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No. 1 of 1999

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
SECURITIES COMMISSION, TO PROVIDE FOR THE
REGULATION OF SECURITY EXCHANGES AND THE
SECURITIES INDUSTRY AND FOR CONNECTED
PURPOSES

13 of 2001

{Incorporating amendments up to and inclusive of 31st August 2001}

Enacted by the Parliament of The Bahamas

PART I

PRELIMINARY

Short
title and
Commencement.

1. (1) This Act may be cited as the Securities Industry Act, 1999.

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

Interpretation.

2. (1) In this Act -

"associated person" means any employee of a broker-dealer or of a facility regulated by the Commission who meets the requirements set forth in section 29(2);

"bank" means any institution licensed under the Banks and Trust Companies Regulation Act whether as a bank or a trust company or both;

"the Board" means the Board of Directors of a Securities Exchange registered by the Commission under this Act;

"broker" or "stockbroker" means a person employed by a broker-dealer or the broker-dealer itself who or which offers to provide or provides securities investment advice to the public including institutions for a fee or other reward, or trades or supervises any of the aforementioned activities and is registered as such by a Securities Exchange or the Commission, as the case may be, for the purposes under any regulations and rules made pursuant to this Act;

"broker-dealer" means a person providing the services of –

- (a) a broker, or
- (b) a dealer, or
- (c) a broker and dealer;

"the Commission" means the Securities Commission of The Bahamas established by section 3;

"company" includes a body corporate, or other incorporated organisation, wherever incorporated;

"contract note" means the trade confirmation required to be made and issued under section 78;

"day" includes every day other than a Saturday, a Sunday or a public holiday;

"dealer" means a person employed by a broker-dealer or the broker-dealer itself who or which trades on a Securities Exchange for the account of or on behalf of such broker-dealer or deals in securities and who or which is registered as such by a Securities Exchange or the Commission, as the case may be, for that purpose under any regulations and rules made pursuant to this Act;

"dealing in securities" means, whether as principal or agent -

- (a) acquiring, disposing of, subscribing for or underwriting, securities;
or
- (b) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into –
 - (i) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities, or
 - (ii) any agreement, the purpose of which is to secure a profit to any of the parties from the

yield of securities or by reference to fluctuations in the value of securities;

“Executive Director” means the person appointed under section 16;

"facility" means a company registered pursuant to section 20;

"issuer" means a company, corporation, trust, partnership, limited liability partnership, association, joint venture, syndicate or other entity which issues its own security or securities;

“licence” means a licence granted by the Commission or a Securities Exchange to a person regulated under this Act;

"listed company" means a public company whose securities are listed and quoted on a Securities Exchange and "listed security" shall bear a like meaning;

“material change” when used in relation to the affairs of an issuer, means a change in the ownership, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

"Minister" means the Minister of Finance;

“official register” means the register required by section 28 to be maintained by a Securities Exchange;

"private company" has the meaning assigned to it by section 62;

"promoter" means a person who acting alone or in conjunction with one or more other persons, procures the formation or establishment of an entity whose shares or other securities are offered for sale to the public, or is a party to the offering of securities by an issuer but does not include any person only by reason of his acting in a professional capacity for persons engaged in procuring the formation of an entity the securities of which are offered for sale or are sold to the public;

"prospectus" means prospectus, notice, circular, advertisement or other communication or invitation, offering to the public for subscription or purchase any securities;

"public company" means a company which does not conform to the definition of a private company contained in section 62;

"recognized foreign securities exchange" means any securities exchange specified by the Commission pursuant to section 18;

"repealed Act" means the Securities Board Act, 1995 repealed by section 98 of this Act;

"Securities Exchange" means a company operating in a market or other place in The Bahamas at or on which securities are offered for sale, purchase or exchange and which is registered by the Commission in accordance with this Act;

"securities exchange transaction" means a sale and purchase of securities in which each of the parties is a broker-dealer or trader acting in the ordinary course of business as such, or is acting through the agency of such a broker-dealer or dealer or trader;

"securities investment advisor" shall include any of the following if the said services are performed for a fee or other reward –

- (a) "investment advisor" that is, a person or persons who advises others as to the investing in or the selling of securities or who are primarily engaged in giving advice regarding the investment of funds;
- (b) "portfolio manager" that is, a person or persons who manage securities portfolios for clients on a discretionary or non-discretionary basis with regard to investments therein;

"securities market" means any organisation, association or group of persons whether incorporated or unincorporated which constitutes, maintains or provides a market place or facilities for bringing together buyers and sellers of securities, including an automated or linked quotation or transaction system in securities or which otherwise provides or performs with respect to securities the functions commonly performed by a securities market and includes any market place and the market facilities maintained by such market;

"security" or "securities" has the meaning assigned to it in subsection (2);

"substantial shareholder" or "substantial shareholding" means beneficial ownership of ten per cent or more of the issued and outstanding share capital of any institution or company;

"trade" or "trading" includes -

- (a) any sale or disposition of or other dealing or any solicitation in respect of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise or any attempt to do any of the foregoing;
- (b) any participation as a trader in any transaction in a security occurring upon a Securities Exchange;

- (c) any receipt by a broker-dealer of an order to buy or sell a security which is executed;

"trader" means any person registered as such by a Securities Exchange and employed by a broker-dealer which trades or deals in securities;

"trading day" means any day when trading is authorized by a Securities Exchange;

"underwriter" means a person who as principal agrees to purchase securities with a view to distribution or who as agent offers for sale or sells securities in connection with a distribution and includes a person who has a direct or indirect participation in any such distribution, but does not include –

- (a) a person whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer;
- (b) a mutual fund that under the laws of the jurisdiction to which it is subject purchases its shares and resells them;
- (c) a company that under the laws of the jurisdiction to which it is subject purchases its shares and resells them.

(2) For the purposes of this Act, "security" or "securities" means any share, stock, debenture, loan stock, fund, bond, or note issued by any person or body, whether incorporated or unincorporated, or of any government or local government authority, or government agency, or quasi-government agency, or foreign government agency, or foreign quasi-government agency, or international governmental organization, and includes, but is not limited to -

- (a) an obligation secured by a mortgage and its derivatives;
- (b) an obligation secured by an asset and its derivatives;
- (c) rights, options, futures, contracts or other interest (whether described as units or otherwise) in or in respect of any of the securities hereinbefore mentioned in this subsection;
- (d) certificates of interest or participation in, or temporary or interim certificates for, receipts for, or warrants to subscribe to or purchase, any of the foregoing;

- (e) derivatives including options, futures, contracts or other rights with respect to commodities, currencies, indices or other tangible or intangible personal property or rights therein,

but does not include -

- (i) any securities of any company which is a private company and which has not taken steps to become a public company;
- (ii) any interest arising under a partnership agreement or proposed partnership agreement (other than an agreement creating a limited partnership), unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise, or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises, or investment contracts, whether or not that person is, or is to become a party to the agreement or proposed agreement, or unless the agreement is or would be an agreement, or is or would be within a class of agreements, prescribed by regulations for the purpose of this subsection;
- (iii) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights, or interest arising under any such receipt, certificate, or document;
- (iv) any bill of exchange and any promissory note within the meaning of the Bills of Exchange Act;
- (v) any debenture that specifically provides that it is not negotiable or transferable;
- (vi) bank contracts for spot or forward foreign exchange transactions in currencies, excluding currency options.

Ch. 308.

(3) Notwithstanding subsection (2), the Commission shall have the authority to designate or to exempt any financial instrument from the definition of a security under this Act.

PART II
SECURITIES COMMISSION

Establish-
ment of
Commis-
sion.

3. (1) The body corporate established under section 3 of the repealed Act and known as the Securities Board is preserved and shall continue in existence by virtue of and for the purposes of this Act but shall be known after the commencement of this section as the Securities Commission of The Bahamas.

First
Schedule.

(2) The First Schedule shall have effect with respect to the Commission, its members and staff.

Functions
of the
Commis-
sion.

4. (1) The functions of the Commission shall be -

- (a) to formulate principles to regulate and govern mutual funds, securities and capital markets;
- (b) to maintain surveillance over mutual funds, securities and capital markets ensuring orderly, fair and equitable dealings;
- (c) to create and promote conditions to ensure the orderly growth and development of the capital markets;
- (d) to advise the Minister generally regarding mutual funds, securities and capital markets; and
- (e) to do such other things as may be prescribed by this Act or by any other written law.

(2) The Commission shall have power to do anything which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under subsection (1).

13 of 2001

(3) 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.

Powers of
Minister.

5. (1) The Minister may give the Commission directions in writing for the discharge of its functions and the Commission shall give effect to such directions.

(2) The Commission shall furnish the Minister with any returns, accounts and other information as he may from time to time require with respect to the property and activities of the Commission and shall afford to him facilities for verifying the information in any manner and at such time as he may reasonably require.

Funds and

6. The funds and resources of the Commission shall consist of -

resources
of the
Commis-
sion.

- (a) any moneys as from time to time are provided by Parliament;
- (b) any moneys as from time to time may accrue to the Commission from its operations;
- (c) any moneys as from time to time are borrowed by the Commission pursuant to section 7;
- (d) any moneys as from time to time are advanced to the Commission pursuant to section 8;
- (e) any moneys or other property as from time to time may in any manner be lawfully paid to or vested in the Commission whether or not in respect of any matter incidental to its functions.

Borrowing
powers.

7. (1) Subject to this section, the Commission may borrow sums required by it for meeting any of its obligations or discharging 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 guaran-
tee of borrowings.

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

(2) Subject to subsection (3), the Minister may at the request of the Commission guarantee, in any such manner and on any such conditions as he thinks fit, the repayment of the principal of, and the payment of interest and other charges on, any authorised borrowings of the Commission made under section 7.

(3) No guarantees shall be given under this section unless prior approval thereof has been signified by the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act.

Ch. 329.

- (4) Where any sum is paid pursuant to a guarantee given under this

section, the Minister shall as soon as practicable after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereof is finally discharged, lay before the House of Assembly a statement relating to that sum.

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

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

Repay-
ment of
interest

9. (1) The Commission shall make to the Minister at such times and in such manner as the Minister may direct, payments on any amount as may be so directed in or towards repayment of any sums issued in fulfillment of any guarantee given under section 8 and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different periods.

