

**The Bahamas**  
**Securities Industry Regulations, 200[9]**

**Part I**  
**Preliminary**

- |                |    |   |
|----------------|----|---|
| Citation       | 1. | These Regulations may be cited as the Securities Industry Regulations, 200[9].  |
| Interpretation | 2. | <p>(1) In these Regulations –</p> <p>“Act” means the Securities Industry Act, 2007;</p> <p>“accredited investor” means any person who comes within any of the following categories, or whom the issuer or selling security holder reasonably believes comes within any of the following categories, at the time of the sale of securities to that person</p> <p style="text-align:center">-</p> <ul style="list-style-type: none"><li>(a) any bank licensed under the Banks and Trust Companies Regulation Act, 2000 or licensed and operating outside of The Bahamas, whether acting in its individual or fiduciary capacity;</li><li>(b) any firm registered under the Act which maintains a minimum of one hundred and twenty thousand dollars (\$120,000) of regulatory capital or is a securities firm registered and operating outside of the Bahamas, acting for its own account;</li><li>(c) any insurance company registered under the Insurance Act or licensed and operating outside of The Bahamas;</li><li>(d) any investment fund licensed or registered under the Investment Funds Act, 2003 or regulated and operating outside of The Bahamas;</li><li>(e) any employee benefit plan if the investment decision is made by a plan fiduciary, which is a bank or trust company licensed under the Banks and Trust Companies Regulation Act, 2000, an insurance company registered under the Insurance Act, or a registered firm, or if the employee benefit plan has total assets in excess of five million dollars (\$5,000,000);</li><li>(f) any director, senior officer or general partner of the issuer of the securities being offered or sold, or any director, senior officer or general partner of a general partner of that issuer;</li><li>(g) any individual whose individual net worth, or joint net worth with that person’s spouse, at the time of the purchase exceeds one million dollars (\$1,000,000);</li><li>(h) any individual who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two most recent years or joint income with that person’s spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year;</li><li>(i) any person, other than an individual, with total assets in excess of five million dollars (\$5,000,000) not formed for the specific purpose of acquiring the securities offered;</li><li>(j) any entity in which all of the equity owners are accredited investors;</li><li>(k) the government of The Bahamas or any public authority established in The Bahamas;</li><li>(l) the government of any foreign jurisdiction, or any agency of that government;</li><li>(m) any person purchasing on behalf of an account that is managed on a fully</li></ul> |

discretionary basis by that person, if that person is registered or authorized to carry on business as an adviser managing securities on a discretionary basis under the laws of The Bahamas or a foreign jurisdiction;

- (n) any person residing outside of The Bahamas who qualifies as an accredited investor (however defined) or has similar status, under the securities legislation of that person's country of residence, or who meets the criteria specified in paragraph (g) or (h) and is otherwise lawfully entitled to purchase the securities under the securities laws applicable to such purchase; or
- (o) any person that is recognized or designated by the Commission as an accredited investor;

"approved auditor" means an individual auditor or audit firm recognized by the Commission to act on behalf of a person registered under Part V of the Act, a registered firm or a public issuer;

"Fee Rule" means the instrument prescribed from time to time setting out the fees payable to the Commission under the Act.

"prescribed laws" for the purposes of Part III [Assistance to Domestic and Foreign Regulatory Authorities] and Part IV [Investigations and Inspections] of the Act are those set out in Part A of Schedule 1.

"prescribed statute" for the purposes of Part IV [Investigations and Inspections] of the Act are those set out in Part B of Schedule 1.

"registrar and transfer agent" means any person who engages on behalf of an issuer in:

- (a) countersigning securities upon issue by the issuer;
- (b) monitoring the issue of such securities to prevent unauthorized issue;
- (c) registering the transfer of such securities;
- (d) exchanging or converting such securities; or
- (e) transferring ownership of securities by bookkeeping entry without physical issuance of securities certificates.

"services provided by ancillary facility" includes acting as registrar and transfer agent on behalf of an issuer;

- (2) Any reference in these Regulations to a particular financial statement shall be read to include the equivalent financial statement, whatever it might be called from time to time, under generally accepted accounting principles or under accounting standards otherwise acceptable to the Commission.

Determination of "fit and proper"

- 3. (1) In considering whether a person is a fit and proper person for the purposes of any provision of securities laws, the Commission or the Executive Director, as the case may be, shall, in addition to any other matter that the Commission or Executive Director may consider relevant, have regard to –
  - (a) the financial status or solvency;
  - (b) the educational or other qualifications or experience, having regard to the nature of the functions that, if the application is allowed/granted, the person will perform;
  - (c) the ability to carry on the regulated activity competently, honestly and fairly; and
  - (d) the reputation, character, reliability and financial integrity,of –
  - (e) where the person is an individual, the individual himself; or
  - (f) where the person is a corporation, the corporation and any director, significant security holder, chief executive officer and any other officer of the corporation.
- (2) Without limiting the generality of subsection (1), the Commission or Executive

Director may, in considering whether a person is a fit and proper person, take into account –

- (a) a decision made in respect of the person by the Commission, any other domestic regulatory authority or overseas regulatory authority;
  - (b) any information in the possession of the Commission, whether provided by the person or not, relating to –
    - (i) the person;
    - (ii) any other person who is or is to be employed by or associated with the person for the purposes of the regulated activity for which the registration is granted or the application is made;
    - (iii) any other person who will be acting for or on behalf of the person in relation to the regulated activity; and
    - (iv) where the person is a corporation in a group of companies –
      - (A) any other corporation in the same group of companies; or
      - (B) any significant security holder or officer of any other corporation in the group of companies;
  - (c) where the consideration relates to a registration under Part V of the Act or as a registered firm or an application for registration, whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements; and
  - (d) the state of affairs of any other business that the person carries on or proposes to carry on.
- (3) For the purposes of this regulation, "regulated activity" means the activity carried on or proposed to be carried on by the person that requires registration under the Act.

- |                                 |    |   |
|---------------------------------|----|---|
| Fees                            | 4. | A person that files or delivers a document, makes an application, takes any other action or requests that the Commission take an action listed in the Fee Rule must, concurrently with that action, pay to the Commission the fee shown in The Fee Rule opposite the description of the action.   |
| Late fees                       | 5. | <ul style="list-style-type: none"><li>(1) A person that files or delivers a document listed in the Fee Rule after the date on which the document was required to be filed or delivered must, concurrently with filing or delivering the document, pay to the Commission the late fee shown in the Fee Rule opposite the description of the document.</li><li>(2) A person that is late in paying an annual renewal fee must pay an additional fee equal to that annual renewal fee for each month or part of a month during which the fee and any additional fee imposed under this subsection remains unpaid, up to the date prescribed by the Commission.</li><li>(3) If a person has failed to pay the required annual renewal fee and any additional fee imposed under subsection (2) on or before the date prescribed by the Commission for the relevant year, the Executive Director may revoke the registration of that person.</li><li>(4) The Commission, for good cause, may waive any additional fee imposed under subsection (2).</li></ul> |
| Forms                           | 6. | The forms referred to in these Regulations shall be used in all cases to which they are applicable, and may be modified as directed by the Commission to meet other cases.  |
| Application to investment funds | 7. | Except where expressly noted, these Regulations do not apply to investment funds and parties related to investment funds governed by the Investment Funds Act, 2003.  |

## Part II

### The Commission

- Filing of documents with the Commission
8. (1) Unless otherwise required by the Commission, a document required to be filed with or delivered to the Commission shall be provided by mailing or delivering three copies of the document to the address of the Commission.
- (2) A document filed with or delivered to the Commission under subsection (1) shall be deemed to be filed on the day that is the earlier of –
- (a) its actual receipt by the Commission; and
  - (b) the day it was postmarked.

## Part III

### Approved Auditor

- Approved auditor
9. (1) Only an auditor that has been recognized as an approved auditor may act for any person registered under Part V of the Act, a registered firm or a public issuer.
- (2) Unless the Executive Director permits or requires otherwise, an applicant for recognition as an approved auditor –
- (a) shall be made in writing in Form 1 of Schedule 2; and
  - (b) the application shall be accompanied by the information and documents specified.
- (3) An applicant may be required to provide supplementary information or clarification of the information initially provided in an application.
- (4) Notwithstanding subsection (1), an auditor may act for an approved foreign issuer in connection with a distribution of securities under section 94 of the Act without being recognized as an approved auditor, provided that the auditor is not a resident of The Bahamas.
- Qualifications for approval
10. In order to be recognized as an approved auditor, an applicant must –
- (a) be a member in good standing of the Bahamas Institute of Chartered Accountants;
  - (b) not be barred or suspended by the Commission from acting for any person registered under Part V of the Act, a registered firm or a public issuer in The Bahamas;
  - (c) not be barred or suspended by any domestic regulatory authority or foreign regulatory authority from acting as auditor for any person under that regulatory authority's jurisdiction; and
  - (d) be licensed under the Public Accountants Act, 1991.
- Duties
11. (1) An approved auditor shall –
- (a) comply with the International Code of Ethics for Professional Accountants of the International Federation of Accountants;
  - (b) be independent of the persons being audited; and
  - (c) not cause, assist or abet others in breaching any relevant laws of The Bahamas or the regulations and standards mandated by the Bahamas Institute of Chartered Accountants.
- (2) For the purposes of paragraph (1)(b), 'independent' means without any direct or indirect material relationship with the person being audited.
- (3) Every financial statement that is required by securities laws to be audited must be audited in accordance with generally accepted auditing standards and be accompanied by an auditor's report that –

- 
- (a) identifies all financial periods presented for which the auditor has issued an auditor's report;
- (b) refers to the former auditor's reports on a comparative period, if the person being audited has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and
- (c) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.
- (4) The auditor shall make such examinations as will enable the auditor to make the reports required by securities laws.
- Duty to notify the Commission 12. (1) When in the course of performing the duties required by securities laws, the approved auditor comes to the view that –
- (a) a matter is present that could give rise to a qualification in the audit report on the financial statements; or
- (b) a material deficiency, weakness or non-compliance with any requirement specified in regulation 51(2) with respect to the operations of a registered firm is present;
- the auditor shall notify the Commission immediately and a copy of the notice must be delivered promptly to the person being audited.
- (2) The notice shall contain complete details about the nature of the circumstances giving rise to the notice.
- Duties of person required to appoint an approved auditor 13. (1) A person required by the Act to appoint an approved auditor shall give notice of the appointment, termination or resignation of an auditor to the Commission and to the affected auditor or auditors.
- (2) The notice shall contain the information required by Form 2 of Schedule 2 and be sent to the Commission and the affected auditor or auditors within 10 days after the appointment, termination or resignation, as the case may be.

