



No. 13 of 2001

[Date of Assent - 31st August, 2001]

AN ACT TO AMEND THE SECURITIES INDUSTRY ACT, 1999

Enacted by the Parliament of The Bahamas

- Short title. 1. This Act which amends the Securities Industry Act, 1999 may be cited as the Securities Industry (Amendment) Act, 2001.
- Amendment of section 4 of the principal Act. 2. Section 4 of the principal Act is amended by the insertion after subsection(2) of the following -
- “(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.”.
- Repeal and re- placement of section 91 of the principal Act. 3. Section 91 of the principal Act is repealed and replaced by the following -
- “Con- 91. (1) Subject to subsections fiden- (2) and (3), the Commission or any tial- officer, employee, agent or adviser ity. of the Commission who discloses any information relating to -
- (a) the affairs of the Commission;
- (b) any application made to the Commission;
- (c) 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 regis-
trant 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 subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission it appears necessary

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

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

(9) 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.".