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

Surplus
funds.

10. (1) Subject to subsection (2), any moneys standing to the credit of the Commission and not required for any current purpose (in this section referred to as "surplus funds") may from time to time either be carried to any reserve fund established under section 11 or be invested by the Commission in securities approved by the Minister; and the Commission may from time to time, with the approval of the Minister, sell any or all of such securities.

(2) No surplus funds are to be carried to the reserve fund or invested in securities under subsection (1) without the consent of the Minister and the Minister may direct that the whole or any part of any surplus funds be paid into the Consolidated Fund.

Reserve fund.

11. (1) The Commission shall establish a reserve fund.

(2) Subject to subsection (5), the Commission 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.

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

(4) The power of the Minister to give directions to the Commission pursuant to section 5 shall extend to the

giving of directions to the Commission as to any matter relating to the establishment or management of the reserve fund, the carrying of sums to the credit of the fund or the application of the fund.

(5) The Minister may at any time direct that any part of the reserve fund established under subsection (1) be paid into the Consolidated Fund.

Balancing
of revenue
account
and surplus
revenue.

12. (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 10 and 11 taking one year with another.

(2) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account and its funds under sections 10 and 11 for that year shall be applied by the Commission for the purposes of the Commission.

Accounts
and audit.

13. (1) The Commission shall keep proper accounts of all transactions and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct.

(2) Such accounts shall be audited annually by an auditor appointed by the Commission with the approval of the Minister.

Annual
report.

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

- (a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct; and
- (b) a statement of the accounts of the Commission audited in accordance with section 13.

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

Appoint-
ment of
Secretary.

15. (1) The Minister shall appoint and may dismiss a Secretary to the Commission.

(2) The Secretary shall -

- (a) receive and process administratively all matters relating to the Commission; and

- (b) perform any other duties assigned to him by the Commission and by the Executive Director.

Appoint-
ment of
Executive
Director.

16. The Minister shall appoint and may dismiss an Executive Director as he considers necessary for the purpose of performing the duties assigned to such officer by the Commission or by any written law.

**PART III
REGULATION OF SECURITIES EXCHANGES
AND MARKET PARTICIPANTS**

Registra-
tion of
Securities
Exchanges.

17. (1) The Commission shall have the authority to approve and register any company subject to subsection (2) as a Securities Exchange pursuant to this Act.

(2) Application by a company for registration as a Securities Exchange shall be made only by a company incorporated under the Companies Act, 1992, and shall be made to the Commission in the prescribed form accompanied by the prescribed application fee and shall include a certified copy of its Memorandum and Articles of Association together with any other documentation as the Commission may require.

(3) No person may in The Bahamas establish or maintain or assist in establishing or maintaining a Securities Exchange, or conduct the business of trading on a Securities Exchange other than one registered in accordance with this Act.

(4) Any person who contravenes subsection (3) is guilty of an offence and shall be liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for two years or to both.

(5) Any company desiring to be registered as a Securities Exchange pursuant to this Act shall make arrangements acceptable to the Commission for a compensation fund for the protection of broker-dealers and customers of broker-dealers who may suffer loss as a result of the bankruptcy, insolvency or winding up of a broker-dealer.

Recogni-
tion of
foreign
security
exchanges.

18. (1) The Commission may recognize and specify foreign security exchanges established and operated elsewhere than in The Bahamas whose listed securities may become eligible for trading on a Securities Exchange pursuant to this Act.

(2) For the purposes of subsection (1), the Commission may prescribe jurisdictions other than The Bahamas whose securities laws are equivalent to those of The Bahamas.

Trading in

19. (1) Notwithstanding anything contained in any other law but

listed
securities
restricted
to a
Securities
Exchange.

subject to subsection (2), no trading in a listed security shall take place in The Bahamas except on the Securities Exchange on which it is listed in accordance with this Act and any regulations or rules made thereunder.

(2) Subsection (1) shall not apply to individuals who are trading in securities for his, her, or their own account or for the account of his or her spouse and children (or his or her spouse or children) under eighteen years of age.

Clearing,
settle-
ment,
depository
and
custody
facilities.

20. (1) A company desiring to provide clearing, settlement, depository, custody or other services which facilitate or are ancillary to the operations of a Securities Exchange may not do so until it has been approved and registered by the Commission which shall have the exclusive authority to approve and register companies engaged in such services, and such company shall be referred to individually as a "facility".

18 of 1992.

(2) Application by a company for registration as a facility shall be made only by a company incorporated or registered under the Companies Act, 1992, and shall be made to the Commission in the prescribed form accompanied by the prescribed application fee and shall include a certified copy of its Memorandum and Articles of Association together with any other documentation as the Commission may require.

(3) No person may establish or maintain or assist in establishing or maintaining a facility, or conduct business with any facility other than one registered in accordance with this Act.

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

Broker-
dealer.

21. (1) No person other than a broker-dealer which has obtained membership to trade on a Securities Exchange may trade on such exchange.

(2) Any company (whether acting as a dealer for its own account as principal or as a broker for the account of another) which wishes to effect or attempts to effect any transaction or otherwise to engage in any dealing in any securities listed on a Securities Exchange with the public including institutions, or induces or attempts to induce the public including institutions to purchase, sell or otherwise deal in securities shall be registered as a broker-dealer by the Commission.

(3) Registration under subsection (2) as a broker-dealer shall be a requirement to application to a Securities Exchange for membership for the purpose of trading securities on that Exchange.

Applica-
tion for

22. (1) A broker-dealer shall be a company incorporated or registered under the Companies Act, 1992 and an application by a company for

registra-
tion as a
broker-
dealer.
18 of 1992.

registration as a broker-dealer shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed application fee together with -

- (a) a written statement containing the name and description of the applicant, the address of its registered office in The Bahamas, the names, addresses, nationalities and background details of its substantial shareholders, officers and directors together with their character and financial references, police certificate and curriculum vitae;
- (b) a certified copy of its Memorandum and Articles of Association together with a certified copy of its certificate of incorporation or certificate of registration, as the case may be;
- (c) a declaration signed by the chief executive officer and the chief financial officer that the company is in compliance with the financial requirements pursuant to section 45;
- (d) the following documents -
 - (i) financial statements for the last two fiscal periods together with the report of the auditors thereon prepared in accordance with standards promulgated by The Bahamas Institute of Chartered Accountants or the International Federation of Accountants,
 - (ii) management accounts up to a date not more than three months prior to submission and certified by the chief executive officer and chief financial officer to be true and complete:

Provided that a company incorporated less than six months prior to the date of application shall provide an audited opening balance sheet;

- (e) a written statement of the applicant's operational capabilities;
 - (f) any such other information or documentation which the Commission considers important or appropriate.
- (2) Before registering the applicant as a broker-dealer, the Commission shall -

- (a) be satisfied that the applicant and its principals are fit and proper persons who have and maintain a good reputation;
- (b) consider and if satisfied of their appropriateness taking into account the intent and purposes of this Act approve the Memorandum and Articles of Association referred to in subsection (1)(b);
- (c) be satisfied that the applicant's principal business will be stockbroking and dealing in securities;
- (d) be satisfied that the applicant's operational capabilities and the qualifications of the applicant, its directors, substantial shareholders and officers meet all the standards set by the Commission.

(3) The Commission shall not approve or register as a broker-dealer any company which has issued bearer shares and shall require an undertaking from every broker-dealer that it shall not issue bearer shares.

(4) The Commission shall have the authority to approve or deny any application for registration or may delay its decision and request additional information or documentation from the applicant as it may deem necessary or desirable.

Registra-
tion.

23. (1) Upon being satisfied that the provisions of this Act and the regulations have been complied with, the Commission shall register the applicant as a broker-dealer.

(2) Where the Commission refuses an application for registration, it shall notify the applicant in writing of the reasons for so doing and the applicant may file an appeal in accordance with section 42.

(3) Upon the registration of the applicant as a broker-dealer, the Commission shall issue a certificate of registration in the prescribed form certifying that the applicant is registered as a broker-dealer and such certificate shall be prima facie evidence of compliance with all the requirements of registration of this Act and the regulations made thereunder.

At least
one direc-
tor must be
stockbroker.

24. At least one director of a broker-dealer shall be a stockbroker and not less than two directors, one of whom shall be a stockbroker director, shall be actively engaged in the securities business of the broker-dealer.

Alteration
of Memoran-
dum and
Articles
of a broker-

25. (1) No broker-dealer may alter its Memorandum or Articles of Association without the prior consent in writing of the Commission.

(2) Notwithstanding the provisions of the Memorandum and

dealer.
18 of 1992.

Articles of Association of the broker-dealer and of the Companies Act, 1992, notice in writing shall be given to the Commission of any meeting at least fourteen days prior to the meeting at which it is proposed to effect any alteration of the broker-dealer's Memorandum or Articles of Association together with a copy of the proposed resolution.

Notices to
the Commis-
sion.

26. (1) A broker-dealer shall give immediate notice in writing to the Commission upon -

- (a) the death, retirement, bankruptcy or resignation of any of its substantial shareholders, officers or directors; or
- (b) any material change requiring an amendment to its initial application for registration as a broker-dealer or any other material change.

(2) Upon any occurrence of the matters mentioned in subsection (1), the Commission shall have the authority to review the broker-dealer's licence and may revoke it or impose conditions upon it after conducting a regulatory hearing therefor pursuant to the powers contained in section 33.

Voluntary
liquidation.

27. A broker-dealer shall not go into voluntary liquidation without the prior approval of the Commission and if proceedings for an involuntary liquidation are commenced against a broker-dealer the Commission shall be immediately notified in writing by the affected broker-dealer or by a director or officer thereof.

Official
Register.

28. (1) A Securities Exchange shall maintain a register (to be known as "the Official Register") which shall contain -

- (a) the names of current and former broker-dealers, traders, facilities and associated persons;
- (b) information which the broker-dealers, traders, facilities and associated persons are required to furnish to the Commission or to a Securities Exchange;
- (c) disciplinary records of each broker-dealer, trader, facility and associated person; and
- (d) any other information which the Commission or the appropriate Securities Exchange may require.

(2) Each broker-dealer, trader, facility or associated person shall keep current all the information required in the Official Register and any changes shall be made by notifying the appropriate Securities Exchange in writing.

