

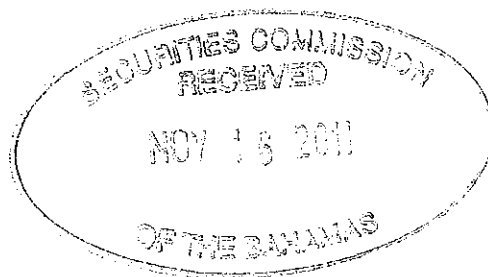


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SECURITIES INDUSTRY ACT, 2011

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No. 10 of 2011

SECURITIES INDUSTRY ACT, 2011

AN ACT TO UPDATE AND MODERNISE THE LAW RELATING TO THE REGULATION OF SECURITIES EXCHANGES AND THE SECURITIES INDUSTRY; TO EXPAND AND ENHANCE THE POWERS OF THE SECURITIES COMMISSION; TO REPEAL THE SECURITIES INDUSTRY ACT, CHAPTER 363 AND FOR CONNECTED MATTERS

[Date of Assent - 1st June, 2011]

Enacted by the Parliament of The Bahamas

PART I –PRELIMINARY

1. Short title.

This Act may be cited as the Securities Industry Act, 2011.

2. Commencement.

This Act shall come into operation on such day as the Minister, by notice published in the Gazette, may 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.

3. Purposes.

The purposes of this Act are to —

- (a) provide protection to investors from unfair, improper or fraudulent practices;
- (b) foster fair and efficient capital markets and confidence in the capital markets in the Bahamas;
- (c) reduce systematic risk;

- (d) reduce the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime such as money laundering, fraud and insider dealing; and
- (e) promote public understanding of the financial system including awareness of the benefits and risks of different kinds of investment or other financial dealing.

4. Interpretation.

In this Act —

“affiliate” means, in relation to an issuer, another issuer if —

- (a) one of them is the subsidiary of the other; or
- (b) the same person controls each of them;

“alternative trading system” or “ATS” means a marketplace that —

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

“ancillary facility” means any person providing prescribed services to a marketplace, clearing facility, registrant, or to a public issuer with securities listed or traded on a marketplace, where the services facilitate or are ancillary to the operations of a marketplace;

“approved auditor” has the prescribed meaning;

“approved foreign issuer” means a foreign issuer that —

- (a) is a public issuer, or equivalent, under the securities laws of a recognised foreign jurisdiction; and
- (b) meets the prescribed criteria;

“approved rating organization” means an organization that is prescribed as such;

“associate” means, if used to indicate a relationship with a person, —

- (a) a partner, other than a limited partner, of the person;

- (b) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar capacity;
- (c) an issuer of which the person owns or controls voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer; or
- (d) a family member of the person, or a family member of the person's spouse, if the family member has the same home as that person;

"beneficial owner" means the person who is entitled to the benefits of ownership of a security although that person may not be the registered owner of the security;

"beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

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

"clearing facility" means a person that —

- (a) maintains records of trades of securities for the purpose of settling claims for money and securities;
- (b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;
- (c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry; or
- (d) performs any combination of two or more functions referred to in paragraphs (a) to (c), but does not include a registrant or financial institution acting exclusively in the ordinary course of its customary business;

"Commission" means the Securities Commission of The Bahamas as continued under Part II;

"company" means any corporation or other incorporated person;

"Consolidated Fund" means the fund established by Article 128 of the Constitution;

"control block holder" means a person that —

- (a) holds more than 30% of the voting rights attached to all an issuer's outstanding voting securities; or
- (b) is able to affect materially the control of the issuer, whether alone or by acting in concert with others;

"decision" means —

- (a) if used in relation to the Commission or a person delegated a power of the Commission, a direction, decision, order, ruling or requirement made under securities laws, or
- (b) if used in relation to a marketplace, self-regulatory organisation or clearing facility, a direction, decision, order, ruling or requirement made in relation to a regulatory instrument;

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

"distribution" means —

- (a) a trade in a security of an issuer that has not been previously issued;
- (b) a trade, by or on behalf of an issuer, in a previously issued security of that issuer that has been redeemed, purchased by or donated to that issuer;
- (c) a trade in a previously issued security of an issuer by a control block holder;
- (d) a trade within a prescribed class of trades; or
- (e) a trade described in an order made under subsection 161 (2);

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

- (a) the date the distribution ceased; and
- (b) the lapse date of the prospectus under section 96;

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

- (a) an electronic communication as defined in the Electronic Communications and Transactions Act, 2003;
- (b) any map, plan, graph or drawing;
- (c) any photograph;
- (d) any disc, tape, sound track or other device in which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced; and
- (e) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

"domestic regulatory authority" means an authority in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions and includes —

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

"Executive Director" means the Executive Director of the Commission;

"expert" means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by the person;

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

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

"file" means to submit a document to the Commission as required under a provision of securities laws that requires such document be filed, other than a document provided to the Commission under Part IV;