#### Part IV

##### Books and Records and Records Retention Requirements

- General Standards 14. Every market participant shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.
- Books and records for registered firms 15. A registered firm must maintain records that –
- (a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the Commission;
- (b) permit determination of the registered firm's capital position;
- (c) demonstrate compliance with the registered firm's capital and insurance requirements;
- (d) demonstrate compliance with internal control procedures;
- (e) demonstrate compliance with the firm's policies and procedures;
- (f) permit the identification and segregation of client cash, securities and other property;
- (g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale;
- (h) provide an audit trail for –

- 
- (i) client instructions and orders; and
  - (ii) each trade transmitted or executed for the account of a client or the registered firm;
- (i) permit creation of account activity reports for clients;
  - (j) provide securities pricing as may be required by securities laws;
  - (k) demonstrate compliance with client account opening requirements;
  - (l) document correspondence with clients;
  - (m) document complaints and disciplinary matters; and
  - (n) document compliance and supervision actions taken by the firm.
- Books and records for persons registered under Part V
16. (1) A person registered under Part V of the Act must maintain records that –
- (a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the Commission;
  - (b) permit determination of the person's capital and solvency position;
  - (c) demonstrate compliance with capital and insurance requirements;
  - (d) demonstrate compliance with internal control procedures;
  - (e) demonstrate compliance with the person's policies and procedures;
  - (f) document complaints and disciplinary matters; and
  - (g) document compliance and supervision actions taken by the person.
- Requirements for registered marketplaces
- (2) In addition to the requirements set out in subsection (1), a registered marketplace must maintain –
- (a) records that provide an audit trail of –
    - (i) orders received by the marketplace, and
    - (ii) transactions executed on the marketplace including details for each transaction of –
      - (A) the time the transaction was executed;
      - (B) the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;
      - (C) the identities and, where appropriate, the roles of the parties to the transaction; and
      - (D) the date and manner of clearance and settlement of the transaction;
  - (b) records of each grant, denial or limitation of access, including the reasons for granting, denying or limiting access to each applicant, and
  - (c) daily trading summaries, including a list of securities traded and transaction volumes.
- Requirements for registered clearing facilities
- (3) In addition to the requirements set out in subsection (1), a registered clearing facility must maintain –
- (a) records that provide an audit trail of transactions cleared and settled through the clearing facility including details for each transaction of –
    - (i) the time(s) the transaction was cleared and settled;
    - (ii) the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction; and
    - (iii) the identities and, where appropriate, the roles of the parties to the transaction;
  - (b) records of each grant, denial or limitation of access, including the reasons for

- granting, denying or limiting access to each applicant; and
- (c) daily summaries, including a list of securities cleared and settled and transaction volumes.
- Storage Medium 17. All records and documents required to be maintained by a market participant may be kept by means of mechanical, electrical, electronic or other devices provided –
- (a) such method of record keeping is not prohibited under any applicable legislation;
  - (b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;
  - (c) such method provides a means to furnish promptly to the Commission upon request legible, true and complete copies of those records of the market participant which are required to be preserved; and
  - (d) the market participant has suitable back-up and disaster recovery programs.
- Records location and retention requirements 18. (1) The books and records required by the Regulations shall be kept –
- (a) in The Bahamas; and
  - (b) in the English language.
- (2) For a period of two years after the creation of a record, a market participant must keep the record in a manner that permits it to be provided promptly to the Commission, and thereafter the record may be kept in a manner that permits it to be provided to the Commission within a reasonable period of time.
- (3) A record provided under subsection (2) must be in a form that is capable of being read by the Commission.
- (4) A market participant must keep a record for the longer of –
- (a) seven years from the date the entry was made; and
  - (b) any period set by any other relevant law.

## Part V

### Registration of Persons under Part V of the Act.

#### Division 1 – Registration of Marketplaces and Clearing Facilities

- Application for registration 19. (1) Unless the Executive Director permits or requires otherwise, an applicant for registration as a marketplace or clearing facility –
- (a) shall file an application in Form 3 of Schedule 2, and
  - (b) the application shall be accompanied by the information and documents specified.
- (2) An applicant may be required to provide supplementary information or clarification of the information initially provided in an application.
- Requirements 20. (1) The Executive Director may grant registration as a marketplace or clearing facility where the Executive Director is satisfied that the applicant –
- (a) is a corporation incorporated or registered under the Companies Act, 1992;
  - (b) is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act, including –
    - (i) appropriate and sufficient systems and controls to perform its functions and manage its risks prudently;
    - (ii) observing standards of solvency and levels of capital as required;
  - (c) has adequate regulatory instruments to govern its members or participants; and
  - (d) is fit and proper.

- 
- (2) The initial requirements for registration shall continue to be met by the person throughout the period of registration under the Act.
- Systems and controls      21.      (1) The marketplace or clearing facility must ensure that the systems and controls used in the performance of its functions are adequate and appropriate for the scale and nature of its business.
- (2) Subsection (1) applies in particular to systems and controls concerning –
- (a) the recording and transmission of information;
  - (b) the assessment and management of risks to the performance of the functions of the marketplace or clearing facility;
  - (c) the effecting and monitoring of transactions on the marketplace;
  - (d) the operation of the arrangements made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the marketplace or cleared and settled by the clearing facility (being rights and liabilities in relation to those transactions); and
  - (e) the safeguarding and administration of assets belonging to users of the facilities of the marketplace or clearing facility.
- Promotion and maintenance of standards      22.      (1) The marketplace or clearing facility must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of securities business by persons in the course of using the facilities provided by the marketplace or clearing facility.
- (2) The marketplace or clearing facility must be able and willing to cooperate, by the sharing of information or otherwise, with the Commission and any domestic regulatory authority and shall not be prohibited from providing information to the Commission for the purpose of assisting an overseas regulatory authority pursuant to the Act.
- Regulatory instruments      23.      (1) The regulatory instruments of a marketplace or clearing facility shall –
- (a) not be contrary to the public interest; and
  - (b) be designed to –
    - (i) ensure compliance with securities legislation;
    - (ii) prevent fraudulent and manipulative acts and practices;
    - (iii) promote just and equitable principles of trade;
    - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and
    - (v) provide appropriate sanctions for violations.
- (2) In addition to those requirements set out in subsection (1), the regulatory instruments of a marketplace shall contain provisions to –
- (a) promote fair trading practices and to facilitate an efficient market; and
  - (b) ensure appropriate transparency of pre-trade and post-trade price information.
- (3) In addition to those requirements set out in subsection (1), the regulatory instruments of a clearing facility shall contain provisions to –
- (a) develop and operate a prompt and accurate clearance and settlement system;
  - (b) safeguard money and securities in its custody, under its control or for which it is otherwise responsible; and
  - (c) provide for appropriate persons to become participants.
- (4) A marketplace or clearing facility shall not –

- (a) permit unreasonable discrimination among clients, issuers, members and users; or
- (b) impose any burden on competition that is not reasonably necessary and appropriate.

#### **Division 2 – Registration of Ancillary Facilities**

- Application for registration
- 24.
- (1) No person shall carry on business as an ancillary facility that is a registrar and transfer agent unless registered under the Act.
  - (2) Unless the Executive Director permits or requires otherwise, an applicant for registration as an ancillary facility –
    - (a) shall file an application in Form 5 of Schedule 2, and
    - (b) the application shall be accompanied by the information and documents specified.
  - (3) An applicant may be required to provide supplementary information or clarification of the information initially provided in an application.

- Requirements
- 25.
- (1) The Executive Director may grant registration as an ancillary facility where the Executive Director is satisfied that the applicant –
    - (a) is a corporation incorporated or registered under the Companies Act, 1992;
    - (b) is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act and regulations, including –
      - (i) appropriate and sufficient systems and controls to perform its functions and manage its risks prudently;
      - (ii) observing standards of solvency and levels of capital as required;
    - (c) has offices in The Bahamas from which it operates its business; and
    - (d) is fit and proper.
  - (2) The initial requirements for registration shall continue to be met by the person throughout the period of registration under the Act.

#### **Division 3 - Reporting to the Commission**

- Notice of change in information – applicant
- 26.
- (1) An applicant for registration under Part V of the Act shall give immediate written notice of any change to the information provided in its application form.
  - (2) Upon receipt of a notice under this regulation, the Executive Director may review the person’s fitness for registration and take appropriate action as a result, including imposing conditions on the person’s registration or denying registration.

- Notice of change in information after registration
- 27.
- (1) A person registered under Part V of the Act shall give written notice of –
    - (a) any change in any information provided in the firm’s application for registration; and
    - (b) any other matter as may be set out in guidance, within five days of the change.
  - (2) In addition to the notice requirements under subsection (1), a person registered under Part V of the Act shall give immediate written notice of any of the following in relation to the person –
    - (a) the presentation of a petition for the winding up of the person or the summoning of any meeting to consider such a winding-up;
    - (b) the application by a person for the appointment of a receiver, administrator or trustee of the person registered under Part V of the Act;
    - (c) the making or any proposal for the making of an arrangement with a creditor or

- creditors of the person registered under Part V of the Act;
- (d) the appointment of inspectors by a domestic regulatory authority or overseas regulatory authority to investigate the affairs of the person registered under Part V of the Act;
  - (e) the bringing of any action under the Act against the person registered under Part V of the Act;
  - (f) any claims on or material changes to the person's insurance arrangements;
  - (g) any resignations or dismissals of directors, officers or senior employees of the person registered under Part V of the Act;
  - (h) where the person registered under Part V of the Act becomes aware that a director, officer or employee has been engaged in activities involving fraud or other dishonesty;
  - (i) any material breakdown of administrative or control procedures (including breakdowns of computer systems or other problems resulting or likely to result in failure to maintain proper records) and the steps that the person registered under Part V of the Act proposes to take to correct the problem;
  - (j) the date on which the person registered under Part V of the Act proposes to cease to carry on business and the reasons for the cessation;
  - (k) a breach by the person registered under Part V of the Act of the requirements regarding financial resources, books and records and risk management and internal controls, together with details of the steps that it is taking to remedy the breach;
  - (l) where the person registered under Part V of the Act has reason to believe that it may be unable to –
    - (i) submit a financial report; or
    - (ii) pay its annual renewal feesto the Commission as required by the Regulations;
  - (m) the failure of any bank or other entity with which the person registered under Part V of the Act has deposited or to which it has passed client money; and for these purposes 'failure' means the appointment of a liquidator, receiver, administrator, or trustee in bankruptcy or any equivalent procedure in the relevant jurisdiction;
  - (n) where a person registered under Part V of the Act becomes aware of any actual or contingent claim in relation to its business by or against the person where any amount claimed or disputed is likely to exceed 10% of its financial resources; or
  - (o) any other matter material to the supervision of the person registered under Part V of the Act.
- (3) Upon receipt of a notice under this regulation, the Executive Director may review the person's continued fitness for registration and take appropriate action as a result, including imposing conditions on the person's registration or revoking that registration.

