

MUTUAL FUNDS ACT, 1995
{Incorporating Amendments up to and including 31st August 2001}

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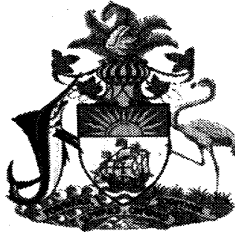
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AN ACT TO REGULATE MUTUAL FUNDS AND FOR
CONNECTED PURPOSES.
{*Incorporating Amendments up to and including 31st August 2001*}

[1st March, 1995]
[Commencement 2nd November, 1995]

Enacted by the Parliament of The Bahamas

PART I

Preliminary

- Short title. 1. This Act may be cited as the Mutual Funds Act, 1995.
- Interpre- 2. (1) In this Act -
tation. "accountant" has the same meaning as in section 2 of the Public Accountants Act;
"auditor" means a person who is -
 (a) a professionally qualified auditor; or
 (b) an accountant licensed to practice as such under the Public Accountants Act;
"the Commission" means the Securities Commission of The Bahamas established by section 3 of the Securities Industry Act;
"company" means a body corporate incorporated or registered under the laws of The Bahamas or of any other jurisdiction;
- 3 of 1999. "Constitutive documents" means the principal documents governing the formation of the mutual fund, and includes the trust deed in the case of a unit trust

and the memorandum and articles of association of a company which owns, controls or operates a mutual fund and the partnership articles of a partnership and all material agreements;

"Court" means the Supreme Court;

"equity interest" means a share, a trust unit or a partnership interest or other security or note that -

- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
- (b) may or may not be redeemable or repurchasable at the option of the investor before the commencement of winding up or dissolution of the company, unit trust or partnership, and in respect of a company incorporated in accordance with the Companies Act in accordance with but subject to section 44 of that Act;

"Executive Director" means the person appointed as such under section 16 of the Securities Industry act;

"general partner" means -

- (a) in respect of a limited partnership registered under any Partnership Act of The Bahamas, a general partner as defined in that Act; or
- (b) in respect of a partnership constituted under the laws of a jurisdiction other than The Bahamas, a person who would be a general partner of the partnership if the partnership were constituted under the laws of The Bahamas;

"investor" in respect of a mutual fund, means the legal holder of record or legal holder of a bearer instrument representing an equity interest in the mutual fund but does not include a promoter or operator;

"licensed mutual fund" means a regulated mutual fund that is the holder of a Mutual Fund Licence;

"licensed mutual fund administrator" means the holder of a Mutual Fund Administrator's Licence but does not include a person exempted from obtaining a Mutual

Fund Administrator's Licence in accordance with subsection (2) of section 9;

"Licensor" means the Commission or a licensed mutual fund administrator with an unrestricted mutual fund licence in its capacity as the grantor of a mutual fund licence;

"Minister" means the Minister responsible for the administration of this Act;

"mutual fund" means -

(a) a unit trust;

(b) an investment company; or

(c) a partnership,

that issues or has equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments but does not include -

(d) a person licensed under -

(i) the Banks and Trust Companies Regulation Act,

(ii) the Insurance Act, or

(iii) the External Insurance Act;

(e) a person enrolled under the Friendly Societies Act; or

(f) any company, trust or partnership, whether Bahamian or foreign, which is primarily engaged in any industrial, commercial or charitable enterprise;

"mutual fund administration", in respect of a mutual fund, means -

(a) to manage (including to control all or substantially all the assets of the mutual fund) or to administer the mutual fund;

(b) to provide the principal office of the mutual fund in The Bahamas;

(c) to provide an operator to the mutual fund; or

(d) to provide the administrative services for a mutual fund including the

accounting, valuation or reporting services;

but does not include -

- (e) the provision of a registered office to a mutual fund where the usual corporate secretarial and related services are provided;
- (f) in relation to a mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the International Business Companies Act, the Companies Act, any Partnership Act, the Trust laws or this Act;
- (g) the provision of investment advice or management or trading execution services;

"mutual fund administrator" or "administrator" means a person who conducts mutual fund administration in or from The Bahamas and includes -

- (a) a company incorporated under the Companies Act;
- (b) a foreign company registered pursuant to Part VI of the Companies Act;
- (c) a Bahamian partnership; or
- (d) an International Business Company incorporated under the International Business Companies Act, that conducts mutual fund administration outside The Bahamas;

"Mutual Fund Administrator's Licence" means a licence granted under sections 10 and 11;

"Mutual Fund Licence" means a licence granted under section 4;

"offering document", in respect of a mutual fund, means a document or series of documents on the basis of which -

- (a) equity interests in the mutual fund are offered for sale; or
 - (b) persons are invited to subscribe for or purchase equity interests in the mutual fund,
- but does not include any other notice,

circular, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the mutual fund or the invitation to any person to subscribe for or purchase any equity interest in the mutual fund if before the offer or invitation is taken up or accepted the prospective investor is given the opportunity to consider an offering document containing the information prescribed by subsection (9) of section 3;

"operator", in respect of the mutual fund, means -

- (a) where the mutual fund is a unit trust, a trustee of that trust;
- (b) where the mutual fund is a partnership, a general partner in that partnership; or
- (c) where the mutual fund is a company, a director of that company;

"partnership", means -

- (a) a limited partnership constituted under any Partnership Act of The Bahamas; or
- (b) a partnership constituted under the laws of a jurisdiction other than The Bahamas;

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"principal office" means the place of business of a mutual fund which has ultimate responsibility for the administration of the mutual fund;

"professional adviser" means -

- (a) a counsel and attorney; or
- (b) an accountant;

"promoter", in respect of a mutual fund or proposed mutual fund, means any person whether within or outside The Bahamas who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund but does not include a professional adviser acting for or on behalf of such a person;

