

FIRST SCHEDULE

Part 1 - Securities

Shares

1. Any of the following securities –
 - (a) shares and stock of any kind in the share capital of a company;
 - (b) interests in a limited partnership established under the Partnership Act;
 - (c) interests in an exempted limited partnership as defined in the Exempted Limited Partnership Act, 1995, as amended;
 - (d) interests in a limited partnership or an exempted limited partnership constituted under the laws of a jurisdiction other than The Bahamas; and
 - (e) equity interests in a regulated or unregulated investment fund as defined in the Investment Funds Act, 2003.

Instruments creating or acknowledging indebtedness

2. Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness other than –
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a cheque, promissory note or other bill of exchange under the Bills of Exchange Act
 - (c) a bankers draft or a letter of credit;
 - (d) a bank note, a statement showing a balance in a current, deposit or savings account, a lease or other disposition of property;
 - (e) a contract of insurance;
 - (f) an instrument creating or acknowledging indebtedness and creating security for that indebtedness over land; and
 - (g) a debenture that specifically provides it is not transferable or negotiable.

Instruments giving entitlements to securities

3. Warrants and other instruments entitling the holder to subscribe for securities falling within section 1 or 2.

Certificates representing certain securities

4. Certificates or other instruments that confer contractual or proprietary rights –
 - (a) in respect of any security falling in sections 1, 2 or 3 being a security held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
 - (b) the transfer of which may be effected without the consent of that person.

Options

5. Options to acquire or dispose of –
 - (a) a security falling in any other section of this Part;
 - (b) any currency;
 - (c) any precious metal; or
 - (d) an option to acquire or dispose of a security falling within this section by virtue of subsection (a), (b) or (c) above.

Futures

- 6.(1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes.

- (2) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised securities exchange, or is made otherwise than on a recognised securities exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within subsection (2) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
- (4) The following are indications that a contract not falling within subsection (2) or (3) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes -
 - (a) one or more of the parties is a producer of the commodity or other property or uses it in his business; or
 - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (5) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.
- (6) The following are indications that a contract is made for investment purposes –
 - (a) it is expressed to be as traded on a securities exchange;
 - (b) performance of the contract is ensured by a securities exchange or a clearing house; or
 - (c) there are arrangements for the payment or provision of margin.
- (7) For the purposes of subsection (1), a price is to be taken to be agreed on when a contract is made –
 - (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences

- 7.(1) Rights under –
 - (a) a contract for differences; or
 - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in that contract;
- (2) Subsection (1) does not include rights under a contract –
 - (a) if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates; or
 - (b) under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

Rights and Interests in Securities

- 8. Rights to and interests in any security falling within any of the preceding sections of this Part.

Foreign Exchange Contracts

- 9. A foreign exchange contract when carried out in connection with a transaction in securities that is not –
 - (a) an option (currency options are covered by section 5) or

- (b) a contract to exchange one currency (whether Bahamian or not) for another that is to be settled immediately;
- where "foreign exchange contract" means a contract: (a) to buy or sell currency (whether Bahamian or not); or (b) to exchange one currency (whether Bahamian or not) for another (whether Bahamian or not).

Prescribed Securities

10. Anything declared by the regulations or rules to be a security for the purposes of this Part.

Part 2 - Securities business - regulated activities

The following activities are activities carried on in the course of securities business for the purposes of this Act-

1. Dealing in securities

- (a) buying, selling, subscribing for or underwriting securities as an agent; or
- (b) buying, selling, subscribing for or underwriting securities as principal where the person entering into that transaction –
- (i) holds himself out as willing, as principal, to buy, sell or subscribe for securities of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;
 - (ii) holds himself out as engaging in the business of underwriting securities of the kind to which the transaction relates; or
 - (iii) regularly solicits members of the public with the purpose of inducing them, as principals or agents, to buy, sell, subscribe for or underwrite securities and such transaction is entered into as a result of such person having solicited members of the public in that manner.
- (c) For the purposes of this section, "members of the public" means any person other than a person –
- (i) referred to in paragraphs 1 to 3 of Part 4;
 - (ii) regulated by the Commission;
 - (iii) regulated by a recognised overseas regulatory authority; or
 - (iv) as prescribed.

2. Arranging deals in securities

Making arrangements with a view to –

- (a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting securities; or
- (b) a person, who participates in the arrangements, buying, selling, subscribing for or underwriting securities.

3. Managing securities

Managing securities belonging to another person in circumstances involving the exercise of discretion.

4. Advising on securities

Advising a person on securities if the advice is –

- (a) given to the person in his capacity as an investor or potential investor or in his capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of his doing any of the following (whether as principal or agent) –
- (i) buying, selling, subscribing for or underwriting a particular security; or
 - (ii) exercising any right conferred by a security to buy, sell, subscribe for, underwrite a security.

Part 3 – Excluded activities

The activities specified in this Part are not considered securities business in the following circumstances-

1. Dealing in securities

(1) Securities evidencing indebtedness:

Where a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or his principal has made, granted or provided.

(2) Issuing, redeeming or repurchasing securities:

Where a company, partnership or trust issues, redeems or repurchases any of its securities falling within sections 1 to 3 of Part 1.