Form of notice	28.	Notices of change shall contain the information set out in Form 6 of Schedule 2 and be accompanied by the documents specified.
Reporting to the Commission – annual reporting	29.	<ul style="list-style-type: none"><li>(1) A person registered under Part V of the Act must deliver to the Commission no later than the 90<sup>th</sup> day after the end of its financial year –<ul style="list-style-type: none"><li>(a) its audited annual financial statements for the financial year; and</li><li>(b) any prescribed statistics for the year.</li></ul></li><li>(2) The financial statements required by paragraph (1)(a) shall consist of –<ul style="list-style-type: none"><li>(a) a statement of comprehensive income, a statement of changes in equity, and a</li></ul></li></ul>

- 
- cash flow statement for the applicable periods referred to in subsection (3); and
- (b) a statement of financial position as at the end of the applicable periods referred to in subsection (3).
- (3) The applicable periods are –
- (a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the person registered under Part V has completed a financial year, the last financial year, as the case may be; and
- (b) the period covered by the financial year next preceding the last financial year, if any.
- (4) The annual financial statements shall be approved by the directors, and the approval shall be evidenced by the signatures of two directors duly authorized to signify the approval.
- Reporting to the Commission – interim reporting 30. (1) A person registered under Part V of the Act must deliver to the Commission no later than the 30<sup>th</sup> day after the end of the first, second, third and fourth quarter of its financial year –
- (a) its financial statements for that quarter; and
- (b) any prescribed statistics for that quarter.
- (2) The interim financial statements shall include -
- (a) a statement of comprehensive income, a statement of changes in equity, and a cash flow statement for the most recent financial year-to-date period for which the interim financial statements are prepared and comparative financial information for the corresponding period in the immediately preceding financial year; and
- (b) a statement of financial position as at the date to which the interim financial statements are prepared and a comparative statement of financial position as at the end of the corresponding period in the immediately preceding financial year.
- (3) The interim financial statements shall include notes.
- (4) The directors of the person registered under Part V of the Act shall review the interim financial statements prior to being filed with the Commission.
- Reporting to Commission - other 31. A person registered under Part V of the Act shall provide to the Commission such other reports and information as the Commission may request.
- Division 4 - General**
- Amendments to incorporating documents etc. 32. (1) A person registered under Part V of the Act shall apply for permission to make any amendment to its memorandum or articles of association.
- (2) A marketplace or clearing facility shall apply for permission to make any amendment to its fees or operations or to adopt, amend or repeal a regulatory instrument or procedure.
- (3) An applicant under subsection (1) or (2) shall provide the Commission with all information and documents requested.
- (4) The Executive Director may, if the Executive Director thinks fit, permit the proposed change to be made or require further amendments.
- Standards of solvency 33. (1) For purposes of this Part, a person registered under Part V of the Act has failed to observe standards of solvency when, at any time, there are reasonable grounds to believe that -
- (a) the person is unable to pay its liabilities as they become due; or
- (b) the realizable value of the assets of the person is less than the aggregate of -

- 
- (i) its liabilities; and  
(ii) the stated capital of its securities.
- (2) In addition to the standards of solvency required by subsection (1), the Commission may require a person registered under Part V of the Act to maintain such minimum level of capital as it may deem necessary.
- Securityholders and transfers of securities 34. (1) The security holders of a person registered under Part V of the Act shall be fit and proper.
- (2) Any proposed issue or transfer of the securities of a person registered under Part V of the Act shall be –
- (a) notified to the Executive Director in Form 7 of Schedule 2 no less than 30 days before the proposed date of the transaction; and
- (b) subject to prior review by and approval of the Executive Director.
- (3) Where the person registered under Part V of the Act is a public issuer in The Bahamas or has equivalent status elsewhere, subsection (2) shall only apply to any proposed issue or transfer of securities if –
- (a) prior to the transaction, the transferor is; or
- (b) after the transaction, the acquirer would be a significant security holder of the person registered under Part V of the Act.
- Renewal process 35. (1) A person registered under Part V of the Act shall renew its registration on an annual basis by submitting the information set out in Form 8 of Schedule 2 on or before the 31st day of January of each year.
- (2) Where the person registered under Part V of the Act has failed to file all required information and pay all required fees on or before the date prescribed by the Commission, of the relevant year, the Executive Director may revoke the registration of the person.
- Liquidation and voluntary surrender of registration 36. (1) No person registered under Part V of the Act shall go into voluntary liquidation without the prior approval of the Executive Director.
- (2) If proceedings for an involuntary liquidation are commenced against a person registered under Part V of the Act, the Commission shall be immediately notified in writing by the person affected or by one of its directors or officers.
- (3) A person registered under Part V of the Act may voluntarily surrender its registration by making application to the Executive Director and the surrender of the registration shall not take effect until the later of –
- (a) 21 days after the notice has been received by the Executive Director; and
- (b) all conditions imposed by the Executive Director on the person have been complied with.

## **Part VI**

### **Registered Firms and Individuals**

#### **Division 1 - Firms**

- Application to be a registered firm 37. (1) Unless the Executive Director permits or requires otherwise, an applicant for registration as a firm –
- (a) shall file an application in Form 9 of Schedule 2, specifying the securities activities that are proposed to be carried on by the firm; and
- (b) the application shall be accompanied by the information and documents specified.

---

		(2) An applicant may be required to provide supplementary information or clarification of the information initially provided in an application.
Requirements	38.	(1) The Executive Director may grant registration if the Executive Director is satisfied that the applicant – (a) is a company incorporated or registered under the Companies Act, 1992 or the International Business Companies Act, 2000; (b) is organized in a manner and has sufficient capacity and resources to carry out its proposed functions in compliance with the Act and regulations, including – (i) having appropriate and sufficient systems and controls to perform its functions and manage its risks prudently; (ii) having appropriate and sufficient insurance coverage; and (iii) observing standards of solvency and levels of capital as required; (c) is fit and proper; and (d) meets such other requirements as may be prescribed. (2) The initial requirements for registration shall continue to be met by the person throughout the period of registration under the Act.
Name of registered firm	39.	The Executive Director may refuse to grant registration to an applicant, where that applicant's name is – (a) identical to that of any other registered firm or which so nearly resembles the name of a registered firm as to be likely to deceive or cause confusion in the market; (b) likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or (c) likely to suggest, falsely, that the registered firm has a special status in relation to or derived from the Government.
Supervisory officers	40.	(1) A registered firm shall have a Chief Executive Officer or managing officer in The Bahamas who shall be – (a) registered as such with the Commission; and (b) responsible for managing the day to day operations of the firm in the jurisdiction, which responsibility shall not be delegated. (2) A registered firm shall designate an officer as the Compliance Officer of the firm who shall be – (a) registered as such with the Commission; and (b) responsible for the supervision of the securities business undertaken by the firm to ensure it is carried out in compliance with the law, which responsibility may not be delegated.
Holding client assets	41.	(1) Only those firms registered to carry on the securities business of dealing in securities as agent or principal may hold client cash and other assets. (2) Firms registered to carry the business of managing securities and that are not also registered to deal in securities as agent or principal must appoint a custodian acceptable to the Commission to hold client cash and other assets.
Regulatory capital	42.	(1) A registered firm is required to maintain at all times adequate financial resources to – (a) meet its business commitments; (b) withstand the risks to which its business is subject; and (c) meet the prescribed requirements.

- 
- (2) Unless otherwise prescribed by the Commission, a registered firm shall ensure its excess net free regulatory capital, calculated as required in Form 14 of Schedule 2, is not less than zero.
- (3) For the purpose of calculating excess net free regulatory capital, the minimum required capital for a firm registered to carry on a specified securities activity is the amount prescribed by the Commission.
- Insurance 43. (1) A registered firm shall at all times maintain insurance policies to cover, at least –
- (a) professional indemnity;
  - (b) the professional liability of senior officers and corporate secretaries;
  - (c) business interruption; and
  - (d) fidelity or bonding,
- in an amount appropriate to the size, complexity and nature of the securities business of the firm.
- (2) The directors of the registered firm shall, on an annual basis, review the amount and type of bonding and insurance held by the firm and ensure that such coverage continues to be sufficient to cover the insurable risks of the business of the registered firm.
- (3) A registered firm shall file current details of the insurance policies held by the firm, with the renewal of its registration.
- (4) No registration or renewal of registration will be granted if, in the opinion of the Executive Director, the amount or extent of coverage is not sufficient.
- Outsourcing 44. (1) If a registered firm proposes to enter into an arrangement with a third party service provider whereby that service provider will undertake a material business function, activity or process on behalf of the registered firm, the registered firm shall give the Executive Director prompt notice of such outsourcing arrangement.
- (2) The outsourcing arrangement must be set out in a written contract that permits the Commission access to any records and information held by the service provider relating to the activities carried out on behalf of the regulated firm, as if those records and information were held at the regulated firm.
- (3) Notwithstanding any outsourcing arrangement, the registered firm shall continue to be responsible for –
- (a) the fulfillment of all obligations and duties imposed by securities laws on the registered firm; and
  - (b) all acts undertaken on its behalf by a service provider under an outsourcing arrangement.
- (4) The Executive Director may, by notice to the registered firm, object to the proposed arrangement or to the continued use of a service provider and the registered firm shall terminate the arrangement promptly after receipt of such notice from the Executive Director.
- Renewal process 45. (1) A registered firm shall renew its registration on an annual basis by submitting, on or before the 31st day of January of each year, the information set out in Form 11 of Schedule 2.
- (2) Where the registered firm has failed to file all required information and pay all required fees on or before the date prescribed by the Commission, of the relevant year, the Executive Director may revoke the registration of the firm.
- Securityholders and transfers of securities 46. (1) The security holders of a registered firm shall be fit and proper.
- (2) Any proposed issue or transfer of the securities of a registered firm shall be –
- (a) notified to the Commission in Form 7 of Schedule 2 no less than 30 days before the

- proposed date of the transaction; and  
(b) subject to prior review by and approval of the Executive Director.
- (3) Where the registered firm is a public issuer in The Bahamas, or has equivalent status elsewhere, subsection (2) shall only apply to a proposed issue or transfer of securities if –  
(a) prior to the transaction, the transferor is, or  
(b) after the transaction, the acquirer would be,  
a significant security holder of the registered firm.