"record" means any means by which information may be stored;

"registered office" means -

- (a) in respect of a company incorporated under the Companies Act, the registered

office registered in accordance with section 17 of that Act;

- (b) in the case of a foreign company registered under section 183 of the Companies Act, the registered office registered in accordance with section 190 of that Act;
- (c) in the case of a company incorporated under the International Business Companies Act, the registered office registered in accordance with section 37 of that Act;
- (d) in the case of a limited partnership registered under any Partnership Act of The Bahamas, the registered office of that partnership for the purposes of that Act; or
- (e) in the case of a unit trust the registered office of the trustee in The Bahamas or the place of business of an individual trustee;

"regulated mutual fund" means a mutual fund that is carrying on or attempting to carry on a business in or from The Bahamas and is doing so in compliance with subsection (1) or (3) of section 3;

"restricted Mutual Fund Administrator's Licence" means a Mutual Fund Administrator's Licence that contains the restriction referred to in subsection (2) of section 10;

"share", in the case of a company limited by guarantee, includes an interest of a member of that company;

"trust unit" means a unit of participation in a unit trust;

"unit trust" means a trust established by a trustee which for valuable consideration issues trust units in the undertaking of the trust entitling the holder thereof to a share in the profits or gains arising from the acquisition, holding, management or disposal of investments by the trustee of the trust, the proper law of which is the law of The Bahamas or the law of any other jurisdiction.

(2) A reference in this Act to "mutual fund" shall

be construed as a reference to "Bahamas-based mutual fund" if the mutual fund is -

(a) a unit trust -

(i) of which the trustee, the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in The Bahamas or one or more companies or individuals any one of whom has a place of business in The Bahamas or uses an address in The Bahamas, or

(ii) the trust instrument of which is governed by the laws of The Bahamas; or

(b) an investment company (including a limited duration company) -

(i) of which any profits or income or benefits derived therefrom arise from the operation of a company incorporated or registered in The Bahamas or having a place of business in The Bahamas or uses an address in The Bahamas, or

(ii) of which the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in The Bahamas or one or more companies or individuals any one of whom has a place of business in The Bahamas or uses an address in The Bahamas; or

(c) a partnership -

(i) of which one or more of the general partners is incorporated or registered in

- The Bahamas or a person resident in The Bahamas or using a Bahamian address,
- (ii) whose partnership articles are governed by the law of The Bahamas, or
 - (iii) of which the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in The Bahamas or one or more companies or individuals any one of whom has a place of business in The Bahamas or uses an address in The Bahamas.

PART II

Regulated, Authorised and Exempt Mutual Funds

Regulated
mutual
funds.

3. (1) Unless a mutual fund has complied with subsection (3) or is exempted by virtue of subsection (4) or (6), it shall not carry on or attempt to carry on business in or from The Bahamas unless -

(a) it is the holder of a Mutual Fund Licence and it has -

- (i) a registered office in The Bahamas,
- (ii) if a unit trust, a trust company or bank licensed under the Banks and Trust Companies Regulation Act with an unrestricted licence, or such other bank or trust company as shall have a minimum paid-up capital and non-distributable reserves of two million dollars and be otherwise acceptable to the Commission or an individual or individual persons approved

by the Commission as its trustee; or

(b) it is the holder of a Mutual Fund Licence and a licensed mutual fund administrator is providing its principal office in The Bahamas; and

(c) the prescribed annual registration fee has been paid in respect of the fund,

and, unless an exemption from this requirement has been granted by the Commission, there is filed with the Commission in respect of the mutual fund a current offering document that complies with subsection (9) and a written synopsis of the mutual fund.

(2) The operator of a mutual fund shall ensure that the mutual fund does not carry on or attempt to carry on business in or from The Bahamas contrary to subsection (1).

(3) Notwithstanding subsection (1), a mutual fund (in this Act termed an "authorised mutual fund") may carry on or attempt to carry on business in or from The Bahamas if -

(a) it is a mutual fund in which -

(i) the minimum equity interest purchasable by a prospective investor in the fund is fifty thousand dollars (or its equivalent in any other currency), or

(ii) the equity interests are listed on a stock exchange (including an over-the-counter market) specified by the Commission by notice in the Gazette;

(b) unless an exemption from this requirement has been granted by the Commission, there is filed with the Commission the prescribed details in respect of the mutual fund's current offering document and the constitutive documents of the mutual fund;

(c) it is registered with the Commission in the prescribed manner; and

(d) the prescribed application fee and the

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prescribed annual registration fee have been paid in respect of the fund.

(4) A mutual fund in which the equity interests are held by not more than fifteen investors the majority of whom are capable of appointing or removing the operator of the fund (in this Act termed as "exempt mutual fund") is not required to comply with subsection (1).

(5) For the purpose of subsection (4), any or all of the investors may be a corporation or a trust provided always that a corporation may not have more than four beneficial owners and a trust shall be regarded as one investor.

(6) A mutual fund which is licensed in a jurisdiction prescribed by the Commission and not suspended from operation (in this Act termed as "exempt mutual fund"), is not required to comply with subsection (1).

(7) Any company, trust or partnership whether Bahamian or foreign which is primarily engaged in any industrial, commercial or charitable enterprise shall not be considered to be a mutual fund notwithstanding that a portion of its activities shall involve the management of its investments and in cases of doubt an application may be made to the Commission to determine whether or not the applicant is a mutual fund.

(8) For the purpose of subsection (1) or (3) a mutual fund is carrying on or attempting to carrying on business in or from The Bahamas if -

- (a) it is incorporated, registered or established in The Bahamas; or
- (b) regardless of where it is incorporated, registered or established, its management (including the control of all or substantially all of its assets) or its administration is carried on in The Bahamas or it otherwise falls within the definition of a Bahamas-based mutual fund.