(3) The Commission may authorize the public disclosure and publication of any or all of the information contained in the Official Register.

Stock-
broker,
etc.
registra-
tion and
associated
person
approval.

29. (1) No individual shall engage in any of the following activities in The Bahamas on a Securities Exchange unless he is registered as a stockbroker, dealer or trader by the Commission and employed by a broker-dealer -

- (a) offering to provide or providing securities investment advice to the public including institutions for a fee or other reward;
- (b) underwriting of securities offerings;
- (c) trading in securities;
- (d) dealing in securities;
- (e) supervising any of the aforementioned activities:

Provided that the provisions of this subsection shall not apply to individuals who are trading in securities for his, her or their own account or for the account of his or her spouse and children (or his or her spouse or children) under eighteen years of age.

(2) Any person, other than one mentioned in subsection (1) or performing clerical or non securities-related functions, and employed by a broker-dealer or a facility, must be approved by a Securities Exchange as an associated person.

(3) The powers exercisable by the Commission under this section shall be exercisable by the Commission until the Commission has delegated such powers to the relevant Securities Exchange and notice thereof has been published by the Commission in the Gazette.

(4) No broker-dealer, without the consent of the Commission, may employ any individual as a stockbroker, a dealer, a trader, or an associated person unless that person's registration, licence or approval, as the case may be, is current and in good standing.

(5) Notwithstanding the foregoing or any other provision of this Act, no company or individual whether self-employed or otherwise employed by a person who or which is not a broker-dealer which has obtained membership to trade on a Securities Exchange shall -

- (a) engage in offering to provide or providing securities investment advice to the public including institutions;
- (b) deal or trade in securities;

- (c) supervise any of the aforementioned activities,

for a fee or other reward unless that company or individual has been registered and licensed in that behalf with the Commission as a securities investment advisor.

(6) Any person or broker-dealer who contravenes the provisions of subsection (1), (2), (3), (4) or (5) is guilty of an offence and shall be liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for two years or to both.

(7) Subsection (5)(a) shall not apply to -

- (a) financial institutions including banks and trust companies licensed under the Banks and Trust Companies Regulation Act and insurance companies registered under the Insurance Act;
- (b) mutual fund administrators licensed or exempt under the provisions of the Mutual Funds Act, 1995;
- (c) counsel and attorneys and accountants qualified to practice in The Bahamas;
- (d) publishers and writers of newspapers and other publications in general circulation in The Bahamas or elsewhere who give advice only through such publications and have no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice,

where engaging in offering to provide or providing securities investment advice is only incidental to their principal business or occupation.

PART IV REGULATORY AUTHORITY OF THE COMMISSION

30. (1) In carrying out its responsibilities under this Act the Commission may make rules providing for such matters as may be necessary or expedient for giving effect to such responsibilities.

(2) Without prejudice to the generality of subsection (1) the Commission may also make rules for -

- (a) tender offers, mergers and other issues of corporate control and acquisition involving any public company;

- (b) the solicitation of proxies by shareholders of public companies, including but not limited to their need, form and content.

Authority.

31. (1) The Commission shall have the authority to supervise and regulate the securities market and the operations and duties specifically delegated or otherwise conferred upon, a Securities Exchange or any other body registered under this Act.

(2) Without prejudice to the generality of the foregoing, the Commission shall have the authority to -

- (a) review, approve, reverse or vary any rules, regulations, interpretations, decisions, actions or orders of a Securities Exchange or any other body registered under this Act;
- (b) establish by rules the educational criteria or standards, if any, which govern the eligibility of an individual to engage in any of the activities regulated by this Act;
- (c) entertain appeals from any rulings, decisions or orders of a Securities Exchange or any other body registered under this Act and for any of these purposes the Commission shall have the power to establish and promulgate its own procedures pursuant to which such proceedings shall be brought, heard and determined.

Delegated
regulatory
authority.

32. (1) The Commission shall have the authority to delegate to a Securities Exchange or any other body registered under this Act and regulated by the Commission, 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) The Commission shall have supervisory authority pursuant to section 31 and it may withdraw, add or vary any powers delegated pursuant to subsection (1) as it deems necessary.

Regulatory
process.

33. The Commission shall have the authority –

- (a) to conduct investigations and regulatory hearings to determine whether there has been or whether there is or is likely to be because of changed circumstances by reason of the matters set out in section 26 or otherwise a failure to comply with the provisions of -

- (i) this Act or with any regulations or rules made thereunder, or
 - (ii) any of the regulations and rules of a Securities Exchange or any other body registered under this Act and regulated by the Commission;
- (b) to impose one or more of the following sanctions, remedies or other relief as the result of any settlements of disputes by persons registered, licensed or approved under this Act or by decisions of the Commission as a result of regulatory hearings -
- (i) censure,
 - (ii) fine, not to exceed three hundred thousand dollars,
 - (iii) disgorgement of profits or other unjust enrichment plus a penalty not to exceed twice the amount of such profits or unjust enrichment,
 - (iv) restitution,
 - (v) suspension of licence, registration or approval,
 - (vi) revocation of licence, registration or approval; or
 - (vii) any other sanctions or remedies as the justice of the case may require;
- (c) to establish and promulgate procedures to be used in carrying out any of the functions conferred by this section upon the Commission.

Investi-
gations.

34. (1) In carrying out an investigation under this Part, the Executive Director is empowered to require the production of any document or other information he deems relevant to the investigation.

(2) In carrying out his functions under this Part, the Executive Director is empowered to summon witnesses to give evidence or produce any documents or other materials to enable him to carry out his investigation subject to the right of either

the Executive Director or the witness to apply to the Supreme Court for an order compelling the cooperation of the witness or excusing the witness from complying with the summons, as the case may be.

(3) To assist the Commission and the Executive Director in carrying out the functions hereby required, the Commission shall establish a Disciplinary Committee comprising five persons including not more than two persons who are members of the Commission.

(4) Upon completion of his investigation, the Executive Director shall report his findings to the Disciplinary Committee for any appropriate action and the Disciplinary Committee may recommend to the Commission -

- (a) dismissal of the matter;
- (b) the issue of a letter of caution or some other informal remedial action;
- (c) the filing of a formal complaint and proceeding with a regulatory hearing before the Commission; or
- (d) the reference of the matter to the Attorney-General,

and in every case the recommendation of the Disciplinary Committee shall be approved or ratified by the Commission before being executed.

Sanctions
and
remedies.

35. (1) Where a dispute has arisen out of or in connection with any dealings in a listed security between any person regulated by the Commission or by a Securities Exchange and another party and that dispute has been settled between the parties, the person so regulated shall, within twenty-one days after the settlement has been effected provide to the Commission a written report of the dispute together with copies of all documentation relating to the settlement.

(2) The Commission shall as soon as practicable after receipt of the said report consider the matter and may either make a finding as to whether or not a violation of any provision of this Act or of any regulations or rules made thereunder has occurred or require that a regulatory hearing be held to so determine.

(3) In either case, should the Commission decide that a violation has occurred, it may dismiss the matter or impose one or more of the sanctions or remedies specified in section 33(b) as it deems fit.

Compliance
with
decisions
of the
Commission.

36. Except where the Commission had made an order or ruling in the terms of section 33 (b) (v) and (vi), where any person or entity against whom a decision has been rendered has not fully complied with the terms of such decision within the prescribed time, that person or entity shall be in contempt of the

Commission, and shall have its registration, licence or approval suspended until further order of the Commission.

Order. 37. (1) The Commission may subject a listed company or a broker-dealer to an order to prevent or restrain the breach of or any non-compliance with, any provision of this Act or the regulations or rules made thereunder by any person or entity, and such order shall be subject to appeal to the Supreme Court.

(2) In addition to all the rights or remedies which are exercisable by the Commission or the Board, they or either of them, shall have the power to make an application to the Supreme Court for an order to prevent the dissipation of any assets owned or standing to the credit of any broker-dealer or other person regulated by this Act.

(3) The Board shall have the power to suspend a broker-dealer or a trader or a facility or an associated person or to impose an order upon any of the foregoing persons to prevent or restrain the breach of or non-compliance with any provision of this Act or the regulations or rules made thereunder by any of the foregoing persons, who may appeal such suspension or imposition to the Commission with a right of appeal to the Supreme Court.

Register as evidence. 38. 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 licence or certificate issued under this Act shall be prima facie evidence of the contents thereof.

Time limits. 39. No proceedings against any person or body corporate for a breach of any of the provisions of this Act, or for a failure to comply with any of its provisions may be commenced after the expiration of four years from the day upon which the breach or non-compliance is or ought to have been discovered.

Defence. 40. In any proceedings for an offence under this Act, it shall be a good defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his supervision or control.

Applicability of the Companies Act, 1992. 41. In the absence of any specific provision in this Act governing the operations of a Securities Exchange, the appropriate provision of the Companies Act, 1992 relating to companies generally shall apply.

Appeals. 42. (1) Any person aggrieved by a decision, refusal, ruling or order of the Commission may appeal to the Supreme Court in accordance with rules of court.

(2) On an appeal pursuant to subsection (1), the Commission shall be entitled to appear and be heard in the proceedings on the appeal.

Criminal 43. (1) Where a broker-dealer, trader, facility or associated person is

conviction.

convicted in The Bahamas or elsewhere of a criminal offence involving fraud or dishonesty under Bahamian or any other law, such person shall cease to be registered, licensed or approved under this Act with effect from the date of the conviction.

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

(3) Where a broker-dealer, trader, facility or associated person has been the subject of any disciplinary action by any Bahamian or foreign regulatory organization, such person's registration, licence or approval shall be reviewed by the Commission and may be subject to revocation, suspension or other remedial action.

Suspension
of trading.

44. The Commission shall have the power to suspend trading for a period of time of all or any securities on a Securities Exchange if it deems it to be in the public interest to do so.

PART V FINANCIAL REQUIREMENTS: BROKER-DEALERS

Minimum
require-
ments.

45. (1) All broker-dealers, upon being registered under capital this Act, shall have and maintain an issued and paid up capital of not less than the sum prescribed by regulations made under this Act, provided that the Commission may from time to time vary such minimum capital sums in particular instances.

(2) In addition to the provisions of subsection (1), every broker-dealer shall maintain the financial standards relating to capital and liquidity at levels fixed by the Commission from time to time.

Records and
books of
accounts.

