its security holders and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; and
 - (b) sends to its security holders the disclosure documents and any other information relating to the securities that is satisfactory to the Commission.
- (2) The prospectus exemption is not available to an issuer if, after the exercise of the rights, there would be –
- (a) in the case of debt securities, an increase of more than 25 percent in the principal amount of debt outstanding; or

- (b) in the case of all other securities, an increase of more than 25 percent in the number of the outstanding securities of the class.
- (3) The calculation of the increase in the number of securities issued or principal amount outstanding on exercise of the rights in sub-regulation (2) is to be carried out assuming the exercise of:
- (a) all rights issued under this rights offering; and
- (b) any other rights issued by the issuer under the rights offering prospectus exemption during the 12 months immediately before the acceptance date of this rights offering.
6. Each purchaser under a distribution described in regulations 4 and 5 shall be provided at the time of the purchase with –
- (a) an offering memorandum, setting out a description of the issuer’s business, the intended use of the proceeds of the transaction, the risk factors associated with the issuer and its securities, and any other information required by the Commission;
- (b) the latest audited financial statements of the issuer;
- (c) the latest available unaudited financial statements, if any; and
- (d) any other information or documents as required by the Commission.
7. (1) Subject to sub-regulation (2), the requirement to file a prospectus under section 165 of the Act does not apply to a distribution by a control block person if –
- (a) the distribution is conducted by or through a broker-dealer;
- (b) the issuer of the security being distributed has been a reporting issuer for at least twelve months immediately preceding the date of commencement of the distribution;
- (c) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a broker-dealer;
- (d) the distribution takes place through the facilities of a securities exchange;
- (e) at the time of the distribution, the selling security holder does not have knowledge or possession of any undisclosed material information in respect of the reporting issuer;
- (f) if the securities being distributed have been acquired by the selling security holder under a prospectus exemption, at least six months have elapsed from the date of the initial exempt distribution; or
- (g) notice of the intention to distribute securities in a trading transaction is disclosed by press release and filed with the Commission no less than

Offering memorandum and other disclosure documents

Sale by selling security holder on securities exchange

three business days and no more than ten business days prior to the first sale by the selling security holder.

- (2) The exemption in sub-regulation (1) is not available unless –
- (a) the first sale takes place no less than three business days and no more than ten business days after the date of issue of the press release required by sub-regulation (1)(g); and
 - (b) the final sale takes place no later than the sixtieth day after the date of issue of the press release required by sub-regulation (1)(g).
8. The requirement to file a prospectus under section 165 of the Act does not apply to a distribution by an issuer of securities of its own issue or that of an affiliate to its directors, officers or employees or the directors, officers or employees of an affiliate if –
- (a) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (b) no commission or other remuneration is paid or given for the distribution except for professional services or for services other than the solicitation of employees.
9. (1) The first trade in securities previously acquired pursuant to an exemption contained in regulations 4 and 5, other than a further trade under an exemption in regulation 3, is deemed to be a distribution, unless –
- (a) the issuer is and has been a reporting issuer for the twelve months immediately preceding the date of the trade;
 - (b) the trade is not a distribution by a control block holder;
 - (c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - (d) no extraordinary commission or consideration is paid to a person in respect of the trade;
 - (e) if the selling security holder is an insider of the reporting issuer, the seller has no reasonable grounds to believe that the reporting issuer is in default of securities laws; or
 - (f) at least six months have elapsed from the date of the initial distribution.
- (2) A person who purchases a security pursuant to an exemption from the prospectus requirement at a time when the condition set out in sub-regulation (1)(f) has not been satisfied shall be in the same position as the selling security holder for the remainder of the period specified in sub-regulation (1)(f).
- (3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition set out in sub-regulation (1)(f) has not been satisfied in respect of the convertible or

exchangeable security, a person who takes such security distributed on conversion or exchange shall be in the same position for the remainder of the period specified in sub-regulation (1)(f) as if the conversion or exchange had not occurred.

10. An asset-backed security may only be distributed pursuant to an exemption where a risk disclosure statement in the prescribed form has been delivered to each purchaser of the asset-backed security. Asset-backed Securities

PART II

DRAWING UP OF THE PROSPECTUS

11. (1) Without prejudice to regulation 15, a prospectus shall contain all material information which, according to the particular nature of the issuer and the securities to be distributed, is necessary to enable investors to make an informed assessment of – Content of prospectus
- (a) the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and
 - (b) the rights attaching to the securities.
- (2) A prospectus shall provide full, true and plain disclosure of all material information relating to the securities issued or proposed to be distributed as required by [the Securities Act and these Regulations].
- (3) A prospectus shall include specific, detailed disclosure about a company, its business and the securities being offered.
- (4) The information contained in the prospectus shall be consistent and presented in a comprehensible form, which can be easily analysed.
- (5) A prospectus shall be drawn up in accordance with the prospectus disclosure standards published by IOSCO and shall include the minimum information set out in the Annex.
12. (1) A prospectus shall include a summary which shall in a brief manner, and in non-technical language, convey the essential characteristics and risks associated with the issuer, the selling security holder, any guarantor and the securities. Prospectus summary
- (2) The summary shall also contain a warning that –
- (a) it should be read as an introduction to the prospectus;
 - (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor; and
 - (c) civil liability attaches to those persons responsible under [the Securities Act or these Regulations] for the contents of the prospectus but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