(3) Risk management:

Where a person buys, sells, subscribes for or underwrites securities and –

- (a) the transaction relates to securities falling within section 5, 6(1), 7 or 9 of Part 1;
- (b) none of the parties to the transaction are individuals;
- (c) the sole or main purpose for which the person concerned enters into the transaction (either by itself or in combination with other such transactions) is to limit the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of any activities specified in Part 2 and which is not excluded by virtue of this Part; and
- (d) the relevant business is a business other than securities business carried on by–
 - (i) the person entering into the transaction;
 - (ii) a company within the same group of companies as such person; or
 - (iii) another person who is or is proposing to become a participator in a joint enterprise with such person.

(4) Disposal of goods or supply of services:

Where a person buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer and the supplier is acting-

- (a) as a principal; or
- (b) as an agent,

and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities.

(5) Incidental activity:

Where a person buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting securities business and where such transaction is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(6) Employee schemes:

Where an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen.

(7) Application of proprietary assets:

Where a company, partnership or trust, acting as principal and dealing only on its own behalf buys, sells or subscribes for securities by applying its proprietary assets, otherwise than as described in section 1 (b) of Part 2.

(8) Dealing in investment funds:

Where a person carries out those securities activities specified in section 1 of Part 2 solely with respect to securities described in section 1(e) of Part 1.

2. Arranging deals in securities

(1) Arranging own deals:

Where a person makes arrangements relating to a transaction to which that person will himself be a party as principal or which will be entered into by that person as agent for one of the parties to the transaction.

(2) Incidental activities:

Where a person makes arrangements and such arrangements are made in the course of carrying on any profession or business not otherwise constituting securities business and where the making of the arrangements is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(3) Enabling parties to communicate:

Where a person makes arrangements to provide means by which one party to a transaction (or potential transaction) is able to communicate with other parties to the transaction or potential transaction.

(4) Arrangements in connection with securities evidencing indebtedness:

Where a person makes arrangements in respect of a transaction referred to in section 1 (1).

(5) Provision of finance:

Where a person makes arrangements for the sole purpose of providing finance to enable a person, as principal or agent, to buy, sell, subscribe for or underwrite securities.

(6) Introducing:

Where a person makes arrangements to introduce a person to another person and-

- (a) the person to whom introductions are to be made is a person referred to in Part 4; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to securities generally or in relation to any class of securities to which the arrangements relate.

(7) Arrangements for the issue of securities:

Where a person makes arrangements in respect of a transaction referred to in sections 1 (1) and 1 (7) of this Part.

(8) Disposal of goods or supply of services:

Where a supplier makes arrangements made for, or with a view to, a transaction that is to be entered into by a customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(9) Employee schemes:

Where a person makes arrangements in connection with the operation by an employer of a share or pension scheme for the benefit of employees or former employees, or of their spouse, widows, widowers or children or step-children under the age of eighteen.

(10) Arranging deals in investment funds:

Where a person makes arrangements for, or with a view to, transactions in securities that are described in section 1(e) of Part 1.

3. Managing securities

(1) Disposal of goods or supply of services

Where a person manages securities that are or are to be managed for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer.

(2) Managing investment funds

Where a person manages securities and –

- (a) is incorporated in The Bahamas; and

(b) its sole securities business is the provision of management or advisory services to one or more investment funds licensed or registered by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act, 2003.

4. Advising on securities

(1) Advising on investment funds

Where a person advises on securities and –

- (a) is incorporated in The Bahamas; and
- (b) its sole securities business is the provision of management or advisory services to one or more investment funds licensed or registered by the Commission as a professional fund, SMART fund or standard fund as defined under and regulated by the Investment Funds Act, 2003.

(2) Disposal of goods or supply of services:

Where a supplier gives advice to his customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(3) Publications:

Where a person gives advice in any communications media and –

- (a) the principal purpose of the publication, taken as a whole including the advertisements, is not to induce persons to buy, sell, subscribe for or underwrite particular securities; or
- (b) the person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting.

(4) Incidental activities:

Where a person gives legal, accounting or other advice and –

- (a) the securities related advice is given in the course of carrying on any profession or business not otherwise constituting securities business;
- (b) the giving of the advice is a necessary or incidental part of other services provided in the course of carrying on that profession or business; and
- (c) is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

Part 4 - Excluded persons

The person specified in this Part are not required to be registered under the Act in the following circumstances:

1. A company carrying on securities business exclusively for one or more affiliated companies.
2. A person participating in a joint enterprise (and, where that person is a company, any other affiliated company) with a person carrying on the securities business where the activities constituting such securities business are to be carried on for the purposes of or in connection with that joint enterprise. For the purposes of this paragraph “joint enterprise” means an enterprise into which two or more persons enter for commercial reasons related to a business or businesses (other than securities business) carried on by them.
3. The following persons –
 - (a) a registered marketplace;
 - (b) the Commission;
 - (c) the Government of The Bahamas; or
 - (d) the Central Bank of The Bahamas.
4. A person carrying on securities business only in the course of acting in any of the following capacities –
 - (a) director;
 - (b) partner;
 - (c) liquidator (including a provisional liquidator);
 - (d) trustee in bankruptcy;

- (e) receiver of an estate or company;
- (f) executor or administrator of an estate; or
- (g) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust:

Provided that in each case such person –

- (i) is not separately remunerated for any of the activities which constitute the carrying on of securities business otherwise than as part of any remuneration the person receives for acting in that capacity; and
- (ii) does not hold himself out as carrying on securities business other than as a necessary or incidental part of performing functions in that capacity, or
- (iii) is acting on behalf of a company, partnership or trust that is otherwise registered or exempted from registration under this Act.