46. A broker-dealer shall keep such books, accounts, registers and other records as may be necessary -

- (a) to show the nature and details of all dealings and transactions entered into by it;
- (b) to explain transactions and the financial status of its business at any time;
- (c) to enable a true profit and loss account and balance sheet to be prepared from time to time,

and such other books and records as the Commission may from time to time require.

Trust
accounts.
Ch. 287.

47. (1) A broker-dealer shall establish and keep in one or more banks which hold an unrestricted licence issued pursuant to section 4 of the Banks and Trust Companies Regulation Act (or such other bank or trust company outside The Bahamas as may be approved by the Commission for the purposes of this section) one or more trust accounts designated as such into which it shall pay -

- (a) all moneys (less any commission and proper charges) that are received from or on account of any person, other than another broker-dealer, for the purchase of securities not delivered to the broker-dealer within five trading days after receipt of such moneys;
- (b) moneys (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 within five trading days after receipt of such moneys.

(2) Save as otherwise provided in this Part, moneys held in trust accounts in accordance with this section shall not be used for payment of the debts or expenses of a broker-dealer.

With-
drawals
from
trust
account.

48. A broker-dealer may not withdraw any moneys from a trust account established under section 47 except for the purpose of making payment on behalf of or to the person lawfully entitled thereto, or for any other purpose duly authorized by law.

Claims and
liens not
affected.

49. Nothing in this Part shall affect in any way any lawful claim or lien which a person may have against or upon moneys held in a trust account, or against or upon moneys received for the purchase of securities, or from the sale of securities, before such moneys are paid into a trust account.

Contra-
vention.

50. Any person who fails to comply with or contravenes any of the provisions of section 45, 46, 47 or 48 is guilty of an offence and shall be liable on summary conviction to a fine of seventy-five thousand dollars or to imprisonment for one year or to both.

Audit of
broker-
dealers.
8 of 1991.

51. (1) A broker-dealer shall appoint an auditor who is a public accountant licensed under the Public Accountants Act, 1991, and approved by the Commission.

(2) The broker-dealer shall -

- (a) within four months after its financial year file with the Commission -
 - (i) financial statements in respect of that year along with the report of the auditor thereon required pursuant to the provisions of subsection (3) (a),
 - (ii) a copy of the report of the auditors on results of the procedures performed by him pursuant to the provisions of subsection (3)(b);
- (b) within forty-five days following every third month of its financial year (other than the year end), prepare and submit to the Commission on the prescribed forms, financial and other information as may be prescribed covering the previous three month period:

Provided that such financial and other information need not be audited or otherwise subject to verification or attestation by the auditor, but shall be attested to by the broker-dealer's chief executive officer and chief financial officer to be true and complete.

- (3) The auditor shall issue -
 - (a) a report on his audit of the financial statements stating whether or not the financial statements present fairly (or present a true and fair view of), in all material respects, the financial position of the broker-dealer and the results of its operations and its cash flows in accordance with standards promulgated by The Bahamas Institute of Chartered Accountants or the International Federation of Accountants; and
 - (b) a report on whether or not the business of the broker-dealer has been conducted in accordance with the provisions of this Act and the regulations and rules prescribed thereunder relating to the record keeping, reserve requirements, filing requirements, segregation of customers' funds and the financial affairs of broker-dealers.

(4) Where the report of the auditor required by subsection (3)(a) is qualified in any respect or the report required by subsection (3)(b) discloses that there are any material weaknesses or deficiencies in or non-compliance with any of the

provisions of this Act and the regulations and rules made thereunder relating to the record keeping, reserve requirements, filing requirements, segregation of customers' funds and the financial affairs of broker-dealers, the Commission shall, if deemed necessary, suspend the broker-dealer from trading on a Securities Exchange, and such suspension shall not be removed until the matter giving rise to the qualified audit report is rectified or otherwise resolved or the matters giving rise to the weaknesses or deficiencies in or non-compliance with the aforementioned provisions of the Act and the regulations and rules made thereunder are rectified.

(5) Where in the course of performing the duties required by subsection (3) the auditor comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements or that a major deficiency, weakness or non-compliance should be reported to the Commission, he shall request the broker-dealer to notify the Commission accordingly and, if the broker-dealer fails or refuses to do so, the auditor shall notify the Commission forthwith on the prescribed form with a copy of such notification being supplied to the broker-dealer.

Indemnity
insurance.

52. (1) Every broker-dealer shall, to the satisfaction of the Commission, effect and maintain appropriate policies of insurance for the purpose of indemnifying itself against any liability that may be incurred as a result of any act or omission of any of its directors, officers or employees.

(2) Failure to comply with this section shall render the registration of the broker-dealer revocable by the Commission.

Prohibition.

53. (1) A broker-dealer may not -

- (a) acquire any substantial shareholdings in any company which is not a broker-dealer other than in the usual course of the business of trading in securities;
- (b) acquire any shares, debentures or other interest in any other broker-dealer, except where such acquisition involves the take-over of all the shares, debentures and other interests of the other broker-dealer,

without the approval of the Commission.

(2) Failure to comply with this section shall render the registration of the broker-dealer revocable by the Commission.

PART VI
THE ISSUE OF SECURITIES TO
THE PUBLIC:
PROSPECTUS

No issue
to public
without an
approved
prospectus.

54. (1) Subject as hereinafter appears it shall not be lawful to publish to the public any invitation to subscribe for securities or to issue to the public any form of application to subscribe for or to purchase securities -

- (a) unless before the date of such publication or issue, as the case may be, the prospectus required by and complying with the requirements of this Act and regulations made thereunder, has been lodged with the Commission and has been approved and has been registered as provided herein;
 - (b) unless in the case of the issue of any form of application for securities such form of application is accompanied by a copy of the prospectus as so registered with the Commission;
 - (c) unless in the case of such publication of any invitation to subscribe for securities the issuer shall have published at least once in a newspaper circulating generally in The Bahamas not less than three days before the publication of such advertisement a notice advising where an applicant may obtain (except from the Commission) free of charge a copy of the prospectus as so registered with the Commission.
- (2) A prospectus -
- (a) shall be dated; and
 - (b) shall be signed, in the case of a company or intended company by the chief executive officer and the chief financial officer and by every director or proposed director or his agent, and in the case of a partnership by every general partner or proposed general partner or his agent, and in the case of a trust by every trustee and in the case of a syndicate or of a joint venture by every manager or proposed manager or his agent.
- (3) Every prospectus shall state on its face that the original has been

registered with the Commission, but the publication of the prospectus shall not be deemed to mean approval of the contents thereof by the Commission nor create any liability of the Commission nor of the Government in respect thereof or in respect of any statement contained therein and every published prospectus shall contain a statement to such effect prominently displayed therein.

(4) The provisions of subsection (1) shall not apply if it is shown to the reasonable satisfaction of the Commission -

- (a) that the form of application was issued either in connection with a bona fide invitation to a person or persons or company to enter into an underwriting agreement with respect to the securities which are to be offered to the public in the future; or
- (b) that the issue was in relation to securities which were not offered to the public and that issuers have fifty members or less and are prima facie exempt as regards dealings in their securities and the issue of invitations in respect thereof which will not result in their having more than fifty members.

(5) If any person acts in contravention of the provisions of subsection (1), he is guilty of an offence and shall be liable on summary conviction to a fine of thirty thousand dollars, or to imprisonment of six months or to both.

(6) In the event of non-compliance with or contravention of any of the requirements of this section, any person responsible for the publication or issue of the prospectus shall not incur any liability by reason of the non-compliance or contravention if -

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof;
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial and were otherwise such as ought, in the opinion of the court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus

a statement with respect to matters relating to share capital, no such responsible person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed; and provided that nothing in this subsection shall limit or diminish any liability which the responsible person or the issuer of the securities may incur under the Common Law or this Act apart from this subsection.

(7) This section shall not apply -

- (a) to securities issued by the Government of The Bahamas;
- (b) to exempt securities pursuant to subsection (8);
- (c) to an issue of securities exempt from the provisions of this section by the Commission in writing; or
- (d) to any such class of securities which the Commission designates as exempt from the requirements of this section.

(8) For the purposes of paragraph (b) of subsection (7), "exempt securities" shall mean -

6 of 1995.

- (a) securities which are regulated under the Mutual Funds Act, 1995 or are "exempt mutual funds" pursuant to subsection (4) or (6) of section 3 of that Act;
- (b) securities quoted on and dealt in on a recognized foreign securities exchange specified by the Commission pursuant to section 18 of this Act and currently in good standing in its relevant jurisdiction;
- (c) subject to approval by the Commission, securities authorized by a national or local government, its agencies or any other quasi-governmental entity.

(9) Every company incorporated in The Bahamas and every partnership or joint venture or syndicate or trust or other issuer established in The Bahamas that issues securities to the public in any other jurisdiction shall comply with the provisions of this section and any regulations made thereunder:

Provided that securities issued in jurisdictions prescribed by the Commission pursuant to section 18 are exempt from complying with this subsection.

(10) In any particular class of securities or issuers, the Commission shall have the authority -

- (a) to require any additional information to be included in the prospectus; or
- (b) to permit the omission of any items of information.

(11) Upon written application by an issuer, the Commission shall have the authority to exempt such issuer from any of the requirements of this section.

Expert's consent to issue of prospectus containing statement by him.

55. (1) A prospectus inviting persons to subscribe for securities and which includes a statement purporting to be made by an expert shall not be published unless -

- (a) such expert has given his consent in writing and has not, before delivery of the prospectus for registration, withdrawn his written consent to the publication thereof with the statement included in the form and context in which it is included; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is published in contravention of this section, the issuer and every person who is knowingly a party to the publication thereof is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars.

(3) In this Part the expression "expert" includes engineer, valuer, accountant, counsel and attorney and any other person whose profession gives authority to a statement made by him.

Registration of prospectus.

56. (1) No prospectus shall be registered by the Commission unless there has been delivered to the Commission a copy thereof dated and signed by such persons as are required by subsection (2) of section 54 or by their agent authorized in writing, and having endorsed thereon or attached thereto -

- (a) any consent to the publication of the prospectus required by section 55 from any person as an expert;
- (b) a copy of any contract required by regulations to be stated in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and
- (c) where the person making any report required by any regulations made under this Act has made therein, or has without giving the reasons indicated therein, any adjustments to his report, a written statement signed by that

person setting out the adjustments made and the reasons therefor.