- | | | |
|-----|---|-------------------------|
| 13. | <ul style="list-style-type: none"> (1) The prospectus can, at the election of the issuer or selling security holder, consist of a base prospectus containing all material information concerning the issuer and the securities to be distributed if it relates to non-equity securities, issued under an offering programme. (2) The information given in the base prospectus shall be supplemented, if necessary, in accordance with regulation 22, with the change in material information on the issuer and on the securities to be distributed. (3) If the final terms of the offer are not included in either the base prospectus or the amended prospectus, the final terms shall be – <ul style="list-style-type: none"> (a) filed with the Commission; and (b) published when each distribution is made as soon as practicable, and if possible in advance of the beginning of the offer. | Base prospectus |
| 14. | Without prejudice to the generality of regulation 11 and subject to regulation 15(3), the prospectus shall contain the minimum information required under the Schedule. | Minimum information |
| 15. | <ul style="list-style-type: none"> (1) Where the final offer price or amount of securities, or both, which will be distributed cannot be included in the prospectus, a [preliminary prospectus, or base prospectus, as the case may be] shall set out the criteria or the conditions, or both, in accordance with which the price or amount of securities will be determined, or in the case of price, the maximum price. (2) The Commission may authorise the omission from a prospectus of certain information provided for under these Regulations or any other provisions under the Act, if it considers that – <ul style="list-style-type: none"> (a) disclosure of the information would be contrary to the public interest; (b) disclosure of the information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, selling security holder or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or (c) the information is of minor importance only for a specific distribution and is not such as will influence the assessment of the financial position and prospects of the issuer, selling security holder or guarantor, if any. (3) Without prejudice to the requirement to provide adequate information to investors, where, in exceptional situations, certain information which is required to be disclosed in a prospectus is determined to be inappropriate to the issuer's sphere of activity, or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus may omit that required information but, unless there is no such equivalent information, shall contain information equivalent to the required information and if there is no such information, this requirement shall not apply. | Omission of information |

- | | | |
|-----|---|--|
| 16. | <p>(1) Responsibility for the information given in a prospectus attaches to the following persons –</p> <ul style="list-style-type: none"> (a) the issuer or the control block holder on whose behalf the distribution is made; (b) a person who is the chief executive officer, chief financial officer or a director of the issuer at the time the prospectus was filed; (c) a person who consented to be named in the prospectus as the chief executive officer, chief financial officer or director or as a proposed chief executive officer, chief financial officer or director of the issuer; (d) where the issuer is not a reporting 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 with the Commission, to the use of the expert's report, 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 sub-regulations (a) to (d). <p>(2) The persons responsible for the information contained in the prospectus shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their names and registered offices.(3) A prospectus shall contain declarations by the responsible persons that, to the best of their knowledge –</p> <ul style="list-style-type: none"> (a) the information contained in the prospectus is in accordance with the facts; and (b) the prospectus makes no omission likely to affect its import. | Responsible persons |
| 17. | <p>(1) A prospectus shall be valid for 12 months after its publication for distributions, provided that the prospectus is updated by any amendments required pursuant to regulation 22.</p> <p>(2) In the case of an offering programme for non-equity securities, the base prospectus, previously filed shall, subject to regulation 17(1), be valid for a period of up to 12 months.</p> | Validity of a prospectus and base prospectus |
| 18. | <p>(1) Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the Commission, filed with or notified to the Commission, in accordance with these Regulations.</p> <p>(2) Information incorporated by reference shall be the most recent information available to the issuer.</p> | Incorporation by reference |

- (3) When information is incorporated by reference, a cross-reference list shall be provided in order to enable investors to easily identify specific items of information.
- (4) Information which may be incorporated by reference includes –
 - (a) annual financial statements and annual reports;
 - (b) interim accounts and management statements.
- (5) The summary shall not incorporate information by reference.

PART III

ARRANGEMENTS FOR APPROVAL AND PUBLICATION OF THE PROSPECTUS

- | | | |
|-----|---|---|
| 19. | <ol style="list-style-type: none"> (1) An issuer, broker-dealer or selling security holder who solicits a sale of securities or receives an expression of interest, order or subscription from a person for a security offered in a distribution during the period before the issue of a receipt for the prospectus, shall send to the person a preliminary prospectus or amended preliminary prospectus, as the case may be. (2) An issuer, broker-dealer or selling security holder who receives an expression of interest, order or subscription for a security offered in a distribution, during the distribution period shall send to such person a prospectus, or amended prospectus, as the case may be. (3) The documents required to be sent under sub-regulations (1) and (2) shall be sent within two business days after the expression of interest, order or subscription is received. (4) An agreement of purchase and sale is not binding on a purchaser if the issuer, broker-dealer or the selling security holder from whom the purchaser purchases the security receives written notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than two business days after the purchaser received the prospectus or an amended prospectus. (5) In this Part, references to “prospectus” includes a base prospectus. | Delivery of prospectus |
| 20. | <ol style="list-style-type: none"> (1) A preliminary prospectus or prospectus shall not be published unless filed with the Commission and approved by the Commission [or Commission of the home Member State] evidenced by the issue of a receipt. (2) The Commission shall notify the issuer, the selling security holder or the person making the distribution, of its decision regarding the approval of the prospectus within 10 business days of the submission of the draft preliminary prospectus and prospectus respectively. (3) If the Commission fails to give a decision on the preliminary prospectus or prospectus within the time limits laid down in sub-regulation (2) and sub-regulation (4), this shall not be deemed to constitute approval of the application. | Approval of preliminary prospectus and prospectus |

- (4) The time limit referred to in sub-regulation (2) shall be extended to 20 business days if the distribution involves securities issued by an issuer who has not previously made a distribution of securities.
 - (5) If the Commission finds, on reasonable grounds, that the documents submitted to it are deficient for any of the reasons set out in sub-regulation (7)(a), the time limits referred to in sub-regulations (2) and (4) shall apply only from the date on which information concerning the deficiency is provided by the issuer, the selling security holder or the person making a distribution of securities.
 - (6) In the cases referred to in sub-regulations (2) and (4), the Commission shall notify the issuer if the documents are incomplete within 10 business days and 20 business days respectively, of the submission of the application.
 - (7) The Commission shall refuse to issue a receipt for a prospectus if –
 - (a) the prospectus or any other document filed with the prospectus –
 - (i) contains a misrepresentation;
 - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;
 - (iii) fails to disclose any material information which may be required under the Act; or
 - (iv) fails to comply with any requirement of the Act;
 - (b) the Commission considers that the distribution would be prejudicial to the public interest; or
 - (c) any other reason is prescribed.
 - (8) The Commission shall not approve a prospectus unless it is satisfied that the applicable requirements imposed by or under these Regulations and any other provisions under the Securities Act have been complied with.
21. (1) Upon a prospectus having been approved, the prospectus can be made available to the public by the issuer, selling security holder or person making the distribution as soon as practicable, and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the distribution of the securities involved. Publication of the prospectus
- (2) The prospectus shall be deemed available to the public when published –
- (a) by insertion in one or more newspapers circulated throughout, or widely circulated in [Member State];
 - (b) in a printed form to be made available, free of charge, to the public at the registered office of the issuer and at the offices of the broker-dealers placing or selling the securities;
 - (c) in an electronic form on the issuer's website and, if applicable, on the website of the broker-dealers placing or selling the securities; or