(9) An offering document in respect of equity interests in a mutual fund shall -

- (a) describe the equity interests in all material respects;
- (b) contain the prescribed details; and

- (c) contain such other information as is necessary to enable the prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests.

(10) Subsection (9) shall be without prejudice to any duty or disclosure under -

- (a) the common law; or
- (b) any other law.

(11) A mutual fund shall not, for the purpose of compliance with subsection (1) or (3)(b), have filed with the Commission a current offering document or the prescribed details in respect of its current offering document if there is a continuing offering of equity interests and any promoter or operator of the mutual fund -

- (a) is aware of any material change that affects any material information in the offering document filed with the Commission or in the prescribed details of the offering document filed with the Commission; and
- (b) has not, within twenty-one days of becoming so aware, filed with the Commission an amended offering document or amended prescribed details, as the case may be, incorporating that change; and such amendment may be in the form of a sticker or a supplement.

(12) A mutual fund has not complied with subsection (1) if -

- (a) it has changed its registered office or its principal office; or
- (b) it has changed its operator,

and it has failed to inform the Commission of the change.

(13) Notwithstanding subsections (3), (4) and (6), a mutual fund to which any of those subsections applies may choose to comply with subsection (1).

Mutual Fund
Licences.

- 4. (1) An application for a Mutual Fund Licence -
 - (a) shall be made to a Licensor in the prescribed form; and

- (b) shall be accompanied by -
- (i) the current offering document, or if one has not been finally settled, the latest draft of the offering document together with a synopsis of that document,
 - (ii) details necessary to satisfy the Licensor that the applicant complies or will be complying with paragraph (a)(i) or (ii) or (b) of subsection (1) of section 3,
 - (iii) details necessary to satisfy the Licensor in accordance with subsection (3), and
 - (iv) where the licensor is the Commission, the prescribed application fee.

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(2) Where a mutual fund is licensed by a Licensor other than the Commission such Licensor shall, within thirty days of such licensing, file with the Commission the documents referred to in paragraph (b) of subsection (1) together with the constitutive documents of the mutual fund accompanied by the prescribed filing fee.

(3) The Licensor shall have no power to grant a Mutual Fund Licence until it has been satisfied by the applicant -

- (a) that each promoter is of sound reputation; and
- (b) that the administration of the mutual fund will be undertaken by persons who -
 - (i) have sufficient expertise to administer the mutual fund, and
 - (ii) are of sound reputation;
- (c) in the case of an application for a licence made to a mutual fund administrator, that such mutual fund administrator shall provide the principal office and shall be the administrator of the applicant; and
- (d) that the business of the mutual fund and

any offer of equity interests in it will be carried out in a proper manner.

(4) Nothing in subsection (3) is to be taken as prohibiting the Licensor from granting a Mutual Fund Licence to take effect on the incorporation of any relevant company or, in the case of a foreign company, on the registration of the company under Part VI of the Companies Act, 1992 or on the establishment of any unit trust.

(5) The Licensor may grant a Mutual Fund Licence subject to such conditions as it considers appropriate.

(6) The operator of a mutual fund shall ensure that when carrying on or attempting to carry on business in or from The Bahamas the mutual fund complies with all conditions contained in its licence.

(7) The Licensor may, on the written application of a licensed mutual fund, waive, vary or revoke any condition contained in the Mutual Fund Licence.

(8) A person shall not, in connection with an application for a Mutual Fund Licence, supply the Licensor information that he knows or should reasonably know is false or misleading.

Name of regulated mutual fund restricted.

5. (1) The Licensor may refuse to grant a Mutual Fund Licence in respect of a mutual fund with a name that -

(a) is identical with that of any company, firm, business or other entity, whether or not within the Bahamas, or which so nearly resembles the name of such company, firm, business or entity as to be likely to deceive;

(b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or

(c) is likely to suggest falsely, that the fund has a special status in relation to or derived from the Government or the Crown.

(2) If, in the opinion of the Licensor, a mutual fund is carrying on business in or from The Bahamas in a name that the Licensor would have refused by virtue of subsection (1) the Licensor may direct the mutual fund to change its name

to a name approved by the Licensor.

(3) The operator of a mutual fund shall ensure that the fund complies with a direction given to it in accordance with subsection (2).

Misrepresenta-
tion as
mutual
fund.

6. A person other than a regulated mutual fund or a mutual fund referred to in subsection (4) or (6) of section 3 shall not represent in any way that he is carrying on business in or from The Bahamas as a mutual fund.

Annual
audit of
regulated
Mutual
fund and
authorised
mutual
fund.

7. (1) A regulated mutual fund and an authorised mutual fund shall have its accounts audited annually by an auditor approved by the Licensor.

(2) A regulated mutual fund and an authorised mutual fund shall send its audited accounts in respect of a financial year of the fund to the Licensor within four months of the end of that financial year or within such extension of that period as the Licensor may allow.

(3) The operator of a regulated mutual fund and an authorised mutual fund shall ensure that the mutual fund complies with subsections (1) and (2).

Regulated
mutual
fund to
pay annual
fee.

8. (1) A licensed mutual fund shall pay the prescribed annual licence fee on or before 31st January, in each year.

(2) A regulated mutual fund that has complied with subsection (3) of section 3 shall pay the prescribed annual registration fee on or before 31st January in each year.

(3) If an annual fee referred to in subsection (1) or (2) is not paid on or before 31st January there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(4) The Commission may, for good cause, waive any additional fee imposed by virtue of subsection (3).