(2) The references in subsection (1)(b) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified by the translator before a notary public and authenticated to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof all similarly certified as aforesaid.

(3) Every prospectus shall, on the face of it -

- (a) state that a copy has been lodged for registration as required by section 54 and that publication of the prospectus or allocation or trading in the securities described in the prospectus as being offered can commence only after the registration of the prospectus by the Commission; and
- (b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(4) Where a copy of a prospectus has been lodged for registration, the Commission shall issue a receipt for the prospectus and shall -

- (a) approve and register the prospectus expeditiously; or
- (b) refuse to register the prospectus and notify the issuer immediately in writing of the reason for so doing.

(5) The Commission shall not register a prospectus unless it is dated and the copy thereof signed in the manner required by this section and section 54 and unless it has endorsed thereon or attached thereto such financial statements, reports or other documents as are required by this Act or any regulations or rules made thereunder.

(6) The Commission shall refuse to register a prospectus if it appears to the Commission -

- (a) that the prospectus or any other document required to be filed therewith -

- (i) fails to comply in any substantial respect with any of the requirements of this Act or any regulations or rules made thereunder, or
 - (ii) contains any statement that is misleading, false or deceptive;
- (b) that an unconscionable consideration has been or is intended to be paid for promotional purposes or for the acquisition of a security;
 - (c) that the proceeds from the sale of securities together with other resources of the issuer will be insufficient to accomplish the purpose of the issue as stated in the prospectus;
 - (d) that the financial condition or past conduct of the issuer or any officer, director, promoter or person connected with the issuer affords reasonable grounds for believing that the business of the issuer will not be conducted in a manner that is financially responsible or is in the best interest of the holders of its securities; or
 - (e) that a person who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with the prospectus is not a fit and proper person to do so.

(7) If a prospectus is published without its having been registered by the Commission under this Act, the issuer and every person who is knowingly a party to the publication of the prospectus is guilty of an offence and shall be liable to a fine of one thousand dollars for every day, or part thereof, from the date of the publication of the prospectus until the prospectus is in compliance with all the requirements of this Act and the regulations and shall be further liable -

- (a) on summary conviction to a fine of thirty thousand dollars or to imprisonment for six months, or to both;
- (b) on conviction on information to a fine of seventy-five thousand dollars or to imprisonment for one year or to both.

Civil
liability
for mis-
statements in a
prospectus.

57. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for securities of an issuer, the following persons shall be liable to pay compensation to all persons (individually or as a class) who subscribe for any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say -

- (a) every person who is a director or a chief executive officer or a chief financial officer or manager or partner (except a limited partner) of the issuer at the time of the publication of the prospectus;
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or a chief executive officer or a chief financial officer or manager or partner or as having agreed to become a director or a chief executive officer or a chief financial officer or manager or partner either immediately or after an interval of time;
- (c) every person being a promoter of the issue;
- (d) every person who has authorized the publication of the prospectus:

Provided that where, under section 55, the consent of a person is required to the publication of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the publication of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

- (2) No person shall be liable under subsection (1) if he proves -
 - (a) that, having consented to become a promoter, a director or a chief executive officer or a chief financial officer or a manager or a partner of an issuer, he withdrew his consent before the publication of the prospectus, and that it was published without his authority or consent;
 - (b) that the prospectus was published without his knowledge or consent, and that on becoming aware of its publication he forthwith gave reasonable public notice that it was published without his knowledge or consent;
 - (c) that, after the publication of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that -

- (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did up to the time of the allotment of the securities believe, that the statement was true,
- (ii) as regards every untrue statement purporting to be a statement by an expert, or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of publication of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 55 to the publication of the prospectus and had not withdrawn that consent before the delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder, and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 55 as a person who has authorized the publication of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 55 as a person who has authorized the publication of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves -

- (a) that, having given his consent under section 55 to the publication of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration;
 - (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor;
 - (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the securities, believe that the statement was true.
- (4) Where -
- (a) the prospectus contains the name of a person as a promoter or a director or a chief executive officer or a chief financial officer or manager or partner of the issuer, or as having agreed to become a director or a chief executive officer or a chief financial officer or manager or partner thereof; and he had not consented to become a director or a chief executive officer or a chief financial officer or manager or partner, or has withdrawn his consent before the publication of the prospectus, and has not authorized or consented to the publication thereof; or
 - (b) the consent of a person is required under section 55 to the publication of the prospectus and he either has not given that consent or has withdrawn it before publication of the prospectus,

the promoter, the directors or a chief executive officer or a chief financial officer or managers or partners of the issuer, except any without whose knowledge or consent the prospectus was published, and any other persons who authorized the publication thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the publication of a prospectus by reason only of his having

given the consent required by section 55 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section -

- (a) the expression "promoter" means a person who acting alone or in conjunction with one or more other persons, procures the formation or establishment of an entity whose shares or other securities are offered for sale to the public, or was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the issuer;
- (b) the expression "expert" has the same meaning as in section 55;
- (c) the expression "untrue statements" shall include omissions which render the statement untrue or misleading.

Criminal
liability
for mis-
statements.

58. (1) Where a prospectus includes any untrue statement, any person who authorized the publication of the prospectus is guilty of an offence and shall be liable -

- (a) on summary conviction, to a fine of thirty thousand dollars or to imprisonment for six months or to both;
- (b) on conviction on information to a fine of seventy-five thousand dollars or to imprisonment for one year or to both,

unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the publication of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the publication of a prospectus by reason only of his having given the consent required by section 55 to the inclusion therein of a statement purporting to be made by him as an expert.

Deemed
prospectus.

59. (1) Where an issuer allots or agrees to allot any securities of the issuer with a view to all or any of those securities being offered for sale to the public any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus published by the issuer, and all written laws and regulations and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses shall apply and have effect accordingly as if the securities had been offered to the public for subscription

and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot securities was made with a view to the securities being offered for sale to the public if it is shown -

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made to the public the whole consideration to be received by the issuer in respect of the securities had not been so received.

(3) Section 54 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus -

- (a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and
- (b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected,

and section 56 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as a chief executive officer or chief financial officer or directors or managers or partners of an issuer.

(4) Where a person making an offer to which this section relates is a company or a partnership, it shall be sufficient to establish the document as a prospectus for the purposes of this section if the document is signed on behalf of the company or the partnership by any officer of the company as defined in section 2 of the Companies Act, 1992 or by a majority of partners, as the case may be, and any of the foregoing persons may sign by his agent authorised by him in writing.

18 of 1992.

Interpre-
tation of
prospect-
uses.

60. For the purposes of the foregoing provisions of this Part -

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included or omits any material facts; and

- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Application
of sections
54 to 60.

61. Sections 54 to 60 shall not apply to private companies.

Definition
of private
company.

62. (1) A private company is a company which by its Articles -

- (a) restricts the right to transfer its shares;
- (b) limits the number of its members to no more than fifty beneficial owners; and
- (c) prohibits invitation to the public to subscribe for any shares, debentures or other securities of the company.

(2) If two or more persons hold one or more shares jointly, they shall for the purposes of this section be treated as a single entity.

(3) The Commission shall have the authority to decide whether or not any entity meets the requirements of a private company for the purposes of this section.

Deemed
public
companies.

63. (1) A company -

- (a) incorporated in The Bahamas that issues its securities to the public in The Bahamas;
- (b) existing at the commencement of this Act which prior to the said commencement had issued to the public any securities as a result of a public offering;

and a part or the whole of which is outstanding shall be deemed to be a public company, and the securities of such a company shall be exempt from section 19 until such time as the Commission may determine and notice thereof has been published by the Commission in the Gazette following the registration of a Securities Exchange.

18 of 1992.
2 of 1990.

(2) Every company incorporated in The Bahamas under the Companies Act, 1992 or the International Business Companies Act, 1989 with less than twenty members shall be deemed to have the provisions of section 62 in its Articles of Association.

(3) Every company incorporated in The Bahamas under the Companies Act, 1992 or the International Business Companies Act, 1989 not falling under subsection (1) or (2) shall be deemed to have no more than fifty members and shall

be deemed to include in its Articles of Association the provisions of section 62 during a period of one year from the date of commencement of this Act.

PART VII REPORTING REQUIREMENTS

Company
to file
material
change
with
Commis-
sion.

64. (1) Subject to subsection (2), where a material change occurs or is likely to occur in the affairs of a public company such company shall -

- (a) immediately file a report of such change with the commission; and
- (b) within five days, publish in a newspaper circulating generally in The Bahamas a notice of such change.

(2) Subject to subsection (3) where -

- (a) in the opinion of the company the disclosure of the change would be detrimental to the interest of the company; or
- (b) the company has no reason to believe that its directors or officers with knowledge of the change would use such knowledge in purchasing or selling securities of the company,

the company may, in lieu of complying with subsection (1), file with the Commission a report as prescribed by regulations accompanied by the prescribed fee.

(3) The Commission shall as soon as practicable after receipt of the said report and after giving the company an opportunity to be heard consider whether disclosure of the change should be made in the public's interest.

(4) Where the Commission decides that disclosure should be made in the public's interest the company should be so notified forthwith.

Issuer
to file
reports.

65. (1) Every issuer of a security -

- (a) registered under this Act shall file with the Commission in accordance with any regulations or rules made thereunder such annual reports (and such copies thereof) certified, if required by the rules of the Commission, by independent

public accountants and such quarterly reports (and such copies thereof) as the Commission may prescribe;

- (b) registered on a Securities Exchange shall file with the appropriate Securities Exchange certified duplicate copies of such annual and quarterly reports as are mentioned in paragraph (a).

(2) In the case of public companies, subsection(1) shall be in addition to and not in derogation of the provisions of the Companies Act, 1992 relating to financial disclosures.

PART VIII CONDUCT OF SECURITY BUSINESS

Conduct
in trading.

66. (1) A stockbroker or a dealer or a trader may not trade on a Securities Exchange other than in the name and on behalf of a broker-dealer.

(2) All bids or offers by a stockbroker or a dealer or a trader for the purchase or sale of listed securities shall be made during the trading sessions of a Securities Exchange.