- (d) in an electronic form on the website of the licensed securities exchange where an admission to trading is sought.
 - (3) Issuers which publish their prospectus in accordance with sub-regulation 2(a) or (b) may also publish their prospectus in an electronic form in accordance with sub-regulation 2(c).
 - (4) The Commission may require publication of a notice stating how the prospectus has been made available and where it can be obtained by the public.
 - (5) (a) In the case of a prospectus comprising several documents or incorporating information by reference, or both, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public, in accordance with the arrangements established in sub-regulation (2).
 - (b) Each document shall indicate where the other constituent documents of the full prospectus may be obtained.
 - (6) The text and the format of the prospectus, and the amended prospectus, published or made available to the public, shall at all times be identical to the original version approved by the Commission.
 - (7) Where the prospectus is made available by publication in electronic form, a paper copy shall nevertheless be delivered to each investor who purchases or subscribes for the securities involved, (or intends to purchase or subscribes for such securities or bona fide contemplates such purchase or subscription), upon the investor's request and free of charge, by the issuer, broker-dealer or selling security holder.
 - (8) Every issuer, broker-dealer or selling security holder participating in the distribution of a security shall maintain a record of the names and addresses of all persons to whom the preliminary prospectus has been forwarded.
22. (1) If, after a receipt is obtained for a preliminary prospectus and before the receipt for the prospectus is obtained, or during the distribution period there is a change in material information, the issuer shall file with the Commission an amended preliminary prospectus or amended prospectus containing the particulars of the change in material information. Amendments to the prospectus
- (2) Every preliminary prospectus or prospectus thereafter sent or given to any person shall include the amended prospectus.
 - (3) Where an amended prospectus is required to be filed with the Commission under sub-regulation (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, broker-dealer or selling security holder who sent a preliminary prospectus to a person under regulation 19(1) shall send to each such person an amended preliminary prospectus immediately after it has been filed.

- (5) An amendment to a preliminary prospectus or a prospectus shall consist of either –
- (a) an amendment in the form of an addendum that does not fully restate the text of the prospectus; or
 - (b) a complete restatement of the prospectus, as amended.
- (6) An issuer, broker-dealer or selling security holder who sent a prospectus to a purchaser under regulation 19(2) shall send to each purchaser an amended prospectus immediately after a receipt is issued by the Commission for the amended prospectus.
23. (1) During the period between the issue of the receipt for the preliminary prospectus and the receipt for the prospectus, it is permissible to –
- Advertisements
- (a) distribute any communication to the public regarding the proposed distribution –
 - (i) identifying the issuer and security proposed to be issued;
 - (ii) stating the security's price, if then determined;
 - (iii) stating the name and address of a person from whom purchases of the security may be made;
 - (iv) stating the name and address of a person from whom a preliminary prospectus may be obtained, including the web address of the issuer and market intermediary where a copy of the prospectus can be retrieved and printed in readable form, if any; and
 - (v) containing only such further information as may be permitted or required by any guideline of the Commission;
 - (b) distribute a preliminary prospectus; and
 - (c) solicit expressions of interest from a prospective purchaser if, prior to such solicitation or immediately after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to the person.
- (2) A person shall not make any oral or written representation or disclose any fact to any person with respect to the issuer or the securities being distributed under the prospectus which is not contained in the prospectus for which a receipt has been issued by the Commission.
24. (1) Every prospectus shall contain a certificate signed by –
- Prospectus certificates
- (a) the chief executive officer and the chief financial officer, or the persons acting in such capacities for the issuer, whatever their titles;
 - (b) any two directors of the issuer duly authorized to sign, other than the persons referred to in paragraph (a), on behalf of the board of directors of the issuer;

- (c) the selling security holder; and
 - (d) any person who is a promoter of the issuer.
- (2) If there is an underwriter, the prospectus shall contain a certificate in the form set out in the Schedule, signed by the underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or selling security holder.
25. The Commission may require that a report, valuation, statement or opinion from an accountant, appraiser, auditor, engineer, a lawyer, or any other expert shall be included in a prospectus or provided to or filed with the Commission. Expert's opinions
26. (1) If any accountant, appraiser, attorney, auditor, engineer, or any other person whose profession or business gives authority to a statement made by that person is named in a prospectus as having – Experts' consents
- (a) prepared or certified any part of the prospectus;
 - (b) opined on financial statements from which selected information included in the prospectus has been derived and which audit opinion is referred to in the prospectus; or
 - (c) prepared or certified a report or valuation referred to in the prospectus, the issuer shall file, no later than the time the prospectus is filed, a written consent from the accountant, appraiser, attorney, auditor, engineer, or other person.
- (2) The consent referred to in sub-regulation (1) shall –
- (a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion; and
 - (b) contain statements that the person referred to in sub-regulation (1) –
 - (i) consents to being named in the prospectus;
 - (ii) consents to the use of the person's report, valuation, statement or opinion;
 - (iii) has read the prospectus; and
 - (iv) has no reason to believe that there are any misrepresentations in the information contained in it that are –
 - (A) derived from the report, valuation, statement or opinion; or
 - (B) within the knowledge of the person as a result of the services performed by that person in connection with the report, financial statements, valuation, statement or opinion.
- (3) In addition to any other requirement of this regulation, the consent of an auditor or accountant shall also state –

- (a) the dates of the financial statements on which the report of the person is made; and
 - (b) that the person has no reason to believe that there are any misrepresentations in the information contained in the prospectus that are –
 - (i) derived from the financial statements on which the person has reported; or
 - (ii) within the knowledge of the person as a result of the audit of the financial statements.
- (4) Sub-regulation (1) shall not apply to an approved rating organization that issues a rating of the securities being offered under a prospectus.