**Division 2 - Reporting to Commission**

- |   |     |   |
|---|-----|---|
| Employment of representative                    | 47. | <p>(1) A registered firm shall file notice with the Commission immediately upon the commencement of employment of any individual who will be carrying out securities business on behalf of the registered firm.</p> <p>(2) The notice shall contain the information set out in Form 12 of Schedule 2 and shall be accompanied by the documents specified.</p> <p>(3) The registered firm shall give notice to the Commission immediately if an individual for whom a notice has been given under subsection (1) does not commence employment with the firm as intended.</p>   |
| Termination of representative                   | 48. | <p>(1) A registered firm shall file notice with the Commission immediately upon the termination, resignation or retirement of any registered individual who carried out securities business on behalf of the registered firm.</p> <p>(2) The notice shall contain the information set out in Form 13 of Schedule 2 and shall be accompanied by the documents specified.</p> <p>(3) A copy of the notice shall be provided to the registered individual at the same time as it is provided to the Commission.</p>  |
| Reporting to the Commission – annual reporting  | 49. | <p>(1) A registered firm must deliver to the Commission no later than the 90<sup>th</sup> day after the end of its financial year –<br/>(a) its audited annual financial statements for the financial year; and<br/>(b) the information set out in Form 14 of Schedule 2 for the year.</p> <p>(2) The financial statements required by paragraph (1)(a) shall consist of –<br/>(a) a statement of comprehensive income, a statement of changes in equity, and a cash flow statement for the applicable periods referred to in subsection (3); and<br/>(b) a statement of financial position as at the end of the applicable periods referred to in subsection (3).</p> <p>(3) The applicable periods are –<br/>(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the registered firm has completed a financial year, the last financial year, as the case may be; and<br/>(b) the period covered by the financial year next preceding the last financial year, if any.</p> <p>(4) The annual financial statements shall be approved by the directors, and the approval shall be evidenced by the signatures of two directors duly authorized to signify the approval.</p> |
| Reporting to the Commission – interim reporting | 50. | <p>(1) A registered firm must deliver to the Commission no later than the 30<sup>th</sup> day after the end of the first, second, third and fourth quarter of its financial year –<br/>(a) its financial statements for that quarter; and<br/>(b) the information set out in Form 14 of Schedule 2 for that quarter.</p>  |

- 
- (2) The interim financial statements shall include –
- (a) a statement of comprehensive income, a statement of changes in equity, and a cash flow statement for the most recent financial year-to-date period for which the interim financial statements are prepared and comparative financial information for the corresponding period in the immediately preceding financial year; and
  - (b) a statement of financial position as at the date to which the interim financial statements are prepared and a comparative statement of financial position as at the end of the corresponding period in the immediately preceding financial year.
- (3) The interim financial statements shall include notes.
- (4) The directors of the registered firm shall review the interim financial statements prior to being filed with the Commission.
- Reporting to Commission - other 51. (1) A registered firm must deliver to the Commission the report of its auditors on the registered firm's operations as required by section 76(2)(b) of the Act no later than the 90<sup>th</sup> day after the end of its financial year.
- (2) For the purposes of section 76(2)(b) of the Act, the prescribed requirements are those relating to –
- (a) capital and other financial affairs;
  - (b) record keeping;
  - (c) reporting to or filing information with the Commission;
  - (d) reconciliations and segregation of client assets; and
  - (e) internal controls and risk management systems.
- (3) A registrant shall provide to the Commission such other reports and information as the Commission may request.
- Notice of change in information –applicant 52. (1) An applicant for registration shall give immediate written notice of any change to the information provided in the person's application form.
- (2) Upon receipt of a notice under this regulation, the Executive Director may review the person's fitness for registration and take appropriate action as a result, including imposing conditions on the person's registration or denying registration.
- Notice of change in information – after registration 53. (1) A registered firm shall give written notice of –
- (a) any change in any information provided in the firm's application for registration; and
  - (b) any other matter as may be set out in guidance, within five days of the change.
- (2) In addition to the notice requirements under subsection (1), a registered firm shall give immediate written notice of the occurrence of any of the following in relation to the registered firm or its securities business, as the case may be –
- (a) the presentation of a petition for the winding up of the firm or a company that is a subsidiary or holding company of the firm or the summoning of any meeting to consider a winding-up of any of them;
  - (b) the application by a person for the appointment of a receiver, administrator or trustee of the registered firm or a subsidiary or holding company of the registered firm;
  - (c) the making or any proposal for the making of an arrangement with a creditor or creditors of the registered firm, or a subsidiary or holding company of the registered firm;
  - (d) the appointment of inspectors by a domestic regulatory authority or overseas regulatory authority to investigate the affairs of the registered firm, or a

- subsidary or holding company of the registered firm;
  - (e) the bringing of any action under the Act against the registered firm, or a subsidiary or holding company of the registered firm;
  - (f) any claims on or material changes to the registered firm's insurance arrangements;
  - (g) any resignations or dismissals of directors, officers or senior employees of the registered firm or holding company of the registered firm;
  - (h) where the registered firm becomes aware that a director, officer or employee has been engaged in activities involving fraud or other dishonesty;
  - (i) any material breakdown of administrative or control procedures (including breakdowns of computer systems or other problems resulting or likely to result in failure to maintain proper records) and the steps that the registered firm proposes to take to correct the problem;
  - (j) the date on which the registered firm proposes to cease to carry on securities business and the reasons for the cessation;
  - (k) the inability of the registered firm to perform any of the calculations or reconciliations required by any regulations or to correct any deficiencies identified by the calculations or reconciliations;
  - (l) a breach by the registered firm of the requirements regarding financial resources, books and records and risk management and internal controls, together with details of the steps that the firm is taking to remedy the breach;
  - (m) where the registered firm has reason to believe that it may be unable to –
    - (i) submit a financial report as required;
    - (ii) pay its annual renewal fees to the Commission; or
    - (iii) make a payment to a marketplace or clearing facility by the due date as required under the regulatory instruments of any of those entities, thereby causing the default of the registered firm;
  - (n) the failure of any bank, registered marketplace, clearing facility or other entity with which the registered firm has deposited or to which it has passed client money; and for these purposes 'failure' means the appointment of a liquidator, receiver, administrator, or trustee in bankruptcy or any equivalent procedure in the relevant jurisdiction;
  - (o) where the registered firm becomes aware of any actual or contingent claim in relation to its securities business by or against the registered firm where any amount claimed or disputed is likely to exceed 10% of the firm's financial resources;
  - (p) where the registered firm is the subject of any written customer complaint involving allegations of forgery, fraud, theft or misappropriation of funds or securities;
  - (q) where the registered firm is named as a defendant or respondent in any domestic or foreign criminal or regulatory proceeding or any civil proceeding, exceeding twenty-five thousand dollars (\$25,000);
  - (r) where the registered firm is associated in any way in any business or financial activity with any person who has been convicted of an indictable offence under Bahamian law, an offence punishable by one year or more in prison under any foreign law, or barred or suspended by any domestic or overseas regulatory authority; or
  - (s) any other matter material to the supervision of the registered firm.
- (3) Upon receipt of a notice under this regulation, the Executive Director may review the person's continued fitness for registration and take appropriate action as a

result, including imposing conditions on the person's registration or revoking that registration.

- Form of notice 54. Notices of change shall contain the information set out in Form 6 of Schedule 2 and be accompanied by the documents specified.
- Transactions affecting financial resources 55. A registered firm shall obtain the prior written consent of the Executive Director before –
- (a) seeking to reduce or change the nature of its issued capital or the rights and obligations of its security holders;
  - (b) acquiring 10% or more of the voting securities of another company; or
  - (c) entering into any agreement to sell or merge the whole or any part of the registered firm to or with a third party.

### **Division 3 - Registration of Individuals**

- Categories of individual registration 56. (1) The categories of individual registration are –
- (a) Chief Executive Officer;
  - (b) Compliance Officer;
  - (c) Dealing Representative;
  - (d) Discretionary Management Representative; and
  - (e) Advising Representative.
- (2) An individual may only be registered to carry on a securities activity that the firm for which he or she works is registered to undertake.
- Application to be a registered individual 57. (1) Unless the Executive Director permits or requires otherwise, an applicant for registration as an individual –
- (a) shall file an application in Form 10 of Schedule 2 specifying the category or categories of registration sought; and
  - (b) the application shall be accompanied by the information and documents specified.
- (2) An applicant may be required to provide supplementary information or clarification of the information initially provided in an application.
- Requirements 58. (1) The Executive Director may grant registration if it is satisfied that the applicant –
- (a) is at least 18 years of age;
  - (b) is fit and proper;
  - (c) does not have other interests, whether directly or indirectly, which may conflict with the conduct and integrity of the person's employment with the registered firm; and
  - (d) meets any other requirements that the Executive Director may deem appropriate.
- (2) The initial requirements for registration shall continue to be met by the person throughout the period of registration under the Act.
- Education and experience 59. (1) When an individual is to perform an activity that requires registration, the individual must have the education and experience reasonably necessary to perform the activity.
- (2) As a minimum, an applicant for registration in a category listed in regulation 56(1) shall have –
- (a) no less than six months of securities-related experience and have obtained one of the examinations recognized by the Commission from time to time for these