"financial institution" means a bank or trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) or an insurance company registered under the Insurance Act (*Ch. 347*);

"foreign issuer" means an issuer that is not organized under the laws of The Bahamas;

"foreign disclosure requirements" means the requirements to which a foreign issuer is subject concerning disclosure made to an overseas regulatory authority in a recognised foreign jurisdiction, which disclosure is made publicly available;

"foreign jurisdiction" means a jurisdiction other than The Bahamas;

"form of proxy" means a written or printed form that, upon completion and signature by or on behalf of a security holder, becomes a proxy;

"former Act" means the Securities Industry Act (*Ch. 363*);

"generally accepted accounting principles" means the standards promulgated by the International Accounting Standards Board or as prescribed;

"generally accepted auditing standards" means the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or as prescribed;

"inside information" means material information that has not been generally disclosed;

"insider" means —

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

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

"investment fund" has the meaning given in the Investment Funds Act, 2003;

"investment fund administrator" has the meaning given in the Investment Funds Act, 2003;

"issuer" means a person that —

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

"issuer bid" has the prescribed meaning;

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

"market participant" means —

- (a) a marketplace;
- (b) a self-regulatory organization;
- (c) a clearing facility;
- (d) a registrant;
- (e) a compensation, contingency or similar fund formed to compensate clients of registrants;
- (f) a custodian of assets of a registrant or a client of a registrant;
- (g) a public issuer;
- (h) a transfer agent or registrar for securities of a public issuer;
- (i) an investment fund;
- (j) a party related to an investment fund;
- (k) a general partner or a partner, director, officer or significant security holder of a person referred to in this definition;
- (l) a person that the Commission has ordered is exempt from a provision of securities laws;
- (m) a rating organisation; or
- (n) a person described in an order made under subsection 161(2);

but does not include a person —

- (aa) described in an order made under subsection 161(1); or

(bb) within a prescribed class of persons;

"marketplace" means —

- (a) a securities exchange, a quotation and trade reporting system, or an ATS;
- (b) a person not included in paragraph (a) that —
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
 - (ii) brings together the orders for securities of multiple buyers and sellers; and
 - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or
- (c) a person described in an order made under subsection 161(2), but does not include a person —
 - (aa) described in an order made under subsection 161(1); or
 - (bb) within a prescribed class of persons;

"material information" means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer;

"Member" means a person appointed by the Minister to the Commission under section 10;

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

"misrepresentation" means —

- (a) in relation to an issuer —
 - (i) an untrue statement of material information;
 - (ii) the failure to disclose material information that is required to be disclosed; or
 - (iii) the omission of material information from a statement, if that information is necessary to prevent the statement from being false or misleading in the circumstances;
- (b) in any other circumstance, a statement about something that a reasonable investor would consider important —
 - (i) in making a decision to trade a security; or
 - (ii) in relation to a trading or advising relationship with a person,

if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances;

"offering document" means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision regarding securities being sold in a distribution to which section 83 would apply but for the availability of one or more of the exemptions contained in this Act or regulations;

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

"order" means, unless a contrary intention appears, an order or decision of the Commission or its delegatee;

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

"party related to an investment fund" has the meaning given in the Investment Funds Act, 2003;

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

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

"private company " means a company whose constitutive document —

- (a) restricts the right to transfer its shares;
- (b) limits the number of its security holders to no more than fifty beneficial owners, where two or more persons holding securities jointly shall be counted as one person; and
- (c) prohibits any invitation to the public to subscribe for any securities of the company;

"prospectus" means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase;

"proxy" means a completed and signed form of proxy by which a holder of voting securities of an issuer appoints a person to attend and act on the security holder's behalf at a meeting of security holders;

"promoter" means a person that takes the initiative in founding or organizing an issuer;

"public issuer" means an issuer that —

- (a) has filed a prospectus for which the Commission has issued a receipt under Part IX;
 - (b) has completed a takeover, business combination or other reorganisation, involving an exchange of securities in which one of the parties was a public issuer;
 - (c) has issued a security that —
 - (i) was listed for trading on a securities exchange registered with the Commission at the time this Act comes into force; or
 - (ii) at any time after this Act comes into force, has been traded on a registered marketplace registered under Part V;
 - (d) was a public company or deemed public company under the former Act at the time that Act was repealed; or
 - (e) is described in an order made under subsection 161(2);
- but does not include an issuer —
- (aa) described in an order made under subsection 161(1);
 - (bb) that is an investment fund; or
 - (cc) within a prescribed class of issuers;

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

- (a) publish in a daily newspaper of general circulation in The Bahamas;
- (b) print in a periodical regularly published by the Commission;
- (c) post on the Commission's website; or
- (d) any other method of publication of the rule or proposed rule as prescribed;