(3) Subsection (1) shall not apply to casual private securities transactions between individuals not subject to regulation or registration under this Act, unless the frequency or nature of the transactions exceed the limits established by the Commission.

(4) Notwithstanding subsection (2), stockbrokers or dealers or traders may, where the sale or purchase order is in the opinion of the Commission beyond the capacity of the Securities Exchange, find matching orders other than during the trading session in accordance with regulations made under this Act.

Beneficial
ownership
of listed
securities.

67. The beneficial ownership of any listed security sold together with all rights and interests in such listed security shall pass from seller to buyer with effect from the trade date of the transaction unless such rights and interests are expressly excluded by the terms of the contract of sale in which case the nature of the exclusion and its extent shall be recorded at the time of the transaction in the contract note as provided for in section 78.

Broker-
dealer
may act
in dual
capacity.

68. (1) Subject to subsection (2), a broker-dealer may trade in listed securities both as an agent and as a principal.

(2) Where a broker-dealer seeks to purchase listed securities as a principal, and there is a competing bid on behalf of a client for the purchase of those securities which equals or is better than the bid made by the broker- dealer the competing bid shall be preferred to that made by the broker-dealer.

(3) For the purposes of this section, trading as a principal includes trading on behalf of a corporation in which the broker-dealer or its directors have a controlling interest.

(4) Where a broker-dealer purchases listed 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.

Prohibition
of false
markets.

69. (1) A person who directly or indirectly for the purpose of creating a false market in any security -

- (a) effects any transaction in such security which involves no change in the beneficial ownership thereof; or
- (b) enters an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price, has or have been or will be entered by or for the same or different parties for the sale of that security,

is guilty of an offence.

(2) For the purposes of this section, a "false market" is a market in which the movement in the price of a security is brought about or sought to be brought about by factors calculated to create a movement of the price of a security not justified by the assets, earnings or prospectus related to that security.

Market
rigging
trans-
actions.

70. A person who directly or indirectly effects a series of transactions in any security in the securities market creating actual or apparent active trading in such security for the purpose of inducing the purchase or sale of such security by others is guilty of an offence.

Induce-
ment to
purchase
or sell
securities
by circu-
lation of
information.

71. A broker-dealer, a trader or any other person who is selling or offering for sale or purchasing or offering to purchase, any security whether in consideration or anticipation of a reward or benefit or otherwise and who induces a purchase or sale of such security on a securities market by the circulation of information to the effect that the price of any such security will or is likely to rise or fall because of market operations by one or more persons conducted for the purpose of raising or depressing the price of such security is guilty of an offence.

Employment
of decep-
tive de-

72. A person who directly or indirectly in connection with the purchase or sale of any security -

- vices.
- (a) employs any device, scheme or artifice with the intention to defraud;
 - (b) engages in any act, practice or course of business which would operate as a fraud or deceit on any person;
 - (c) makes any untrue statement of a material fact or omits to state a material fact with the intent to mislead,

is guilty of an offence.

Prohibition of use of confidential information.

73.

A person who -

- (a) discloses any internal or confidential information concerning the affairs of an issuer which he has obtained by virtue of his employment with that issuer, or any other employment, prior to the normal or arranged time for the publication of that information by that issuer; or
- (b) carries out on his own behalf or on behalf of any other person or causes to be carried out any security transaction based on internal or confidential information concerning the affairs of an issuer prior to the normal or arranged time for the publication of information by that issuer,

is guilty of an offence.

Insider trading definitions.

74. (1) For the purposes of sections 75 and 76 "insider" means in respect of a company -

- (a) a director or officer of the company or a person connected with a director or officer;
- (b) an associated company or enterprise of the company;
- (c) an affiliated company or enterprise of the company;
- (d) a person who beneficially owns ten per cent or more of the shares of the company or who exercises control or direction over ten per cent or more of the votes attached to the securities of the company whether such control or direction is exercised by virtue of direct or indirect ownership or by virtue of statute or agreement and a connected person of such a person;
- (e) a person, whether or not he is employed by the company, -

- (i) who receives specific confidential information from a person described in this section, and
 - (ii) who has knowledge that the person giving the information is a person described in this section; or
- (f) any agent, auditor, contractor or consultant to the company who receives or comes into confidential information.

(2) In this section -

- (a) "associated company" includes a company (not being a subsidiary of the investing group or company) in which either -
- (i) the investing group or company's interest is effectively that of a partner in a joint venture or consortium and the investing group or company is in a position to exercise significant influence over the investee company, or
 - (ii) the investing group or company's interest is substantial and for the long term and, having regard to the disposition of the other shareholdings of the investing group or company, is in a position to participate in the investee company's operating and financial policies (including dividend policy), but not necessarily exercise control over these policies,

and where the investing group or company's interest amounts to twenty per cent or more of the equity voting rights of a company, it shall be presumed, subject to clear rebuttal otherwise, that the investing group or company has the ability to exercise significant influence over that company (through the participation in the operating and financial policy decisions of that company);

- (b) "connected person" includes, in relation to a director or officer unless that person is also a director or officer of the same company -

- (i) the spouse of the director or officer and any minor child or minor step-child,
- (ii) a body corporate in which the director or the officer or those natural persons connected with the director or the officer have direct or indirect interests in twenty per cent or more of the equity share capital of that body corporate or are able to control twenty per cent or more of the voting authority at any of its general meetings,
- (iii) a trustee or trust, the beneficiaries of which include the director himself, or the officer himself or a person connected with the director or the officer,
- (iv) a partner of either the director or officer or a connected person;

(c) "enterprise" includes an unincorporated association.

(3) The provisions of this section shall apply mutatis mutandis to partnerships, limited liability partnerships, trusts, joint ventures, syndicates and other issuers, as the case may be.

Presumed
insider.

75. (1) For the purposes of this section and sections 76 and 77 -

- (a) a director or officer of a body corporate that is a parent company is an insider of its subsidiary company;
- (b) a director or officer of a body corporate that is a subsidiary is an insider of its parent company;
- (c) a director or officer of a body corporate that is an affiliated company is an insider of its affiliates.

(2) For the purposes of this section and sections 76 and 77 -

- (a) if a body corporate becomes an insider of a company or enters into a business combination with a company, a director or officer of the body corporate shall be presumed to have been an insider of the company for the previous six months or for such shorter period that he was a director or an officer of the body corporate; and

- (b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate shall be presumed to have been an insider of the company for the previous six months or for such shorter period that he was a director or officer of the body corporate.

(3) In subsection (2), "business combination" means an acquisition of all or substantially all the property of one body corporate by another or a merger of two or more bodies corporate.

(4) The provisions of this section shall apply mutatis mutandis to partnerships, limited liability partnerships, trusts, joint ventures, syndicates, and other issuers, as the case may be.

Liability
of insider.

76. An insider who, in connection with a transaction in a security of the issuer or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the share shall be liable to compensate any person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction.

Limitation
and appli-
cation.

77. (1) An action to enforce a right created by section 76 may not be commenced except within two years after the discovery of the facts that gave rise to the cause of action.

(2) Sections 74 to 76 inclusive are applicable to public companies only.

Contract
note.

78. (1) Any broker-dealer which effects any sale or purchase of any listed security shall within twenty-four hours after the sale or purchase make and transmit a contract note of the transaction to its principal.

(2) A contract note shall -

- (a) advise of the sale or purchase of the listed security;
- (b) state the price at which the sale or purchase was effected and the commission charged in connection therewith and any other proper charges;
- (c) identify the broker-dealer involved in the sale or purchase;
- (d) where the broker-dealer is selling or buying as principal, state that fact; and

- (e) contain such further particulars as may from time to time be required by the Commission.

(3) No broker-dealer or any other person shall have any legal claim to any commission or other fees with respect to the sale or purchase of any security where there is failure to comply with this section, except where such failure is beyond the control of the broker-dealer or any other person, as the case may be.

Transfer
of securi-
ties.

79. Notwithstanding any provision of this Act or any other law of the Bahamas to the contrary -

- (a) listed securities shall be transferred by means of an instrument in the prescribed form, (to be called the "Security Transfer Form") executed by the transferor only and specifying the particulars of the consideration, the description and number or amount of the securities, the person by whom the transfer is made, and the full name and address of the transferee;
- (b) where listed securities represented by a single certificate are purchased by more than one person, in addition to the Security Transfer Form, instruments in the prescribed form (to be known as "Brokers Transfer Form") shall be executed in respect of each transferee identifying the transferor, the security transferred, and specifying the securities to which each such instrument relates and the consideration paid by each transferee for those securities.

Offences
under
Part VIII.

80. (1) Any person who commits an offence under section 69, 70, 71, 72 or 73 is liable -

- (a) on summary conviction to a fine of seventy-five thousand dollars, or to imprisonment for one year, or to both;
- (b) on conviction upon information to a fine of one hundred and fifty thousand dollars, or to imprisonment for two years or to both,

and shall return any gains made from contravention of the sections, and if the court so directs, a penalty not to exceed twice the amount of such gains.

(2) A person being an insider who, in connection with any transaction in a security of an issuer or any of its affiliates, makes use of any material confidential information for his own benefit or advantage is guilty of an offence and shall be liable on conviction on information to a fine of one hundred and fifty thousand dollars or to

imprisonment for two years or to both, and if the court so directs, a penalty not to exceed twice the amount of the unlawful gains made by such insider:

Provided that no information may be brought against a person if the transaction took place more than two years after he has ceased to be associated with the issuer or more than two years after the discovery of the facts which gave rise to the offence whichever is the later.

PART IX
INTEREST IN SECURITIES OF
PUBLIC AND LISTED COMPANIES

Notifica-
tion of
acquisition
and
change of
interest.

81. (1) Any person, group or entity upon becoming a direct or indirect substantial shareholder of a public company, shall within five days file with the Commission and with such company, on a prescribed form, a statement setting forth the identity and background of such person, group or entity, the number of securities owned, the source of its acquisition funds, its intentions with respect to the company, and any other relevant information.

(2) Any person, group or entity classified as an "insider" of a public company pursuant to subsection (1) of section 74 shall, within five days of the occurrence of any event resulting in any change of his or its interest in such company file with the Commission and with such company on a prescribed form setting forth information regarding the transaction, the amount of securities owned or in which the person had an interest before and after the transaction, and any other relevant information deemed necessary or relevant.