- 
- purposes; or  
(b) at least ten-years of securities-related experience.
- Trainees
60. At the Executive Director's discretion, an applicant lacking the experience requirement for individual registration may be registered subject to the condition that all securities business carried on by that person that would require registration shall be subject to prior review and approval by a designated registered individual who is an officer of the firm.
- Notice of change in information – applicant
61. (1) An applicant for registration shall give immediate written notice of any change to the information provided in the individual's application form.  
(2) Upon receipt of a notice under this regulation, the Executive Director may review the person's fitness for registration and take appropriate action as a result, including imposing conditions on the person's registration or denying registration.
- Notice of changes in information – after registration
62. (1) A registered representative of a registered firm shall promptly report to the Commission and the registered firm if that representative –  
(a) is the subject of any written customer complaint involving allegations of forgery, fraud, theft or misappropriation of funds or securities;  
(b) is named as a defendant or respondent in any criminal or regulatory proceeding or any civil proceeding, either domestic or foreign, exceeding twenty-five thousand dollars (\$25,000);  
(c) is associated in any business or financial activity with any individual who has been convicted of an indictable offence under Bahamian law, an offence punishable by one year or more in prison under any foreign law or barred or suspended in excess of three months by any domestic or overseas regulatory authority; or  
(d) is a director, significant security holder, partner, officer or sole proprietor or in any way associated with any entity which has been convicted of an indictable offence under Bahamian law, an offence punishable by one year or more in prison under any foreign law or barred or suspended by any domestic or foreign regulatory authority.  
(2) Upon receipt of a notice under this regulation, the Executive Director may review the person's continued fitness for registration and take appropriate action as a result, including imposing conditions on the person's registration or revoking that registration.
- Suspension and reinstatement of registration
63. (1) The registration of a registered individual is suspended on the date that –  
(a) the registered individual ceases to act on behalf of the registered firm; or  
(b) the registration of the registered firm that sponsored his or her registration is suspended or terminated.  
(2) A registered individual whose registration is suspended under subsection (1) shall not carry on any securities business for any person until such time as his or her registration is reinstated.  
(3) If a registration is suspended under subsection (1) and has not been reinstated, the registration is revoked on the second anniversary following the date of suspension.  
(4) Unless the Executive Director permits or requires otherwise, an application for reinstatement shall be made in Form 10 accompanied by such other information as required.  
(5) A registration shall not be reinstated unless the Executive Director is satisfied that the applicant meets the requirements of regulation 58(1).

- (6) Notwithstanding subsection (3), if a hearing concerning a suspended individual is commenced, that person's registration remains suspended until a final decision has been issued.

#### **Division 4 - General**

- Voluntary surrender of registration or liquidation 64. (1) No registered firm shall go into voluntary liquidation without the prior approval of the Executive Director.
- (2) A registrant may voluntarily surrender the registrant's registration by making application to the Executive Director and the surrender of the registration shall not take effect until the later of –
- (a) 21 days after the notice has been received by the Executive Director; and
  - (b) all conditions imposed by the Executive Director on the registrant have been complied with.
- Provision for cessation of business (3) Where a registered firm decides to cease to carry on any securities business, it shall ensure that any securities business that is outstanding is properly completed or is transferred to another firm registered to carry on that securities business.

### **Part VII**

#### **Conduct of Business**

##### **Division 1 – General**

- Application 65. Division 1 and 2 of this Part also apply to transactions in investment funds by registered firms.
- Required standards of a registered firm or individual 66. In addition to those duties set out in section 75 of the Act, a registrant shall ensure clients are provided with sufficient and timely disclosure regarding –
- (a) the registered firm's fees, commission and recoverable disbursements;
  - (b) any risks associated with an investment strategy recommended to a client by the firm or individual; and
  - (c) any other matter reasonably to be regarded as necessary to enable the client to make informed decisions regarding the securities business conducted with or through the registrant.
- Know your client 67. (1) A registered firm must take reasonable steps to –
- (a) establish the identity of a client and, where there may be cause for concern, the reputation of the client;
  - (b) ascertain whether the client is an insider of a public issuer;
  - (c) ensure that it has sufficient personal and financial information about a client to enable it to meet its regulatory obligations when it –
    - (i) makes a recommendation to the client;
    - (ii) accepts an instruction to trade from the client;
    - (iii) makes a discretionary purchase or sale of a securities on behalf of the client; and
  - (d) establish the creditworthiness of a client, if the registered firm is financing the client's acquisition of a security.
- (2) If the client is a company, to comply with the obligation under paragraph (1)(a), the registered firm must establish the nature of the client's business and the identity of any individual who is a significant security holder of the company.
- (3) The registered firm must make reasonable efforts to keep the information required under this regulation up to date.

- 
- |   |     |   |
|---|-----|---|
| Client account opening form and documentation | 68. | <ul style="list-style-type: none"><li>(1) A registered firm must maintain account opening documentation for each client.</li><li>(2) No registered firm shall execute any transaction for a client until it has in its possession a 'client account form' executed by the client and approved by the designated officer of the firm.</li><li>(3) The client account form shall contain information concerning the client's financial status, employment, education, investment objectives, ability to incur risk and any other information that may be considered reasonable by the firm in making an investment recommendation to the client.</li></ul>  |
| Suitability obligation                        | 69. | <ul style="list-style-type: none"><li>(1) A registrant must take reasonable steps to ensure that before it makes a recommendation to, or accepts instructions from, a client or makes a discretionary purchase or sale of a security on behalf of a client, the proposed purchase or sale is suitable for the client given the client's financial circumstances, risk tolerance, investment knowledge, and investment needs and objectives.</li><li>(2) If a client instructs a registrant to buy, sell or hold a security and in the registrant's opinion, acting reasonably, following the instruction would not be suitable for the client, the registrant must inform the client of the registrant's opinion and must not buy or sell the security unless the client instructs the registrant to proceed nonetheless.</li></ul>   |
| Discretionary trading                         | 70. | <ul style="list-style-type: none"><li>(1) A registrant, other than one registered to carry on the regulated activity of managing securities, may not execute any trade for a client unless the registrant has the client's prior authorization for the transaction.</li><li>(2) A registrant that is registered to carry on the regulated activity of managing securities may only execute investment discretion over a client's account if –<ul style="list-style-type: none"><li>(a) the registered firm has entered into a written agreement with the client granting such authority; and</li><li>(b) the agreement has been signed and approved by a designated supervisor of the registered firm prior to the first transaction for the client.</li></ul></li></ul>  |
| Unregistered, suspended or barred individuals | 71. | <p>No registered firm shall permit –</p> <ul style="list-style-type: none"><li>(a) any individual associated with the firm to engage in any securities business unless that individual is registered to carry on that business by the Commission;</li><li>(b) any individual who is barred or suspended by the Commission or any domestic or overseas regulatory authority to share premises with the registered firm or otherwise carry on business from the premises of the registered firm; or</li><li>(c) any person to share premises with the registered firm or otherwise carry on business from the premises of the registered firm, if that person is carrying on a securities business, unless that person is appropriately registered with the Commission.</li></ul>   |
| Reporting to clients – contract note          | 72. | <ul style="list-style-type: none"><li>(1) Any registered firm that carries out any sale or purchase of securities on behalf of a client shall, within one business day after the sale or purchase was executed, make and transmit a contract note of the transaction to its client.</li><li>(2) A contract note shall set out –<ul style="list-style-type: none"><li>(a) the quantity and description of the security;</li><li>(b) the price at which the transaction was effected and the commission and any other fees charged on the transaction;</li><li>(c) the settlement date of the transaction;</li><li>(d) the name of the registered firm involved in the transaction;</li><li>(e) whether the registered firm was acting as principal or agent;</li><li>(f) the marketplace, if any, on which the transaction took place, or if applicable, a</li></ul></li></ul> |

- statement that the transaction took place on more than one marketplace or over more than one day; and
- (g) any other information required by the Commission.
- Reporting to clients – client account statements 73. (1) A registered firm must send or deliver a statement of account to each client not less than once every three months showing any debit or credit balance and the details of securities held for or owned by the client.
- (2) The statement required by subsection (1) must list the securities held for or owned by the client and indicate clearly which securities are held for safekeeping or in segregation.
- (3) A registered firm managing client accounts on a discretionary basis must send or deliver to each managed account client not less than once every three months, a statement of the portfolio of the client under the registered firm's management.
- Supervision, compliance and risk management systems 74. (1) A registered firm shall be responsible for supervising anyone acting on its behalf, whether registered or not, and shall maintain adequate supervisory personnel in keeping with its activities and the number of its branch offices and staff.
- (2) A registered firm must establish, maintain and apply a system of controls and supervision sufficient to –
- (a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities laws and all other relevant legislation; and
- (b) manage the risks associated with its business in conformity with prudent business practices.
- (3) The system of controls referred to in subsection (2) must be documented in the form of written policies and procedures.
- Complaints 75. A registered firm shall establish effective complaints handling systems and procedures that ensure that –
- (a) adequate records of complaints, including a central register, are established and maintained;
- (b) all complaints are responded to in writing within 14 days of receipt of the complaint; and
- (c) each complaint is effectively and fairly resolved.
- Trading listed securities 76. (1) Subject to subsection (2), all trading within The Bahamas in securities listed on a registered securities exchange located in The Bahamas shall take place on that securities exchange.
- (2) Subsection (1) shall not apply to –
- (a) a trade by an executor, administrator or guardian or by an authorized trustee or assignee, an interim or official receiver or a custodian under the Bankruptcy Act, or by a receiver or a liquidator under the Companies Act, or at a judicial sale; or
- (b) a trade by an owner of a security, for the owner's account, to an affiliate or an associate of the owner; or
- (c) a prescribed trade.
- Prompt delivery 77. A registered firm shall deliver funds or securities promptly to its clients and to other registered firms in accordance with the regulatory instruments of the applicable marketplace or clearing facility or as may be prescribed by the Commission.
- Priority of client orders 78. (1) A registered firm shall give priority to orders for the accounts of clients of the registered firm over all other orders for the same security at the same price.