PART IV

MISCELLANEOUS PROVISIONS

27. (1) (a) Issuers whose securities have been distributed, shall file an annual report with the Commission which shall contain or refer to all information that they have published or made available to the public over the preceding 12 months in one or more Member States and in foreign jurisdictions in compliance with their obligations under the Act, and other laws and rules dealing with the regulation of securities, issuers of securities and securities markets within CARICOM. Information to be filed
- (b) Where an exemption to the requirement to file a prospectus has been granted to an issuer, or selling security holder, the Commission shall issue a certificate stating the reason for the grant of the exemption.
- (2) Without prejudice to the generality of sub-regulation (1), information required to be filed includes all information required to be filed pursuant to [the Companies Act] and any other written law, including financial statements prepared in accordance with International Financial Reporting Standards.
- (3) The document shall be filed with the Commission along with the annual report.
- (4) Where the document refers to information, it shall be stated where the information can be obtained.
- (5) Information filed with the Commission pursuant to this regulation, shall be made available to the Commission of the host Member State in accordance with prescribed rules.
28. The Commission may approve a prospectus of an approved foreign issuer, provided that: Issuers incorporated in foreign countries
- (a) the prospectus has been drawn up in accordance with international standards set by the International Organisation of Securities Commissions, (IOSCO);

(b) the information requirements, including information of a financial nature, are equivalent to the requirements under the Act and these Regulations.

29. In the case of a distribution by an issuer incorporated in a Member State other than the home Member State, the prescribed requirements shall apply. CARICOM issuers

SCHEDULE
PROSPECTUS DISCLOSURE STANDARDS

(regulation 14)

PART A - PRELIMINARY

1. Preliminary Information

Preliminary information shall include –

- (a) the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business;
- (b) the issuer's address and telephone number of the issuer's registered office, head or management office, its e-mail address, its website address, its jurisdiction of incorporation or organization and the statute under which it was incorporated or organized;
- (c) Statutory Rights of Withdrawal and Rescission - Every prospectus shall contain a statement of rights given to a purchaser of securities, in the form set out below:

The Securities Act and the Regulations made under the Act, provide a purchaser with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt of a prospectus and any amendment. The securities legislation further provides a purchaser with remedies for rescission and damages if the prospectus or any amendment contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation. The purchaser should refer to the Securities Act, and the regulations made under that Act, for the particulars of these rights or consult with a legal adviser.

- (d) Prospectus Certificate - The certificate required by regulation 24 shall be in the following form –

"The foregoing constitutes full, true and plain disclosure of all material information relating to the issuer and the securities distributed by this prospectus and contains no misrepresentation that is likely to affect the value or the market price of the securities being offered."

If there is an underwriter, the prospectus shall contain a certificate in the following form, signed by the underwriter that, with respect to the securities offered by the prospectus, the underwriter is in a contractual relationship with the issuer or selling security holder

–

"To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material information relating to the issuer and the securities distributed by this prospectus and contains no misrepresentation that is likely to affect the value or the market price of the securities being offered."

PART B – SUMMARY OF PROSPECTUS

2. Information Summary

Include near the front of the prospectus, but after the cover page, summary information about the issuer and the securities to be distributed. The summary shall provide in a few pages the most important information included in the prospectus, covering at least the following items:

- (a) identity of promoters, directors, senior management, advisers and auditors;
- (b) offer statistics and expected timetable;
- (c) key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors;
- (d) information concerning the issuer-
 - history and development of the issuer;
 - description of the principal activities and business of the issuer;
 - a description of the principal activities and business of the issuer;
- (f) operating and financial review and prospects-
 - research and development, patents and licenses, etc.;
 - trends;
- (g) directors, senior management and employees;
- (h) major shareholders and related-party transactions;
- (i) disclosure of conflicts of interests;
- (j) financial information-
 - consolidated statement and other financial information;
 - significant changes;
- (j) details of the offer and distribution-
 - offer;
 - plan for distribution;
 - market for the securities;
 - underwriters/selling shareholders;
 - dilution (equity securities only);
 - expenses of the issue;
- (k) additional information-
 - share capital;
 - memorandum and articles of association;
 - documents available for inspection;

(I) Warning Statement.

Every prospectus shall contain a warning statement at the beginning of the summary to the effect that the information which follows is only a summary of the information contained in the prospectus, and that prospective purchasers are advised to read the entire prospectus prior to deciding whether to invest in the securities being distributed.

PART C – DETAILS OF THE DISTRIBUTION

3. Identity of directors, senior management, advisers, auditors and agents

The purpose is to identify the company representatives and other individuals involved in the distribution; these are the persons responsible for drawing up the prospectus as required by regulation 16 and those responsible for auditing the financial statements.

4. Offer statistics and expected timetable

The purpose is to provide key information regarding the conduct of any offer and the identification of important dates relating to that offer.

- (a) Offer statistics including offer price, amount to be raised and type of securities.
- (b) Classes of securities and rights attaching to the securities regarding voting, dividends, liquidation and any special rights.
- (c) Method and expected timetable including the offer date and the closing date and any special conditions in subscribing for the offer.

5. Key information

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data shall also be restated.

- (a) Selected financial data. Reports should be submitted for the past 3 years or for a shorter period where the issuer has been in operation for less than 3 years.
- (b) Capitalisation and indebtedness.
- (c) Reasons for the offer and use of proceeds.
- (d) Expenses of the issue.
- (e) Risk factors.

5. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide

information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases.

- (a) History and development of the company.
- (b) Business overview.
- (c) Organisational structure.
- (d) Property, plant and equipment.

6. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- (a) Operating results.
- (b) Liquidity and capital resources.
- (c) Research and development, patents and licences, etc.
- (d) Trend Information, Profit Forecast and Cash Flow Forecast.

7. Senior Officers – Directors and senior management and employees

The purpose is to provide information concerning the company's senior officers including directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- (a) Directors and senior management.
- (b) Material background information on senior officers.
- (c) Remuneration.
- (d) Board practices.
- (e) Employees.
- (f) Share ownership.

8. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- (a) Major shareholders.
- (b) Related-party transactions and conflicts of interest.
- (c) Interests of Experts, Counsel, Underwriters and Financial Advisers.

9. Financial information

The purpose is to specify which financial statements shall be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- (a) Consolidated statements and other financial information.
- (b) Pro forma financial statements.
- (c) Litigation.
- (d) Dividends.
- (e) Significant changes.
- (f) Change in accounting policies.

10. Details of the distribution

The purpose is to provide information regarding the plan for distribution of the securities and related matters.

- (a) Offer and admission to trading.
- (b) Plan for distribution.
- (c) Markets.
- (d) Holders of securities who are selling.
- (e) Dilution (for equity securities only).
- (f) Expenses of the issue.

11. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- (a) Share capital.
- (b) Memorandum and articles of association.
- (c) Material contracts.
- (d) Exchange controls.
- (e) Taxation.
- (f) Dividends and paying agents.
- (g) Statement by experts.
- (h) Documents on display.
- (i) Subsidiary information.

APPENDIX II

2025-06-26

OBJECTS AND REASONS

This Bill would amend the Financial Services Commission Act, 2010 (Act 2010-21).

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Act 2010-21
3. Amendment of section 4 of Act 2010-21
4. Amendment of section 6 of Act 2010-21
5. Insertion of section 6D into Act 2010-21
6. Amendment of section 8 of Act 2010-21
7. Insertion of new sections 9A, 9B and 9C in Act 2010-21
8. Amendment of section 10 of Act 2010-21
9. Amendment of section 11 of Act 2010-21
10. Repeal and replacement of section 15 of Act 2010-21
11. Amendment of section 16 of Act 2010-21
12. Insertion of section 19A into Act 2010-21
13. Amendment of section 20 of Act 2010-21
14. Amendment of section 23 of Act 2010-21
15. Amendment of section 25 of Act 2010-21

- 16.** Amendment of section 31 of Act 2010-21
- 17.** Repeal and replacement of section 38 of Act 2010-21
- 18.** Insertion of new sections 39A, 39B, 39C, 39D and 39E into Act 2010-21
- 19.** Amendment of section 40 of Act 2010-21
- 20.** Amendment of section 54 of Act 2010-21
- 21.** Insertion of 54A into Act 2010-21

BARBADOS

A Bill entitled

An Act to amend the *Financial Services Commission Act, 2010*
(Act 2010-21).

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Financial Services Commission (Amendment) Act, 2025*.

Amendment of section 2 of Act 2010-21

2. *Section 2 of the Financial Services Commission Act, 2010 (Act 2010-21), in this Act referred to as the principal Act, is amended by*

(a) *deleting the definition of “financial institution” and substituting the following definition:*

“ “financial institution”

(a) means an institution or a business which is governed by any of the Acts set out in the *Second Schedule*; and

(b) includes

(i) a credit union;

(ii) a mutual fund;

(iii) a pension plan; or

(iv) a reporting issuer; ”; and

(b) *inserting the following definitions in their appropriate alphabetical order:*

“ “administrative penalty” means a penalty of up to \$250 000 payable to the Commission for

(a) a breach of a term or condition of a licence, certificate, registration or authorization, as the case may be; or

(b) a contravention of this Act, its statutory instruments or a specified enactment;

“intermediary” includes

- (a) an insurance intermediary as defined in section 2 of the *Insurance Act*, Cap. 310;
- (b) a market actor as defined in section 2 of the *Securities Act*, Cap. 318A; and
- (c) a mutual fund administrator as defined in section 2 of the *Mutual Funds Act*, Cap. 320B;

“mutual fund” has the meaning assigned to it under section 2 of the *Mutual Funds Act*, Cap. 320B;

“pension plan” has the meaning assigned to it under section 2 of the *Occupational Pension Benefits*, Cap. 350B;

“reporting issuer” has the meaning assigned to it under section 2 of the *Securities Act*, Cap. 318A;”.

Amendment of section 4 of Act 2010-21

3. Section 4 of the principal Act is amended in subsection (1)

- (a) *by deleting the word “and” appearing immediately after the words “operating in Barbados” in paragraph (h);*
- (b) *by deleting paragraph (i);*
- (c) *by inserting the following new paragraphs immediately after paragraph (h):*

“(i) to establish and promote any conditions necessary, advisable or appropriate, as the case may be, to facilitate the orderly growth and development of the non-bank financial sector including the introduction of new services and products;

- (j) to maintain surveillance of the market; and

- (k) to do such other things as are necessary to effectively carry out the purposes of this Act.”.

Amendment of section 6 of Act 2010-21

4. *The principal Act is amended by deleting section 6 and substituting the following:*

“Duty to be licensed or registered

6.(1) Subject to subsection (2), no person shall operate a financial institution or function as an intermediary unless it is registered or licensed, as the case may be, in accordance this Act or the relevant specified enactment.”

(2) After the commencement of this Act, all licences and certificates of registration issued under the specified enactments shall remain valid until the date fixed for their expiry.

(3) An application shall be in the prescribed form and manner.

(4) No person shall be registered or licensed, as the case may be, unless it provides such sum of capital **as prescribed by the Commission** that adequately reflects the risk associated with the stated proposed activity of the financial institution.

(5) The Commission shall issue a certificate of registration or licence, as the case may be, where it is satisfied that

(a) **a person has met the requirements under this Act or any of the specified enactments;** and

(b) the person is a fit and proper person to operate a financial services business.

(6) The certificate of registration or licence issued under subsection (1) shall be in such form as the Commission approves.

(8) Where there is reasonable cause to believe that a person has contravened subsection (1), the Commission may cause an examination to be made of that person and the provisions of this Act shall apply *mutatis mutandis* for the purposes of the examination as if the person was registered or licensed under this Act.

(9) A person who holds funds obtained from carrying on business in Barbados contrary to subsection (1) shall repay those funds in accordance with the direction of the **Commission**.

(10) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.”.