PART III

Mutual Fund Administration

Person to
be author-
ised to

9. (1) Unless -
(a) acting with and in accordance with the authorisation of the Commission; or

administer
mutual
funds.

(b) exempted in accordance with subsection (2), a person shall not act or carry on business as a mutual fund administrator unless authorised to do so by a Mutual Fund Administrator's Licence.

(2) The Commission may exempt a mutual fund administrator from obtaining a Mutual Fund Administrator's Licence if, upon application made to it accompanied by the prescribed application fee, it is satisfied that -

- (a) the applicant would otherwise be granted a restricted Mutual Fund Licence; and
- (b) the applicant will not be administering more than one specified mutual fund.

(3) Subject to subsections (4) and (5), for the purposes of this Act a mutual fund administrator exempted from obtaining a Mutual Fund Administrator's Licence in accordance with subsection (2) is permitted to function as a Mutual Fund Administrator.

(4) An exemption granted under subsection (2) may be revoked in the same circumstances as a Mutual Fund Administrator's Licence may be revoked under subsection (12) of section 34.

(5) Instead of the prescribed annual licence fee referred to in subsection (3) of section 13 a mutual fund administrator exempted by virtue of subsection (2) of this section shall pay the prescribed annual exemption fee.

Types of
Mutual Fund
Admini-
strator's
Licences.

10. (1) Subject to subsection (2), a Mutual Fund Administrator's Licence authorises the holder of the licence to act or carry on business as a mutual fund administrator in respect of an unlimited number of regulated mutual funds.

(2) Subject to subsection (3), there may be granted a Mutual Fund Administrator's Licence that authorises the holder of the licence to act or carry on business as a mutual fund administrator solely in respect of the regulated mutual funds specified from time to time in the licence.

(3) A restricted Mutual Fund Administrator's Licence cannot be granted to a person who does not have a registered office in The Bahamas.

Mutual Fund

11. (1) An application for a Mutual Fund

Admini-
strator's
Licences.

Administrator's Licence -

- (a) shall be made to the Commission in the prescribed form; and
- (b) shall be accompanied by -
 - (i) such information as the Commission requires to determine the application, and
 - (ii) the prescribed application fee.

(2) The Commission has no power to grant a Mutual Fund Administrator's Licence until it has been satisfied by the applicant -

- (a) that the applicant -
 - (i) has sufficient expertise to administer regulated mutual funds,
 - (ii) if of sound reputation, and
 - (iii) will administer regulated mutual funds in a proper manner;

(b) in the case of an application for a licence that is not a restricted Mutual Fund Administrator's Licence and subject to subsection (3) -

- (i) that the applicant has a fully paid-up equity capital of at least five hundred thousand dollars (or the equivalent in another acceptable currency), or
- (ii) if the applicant is a company, that it has a fully paid up equity capital of not less than five hundred thousand dollars (or the equivalent in another acceptable currency) or a fully paid up equity capital of at least one hundred and fifty thousand dollars (or the equivalent in another acceptable currency) plus liability insurance cover of not less than three hundred and

fifty thousand dollars (or the equivalent in another acceptable currency);

- (c) in the case of an application for a licence that is not a restricted Mutual Fund Administrator's Licence, it has -
 - (i) a place which will be its principal office in The Bahamas, and
 - (ii) two individuals resident in The Bahamas to be its agents in the Bahamas; and
- (d) in the case of an application for a restricted Mutual Fund Administrator's Licence, that the applicant has a registered office in The Bahamas.

(3) The Commission may waive compliance with subsection (2)(b) if it is otherwise satisfied as to the financial viability of the applicant.

(4) Where in accordance with subsection (2)(c)(ii) a licensed mutual fund administrator has appointed two individuals resident in The Bahamas to act as its agents in The Bahamas the administrator may appoint them to act either separately or jointly.

- (5) If a licensed mutual fund administrator has -
 - (a) a principal office in The Bahamas; or
 - (b) two individuals acting as its agents in The Bahamas,

it shall not change that principal office or any individual acting as its agent without first giving the Commission notice of its intention to do so.

(6) The Commission may grant a Mutual Fund Administrator's Licence subject to such conditions as it considers appropriate.

(7) A licensed mutual fund administrator shall when carrying on or attempting to carry on business as a mutual fund administrator comply with any conditions contained in its Mutual Fund Administrator's Licence.

(8) A person shall not, in connection with an application for a Mutual Fund Administrator's Licence, supply to the Commission information which he knows or should reasonably know is false or misleading.

Restriction
on issue,
etc. or
transfer of
shares in
licensed
mutual fund
admini-
strator.

12. (1) Subject to subsection (2), where a licensed mutual fund administrator is a company the company shall not issue shares and no person owning or having an interest in shares in the company shall transfer or otherwise dispose of or deal in those shares or that interest unless -

(a) the Commission has given its approval to the issue, transfer, disposal or dealing as the case may be; or

(b) the Commission has, in respect of the company, waived the obligation to obtain that approval,

and any conditions of the approval or waiver are complied with.

(2) Subsection (1) shall not apply to a licensed mutual fund administrator where such administrator has a current licence granted to it to carry on banking business or trust business or both under the Banks and Trust Companies Regulation Act.

Annual fee
for pro-
viding or
acting as
principal
office of
mutual
funds.

13. (1) A licensed mutual fund administrator shall immediately upon starting to provide the principal office of a regulated mutual fund -

(a) give the Commission the prescribed details in respect of the mutual fund; and

(b) pay the prescribed fee in respect of the mutual fund.

(2) A licensed mutual fund administrator shall on or before 31st January in each year after the date when it started to provide the principal office of a regulated mutual fund pay the prescribed annual fee in respect of that mutual fund.

(3) A licensed mutual fund administrator shall on or before 31st January in each year pay the prescribed annual licence fee for its own licence.