- 
- (2) In this regulation "orders for the accounts of clients of the registered firm" shall not include an order for an account in which the registered firm or an officer, director or employee of the firm has an interest, direct or indirect, other than an interest in a commission or fee charged.
- Trading as principal      79.      (1) A registered firm may only trade as principal if it is registered to carry on that securities business.
- (2) Where a registered firm seeks to purchase securities as principal, and there is a competing bid on behalf of its client for the purchase of those securities which equals or is better than the bid made by the registered firm, the competing client bid shall be preferred to that made by the registered firm.
- (3) Where a registered firm seeks to sell securities as principal, and there is a competing offer on behalf of its client for the sale of those securities which equals or is better than the offer made by the registered firm, the competing client offer shall be preferred to that made by the registered firm.
- (4) For the purposes of this regulation, trading as a principal includes trading on behalf of an affiliate of the registered firm or any of its officers, directors or significant security holders.
- (5) Where a registered firm purchases 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.
- Conflicts of interest      80.      (1) A registered firm shall –
- (a) make reasonable efforts to identify existing conflicts of interest and conflicts the registered firm, acting reasonably, would expect to arise between the firm, including each individual acting on the firm's behalf, and its clients; and
- (b) establish policies and procedures to avoid conflicts of interest arising or, if conflicts arise, to ensure fair treatment to all its clients.
- (2) If a registrant has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest in relation to the transaction, the registrant shall not knowingly either advise, or exercise discretion, in relation to that transaction unless the registrant has –
- (a) fairly disclosed that material interest or relationship, as the case may be, to the client; and
- (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the client.
- Fair allocation of investment opportunities      81.      A registered firm must establish and maintain policies and procedures to ensure fairness in the allocation of investment opportunities among its clients.
- Churning      82.      (1) No registrant shall carry out trades that are excessive in volume or frequency with or for a client whose trading the registrant controls or directs.
- (2) No person who has discretionary authority over, or who is a trustee for, an account of another, shall effect, or cause to be effected, trades that are excessive in volume and frequency for the person whose account he or she has discretionary authority over, or is a trustee for.
- (3) For the purposes of this regulation, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant in relation to the size of the client's account, the investment objectives of the client and the pattern of trading in the account.

- 
- |  |     |  |
|--|-----|--|
| Transactions in securities outside scope of employment | 83. | (1) No registered individual associated with a registered firm shall, without written authorization from that firm, participate in any manner in –<br>(a) transactions involving securities not endorsed by the firm; or<br>(b) securities transactions outside the regular scope of the individual’s employment with the registered firm.<br>(2) Subsection (1) shall not apply to the individual’s personal transactions or those undertaken in the course of the individual’s personal duties as an executor of an estate, as a trustee or in a similar fiduciary capacity.   |
| Improper use of client assets                          | 84. | No registrant shall make improper use of a client’s securities or funds, such as, but not limited to, borrowing, lending or pledging of funds or securities without the client’s prior written authorization.  |
| Voting securities not beneficially owned               | 85. | Voting securities of an issuer registered in the name of a registered firm or in the name of the firm’s nominee, that are not beneficially owned by the registered firm, shall not be voted by the firm at any meeting of security holders of the issuer.  |
| Forwarding documents to beneficial owners              | 86. | (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a registered firm or its nominee, the firm shall send the beneficial owner of the securities a copy of any documents sent to the registered firm or its nominee as registered security holder as soon as practicable after receipt, unless the beneficial owner instructs the firm that the documents need not be sent.<br>(2) A person who is required to send a document to registered security holders under to the Act shall –<br>(a) promptly provide the registered firm with the number of copies of the document as requested by the firm to enable it to comply with subsection (1); and<br>(b) shall pay or reimburse the registered firm for the reasonable costs of complying with subsection (1). |

**Division 2 - Reconciliations and Client Assets**

- |                                       |     |   |
|---------------------------------------|-----|---|
| Reconciliations                       | 87. | (1) A registered firm shall perform reconciliations as often as necessary to ensure the accuracy of its records, and shall perform reconciliations –<br>(a) at least once every month –<br>(i) on all balances with banks; and<br>(ii) on all balances and positions with marketplaces and clearing facilities;<br>(b) at least once every business day, on the registered firm’s own margin accounts with marketplaces and clearing facilities; and<br>(c) at least twice per month –<br>(i) on the balance in each trust account in which client cash is held as recorded by the firm to the balance as recorded by the bank with which that account is held;<br>(ii) on the balance in each client transaction account with registered marketplaces or clearing facilities as recorded by the firm, to the balance as recorded by the registered marketplace or facility; and<br>(iii) on its records of client assets for which it is accountable with statements obtained from the custodians of those assets.<br>(2) The registered firm shall correct any differences immediately. |
| Segregation of client cash and assets | 88. | (1) A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client.   |

- 
- (2) A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a bank holding an unrestricted license under the Banks and Trust Companies Regulation Act, 2000, or other deposit-taking institution outside The Bahamas as may be approved by the Commission for this purpose.
- (3) A registered firm may allow a registered marketplace or clearing facility to hold or control client cash for the purpose of –
- (a) a transaction for the client with or through that marketplace or facility; or
  - (b) meeting the client's obligation to provide collateral for a transaction, provided that the client is notified that the cash may be so held or controlled.
- Securities subject to safekeeping agreement 89. (1) A registered firm that holds unencumbered securities for a client under a written safekeeping agreement must –
- (a) segregate the securities from all other securities; and
  - (b) identify the securities as being held in safekeeping for the client in –
    - (i) the registrant firm's security position record;
    - (ii) the client's ledger; and
    - (iii) the client's statement of account.
- (2) Unencumbered securities held for a client under a written safekeeping agreement must only be released on an instruction from the client.
- Securities not subject to safekeeping agreement 90. (1) A registered firm that holds unencumbered securities for a client that are either fully paid for or are excess margin securities, but are not held under a written safekeeping agreement, must –
- (a) segregate and identify the securities as being held in trust for the client; and
  - (b) describe the securities as being held in segregation on –
    - (i) the registered firm's security position record,
    - (ii) the client's ledger, and
    - (iii) the client's statement of account.
- (2) If a client is indebted to a registered firm, the registered firm may sell or lend the securities described in subsection (1), but only to the extent reasonably necessary to cover the indebtedness.
- (3) Securities described in subsection (1) may be segregated in bulk.
- Reporting to the Commission 91. (1) The registered firm shall prepare and deliver a report to the Commission on a quarterly basis –
- (a) confirming that it is in compliance with the requirements of this Division; or
  - (b) if it is not in compliance with these requirements, providing full details of the non-compliance and what actions the registered firm is taking to rectify the problem.
- (2) The report required by subsection (1) shall be included in Form 14 of Schedule 2.

### **Division 3 - Advertising and Communication Standards**

- Registration not to be advertised 92. A person shall not represent, orally or in writing that the Commission has in any way approved the financial standing, fitness or conduct of any registrant or evaluated the merits of any security or issuer.
- Advertising standards 93. (1) No person shall publish, make or issue an advertisement or other public invitation, including a public announcement, for persons to invest in a security or engage in a securities transaction, unless the advertisement or other invitation –

- (a) contains sufficient relevant information so that it is not misleading; and
- (b) where it is made, issued or published –
  - (i) outside The Bahamas, it complies with any laws in the jurisdiction where the advertisement or other invitation is made, issued or published; or
  - (ii) in The Bahamas and the Commission has given notice under subsection (2), it is approved by the Commission prior to publication.
- (2) The Commission may give notice that it requires advertisements or other public invitations regarding securities proposed to be made in The Bahamas by a person be subject to pre-approval by the Commission.
- (3) If the Commission has given notice under subsection (2), any affected person wishing to publish, make or issue such an advertisement in The Bahamas shall file with the Commission an application containing the information set out in Form 15 of Schedule 2.

### **Part VIII**

#### **Distributions and Prospectus Requirements**

##### **Division 1 – Public Distributions**

- |   |     |   |
|---|-----|---|
| Definitions   | 94. | (1) In this Part<br>“printed” or “written” includes material distributed by electronic means; and<br>“vendor” means the issuer or selling security holder of the securities being distributed.<br><br>(2) In this Part, unless otherwise stated, a reference to a prospectus includes a preliminary prospectus and a prospectus in final form.  |
| Prospectus form   | 95. | Without limiting the obligations of an issuer under subsection 84(2) of the Act, a preliminary prospectus and a prospectus in final form –<br>(a) shall be prepared in accordance with Form 16 of Schedule 2;<br>(b) shall contain such financial statements, reports and other documents as are required under the Act or as prescribed by the Commission; and<br>(c) may contain, any information required under any other applicable statute.  |
| Materials to be filed with preliminary prospectus                                   | 96. | An issuer that files a preliminary prospectus with the Commission shall file and deliver the documents required by section 1 of Appendix B to Form 17 of Schedule 2.  |
| Materials to be filed with final prospectus or made available for public inspection | 97. | (1) An issuer that files a prospectus in final form with the Commission shall file the documents required by section 2 of Appendix B to Form 16.<br>(2) At least two business days before filing of the prospectus in final form, the issuer shall deliver to the Commission the required copies of the prospectus marked to show all changes from the preliminary prospectus.<br>(3) An issuer that files a prospectus in final form shall make the documents set out in section 4 of Appendix B to Form 16 available for public inspection during normal business hours at a place in The Bahamas throughout the period of distribution of the securities under the prospectus. |
| Advertisements in connection with a distribution                                    | 98. | (1) Subject to any guideline of the Commission, for the purposes of section 86(1)(a) of the Act, during the period between the issue of the receipt for the preliminary prospectus and the receipt for the prospectus it is permissible to –<br>(a) distribute any communication to the public regarding the proposed distribution –  |

- 
- (i) identifying the issuer and security proposed to be issued;
  - (ii) stating the security's price, if then determined;
  - (iii) stating the name and address of a person from whom purchases of the security may be made;
  - (iv) stating the name and address of a person from whom a preliminary prospectus may be obtained, including the web address of the issuer where a copy of the prospectus can be retrieved and printed in readable form, if any; and
  - (v) containing only such further information as may be permitted or required by any guideline of the Commission;
- (b) distribute a preliminary prospectus; and
- (c) solicit expressions of interest from a prospective purchaser if, prior to such solicitation or immediately after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to the person.
- Material given on distribution
- (2) From the date of the delivery by the Commission of a receipt for a preliminary prospectus relating to a security, a vendor or other person participating in a distribution on behalf of the vendor, shall not distribute any printed or written material or electronically provide or make available any material respecting the security that is not permitted by subsection (1).
- Marketing restrictions for prospectus offerings
99. No person shall, in connection with a distribution of security by means of a prospectus, make any oral or written representation or disclose any fact to any person with respect to the issuer or the securities being distributed under the prospectus which is not contained in the prospectus for which a receipt has been issued by the Commission.
- Prospectus certificates
- 100.
- (1) For the purposes of section 90 of the Act, every prospectus shall contain a certificate signed by –
- (a) the chief executive officer and the chief financial officer, or the persons acting in such capacities for the issuer, whatever their titles;
  - (b) on behalf of the board of directors of the issuer, by any two directors of the issuer duly authorized to sign, other than the persons referred to in paragraph (a);
  - (c) the selling security holder; and
  - (d) any person who is a promoter of the issuer.
- (2) The certificate required by subsection (1) shall be in the following form –
- "The foregoing constitutes full, true and plain disclosure of all material information relating to the issuer and the securities distributed by this prospectus and contains no misrepresentation that is likely to affect the value or the market price of the securities being offered."*
- (3) If there is an underwriter, the prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters that, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or selling security holder –
- "To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material information relating to the issuer and the securities distributed by this prospectus and contains no misrepresentation that is likely to affect the value or the market price of the securities being offered."*