Notifica-
tion of
interests
of direc-
tors,
officers
or subs-
stantial
share-
holders.

82. (1) Where, upon the commencement of this Act, a director, officer or substantial shareholder of a listed company is interested in securities of that company or that company's subsidiary or parent company or a subsidiary of that company's parent company, or thereafter becomes interested in such securities, he shall notify the listed company in writing of his interest in such shares or debentures giving the full particulars, including but not limited to, the number of shares in and amount of debentures of every class.

(2) A director, officer or substantial shareholder shall notify the listed company, within five days of the occurrence of any of the following events -

- (a) any event in consequence of which he becomes or ceases to be interested in the securities of the listed company or its subsidiary or parent company or a subsidiary of its parent company;

- (b) the entering into by him of a contract to sell or purchase any such securities;
- (c) the assignment by him of a right granted to him or to any member of his family by the listed company to subscribe for any securities of the company;
- (d) the grant to him by another company being a subsidiary of the listed company or a parent company or a subsidiary of the listed company's parent company of a right to subscribe for securities of that other company, the exercise of such a right or the assignment of such a right,

stating the particulars of the transaction, including but not limited to, the number or amount and class of securities involved.

(3) Where a director, officer or substantial shareholder of a listed company is granted the right to subscribe for the securities of a company under subsection (2)(d), he shall notify the listed company on the date on which the right is granted, the period during which or the time at which the right is exercisable, and the consideration for the grant, and in the case of the exercise of the right the number or amount of securities in respect of which it is exercised, and the name or names in which such securities are registered.

(4) Nothing in this section shall operate so as to impose an obligation with respect to the securities of a company which is the wholly owned subsidiary of another company, and for this purpose a company shall be deemed to be the wholly owned subsidiary of another company if it has no beneficial members except that other company and any wholly owned subsidiaries of that other company.

(5) Where a listed company is notified by a director, officer or substantial shareholder of any matter relating to securities of which he is required to give notice under this section, or inscribes in its register any matter relating to securities required to be inscribed under section 85 or section 87, the listed company shall inform the Commission before the end of the day following the day of the notification or inscription, as the case may be, and the Commission may publish, in such manner as it may determine, any information it receives under this subsection.

83. (1) A person is deemed to be interested in securities of a listed company, and for the purposes of this Part only, deemed to be a director, officer or substantial shareholder of that company where -

- (a) the directors or management of that company are accustomed to act in accordance with that person's directions or instructions; or

Interest in
securities.

- (b) that person is entitled to exercise or control the exercise of one-fifth or more of the voting authority at any general meeting of that company.

(2) A person is also deemed to be interested in securities of a listed company where-

- (a) he enters into a contract for the purchase thereof by him;
- (b) he has a right to call for delivery thereof to himself or to his order whether such right is exercisable immediately or in the future;
- (c) not being a registered holder thereof, he is entitled (otherwise than by virtue of his having been appointed a proxy to vote at any meeting of the company, or of his having been appointed by a corporation to act as its representative at any meeting of the company), to exercise any right conferred by the holding thereof or is entitled to control the exercise of any right so conferred; or
- (d) he has an interest other than a discretionary interest under a trust the property of which comprises the shares or debentures, and he is not a bare trustee or a custodian trustee of the trust.

(3) Persons having a joint interest are deemed each of them to have that interest.

(4) So long as a person is entitled to receive, during his lifetime or the lifetime of another, income from trust property comprising of securities, an interest in the securities in reversion or remainder shall be disregarded for purposes of this section.

(5) For the purposes of this section, the securities in which a person has an interest need not be identifiable.

(6) Subject to the provisions of this Act, reference to a person being interested in securities of a company shall be construed so as not to exclude an interest on the ground of its remoteness or the manner in which it arises or by reason of the fact that the exercise of a right by ownership thereof is, or is capable of being made subject to any restraint or restriction.

84. (1) For the purposes of sections 81, 82 and 83 -

- (a) an interest of the spouse or minor child (such child

Extension
to spouses
and

children.

not being a director) of a director, officer or substantial shareholder of a listed company shall be treated as being the director's interest; and

- (b) any interest which arises by virtue of section 81 and is vested in the spouse or minor child (such child not being a director) of a director, officer or substantial shareholder of a listed company shall be treated as his interest.

- (2) In this section "child" includes a step-child and an adopted child.

Register of
interests
of direc-
tors,
officers
and sub-
stantial
share-
holders.

85. (1) Every listed company shall keep a register for the purposes of sections 81 and 82, and whenever the company receives information from a director, officer or substantial shareholder in consequence of an obligation imposed on him by that section, it shall inscribe in the register against the name of the director such information and the date of the inscription.

- (2) Every listed company shall -

- (a) whenever it grants to a director, officer or substantial shareholder a right to subscribe for securities of the company, inscribe in such register against his name the date on which the right is granted, the period during which or time at which the right is exercisable, the consideration for the grant (or where there is to be no consideration, that fact), the description of the securities involved and the number or amount thereof, and the price to be paid therefor;
- (b) whenever a right as referred to in paragraph (a) is exercised by a director, officer or substantial shareholder, inscribe in the register against the name of such director, officer or substantial shareholder that fact identifying the right and the number or amount of securities in respect of which it is exercised and the name or names of the person or persons in whose name or names they were registered, together with the number or amount thereof registered in the name of each person (where they were registered in the names of two or more persons).

(3) The nature and extent of the interest of a director, officer or substantial shareholder in or over any securities recorded in relation to him in the register shall, if he so required, be indicated in the register.

(4) The register shall be so made up that the entries against the several names inscribed therein appear in chronological order, and shall be indexed to enable the information in respect of each name to be readily found, such inscription to be made within three days.

(5) The register shall be kept at the company's registered office or at the place where the company's register of members is kept and shall during business hours (subject to such reasonable restriction as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be opened to inspection by any member of the company without charge and of any other person on payment of such sum as may be prescribed.

(6) The register shall be produced at the commencement of the company's annual general meeting and be kept open and accessible during the continuance of the meeting to any person attending the meeting.

(7) Any person may require a copy of such register or of any part thereof on payment of such sum as may be prescribed.

Obligation
to notify
listed
company
of acquisition of
substantial
share-
holding.

86. (1) A person who -
- (a) being previously uninterested in shares comprised in the relevant share capital of a listed company becomes interested in such shares of a nominal share value equal to one-tenth or more of the nominal share capital, or being previously interested in such shares of a nominal value of less than one-tenth of the nominal value of the share capital, acquires an interest in such shares as to increase the nominal value of all shares so comprised in which he is interested to one-tenth or more of the nominal value of that share capital;
 - (b) being previously interested in shares comprised in the relevant share capital of a listed company of a nominal value of not less than one-tenth of the nominal value of that share capital -
 - (i) acquires such interest of a nominal value in shares comprised in that share capital as to increase by more than ten per cent the nominal value of all shares so comprised in which he is interested, or
 - (ii) suffers a decrease of more than ten per cent in the nominal value of shares so comprised in which he is interested, but remains interested in such shares of a nominal value

equal to one-tenth or more of the nominal value of that share-capital; or

- (c) being previously interested in shares comprised in the relevant share capital of a listed company of a nominal value equal to one-tenth or more of the nominal value of that share capital, suffers a decrease of more than ten per cent in the nominal value of such shares in which he is interested, so that the nominal value of such shares in which he is interested is equal to less than one-tenth of the nominal value of that share capital, or becomes uninterested in such shares,

shall notify the company in writing of the occurrence of the event resulting in his change of interest within five days of the date on which it occurred, and the number of shares in that share capital in which he has become interested or has lost interest.

(2) Every person who, when this Part comes into operation, is interested in shares comprised in the relevant share capital of a listed company of a nominal value of one-tenth or more of the nominal value of that share capital shall within five days notify the company of the subsistence of his interests at that time and the number of shares comprised in that share capital in which each interest subsists at that time.

(3) In the event that a company becomes a listed company, or a listed company's share capital of any class becomes relevant share capital, subsection (2) shall apply as in the case therein mentioned but with the substitution for the reference to the time when this Part comes into operation the reference to the time at which the event occurs.

(4) This section shall not apply to an interest in relevant capital held by any person in a listed company for the purpose of making a market in trading in securities.

Register of
interest
in voting
shares.

87. (1) Every listed company to which section 86 applies shall keep a register for the purposes of that section and whenever the company is notified by a person as is required by that section, it shall inscribe in the register against the name of that person the information so notified and the date of the inscription, and shall inform the Commission accordingly.

(2) Subsections (5), (6) and (7) of section 85 shall apply to the register required to be kept under this section.

Disclosure
of bene-
ficial in-
terest in

88. (1) A listed company may by notice in writing require any shareholder of that company within such reasonable time as is specified in the notice -

share
capital.

- (a) to indicate in writing the capacity in which he holds any shares comprised in relevant share capital of the company; and
- (b) if he holds such shares otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge the person who has an interest in them (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.

(2) Where the listed company is informed in pursuance of a notice given to any person under subsection (1) that any other person has an interest in any shares comprised in relevant share capital of the company, the company may by notice in writing require that other person within such reasonable time as is specified in the notice

- (a) to indicate in writing the capacity in which he holds that interest; and
- (b) if he holds it otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person's interest.

(3) A listed company may by notice in writing require any member of the company to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any shares comprised in the relevant share capital of the company held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(4) Where a listed company is informed in pursuance of a notice given to any person under subsection (3) that any other person is a party to such agreement or arrangement as is mentioned in that subsection, the company may by notice in writing require that other person within such reasonable time as is specified in the notice to give as far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(5) Where a listed company receives information from a person in pursuance of a requirement imposed on him by this section, it shall inscribe against the name of that member in a separate part of the register kept by it under section 87 -

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) Where a listed company receives information from a person in pursuance of a requirement imposed on him by this section, it shall not disclose such information except where disclosure -

- (a) is required under any provision of this or any other Act; or
- (b) is lawfully required or permitted by a court of competent jurisdiction.

(7) For the purposes of section 86 and of this section, the expression "relevant share capital" means issued share capital of a class carrying the right to vote in all circumstances and at all general meetings.

Offences
under
Part IX.