(4) If an annual fee referred to in subsection (2) or (3) is not paid on or before 31st January there is payable an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid.

(5) The Commission may, for good cause, waive any additional fee imposed by virtue of subsection (4).

Commission
may direct
licensed
mutual fund
admini-
strators to
increase
capital
value, etc.

14. (1) If the Commission is satisfied that -
(a) there is reasonable cause to do so; or
(b) the fully paid-up capital of a licensed mutual fund administrator is less than any amount prescribed by subsection (2)(b) of section 11,
it may direct the mutual fund administrator -
(c) to provide such guarantees or insurance cover or other financial support as the Commission shall think fit; or
(d) to increase its fully paid-up capital to such amount as the Commission shall consider appropriate.

(2) A licensed mutual fund administrator shall comply with a direction given under subsection (1).

Licensed
mutual fund
admini-
strators to
be satisfied
in respect
of mutual
funds.

15. A licensed mutual fund administrator shall not provide a principal office to a regulated mutual fund unless it is satisfied that -
(a) each promoter of the mutual fund is of sound reputation;
(b) the administration of the mutual fund will be undertaken by persons who -
(i) have sufficient expertise to administer the mutual fund, and
(ii) are of sound reputation; and
(c) that the business of the mutual fund and any offer of equity interest in it will be carried out in a proper manner.

Licensed
mutual fund
admini-
strators to
give notice
of certain
matters.

16. If a licensed mutual fund administrator knows or has reason to believe that a regulated mutual fund for which it provides a principal office, or a promoter or operator of such a mutual fund -
(a) is or is likely to become unable to meet its obligations as they fall due;
(b) is carrying on business otherwise than in accordance with this or any other Act; or

- (c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the mutual fund,

the mutual fund administrator shall immediately give the Commission written notice of its knowledge or belief giving its reason for that knowledge or belief.

Name of licensed mutual fund administrators, restricted.

17. (1) The Commission may refuse to grant a Mutual Fund Administrator's Licence authorising a person to carry

on business as a mutual fund administrator in a name that -

- (a) is identical with that of any company, firm, business or other entity, whether or not within The Bahamas, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive;
- (b) is likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or
- (c) is likely to suggest, falsely, that the administrator has a special status in relation or derived from the Government or the Crown.

(2) If subsequent to granting a Mutual Fund Administrator's Licence the Commission discovers that the licensed mutual fund administrator is authorised to carry on business as a mutual fund administrator in or from The Bahamas in a name which in the opinion of the Commission it would have refused by virtue of subsection (1) the Commission may direct the licensed mutual fund administrator to change its name to a name approved by the Commission.

(3) A licensed mutual fund administrator shall comply with a direction given to it in accordance with subsection (2).

Misrepresentation as fund manager or fund admini-

18. A person other than a licensed mutual fund administrator shall not carry on or attempt to carry on business in or from The Bahamas with the words "fund management" or "fund manager" or "fund administrator" or any of their derivatives in the English Language or any other

strator. language in its name or title and shall not represent in any way that he is carrying on or attempting to carry on business in or from The Bahamas as a mutual fund administrator unless exempted by the Commission.

Licensed mutual fund administrators to have annual audit. 19. (1) A licensed mutual fund administrator shall have its accounts audited annually by an auditor approved by the Commission.

(2) A licensed mutual fund administrator shall send its audited accounts in respect of a financial year of the administrator to the Commission within four months of the end of that financial year or within such extension of that period as the Commission may allow.

Approval to be sought to appointment of director, etc., of licensed mutual fund administrator. 20. A licensed mutual fund administrator shall not appoint a director or similar senior officer, or a general partner, as the case may be, unless -

- (a) the written approval of the Commission to the appointment has been obtained;
- (b) the Commission has exempted the administrator from the obligation to obtain the Commission's approval; or
- (c) it is in possession of a current licence to carry on banking business or trust business or both under the Banks and Trust Companies Regulation Act.

Certain licensed mutual fund administrators to have two directors. 21. A licensed mutual fund administrator that is a company shall at all times have at least two directors approved by the Commission, unless it is in possession of a current licence to carry on banking business or trust business or both under the Banks and Trust Companies Regulation Act.

PART IV
SUPERVISION AND ENFORCEMENT
Regulated Mutual Funds

Special audits of 22. (1) The Commission may at any time instruct a regulated mutual fund to have its accounts audited and to

regulated mutual funds. submit them to the Commission within such time as the Commission shall specify.

(2) The operator of a regulated mutual fund shall ensure that an instruction given to the mutual fund in accordance with subsection (1) is complied with within the specified time.

Promoter or operator of regulated mutual funds to give Commission information or explanation.

23. (1) If requested to do so by the Commission, a promoter or operator of a regulated mutual fund shall give the Commission such information or such explanation in respect of the fund as the Commission may reasonably require to enable it to carry out its duties under this Act.

(2) A person giving information or an explanation for the purpose of subsection (1) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

Promoter or operator of regulated mutual funds to give Executive Director access to records.

24. (1) If requested to do so by the Executive Director, the promoter or operator of a regulated mutual fund shall give the Executive Director access to, or provide at any reasonable time all records relating to the mutual fund.

(2) The Executive Director may copy or take an extract of a record he is given access to, or is provided with in accordance with subsection (1).

Commission may require information in respect of alleged breach of section 3.

25. (1) If the Commission has reasonable grounds for believing a person is carrying on or attempting to carry on business as a mutual fund in or from The Bahamas in contravention of subsection (1) of section 3, the Commission may instruct that person to give to it such information or explanation as it may reasonably require to enable it to carry out its duties under this Act.