- 
- |                     |      |   |
|---------------------|------|---|
| Expert opinions     | 101. | The Commission may require that a report, valuation, statement or opinion from a lawyer, auditor, accountant, engineer, appraiser or any other expert must be included in a prospectus or provided to the Commission.   |
| Experts' consents   | 102. | <p>(1) If any lawyer, auditor, accountant, engineer or appraiser, or any other person whose profession or business gives authority to a statement made by that person, is named in a prospectus as having –</p> <ul style="list-style-type: none"><li>(a) prepared or certified any part of the prospectus;</li><li>(b) opined on financial statements from which selected information included in the prospectus has been derived and which audit opinion is referred to in the prospectus; or</li><li>(c) prepared or certified a report or valuation referred to in the prospectus, the issuer shall file, no later than the time the prospectus is filed, the written consent of the person to being named and to the use of that report, valuation, statement or opinion.</li></ul> <p>(2) The consent referred to in subsection (1) shall –</p> <ul style="list-style-type: none"><li>(a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion; and</li><li>(b) contain a statement that the person referred to in subsection (1) –<ul style="list-style-type: none"><li>(i) has read the prospectus; and</li><li>(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are –<ul style="list-style-type: none"><li>(A) derived from the report, valuation, statement or opinion; or</li><li>(B) within the knowledge of the person as a result of the services performed by that person in connection with the report, financial statements, valuation, statement or opinion.</li></ul></li></ul></li></ul> <p>(3) In addition to any other requirement of this regulation, the consent of an auditor or accountant shall also state –</p> <ul style="list-style-type: none"><li>(a) the dates of the financial statements on which the report of the person is made; and</li><li>(b) that the person has no reason to believe that there are any misrepresentations in the information contained in the prospectus that are –<ul style="list-style-type: none"><li>(i) derived from the financial statements on which the person has reported; or</li><li>(ii) within the knowledge of the person as a result of the audit of the financial statements.</li></ul></li></ul> <p>(4) Subsection (1) does not apply to an approved rating organization that issues a rating of the securities being offered under a prospectus.</p> |
| Statement of rights | 103. | <p>Every prospectus shall contain a statement of rights given to a purchaser under the Act in the following form:</p> <p><i>“The Securities Industry Act, 200[7], as amended, and the Regulations made under the Act, provide a purchaser with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt of a prospectus and any amendment. The securities legislation further provides a purchaser with remedies for rescission and damages if the prospectus or any amendment contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities</i></p>   |

*legislation. The purchaser should refer to the Securities Industry Act, 200[7], as amended, and the regulations made under that Act, for the particulars of these rights or consult with a legal adviser.”*

Reasons the  
Commission shall  
refuse receipt

104. The Commission shall refuse to issue a receipt for a prospectus if it appears that –
- (a) the prospectus or any other document filed with the prospectus –
    - (i) contains a misrepresentation;
    - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;
    - (iii) fails to disclose any material fact which may be required under this Act or the regulations; or
    - (iv) fails to comply with any requirement of the Act;
  - (b) the distribution in connection with which the prospectus is filed is deceptive;
  - (c) an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;
  - (d) the past conduct of the issuer, or any director, senior officer, promoter, or controller, or any other person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or policies, suggests to the Commission that the business or affairs of the issuer are likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;
  - (e) the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;
  - (f) an expert who has prepared or certified a part of the prospectus or report used in connection with it, or who has filed a consent with the Commission, is not acceptable to the Commission;
  - (g) the issuer is in default in filing or delivering any document with the Commission required under the Act, or under any law under which it is incorporated or organized; or
  - (h) an underwriter named in the prospectus and that is participating in the distribution in The Bahamas is not registered under the Act as a registered firm.

Prospectus  
amendments

105. (1) An amendment to a preliminary prospectus or a prospectus shall consist of either –
- (a) an amendment in the form of an addendum that does not fully restate the text of the prospectus; or
  - (b) a complete restatement of the prospectus, as amended.
- (2) An amendment to a preliminary prospectus or a prospectus shall contain the certificates required by regulation 100 and, in the case of an amendment that does not fully restate the text of the preliminary prospectus or prospectus, shall be numbered and dated as follows –
- “Amendment No. [insert amendment number] dated [insert date of amendment] to [Preliminary] Prospectus dated [insert date of preliminary prospectus or prospectus].”*
- (3) An issuer that files an amendment to a preliminary prospectus or prospectus shall file or deliver to the Commission the documents set out in section 3 of Appendix B to Form 16 of Schedule 2.
- (4) Where an amendment is required to be filed, the issuer shall make immediate public disclosure of that fact.

- 
- |                          |      |  |
|--------------------------|------|--|
| Distribution list        | 106. | Every registered firm participating in the distribution of a security to which section 84 of the Act applies, and if there is no registered firm, the vendor, shall maintain a record of the names and addresses of all persons to whom the preliminary prospectus has been forwarded.   |
| Withdrawal from purchase | 107. | <p>(1) An agreement of purchase and sale for a security to which section 84 of the Act applies is not binding upon the purchaser, if the vendor or the registered firm from whom the purchaser purchased the security receives written notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the prospectus and any amendment to the prospectus.</p> <p>(2) For the purposes of subsection (1) –</p> <p>(a) the receipt of the notice referred to in subsection (1) by a registered firm who acted as agent of the vendor with respect to the sale of the security shall be deemed to be receipt by the vendor as of the date on which the registered firm received such notice;</p> <p>(b) where the prospectus or an amendment to the prospectus is sent by prepaid mail, it shall be deemed to have been received in the ordinary course of mail by the person to whom it was addressed;</p> <p>(c) the receipt of the prospectus or an amendment to the prospectus by a licensed registered firm who is acting solely as agent of the purchaser shall be deemed to be receipt by the purchaser; and</p> <p>(d) a registered firm shall not be considered to be acting as agent of the purchaser unless the registered firm is acting solely as agent of the purchaser and receives no compensation from or on behalf of the vendor with respect to the purchase and sale.</p> <p>(3) The onus of proving that the time for giving notice under subsection (1) has expired is upon the registered firm from whom the purchaser has agreed to purchase the security, or if there is no registered firm, on the vendor.</p> |
| Escrow requirements      | 108. | <p>(1) Any underwriter that is distributing an issuer's securities, other than on a firm commitment basis, or any issuer that is distributing its own securities shall escrow any proceeds from such offering with a financial institution which has been approved by the Commission for this purpose.</p> <p>(2) An underwriter may escrow such proceeds in a separate bank account in trust for the issuer the securities which are being offered.</p> <p>(3) The proceeds of the distribution shall remain in the escrow or trust account until –</p> <p>(a) the subscription period ends; or</p> <p>(b) the minimum subscription amount or other offering goals have been satisfied.</p>   |

#### **Division 2 – Exempt Offerings**

- |                                  |      |  |
|----------------------------------|------|--|
| Offering to accredited investors | 109. | <p>(1) The requirement to file a prospectus under section 84 of the Act does not apply to a distribution of securities of an issuer, if –</p> <p>(a) each purchaser –</p> <p>(i) is an accredited investor;</p> <p>(ii) has been provided with an offering memorandum and such other information as required by regulation 112; and</p> <p>(iii) has provided the vendor with an affidavit attesting to the investor's status as an accredited investor and acknowledging that the securities purchased are subject to restrictions on resale; and</p> |
|----------------------------------|------|--|

- 
- (b) no advertisement or general public solicitation by any of the issuer, the selling security holder, any of their agents or any registered firm takes place.
- (2) The exemption in subsection (1) is not available if the issuer –
- (a) is an investment fund, as that term is defined in the Investment Funds Act; or
- (b) is not an operating company.
- (3) The affidavit required by subparagraph (1)(a)(iii) shall be retained by the vendor.
- Exemptions not available 110. The exemption under regulation 109 shall not be available for any vendor, if such vendor, any of its predecessors, affiliates, directors, senior officers, or significant security holders have been convicted of any indictable offence or have been the subject of any regulatory action either in The Bahamas or any foreign jurisdiction.
- Rights offerings 111. (1) The requirement to file a prospectus under section 84 of the Act does not apply to a distribution of securities by an issuer, in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue, and issue of securities on the exercise of the right, if the issuer –
- (a) files with the Commission a notice and the disclosure documents under regulation 112 that are to be sent to its security holders and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; and
- (b) sends to its security holders the disclosure documents and any other information relating to the securities that is satisfactory to the Commission.
- (2) The prospectus exemption is not available to an issuer if, after the exercise of the rights, there would be an increase of more than 25 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class.
- (3) The calculation of the increase in the securities issued on exercise of the rights in subsection (2) is to be carried out assuming the exercise of all rights issued under this rights offering and the exercise of any other rights issued by the issuer under the rights offering prospectus exemption during the 12 months immediately before the acceptance date of this rights offering.
- Offering memorandum and other disclosure documents 112. Each purchaser under a distribution described in regulations 109 and 111 must be provided at the time of the purchase with –
- (a) an offering memorandum, in English, setting out a description of the issuer’s business, the intended use of the proceeds of the transaction, the risk factors associated with the issuer and its securities, and any other information required by the Commission;
- (b) the latest audited financial statements of the issuer;
- (c) the latest available unaudited financial statements, if any; and
- (d) any other information or documents as required by the Commission.
- Sale by selling security holder on registered marketplace 113. (1) Subject to subsection (2), the requirement to file a prospectus under section 84 of the Act does not apply to a distribution by a control block person if –
- (a) the distribution is conducted by or through a registered firm;
- (b) the issuer of the security being distributed has been a public issuer for at least twelve months immediately preceding the date of commencement of the distribution;
- (c) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registered firm;
- (d) the distribution takes place through the facilities of a securities exchange;
- (e) at the time of the distribution, the selling security holder does not have