Insertion of section 6D into Act 2010-21

5. *The principal Act is amended by inserting immediately after section 6C the following new section:*

“Display of licence or certificate of registration

6D.(1) A licensee or registrant shall conspicuously display

(a) **its licence or certificate of registration, as the case may be, at the primary location where the licensee or registrant conducts business; and**

(b) **a copy of the licence or certificate of registration, as the case may be, at every other location or branch in Barbados.**

(2) A person who contravenes subsection (1) **is liable to an administrative penalty.”.**

Amendment of section 8 of Act 2010-21

6. Section 8 of the principal Act is amended by

(a) deleting subsection (1) and substituting the following:

“(1) The Commission shall have the power to

(a) give directives

(i) to ensure compliance with this Act, its statutory instruments, guidelines or any of the specified enactments;

(ii) to ensure that a financial institution is being properly managed and remains financially sound;

(b) examine or investigate the affairs of any person in accordance with this Act or any of the specified enactments;

(c) suspend, cancel or revoke the licence, certificate, registration or authorization, as the case may be, of a financial institution or intermediary, pursuant to this Act and the specified enactments or take such other action, measure or impose such sanction as permitted under the specified enactments;

(d) seize the management and control of a financial institution, appoint a manager or take any other necessary action for the purpose of protecting the interest of customers of financial institutions, as well as creditors and the public and ensuring that the financial institution remains financially sound;

- (e) reorganize or wind up a financial institution in accordance with the specified enactments and any other applicable enactment;**
- (f) exempt any financial institution or any financial services sector from any requirement under this Act, its statutory instruments, any specified enactment or the guidelines where, in the opinion of the Commission, it is necessary to do so;**
- (g) exercise any of the powers exercisable by the regulatory authorities under the specified enactments before the commencement of this Act;**
- (h) require a person seeking to be registered or licensed, as the case may be, under the Act, provide appropriate levels of capital that reflect the risk associated with the stated activity of the financial institution;**
- (i) impose administrative measures including administrative penalties;**
- (j) cause or initiate the wind up of a registered or licensed financial institution where such institution has not commenced business within one year of the issue of a certificate of registration or licence, as the case may be;**
- (k) review, approve or refuse, as the case may be, an amalgamation, merger, takeover or any other form of business combinations;**
- (l) make an application to the court for an order to freeze the assets of a registered or licensed financial institution or any other person;**
- (m) make an application to the court for the purpose of protecting the interest of customers and creditors of the**

financial institutions, the public and integrity of the financial services sector;

- (n) approve or refuse a service, product or transaction;**
- (o) prohibit a person from carrying on business under a name that is likely to mislead the public that such person is licensed or registered, as the case may be, under the Act;**
- (p) issue orders and give directions, to such persons and in such manner as it thinks fit, for the purpose of**
 - (i) ensuring the attendance of a party or witness to any proceeding or hearing;**
 - (ii) requiring the disclosure of documents or other evidence;**
 - (iii) requiring parties or witnesses to answer questions; and**
 - (iv) conducting its proceedings in a proper and orderly manner; and**
- (q) exercise such other powers as are necessary to enable it to effectively discharge its functions under this Act, its statutory instruments or any of the specified enactments.”; and**

(b) *by inserting the following new subsections immediately after subsection (3)*

“(4) No person shall, without reasonable excuse, refuse or fail to comply with an order or instruction of the Commission made or given under subsection (1)(p).

(5) A person who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Insertion of new sections 9A, 9B and 9C in Act 2010-21

7. *The principal Act is amended by inserting the following new section immediately after section 9:*

“Administrative penalty notice

9A.(1) Where the Commission intends to impose an administrative penalty, it shall issue an administrative penalty notice in the form approved by the Commission.

(2) An administrative penalty notice shall

- (a) specify the nature of the act constituting the breach or contravention;**
- (b) the penalty to be paid to the Commission; and**
- (c) require the person to whom it is addressed to pay the penalty within 30 days of the date of the notice.**

(3) A person who is in receipt of an administrative penalty notice issued pursuant to subsection (1) shall pay the amount of the penalty set out in the notice on or before the date specified in the notice.

(4) Notwithstanding subsection (3) where the Commission is satisfied on grounds of undue hardship or for any other reason that it would be just and equitable to do so, it may arrange with the person who is the subject of the penalty notice to pay the penalty set out in the notice in instalments.

Procedure for challenging an administrative penalty

9B. A person to whom an administrative penalty notice is addressed may appeal to the Tribunal.

Administrative penalty to constitute a debt to the State

9C. The amount of an outstanding administrative penalty constitutes a debt to the State and is recoverable in civil proceedings before a magistrate's court."

Amendment of section 10 of Act 2010-21

8. *The principal Act is amended by deleting section 10 and substituting the following:*

"Submission of information

10.(1) Subject to section 8(1)(f), a financial institution shall submit to the Commission, within 30 days of the end of each quarter, interim unaudited financial statements and any information relating to the financial statements.

(2) In addition to the furnishing of the financial statement pursuant to subsection (1), every financial institution shall furnish to the Commission at such time as the Chief Executive Officer of the Commission may fix in writing, such time being reasonable in all the circumstances; and in such manner as may be specified, the following information relating to its business operations:

- (a) any information relating to the financial statements or any information relating to the financial returns of the financial institution;

- (b) any information the Commission considers necessary in respect of any holding company, subsidiary or affiliate of the financial institution; and
- (c) any other information, records or documents the Commission considers necessary for the purpose of carrying out its functions under section 4(1)(b).
- (3) Notwithstanding subsection (1), the Commission may grant an extension of time for the submission of interim unaudited financial statements and any information relating to the financial statements.
- (4) Where the Commission is satisfied that a document submitted under this section is incomplete, inaccurate, unclear or not prepared in accordance with the provisions of the Act, the Commission shall, by notice in writing, require a financial institution to complete, amend, submit or prepare in accordance with the provisions of the Act, as the case may be, a document.
- (5) A person who contravenes subsection (1) or (2) is liable to an administrative fine.”.