(2) A person shall comply with an instruction given to him in accordance with subsection (1).

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

Commission

26. If it appears to the Commission that -

may take
action
in respect
of unregu-
lated
mutual
funds.

- (a) a mutual fund is carrying on or attempting to carry on business in or from The Bahamas; and
- (b) the mutual fund is doing so in breach of subsection (1) of section 3,

the Commission has power to apply to the Court for such order as it thinks fit to preserve the assets of the investors in the mutual fund or to protect the creditors of the mutual fund and the Court has power to grant such orders.

Licensed Mutual Fund Administrators

Special
audits of
licensed
mutual fund
admini-
strators.

- 27. (1) The Commission may at any time instruct a licensed mutual fund administrator to have its accounts audited and to submit them to the Commission within such reasonable time as the Commission shall specify.
- (2) A licensed mutual fund administrator shall comply with an instruction given to it in accordance with subsection (1).

Licensed
mutual fund
admini-
strators
to give
Commission
information.

- 28. (1) If requested to do so by the Commission, a licensed mutual fund administrator shall give to the Commission such information or such explanation in respect of its mutual fund administration as the Commission may reasonably require to enable it to carry out its duties under this Act.
- (2) A person giving information or an explanation for the purpose of subsection (1) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

Licensed
mutual fund
admini-
strators
to give
Executive
Director
access to
records.

- 29. (1) If requested to do so by the Executive Director, a licensed mutual fund administrator shall give the Executive Director access to, or provide at any reasonable time -
 - (a) the records of the administrator; and
 - (b) any records under the control of the administrator,
 relating to mutual fund administration carried out by the administrator.
- (2) The Executive Director may copy or take an extract of a document he is given access to, or is provided

with in accordance with subsection (1).

Commission
may require
information
in respect
of alleged
breach of
section 9.

30. (1) If the Commission has reasonable grounds for believing a person is acting or carrying on business as a mutual fund administrator in contravention of section 9 the Commission may instruct that person to give to it such information or explanation as it may reasonably require to enable it to carry out its duties under this Act.

(2) A person shall comply with an instruction given to him in accordance with subsection (1).

(3) A person giving information or an explanation for the purpose of subsection (1) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

Commission
may take
action
respect of
unlicensed
mutual fund
admini-
strator.

31. If it appears to the Commission -
(a) that a person is acting or carrying on business as a mutual fund administrator;
and
(b) the person is doing so in breach of section 9,
the Commission has power to apply to the Court for such orders as it thinks fit to preserve the assets of the investors or to protect the interests of the creditors in any mutual fund being administered by that person and the Court has power to grant such orders.

PART V

Powers of the Commission

Commission
to admini-
ster Act.

32. It is the duty of the Commission to administer this Act.

Powers of
Commission
in respect
of regulated
mutual
funds.

33. (1) The Commission may take all or any or the actions specified in subsection (3) if it is satisfied that a regulated mutual fund -
(a) is or is likely to become unable to meet its obligations as they fall due;
(b) is carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is

prejudicial to its investors or creditors; or

- (c) in the case of a licensed mutual fund, is carrying on or attempting to carry on business without complying with any condition of its Mutual Fund Licence contrary to subsection (4) of section 4.

(2) For the purposes of alerting him as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Executive Director shall immediately enquire into and ascertain the reason for any failure by the regulated mutual fund -

- (a) to change its name in accordance with a direction given to it under subsection (2) of section 5;
- (b) to have its accounts audited in accordance with subsection (1) of section 7 or to send its audited accounts to the Commission in accordance with subsection (2) of section 7;
- (c) to pay its prescribed annual licence or registration fee in accordance with section 8;
- (d) to have its accounts audited or to submit the audited accounts to the Commission when instructed to do so under subsection (1) of section 22; or
- (e) by its promoter or operator -
 - (i) to give the Commission information or an explanation when requested to do so under section 23, or
 - (ii) to give the Executive Director access to records when requested to do so under section 24.

(3) For the purpose of subsection (1) the actions the Commission may take in respect of a regulated mutual fund are-

- (a) to revoke any Mutual Fund Licence which the mutual fund holds;
- (b) to impose conditions or further

conditions on any Mutual Fund Licence which the mutual fund holds and to amend or revoke those conditions;

- (c) to require the substitution of any promoter or operator of the mutual fund;
- (d) to appoint a person to advise the fund on the proper conduct of its affairs;
- (e) to appoint a person to assume control of the affairs of the mutual fund.

(4) If the Commission takes action under subsection (3) it may -

- (a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of investors in and creditors of the mutual fund; and
- (b) subsequently, take any other action provided for in that subsection.

(5) Where it considers it necessary or appropriate to do so and if it is practical to do so the Commission shall inform the investors of a mutual fund of any action it is taking or intending to take in respect of the mutual fund.

(6) A person appointed under subsection (3)(d) or (e) is appointed at the expense of the relevant fund and any expenses incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the mutual fund.

(7) A person appointed under subsection (3)(e) has all the powers necessary, to the exclusion of any operator, to administer the affairs of the mutual fund in the best interests of the investors and creditors of the mutual fund.

(8) The powers referred to in subsection (7) include the power to terminate the business of the mutual fund if it is adjudged insolvent.

(9) A person appointed in respect of a mutual fund under subsection (3)(d) or (e) shall -

- (a) when requested to do so by the Commission, supply the Commission with such information in respect of the mutual fund as is specified by the Commission;
- (b) within three months of his appointment, or within such other period as the

Commission may specify, prepare and supply to the Commission a report on the affairs of the mutual fund making, where appropriate, recommendations in respect of the mutual fund; and

- (c) if his 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 specify.