89. Any person who commits a breach of any section in this Part or who in complying with any other section makes a statement which he knows to be false, or recklessly makes a statement which is false, or fails to supply any particulars which he is required to supply is guilty of an offence and shall be liable -

- (a) on summary conviction to a fine of thirty thousand dollars or to imprisonment for six months, or to both;
- (b) on conviction on information to a fine of seventy-five thousand dollars or to imprisonment for one year, or to both.

Application
of Part IX.

90. The provisions of this Part shall apply mutatis mutandis to partnerships, limited liability partnerships, trusts, joint ventures, syndicates, and other issuers, as the case may be.

PART X MISCELLANEOUS

13 of 2001
Con-
fiden-
tial-
ity.

91. (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to -

- (a) the affairs of the Commission;
- (b) any application made to the Commission;

- (b) the affairs of a registrant or licensee; or
 - (d) the affairs of a customer or client of a registrant or licensee, that it or he has acquired in the course of its or his duties or in the exercise of the Commission's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding 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 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 registrant or licensee or of a customer or client of a registrant or licensee, with the consent of the registrant or licensee, 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 registrant or licensee or of any customer or client of a registrant 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, or a member or employee of the Commission of his duties; or
 - (g) in any legal proceedings in connection with -

- (i) the winding-up or dissolution of a registrant or licensee, or
- (ii) the appointment or duties of a receiver of a registrant or licensee.

(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 power 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) In this section-

(a) “overseas regulatory authority” means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission;

(b) “registrant” means a security exchange, facility, broker-dealer, principal, associated person, stockbroker, dealer or trader as defined by the Securities Industry Act, 1999.

Proxy
solicita-
tion.

92. (1) A public company, prior to any meeting of its shareholders, shall have a notice of the meeting and proxy sent to each shareholder in the prescribed Form and in accordance with the requirements set out by the Commission.

(2) A public company shall file copies of any proxy materials with the Commission prior to any such proxy materials being sent to its shareholders for any purposes, within such time limit as may be established by regulations.

(3) The Commission may review any proxy materials or any other communications to shareholders and may insist on any modifications and may delay any mailing or shareholder meeting as a result of its review.

(4) Where the securities are registered in the names of broker-dealers or nominees, the public company shall inquire as to the beneficial ownership of the securities, furnish sufficient copies of the proxy materials for distribution to all shareholders and pay any reasonable expenses of such distribution.

Regula-
tions.

93. The Minister may, after consultation with the Commission, make regulations for carrying out the provisions of this Act and without prejudice to the generality of this provision may make regulations -

- (a) for the regulation and operation of securities exchanges, securities markets and market participants;
- (b) for the contents of prospectuses for the purpose of issuing securities to the public;
- (c) for the conduct of securities business and transactions in or from The Bahamas;
- (d) for prescribing fees to be paid in respect of matters arising under or provided for or authorized by this Act; and
- (e) for any other matter or thing which may be or is required to be prescribed under this Act.

Guide-
lines.

94. The Commission may publish guidelines of any regulations or rules made pursuant to this Act, or of any provisions of this Act, provided however that such guidelines shall not be taken as having the force of law.

Transi-
tional
provisions.

95. (1) Upon the day of the coming into operation of this Act -

- (a) every person who immediately before that day was appointed a member to the former Securities Board shall be deemed to have been appointed under this Act and shall continue to serve in that office for the unexpired portion of the term remaining to be served;
- (b) all real and personal property and every right and interest in property that immediately before that day was vested in the former Securities Board under the repealed Act, shall, by force of this section, be transferred to and vested in the Commission for the purposes of this Act subject to any debts, trusts and liabilities affecting them;
- (c) all rights accruing or accrued to the former Securities Board in respect of any property vested in the Commission by virtue of this section -
 - (i) are vested in the Commission;
 - (ii) may be enforced against the Commission;
- (d) all contracts, agreements, leases and undertakings made by the former Securities Board and all securities lawfully given to or by the former Securities Board and in force

immediately before that day shall have effect as contracts, agreements, leases and undertakings by and with the Commission and may be enforced by and against the Commission accordingly;

- (e) all debts due and moneys payable by the former Securities Board and all claims, liquidated or unliquidated, recoverable against the former Securities Board shall be debts due and moneys payable by and claims recoverable against the Commission;
- (f) any legal or other proceedings that might, but for this section, have been continued or commenced by or against the former Securities Board may be continued or commenced by or against the Commission.

(2) A reference -

- (a) in a law of The Bahamas; and
- (b) in any document,

in force immediately before the date of the coming into operation of this Act to the former Securities Board or Inspector shall be read, deemed and taken to refer respectively to the Commission or Executive Director.

(3) The person who immediately before the coming into operation of this Act was the Inspector under the repealed Act shall continue under the new title of Executive Director under this Act as if that person had been appointed under section 16 of this Act on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.

(4) Any officer or servant appointed or employed by the former Securities Board shall continue in office or employment with the Commission on the same terms and conditions as existed before the coming into operation of this Act.

(5) In this section -

"former Securities Board" means the Securities Board established by the repealed Act.

Savings.

96. Any licence, authority, approval or exemption granted by the former Securities Board which is in force immediately before the coming into force of this Act -

- (a) shall continue to have effect after the coming into force of this Act as if granted by the Commission;

- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

Exemption.

97. Nothing contained in this Act shall operate so as to impose any obligation on the Central Bank of The Bahamas.

Repeal and
Amendments.

98. (1) The Securities Board Act, 1995 is repealed.

Second
Schedule.

(2) The Acts mentioned in the Second Schedule are amended to the extent specified in that Schedule.

FIRST SCHEDULE (Section 3(2))

THE COMMISSION, ITS MEMBERS AND STAFF A Body Corporate.

1. (1) The Commission is a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(2) The Commission may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Commission of any document of whatsoever kind must be made by delivering the document to, or sending it by registered post addressed to, the secretary of the Commission at the office of the Commission.

2. (1) The seal of the Commission must be kept in the custody of any officer of the Commission as the Commission may approve, and may be affixed to instruments pursuant to a resolution of the Commission and in the presence of the chairman or the deputy chairman and one other member.

(2) The seal of the Commission must be authenticated by the signature of the chairman or deputy chairman and another member, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the chairman or deputy chairman.

3. Nothing in this Act shall exempt the Commission from liability for any tax, duty, rate, levy or other charge whatsoever.

Chairman and Members

4. (1) The members of the Commission shall consist of a chairman, a deputy chairman and such number of other members, not being more than seven as the Minister may from time to time determine.

(2) The Executive Director, the Governor of the Central Bank and the Registrar of Insurance shall be ex-officio members of the Commission.

5. (1) The Chairman shall be appointed by the Minister, shall hold office for five years and shall be eligible for re-appointment.

(2) The deputy chairman and the other members of the Commission shall be appointed by the Minister from amongst persons appearing to him to be qualified as having had experience of or having shown capacity in matters relating to industry, commerce, law, finance or administration.

6. A member of the Commission other than the chairman, subject to paragraphs 8 and 9, shall hold office for such period, not exceeding three years or four years as the Minister may direct in the instrument appointing such member, and such member shall be eligible for re-appointment.

7. (1) The Minister may by instrument in writing appoint some suitable person as a member of the Commission to act temporarily in the place of any member of the Commission in the case of the absence or inability of such member to act.

(2) The Minister shall appoint new members of the Commission on the advice of the Commission and the Securities and Mutual Funds industry in The Bahamas.

8. Any member of the Commission may at any time resign his office by instrument in writing addressed to the Minister.

9. The Minister by instrument in writing may at any time revoke the appointment of any member of the Commission if he thinks it expedient to do so.

10. The appointment, removal, death or resignation of any member of the Commission shall be notified in the Gazette.

11. There shall be paid from the funds of the Commission to the chairman and other members of the Commission such remuneration, if any, whether by

way of honorarium, salary or fees, and such allowances, if any, as the Minister may determine.

Proceedings.

12. (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, shall preside at all meetings of the Commission.

(3) The chairman, or in his absence the deputy chairman, and three other members of the Commission shall constitute a quorum.

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

(5) Minutes in proper form of each meeting are to be kept by the secretary or any officer the Commission may appoint for the purpose, and confirmed by the Commission at the next meeting and signed by the chairman or the deputy chairman as the case may be.

(6) The Commission may co-opt any one or more persons to attend any particular meeting of the Commission for the purpose of assisting or advising the Commission in any matter with which the Commission is dealing, but no co-opted person has the right to vote.

(7) The validity of any proceeding of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

13. Subject to the provisions of this Schedule, the Commission has the power to regulate its own proceedings.

Staff.

14. The Commission may appoint and employ on such terms and conditions as it thinks fit any officers, servants or agents as it considers necessary for the proper carrying out of the provisions of this Act.

Ch. 35.

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

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

Ch. 35.

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

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

SECOND SCHEDULE (Section 98)
AMENDMENTS

18 of 1992.

Companies Act, 1992

- (1) Delete the definition of "private company" appearing in section 2 and substitute therefor the following - "private company" has the meaning assigned to it by section 62 of the Securities Industry Act, 1998;".
- (2) In section 40(7) delete the words "which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus" and substitute the words "which has issued a prospectus".
- (3) In section 40(7)(a) delete the words "statement in lieu of".
- (4) In section 42(1) -

- (a) in paragraph (b), delete the words “or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, a proportion equal to the proportion payable on application and allotment on the shares payable in cash”;
 - (b) in paragraph (c), delete the words “; and” and substitute a full-stop;
 - (c) delete paragraph (d).
- (5) In section 42(2), delete the words “; but in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar may not issue such a certificate unless a statement in lieu of prospectus has been filed with him”.
- (6) Delete sections 65 to 69A, sections 157 to 160, subsections (3), (4) and (5) of section 300 and section 302.

6 of 1995.

Mutual Funds Act, 1995

- (1) In section 2,
- (a) delete the definition of "the Board" and substitute therefor the following definition - "the Commission" means the Securities Commission of The Bahamas established by section 3 of the Securities Industry Act, 1998;”;
 - (b) delete the definition of "Inspector" and substitute

therefor, in the appropriate alphabetical position the following definition - "Executive Director" means the person appointed as such under section 16 of the Securities Industry Act, 1998;".

- (2) In the Act, wherever it appears, delete the word "Board" and substitute therefor the word "Commission".
- (3) In the Act, wherever it appears, delete the word "Inspector" and substitute therefor the words "Executive Director".