Amendment of section 11 of Act 2010-21

9. Section 11 of the principal Act is amended

- (a) *in subsection (6) by deleting paragraph (b) and substituting the following:*

“(b) the financial institution to submit to the Commission a copy of the audited annual financial statement and a copy of the report referred to in paragraph (a), within 4 months of the end of the financial year, and in the case of an occupational pension plan, within 6 months of the end of the financial year.”; and

(b) *inserting the following new subsection after subsection (6):*

“(6A) Notwithstanding subsection (6)(b), the Commission may grant an extension of time for the filing of audited annual financial statement, reports or other information.”.

Repeal and replacement of section 15 of Act 2010-21

10. *The principal Act is amended by repealing section 15 and substituting the following:*

“Production of documents and information

15.(1) An auditor, officer or employee of a financial institution shall

- (a) produce for an examiner at such time as the examiner fixes, such time being reasonable in all the circumstances, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally; and
- (b) give the examiner such information concerning its affairs and business as the examiner may request orally or in writing.

(2) A financial institution shall retain all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally until the Commission has given written permission for their disposal.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Amendment of section 16 of Act 2010-21

11. Section 16 of the principal Act is amended

(a) by deleting subsection (1) and substituting the following:

“(1) The Commission may authorize a suitably qualified person to conduct an investigation into the affairs of a financial institution or any person for the purpose of determining whether a person has contravened, is contravening or is likely to contravene a provision of the Act, **its statutory instruments or** a specified enactment.”;

(b) in subsection (2) by

(i) deleting paragraph (a) and substituting the following:

“(a) request information from the financial institution or any person; or”.

(ii) deleting the word “or” appearing immediately after the words “association with the financial institution;” in subparagraph (ii); and

(iii) inserting after subparagraph (iii) the following new subparagraph:

“(iv)any other person.”.

Insertion of section 19A into Act 2010-21

12. The principal Act is amended by inserting the following new section immediately after section 19:

“Fraudulent information and statements

19A.(1) No person shall intentionally provide any information or make a statement that is false or contains misleading or inaccurate information in pursuance of an order or request made under the Act or a specified enactment.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for one year or to both.”.

Amendment of section 20 of Act 2010-21

13. *Section 20 of the principal Act is amended in subsection (2) by deleting the words “subsection (1)(b)(ii)” and substituting the following words “subsection (1)(c)(ii)(A)”.*

Amendment of section 23 of Act 2010-21

14. *The principal Act is amended by deleting section 23 and substituting the following:*

“Obstruction

23. Any person who

- (a) obstructs the Commission or any person authorised in writing by the Commission while in the exercise of any power or authority given under this Act, its statutory instruments or a specified enactment; or**
- (b) in any way obstructs any proceeding, hearing, the examination or investigation of a financial institution, business or person under this Act or a specified enactment,**

is guilty of an offence and is liable on conviction on indictment to a fine of \$200 000 or imprisonment for 5 years or to both.”.

Amendment of section 25 of Act 2010-21

15. Section 25 of the principal Act is amended by

(a) deleting subsection (1) and substituting the following:

“(1) The Commission may, after consultation with the Minister, revoke the licence or cancel the registration of a financial institution **or intermediary** where

- (a) a licence or certificate of registration was obtained through misrepresentation, providing misleading or fraudulent information or concealing information;
- (b) a licence **or** certificate **of** registration was obtained through the mistake of the licensee, registrant, Commission or other person;
- (c) a financial institution or intermediary has ceased to carry on the business for which it was licensed or registered upon the expiration of one year after the licence or certificate of registration was issued;
- (d) a financial institution or intermediary has failed to satisfy a requirement or condition of a licence or certificate of registration;
- (e) a financial institution **or intermediary** has failed to make a payment under the Act or any other enactment;
- (f) a financial institution or intermediary has been convicted of an offence involving fraud or dishonesty;
- (g) a financial institution or intermediary is carrying on business in an unlawful manner;

- (h) a financial institution or intermediary has had final judgment ordered against it and that judgment remains unsatisfied for more than one month;
- (i) a financial institution **or intermediary** fails to maintain high standards of financial probity or follow sound business practices; or
- (j) there is a failure to comply with the provisions of the Act, its statutory instruments, a specified enactment, the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23)**or any relevant enactment.**”;

(b) ***deleting subsection (5) and substituting the following:***

“(5) The Commission may suspend the operation of a financial institution **or intermediary**

- (a) pending the determination of an appeal;
- (b) where a financial institution **or intermediary** is prosecuted for breaching the provisions of the Act or a specified enactment; or
- (c) where it is the opinion of the Commission that it is in the best interest of the public to suspend the operation of the financial institution **or intermediary.**”and

(c) ***inserting the following new subsection immediately after subsection (6):***

“(7) Notwithstanding **subsection (1)**, the Commission shall not revoke the licence or cancel the registration of a financial institution **or intermediary which has outstanding liabilities unless the**

Commission is satisfied that the financial institution made or will make adequate arrangement to discharge that liability.”.

Amendment of section 31 of Act 2010-21

16.*Section 31 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) The Commission may delegate, in writing, any power or function conferred on it by this Act to any member, committee or senior officer of the Commission, except the power to make regulations under this Act.”

Repeal and replacement of section 38 of Act 2010-21

17.*The principal Act is amended by repealing section 38 and substituting the following:*

“Liability

38.(1) No member, officer, employee or former member, officer, employee of the Commission, auditor, examiner or other person appointed or authorized, **in writing**, by or acting on behalf of the Commission, shall be liable to any person in any action or proceeding for anything done or omitted in the discharge or purported discharge of their functions under this Act **or its statutory instruments**, unless it is shown that the act or omission was done in bad faith.

(2) No person shall be liable to any person in any action or proceeding where he

(a) provides or discloses any information or material to the Commission or a regulatory authority in good faith in compliance with an order made under the Act;

- (b) makes a statement to the Commission in good faith in compliance with an order made under the Act;
- (c) does an act or omits to do any act in good faith in compliance with an order made under the Act of in the performance of his duties; or
- (d) complies with an order made under the Act.”.

Insertion of new sections 39A, 39B, 39C, 39D and 39E into Act 2010-21

18. *The principal Act is amended by inserting the following new sections immediately after section 39:*

“Cooperation with other authorities

39A.(1) The Commission may co-operate with

- (a) an entity involved in financial services and their operation in Barbados and the regulation, monitoring and supervision of financial services in Barbados;
- (b) a regulatory authority, foreign regulatory authority or international organization dealing with regulation and oversight of financial services.