(10) If a person appointed under subsection (3)(d) or (e) -

- (a) fails to comply with an obligation under subsection (9); or
- (b) in the Commission's opinion, is not carrying out his obligations in respect of the relevant mutual fund satisfactorily,

the Commission may revoke the appointment and appoint some other person in his place.

(11) On receipt of any information or a report under subsection (9) in respect of a mutual fund, the Commission may -

- (a) require the mutual fund to reorganize its affairs in a manner specified by the Commission;
- (b) if the mutual fund is a company, apply to the Court in accordance with the provisions of the Companies Act, or the International Business Companies Act, for the company to be wound up by the Court in accordance with that Act;
- (c) if the mutual fund is a unit trust governed by the laws of The Bahamas, apply to the Court for an order directing the trustee to wind up the fund; or
- (d) if the mutual fund is a partnership governed by the laws of The Bahamas, apply to the Court for an order to dissolve the partnership,

and may take such action in respect of the appointment or

continued appointment of the person appointed under subsection (3) (d) or (e) as the Commission considers appropriate.

(12) If the Commission takes action under subsection (11) it may -

(a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of investors and creditors of the mutual fund; and

(b) take any other action provided for in that subsection or subsection (3).

(13) Where a regulated mutual fund is a partnership formed under the laws of The Bahamas and the Commission revokes any Mutual Fund Licence of the mutual fund in accordance with subsection (3)(a) the partnership is thereupon dissolved.

(14) Where the Court makes an order on an application made in accordance with subsection (11)(c) the Court may grant the trustee such indemnity as it considers appropriate out of the assets of the mutual fund.

(15) Without prejudice to any other power of the Commission, the Commission may at any time revoke a Mutual Fund Licence if -

(a) the Commission is satisfied that the holder of the licence has ceased to carry on or to attempt to carry on business as a mutual fund; or

(b) the holder of the licence is placed in liquidation or is dissolved.

Powers of
Commission
in respect
of licensed
mutual fund
admini-
strators.

34. (1) The Commission may take all or any of the actions specified in subsection (3) if it is satisfied that a licensed mutual fund administrator -

(a) is or is likely to become unable to meet its obligations as they fall due;

(b) is carrying on or attempting to carry on business or is winding up its mutual fund administration business in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or to the creditors of any such

mutual fund; or

- (c) is carrying on or attempting to carry on the business of mutual fund administration without complying with any condition of its Mutual Fund Administrator's Licence contrary to subsection (6) of section 11.

(2) For the purpose of alerting it as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Commission shall immediately enquire into and ascertain the reason for -

- (a) any failure by a licensed mutual fund administrator -

- (i) to give the Commission notice that it has started to provide the principal office of a regulated mutual fund in accordance with subsection (1) of section 13, to pay the prescribed annual fee in respect of a regulated mutual fund in accordance with subsection (2) of section 13 or to pay its prescribed fee in accordance with subsection (3) of section 13,
- (ii) to provide a guarantee or insurance cover or other financial support or to increase its fully paid up-capital in accordance with a direction given under section 14,
- (iii) to satisfy itself with respect to a regulated mutual fund or any promoter or operator of a fund as required by section 15,
- (iv) to give the Commission written notice in respect of the affairs of a regulated mutual fund as required by section 16,
- (v) to change its name in

- accordance with a direction given to it under subsection (2) of section 17,
- (vi) to have its accounts audited in accordance with subsection (1) of section 19 or to send its audited accounts to the Commission in accordance with subsection (2) of section 19,
- (vii) to have at least two directors as required by section 21,
- (viii) to have its accounts audited and to submit the audited accounts to the Commission when instructed to do so under section 27,
- (xi) to give the Commission information or an explanation when requested to do so under section 28, or
- (x) to give the Executive Director access to records when requested to do so under section 29;
- (b) the issue by the administrator of shares without the Commission's approval contrary to section 12;
- (c) the appointment of a director or similar senior officer, or general partner of the administrator without the Commission's written approval contrary to section 20; or
- (d) any shares in the administrator being disposed of or dealt in without the Commission's approval contrary to section 12.

(3) For the purpose of subsection (1) the actions the Commission may take in respect of a licensed mutual fund administrator are -

- (a) to revoke or impose conditions or further conditions on its Mutual Fund Administrator's Licence and to amend or

revoke those conditions;

- (b) to require the substitution of any director or similar senior officer or a general partner of the administrator;
- (c) to appoint a person to advise the administrator on the proper conduct of its mutual fund administration;
- (d) to appoint a person to assure control of the affairs of the administrator relations to mutual fund administration.

(4) If the Commission takes action under subsection (3) it may -

- (a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of investors in the funds administered by the administrator and its creditors or the creditors of any such fund; and

- (b) subsequently, take any other action provided for in that subsection.

(5) A person appointed under subsection (3)(c) or (d) is appointed at the expense of the relevant administrator and any expenses incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the administrator.

(6) A person appointed under subsection (3)(d) has all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver), to administer the affairs of the administrator relating to mutual fund administration in the best interest of investors in the funds administered by the administrator and its creditors or the creditors of any such funds.

(7) The powers referred to in subsection (6) include the power to terminate the business of the administrator if it is adjudged insolvent so far as it relates to mutual fund administration.

(8) A person appointed in respect of a licensed mutual fund administrator under subsection (3)(c) or (d) shall-

- (a) when requested to do so by the Commission, supply the Commission with

such information in respect of the administrator's administration of mutual funds as is specified by the Commission;

- (b) within three months of his appointment or within such other period as the Commission may specify, prepare and supply to the Commission a report on the administrator's administration of mutual funds making, where appropriate, recommendations in respect of the administrator; and
- (c) if his 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 specify.