"purchase" includes any purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

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

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

- "recognised foreign jurisdiction"** means a foreign jurisdiction recognised under section 165;
- "recognised foreign securities exchange"** means a securities exchange located in a foreign jurisdiction recognised under section 165;
- "registrant"** means any person registered under Part VI of the Act or required to be so registered;
- "registered clearing facility"** means a clearing facility registered under Part V of the Act;
- "registered firm"** means a person registered under subsection 69(1) to carry on securities business in The Bahamas;
- "registered marketplace"** means a marketplace registered under Part V of the Act;
- "registered representative"** means an individual who is registered under subsection 69(4) to act on behalf of a registered firm;
- "registered securities exchange"** means a securities exchange registered under Part V of the Act;
- "registered self-regulatory organisation"** means a self-regulatory organisation registered under Part V of the Act;
- "regulated person"** means a registrant, a person registered under Part V of the Act, an investment fund or an investment fund administrator;
- "regulations"** means the regulations made under this Act and, unless the context otherwise indicates, includes the rules;
- "regulatory instrument"** means a by-law, rule or other similar instrument of a marketplace, clearing facility or self-regulatory organization;
- "representative"** means, when used in relation to a registrant, an individual who acts for or on behalf of the registrant in the carrying out of securities business and who is a director, officer, partner or employee of the registrant who performs any such securities business for the registrant;
- "reserve fund"** means the fund established by the Commission under section 21;
- "sale"** includes a sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise; but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
- "securities"** means the assets, rights or interests specified in Part 1 of the First Schedule;
- "securities activity"** means an activity comprising securities business set out in Part 2 of the First Schedule;

"securities business" has the meaning assigned in section 7;

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

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

"securities laws" means this Act and the Investment Funds Act, 2003;

"self-regulatory organization" means a person, other than a marketplace, that sets standards for, or monitors the conduct of, its members or participants relating to trading in or advising on securities;

"senior officer" means an officer of an issuer whose responsibilities routinely provide the officer with access to inside information about the issuer;

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

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

"spouse" means a person who —

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

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

"subscriber", when used in relation to an ATS, means any person that has entered into a contractual agreement with an ATS to access such ATS for the purpose of effecting transactions in securities or submitting, disseminating or displaying orders on such ATS, including a client, member user or participant in the ATS;

"surplus funds" has the meaning given the term in section 20;

"take-over bid" has the prescribed meaning;

"trade" includes —

- (a) any purchase or sale of a security for valuable consideration; or

- (b) any participation as a registrant or agent in any transaction in a security;

"underwriter" means a person who —

- (a) as principal, agrees to purchase a security for the purpose of a distribution;
- (b) as agent, offers for sale or sells a security in connection with a distribution; or
- (c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for valuable consideration,

but does not include —

- (aa) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
- (bb) an issuer that purchases shares of its own issue and resells them;

"voting security" means a security carrying voting rights —

- (a) under all circumstances; or
- (b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right to acquire such a security.

5. Ownership and control of securities.

In this Act —

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

6. Control of an issuer.

- (1) A person controls an issuer if the person, acting either alone or jointly or in concert with other persons, has the power to direct that the business and affairs of the issuer be conducted in accordance with the person's wishes.
- (2) Where the person or persons own or control more than fifty percent of the outstanding securities carrying voting rights in an issuer, such person or persons are deemed to control the issuer.

- (3) Where the person or persons own or control more than thirty percent of the outstanding securities carrying voting rights in an issuer, such person or persons are presumed to control the issuer.
- (4) The power under subsection (1) to direct the business and affairs of an issuer may arise through the ownership or control over securities of the issuer, or by virtue of any agreement, arrangement, commitment or understanding with any person or persons.

7. Securities business.

- (1) For the purposes of this Act, a person carries on securities business if that person is engaged in the course of business in any one or more of the securities activities set out in the Part 2 of the First Schedule.
- (2) For the purposes of this Act, a person engages in securities business if that person enters or offers to enter into an agreement the making or performance of which by either party constitutes a securities activity.
- (3) The activities set out in Part 3 of the First Schedule do not constitute securities business for the purposes of this Act.
- (4) Without prejudice to the generality of subsection 149(1), the Commission may, by rule, amend the First Schedule by deleting or amending any of the provisions or adding new provisions.

8. Carrying on business in The Bahamas.

- (1) For the purposes of this Act, a person carries on securities business in or from The Bahamas if such person —
 - (a) is incorporated, established or registered under any law in The Bahamas;
 - (b) carries on securities business from a place of business maintained by such person in The Bahamas; or
 - (c) engages in an activity the doing of which constitutes the carrying on by such person of securities business in or from The Bahamas under an order made under subsection (2).
- (2) The Commission may make an order specifying the circumstances in which a person is to be regarded as —
 - (a) carrying on securities business in or from The Bahamas; or
 - (b) not carrying on securities business in or from The Bahamas.
- (3) An order under subsection (2) may be made so as to apply —
 - (a) generally to all securities activities;
 - (b) in relation to a specified category of securities activity; or
 - (c) in relation to a particular securities activity.