(2) The Commission may for the purpose of co-operating with an entity or regulatory authority referred to in subsection (1), enter into a memorandum of understanding with that entity or authority.

(3) Subsection (2) does not prohibit the Commission from co-operating with an authority or entity referred to in subsection (1) in the absence of a memorandum of understanding with that authority or entity.

Disclosure of information and duty of confidentiality

39B.(1) The Commission shall not directly or indirectly disclose to any person any information or document obtained during the exercise of its functions under this Act, except

- (a) for the purpose of performing its functions under this Act;
- (b) where it is necessary to protect the financial integrity, effectiveness or security of the financial services sector;
- (c) where it is disclosed to a person who is lawfully authorized to receive the information;
- (d) when disclosure is ordered by a court of law;
- (e) for statistical purposes; or
- (f) where it is required for the purpose of satisfying an obligation under an international treaty, convention or an agreement to which Barbados is a party.

(2) Notwithstanding subsection (1), the Commission or a person employed or retained by the Commission may, in accordance with section 39A, disclose data or information obtained under this Act to a foreign regulatory authority if it is satisfied that

- (a) the purpose for which the data or information will be used is sufficiently specified;
- (b) the intended use of the data or information fits the framework of the supervision of financial institutions, services, products or markets;
- (c) the supply of the data or information would be compatible with the laws of Barbados or in the public interest;
- (d) the confidentiality of the data or information is adequately guaranteed;

- (e) the supply of the data or information will not come into conflict with the objects of this Act;
- (f) the request for assistance from the regulatory authority is in a form approved by the Commission; and
- (g) there is in place a reciprocal agreement for the exchange of information with the requesting regulatory authority.

Co-operation with regulatory authorities

39C.(1) The Commission may provide assistance to a regulatory authority in Barbados or a foreign regulatory authority.

- (2) The Commission shall have the power to:
 - (a) provide any requested material or information in the possession of the Commission to the relevant regulatory authority;
 - (b) order a person to provide to the Commission any material or information requested by the relevant regulatory authority;
 - (c) provide any requested material or information to the relevant regulatory authority;
 - (d) order a person to render assistance to the Commission in relation to a request made by a regulatory authority; and
 - (e) record an oral or written statement of a person on any information requested by a regulatory authority and submit such statement to the regulatory authority.
- (3) The information or material referred to in subsection (2) shall include the following:
 - (a) auditing information including audit working papers, correspondence, documents and other information relating to the audit or review of financial statements;

- (b) banking records including statements and other documents or information relating to the identified account;
 - (c) subscriber information or records held or maintained by a telephone service provider located in Barbados that include:
 - (i) the identity of the subscriber including the name and address of the subscriber;
 - (ii) the billing and payment information;
 - (iii) incoming and outgoing communications with the date, time, duration and identification of telephone numbers from which communications are made or received; and
 - (iv) any other specified information; and
 - (d) subscriber information or records held or maintained by an internet service provider or other electronic communication provider located in Barbados that include:
 - (i) the identity of the subscriber including the name and address of the subscriber;
 - (ii) the billing and payment information;
 - (iii) **the** type of service;
 - (iv) **the** period of service;
 - (v) **the** network address;
 - (vi) **the** session times, dates and duration; and
 - (vii) any other specified information.
- (5) Notwithstanding anything contained in this section, a person shall not be in breach where he refuses or fails to disclose information or to produce a document on the grounds of legal privilege.

Participation of other regulatory authority in examination or investigation

39D. The Commission may request, approve or facilitate the participation of a regulatory authority in the examination or investigation of a person where the Commission is satisfied that such participation is necessary or beneficial for the purposes of the regulatory functions of the requesting regulatory authority or the administration or enforcement of this Act.

Assistance with court orders

39E.(1) The Commission may render assistance to a regulatory authority in the making an application to the court for an order to

- (a) freeze the assets of a person or provide information on how to freeze the assets of a person; or
 - (b) prohibit a person from withdrawing funds, securities or other property.
- (2) The Commission may render assistance
- (a) under its regulatory powers or pursuant to a request from a regulatory authority; or
 - (b) where it is satisfied that it is in the public interest.
- (3) A person who is aggrieved by an order of the court may appeal such order.”.

Amendment of section 40 of Act 2010-21

19. *Section 40 of the principal Act is amended*

- (a) *by deleting subsection (1) and substituting the following:*

“(1) No member, officer, employee or former member, officer, employee of the Commission or other person employed or retained by the Commission shall make use, either directly or indirectly, of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.”; and

(b) *in subsection (2) by*

- (i) *deleting the word “or” appearing immediately after the words “Government of Barbados;” in paragraph (a);*
- (ii) *deleting the full stop appearing after the words “law of Barbados” and substituting the following words “; or” immediately after the words “law of Barbados” in paragraph (b); and*
- (iii) *inserting the following new paragraph immediately after paragraph (b):*

“(c) a foreign regulatory authority **where such disclosure of confidential information is provided pursuant to the provisions of this Act.**”.

Amendment of section 54 of Act 2010-21

20. *The principal Act is amended by deleting section 54 and substituting the following:*

“Regulations

54. The Commission, after consultation with the Minister, may make the following regulations:

- (a) to make provision for any exemptions granted under section 8 (1)(f) relating to a particular financial services sector;**
- (b) prescribing any matter or thing required by this Act to be prescribed;**
- (c) to make forms;**
- (d) respecting any matter required to carry out the purposes of this Act; and**
- (e) generally for the proper administration of this Act.”**

Insertion of 54A into Act 2010-21

21. *The principal Act is amended by inserting the following new section immediately after section 54:*

“Rules

54A. The Commission may make rules

- (a) to establish standards and practices for innovating and emerging services and products.**
- (b) to impose requirements or conditions on financial institutions of new services and products;**
- (c) to regulate new products and services;**
- (d) relating to the sectors which it regulates or supervises; and**

(e) relating to any other matter under this Act.”.