(9) If a person appointed under subsection (3)(c) or (d) -

- (a) fails to comply with an obligation under subsection (8); or
- (b) in the opinion of the Commission, is not carrying out his obligations in respect of the mutual fund administrator satisfactorily,

the Commission may revoke the appointment and appoint some other person in his place.

(10) On receipt of any information or a report under subsection (8) in respect of a licensed mutual fund administrator, the Commission may -

- (a) require the administrator to reorganize its affairs in a manner specified by the Commission; or
- (b) if the administrator is a company, apply to the Court in accordance with the provisions of the Companies Act, or the International Business Companies Act, for the company to be wound up by the Court in accordance with that Act,

and may take such action in respect of the appointment of the person appointed under subsection (3)(c) or (d) as the

Commission shall consider appropriate.

(11) If the Commission takes action under subsection (10) it may -

- (a) apply to the Court for an order to take such other action as it considers necessary to protect the interests of investors in the funds administered by the administrator and its creditors or the creditors of any such funds; and
- (b) take any other action provided for in that subsection or subsection (3).

(12) Without prejudice to any other power of the Commission, the Commission may at any time revoke a mutual Fund Administrator's Licence if -

- (a) the Commission is satisfied that the holder of the licence has ceased to carry on or to attempt to carry on business as a mutual fund administrator;
- (b) the holder of the licence is placed in liquidation or is dissolved; or
- (c) it is in breach of any other duty or obligation prescribed by this Act.

(13) Where a licensed mutual fund administrator is a partnership formed under the laws of The Bahamas and the Commission revokes its Mutual Fund Administrator's Licence in accordance with subsection (3) the partnership is deemed to have been dissolved.

Commission
or Executive
Director
must not be
hindered.

35. A person shall not hinder the Commission or the Executive Director in the exercise of any of their powers under this Act.

PART VI

Miscellaneous Provisions

12 of 2001

Con-
fiden-

36. (1) Subject to subsections (2) and (3), the Commission or a Licensor or any officer, employee, agent or

tial-
ity.

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 sub-section (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 Licensor.

12 of 2001

Duty
of Com-
mission.

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

Appeal
against
any action
of
Commission.

37. A person aggrieved by any action taken by the Commission under this Act has a right of appeal to the Court but the Commission's decision on any matter of a purely administrative nature shall be final.

Obligation
of auditors.

38. If an auditor in the course of carrying out an audit of the accounts of a regulated mutual fund or of a licensed mutual fund administrator becomes aware or has reason to believe that the mutual fund or the mutual fund administrator -

(a) is carrying on or attempting to carry on business without keeping sufficient accounting records to allow its accounts to be properly audited; or

(b) is carrying on or attempting to carry on business or is winding up its business in a manner that is prejudicial to its investors or creditors,

the auditor shall immediately give the Commission written

notice of his knowledge or belief giving his reason for that knowledge or belief.

Offences.

39. (1) Any person who wilfully contravenes -
- (a) section 3(2) or (9), 4(6) or (8), 6, 9(1), 11(7) or (8), 15, 16, 18, 23(1) or (2), 24(1), 25(2) or (3), 28(1) or (2), 29(1), 30(2) or (3), 35 or 36 is guilty of an offence and shall be liable on conviction on information to a fine of \$40,000 or to imprisonment for three years or to both such fine and imprisonment;
 - (b) section 7(3), 11(5), 12, 13(1), 14(2), 19(1) or (2), 20, 21 or 38 is guilty of an offence and shall be liable on summary conviction to a fine of \$10,000 or to imprisonment for two years or to both such fine and imprisonment;
 - (c) section 5(3) or 17(3) is guilty of an offence and shall be liable on summary conviction to a fine of \$2,000 plus \$100 in respect of each day during which the person failed to comply with the direction or to imprisonment for six months or to both such fine and imprisonment;
 - (d) section 22(2) or 27(2) is guilty of an offence and shall be liable on summary conviction to a fine of \$5,000 plus \$200 in respect of each day after the specified time during which the person failed to comply with the instruction or to imprisonment for twelve months or to both such fine and imprisonment.
- (2) Any person who -
- (a) knowingly refuses or neglects to do anything that is properly required to be done by him under this Act;
 - (b) fails to pay any fee that is due and payable under this Act; or
 - (c) without reasonable cause contravenes any

section of this Act for which no other penalty is provided, is guilty of an offence and shall be liable on summary conviction to a fine of \$10,000 or to imprisonment for two years or to both such fine and imprisonment.

(3) Where a person -

- (a) upon an examination, oath or affirmation required under this Act;
- (b) in any affidavit, deposition or solemn affirmation relation to any matter under this Act; or
- (c) otherwise in or about any matter arising under this Act,

wilfully and corruptly gives false evidence, he is guilty of an offence and shall be liable on conviction to the penalties for wilful perjury.

Regulations.

40. (1) The Minister, after consultation with the Commission, may make regulations for carrying out the purposes of this Act and without prejudice to the generality of the foregoing, may make regulations for -

- (a) the role of trustees, custodians and mutual fund administrators in relation to mutual funds;
- (b) the operation of mutual funds;
- (c) the requirements of non-Bahamas-based mutual funds;
- (d) any other matter or things which may be or is required to be prescribed under this Act.

Ch. 2.

(2) Regulations made under this section may, notwithstanding the provisions of section 25(e) of the Interpretation and General Clauses Act, prescribe greater penalties than those specified in the said section 25(e), so, however, that the maximum penalty that may be imposed by any such regulation shall be a fine of \$5,000 or imprisonment for twelve months or to both such fine and imprisonment.

(3) A mutual fund or a licensed mutual fund administrator on behalf of a mutual fund may apply to the Minister to be exempt from some or all of the regulations made under this section and the Minister shall have power to grant such exemption.