



No. 12 of 2001

[Date of Assent - 31<sup>st</sup> August, 2001]

**AN ACT TO AMEND THE MUTUAL FUNDS ACT, 1995**

**Enacted by the Parliament of The Bahamas**

Short title. 1. This Act which amends the Mutual Funds Act, 1995 may be cited as the Mutual Funds (Amendment) Act, 2001.

6 of 1995.

Repeal and re- 2. Section 36 of the principal Act is repealed and replaced by the following -

placement of section 36 of the principal Act.

"Con- 36. (1) Subject to subsections  
fiden- (2) and (3), the Commission or a  
tial- Licensor or any officer, employee,  
ity. agent or adviser of the Commission  
or a Licensor who discloses any  
information relating to -

- (a) the affairs of the Commission or the Licensor;
- (b) any application made to the Commission or a Licensor;
- (c) the affairs of a mutual fund or a mutual fund administrator; or
- (d) the affairs of a customer or client of a mutual fund or mutual fund administrator,

that it or he has acquired in the course of its or his duties or in the exercise of the Commission's or a Licensor's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

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

- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
- (b) for the purpose of assisting the Commission or a Licensor to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
- (c) in respect of the affairs of a mutual fund or mutual fund administrator or of a customer or client of a mutual fund or mutual fund administrator, with the consent of the mutual fund, mutual fund administrator, customer 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 mutual fund or mutual fund administrator or of any customer or client of the mutual fund or mutual fund administrator to which the information relates to be ascertained;
- (f) to a person with a view to the institution of, or for the purpose of -
  - (i) criminal proceedings,
  - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties,

(iii) disciplinary proceedings relating to the discharge by a public officer, director, officer or a member or employee of the Commission, mutual fund or mutual fund administrator of his duties; or

(g) in any legal proceedings in connection with -

(i) the winding-up or dissolution of a mutual fund or mutual fund administrator, or

(ii) the appointment or duties of a receiver of a mutual fund or mutual fund administrator.

(3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Commission may

take into account -

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
- (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Commission may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Commission unless -

- (a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(b) the Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and

(c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) the Commission is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission it appears necessary in relation to any request for

assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Commission shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(8) The Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law to any other regulatory authority in The Bahamas where it considers such information may be relevant to the functions of such other regulatory authority.

(9) Where a Licensor, other than the Commission, receives a request to disclose information to any other regulatory authority such disclosure shall be made to the Commission and the Commission shall decide whether or not to exercise its powers under this section in relation to such disclosure.

(10) In this section "overseas regulatory authority" means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission or

Licensors.".

Amendment  
of the  
principal  
Act.

3. The principal Act is amended by the insertion  
after section 36 of the following -

"Duty 36A. In the exercise of its  
of Com- functions under this Act the  
mission. Commission shall satisfy itself that  
the provisions of the Financial  
Transactions Reporting Act, 2000 are  
being complied with.".