- 
- knowledge or possession of any undisclosed material information in respect of the public issuer;
- (f) if the securities being distributed have been acquired by the selling security holder under a prospectus exemption, at least six months have elapsed from the date of the initial exempt distribution; and
  - (g) notice of the intention to distribute securities in a trading transaction is disclosed by press release and filed with the Commission no less than three business days and no more than ten business days prior to the first sale by the selling security holder.
- (2) The exemption in subsection (1) is not available unless –
- (a) the first sale takes place no less than three business days and no more than ten business days after the date of issue of the press release required by paragraph (1)(g); and
  - (b) the final sale takes place no later than the sixtieth day after the date of issue of the press release required by paragraph (1)(g).
- Sales to employees      114.      The requirement to file a prospectus under section 84 of the Act does not apply to a distribution by an issuer of securities of its own issue or that of an affiliate to its directors, officers or employees or the directors, officers or employees of an affiliate if –
- (a) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
  - (b) no commission or other remuneration is paid or given for the distribution except for professional services or for services other than the solicitation of employees.
- Approved foreign issuer distributions      115.      (1) For the purposes of section 94 of the Act, to be an "approved foreign issuer" an issuer must meet –
- (a) all of the following criteria –
    - (i) be a public issuer (or equivalent status) in a recognized foreign jurisdiction for 3 years;
    - (ii) have securities listed on a recognized foreign securities exchange;
    - (iii) be subject to foreign disclosure requirements; and
    - (iv) have minimum specified market capitalization of \$100 million; or
  - (b) such alternative criteria as may be prescribed.
- (2) The prospectus exemption contained in section 94 of the Act shall only be available to an approved foreign issuer that –
- (a) files with the Commission the documents set out in section 1 of Schedule 3 at least five business days before it proposes to distribute its securities in The Bahamas; and
  - (b) provides to each purchaser in The Bahamas the documents set out in section 2 of Schedule 3, no later than two business days before the date the purchaser enters into an agreement to purchase the securities.
- Notices required to be filed with Commission on exempt sales      116.      (1) No later than five days prior to the first sale of securities using any exemption set out in this Division, the issuer shall file the information required by Form 18 of Schedule 2, providing the required details of the offering.
- (2) The issuer shall file a report with the Commission within five days after any subsequent sale of securities under the same exemption.

- Resale restrictions      117.      (1) The first trade in securities previously acquired pursuant to an exemption contained in regulations 109 and 111, other than a further trade under an exemption in the Act or Regulations, is deemed to be a distribution, unless –
- (a) the issuer is and has been a public issuer for the twelve months immediately preceding the date of the trade;
  - (b) the trade is not a control block distribution;
  - (c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
  - (d) no extraordinary commission or consideration is paid to a person in respect of the trade;
  - (e) if the vendor is an insider of the public issuer, such seller has no reasonable grounds to believe that the public issuer is in default of securities laws; and
  - (f) at least six months have elapsed from the date of the initial distribution.
- (2) A person who purchases a security pursuant to an exemption from the prospectus requirement at a time when the condition set out in paragraph (1)(f) has not been satisfied shall be in the same position as the vendor for the remainder of the period specified in paragraph (1)(f).
- (3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition set out in paragraph (1)(f) has not been satisfied in respect of the convertible or exchangeable security, a person who takes such security distributed on conversion or exchange shall be in the same position for the remainder of the period specified in such paragraph as if such conversion or exchange had not occurred.

### **Division 3 – General**

- Commission may require preparation and filing of supplementary information      118.      The Commission shall have the authority to require the vendor or other involved party to provide additional information, reports, materials or attachments in connection with a distribution or exempt distribution and may also require that the prospectus, preliminary prospectus or other disclosure document contain additional information or attachments which are not specified in these Regulations.
- Prohibition      119.      No person shall distribute written or printed material in respect of a security, whether in the course of a distribution to the public or otherwise, except in accordance with these Regulations or any exemption granted by the Commission.

## **Part IX**

### **Continuing Disclosure Obligations of Public Issuers**

#### **Division 1 – Routine Reporting**

- Annual financial statements      120.      (1) For purposes of section 101(1) of the Act, the audited annual financial statements of a public issuer shall be filed with the Commission by the 90<sup>th</sup> day after the end of its financial year.
- (2) The financial statements required by subsection (1) shall include -
- (a) a statement of comprehensive income, a statement of changes in equity, and a cash flow statement for the applicable periods referred to in subsection (3); and
  - (b) a statement of financial position as at the end of the applicable periods referred to in subsection (3).
- (3) The applicable periods are -
- (a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the public issuer has

- 
- completed a financial year, the last financial year, as the case may be; and
- (b) the period covered by the financial year next preceding the last financial year, if any.
- (4) Where a change has been made in the ending date of a financial year of a public issuer, the public issuer shall provide the Commission with a notice of the change and the reasons for it no later than the 10<sup>th</sup> day after the decision is made to change the date.
- (5) The annual financial statements of a public issuer shall be approved –
- (a) if the public issuer is organized or constituted as a company, by the directors of the public issuer, and the approval shall be evidenced by the signatures of two directors duly authorized to signify the approval; and
- (b) if the public issuer is organized or constituted other than as a company, by any two persons authorized to sign on behalf of the public issuer, and the approval shall be evidenced by the signatures of two such persons duly authorized to signify the approval.
- Interim financial statements      121.      (1) For purposes of section 101(3) of the Act, the interim financial statements of a public issuer shall be filed with the Commission within 45 days of the end of the first, second, third and fourth quarter interim period to which they relate.
- (2) The interim financial statements of a public issuer shall include –
- (a) a statement of comprehensive income, a statement of changes in equity, and a cash flow statement for the most recent financial year-to-date period for which the interim financial statements are prepared and comparative financial information for the corresponding period in the immediately preceding financial year;
- (b) a statement of financial position as at the date to which the interim financial statements are prepared and a comparative statement of financial position as at the end of the corresponding period in the immediately preceding financial year.
- (3) The interim financial statements shall include notes.
- (4) The directors of a public issuer shall review its interim financial statements prior to being filed with the Commission.
- (5) The directors of a public issuer may permit the audit committee of the board of directors to conduct the review required by paragraph (4).
- Annual report      122.      (1) For purposes of section 101(4)(a) of the Act, an annual report of a public issuer shall be filed with the Commission by the 90<sup>th</sup> day after the end of each financial year.
- (2) The annual report of the public issuer shall contain the information required by Form 18 of Schedule 2.
- Management discussion and analysis      123.      (1) For purposes of section 101(4)(b) of the Act, a public issuer is required to prepare and file a management discussion and analysis concurrently with the filing of the annual financial statements of the public issuer.
- (2) The management discussion and analysis of a public issuer shall contain the information required by Form 19 of Schedule 2.
- (3) Notwithstanding subsection (2), a management discussion and analysis of a public issuer may discuss such other matters which the public issuer reasonably believes are necessary for a full, true and complete understanding of the financial results, financial position and future prospects of the public issuer.
- (4) The management discussion and analysis that a reporting issuer is required to file under subsection (1) must be approved by the board of directors before being filed.

- (5) For purposes of section 102(1)(d) of the Act, a public issuer is required send its annual management discussion and analysis to all security holders to whom it sends its annual audited financial statements.

### **Division 2 – Material Change Reporting**

- Reporting to the Commission 124. (1) The issuer shall deliver to the Commission a copy of the press release issued in connection with a material change immediately upon its release to the media.
- (2) For the purposes of paragraph 99(1)(b) of the Act, the prescribed report is a report containing the information set out in Form 20 of Schedule 2.

### **Division 3 – Proxies**

- Definitions 125. In this Division –
- “dissident” means any person other than a person who is part of the management of the public issuer or its affiliates and associates, by or on behalf of whom a solicitation is made, and includes a committee or group that solicits proxies, any members of the committee or group, and any person whether or not named as a member, who acting alone or with one or more other persons, directly or indirectly, engages in organizing, directing or financing any such committee or group, except –
- (a) a person who contributes not more than \$250 and who does not otherwise participate in the solicitation;
  - (b) a bank, other lending institution or a registered firm that in the ordinary course of business lends money or executes orders for the purchase or sale of shares and that does not otherwise participate in the solicitation;
  - (c) a person who is employed to solicit and whose activities are limited to the performance of duties in the course of such employment;
  - (d) a person who only sends soliciting material or performs other ministerial or clerical duties;
  - (e) a person employed in the capacity of lawyer, accountant, advertiser, public relations or financial adviser and whose activities are limited to the performance of duties in the course of such employment; and
  - (f) an officer, director or employee of a person by or on behalf of whom a solicitation is made, if he or she does not directly participate in the solicitation.

- Proxy Statements 126. (1) For the purposes of section 103 of the Act –
- (a) the prescribed form of management proxy statement is Form 21 of Schedule 2; and
  - (b) the prescribed form of dissident proxy statement is Form 22 of Schedule 2.
- (2) A person shall not solicit proxies unless –
- (a) in the case of solicitation by or on behalf of the management of the public issuer, a management proxy statement accompanies the notice of the meeting; or
  - (b) in the case of any other solicitation, a dissident proxy statement stating the purpose of the solicitation,
- is sent to the auditor of the public issuer, to each security holder whose proxy is solicited, to each director, and if paragraph (b) applies, to the public issuer.

- Form of Proxy 127. (1) A form of proxy required by subsection 103(2) of the Act to be sent to security holders and to be filed with the Commission shall indicate in bold-face type –
- (a) the meeting at which it is to be used; and
  - (b) whether the proxy is solicited by or on behalf of the management of the public issuer.

- 
- (2) A form of proxy shall contain a blank space for a date and shall state that, if it is not dated in the space, it is deemed to bear the date on which it is mailed by the person making the solicitation.
- (3) A form of proxy, an accompanying management proxy statement or a dissident proxy statement shall set out, in bold-face type, that the security holder may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on their behalf at the meeting, and shall contain instructions on the manner in which the security holder may make the appointment.
- (4) If a form of proxy shows a person as designated proxyholder, it shall provide a means for the security holder to designate some other person as proxyholder.
- (5) A form of proxy shall provide a means for the security holder to specify that the shares registered in the security holder's name shall be voted for or against each matter or group of related matters identified in the notice of meeting, management proxy statement, dissident proxy statement or a security holder proposal under regulation 129, other than the appointment of an auditor, the remuneration of the auditor and the election of directors.
- (6) A form of proxy may confer authority as to a matter for which a choice is not specified by the security holder in accordance with subsection (5) if the form of proxy, management proxy statement or dissident proxy statement states in bold-face type how the proxyholder will vote the shares in respect of each matter or group of related matters.
- (7) A form of proxy shall provide a means for the security holder to specify that the shares registered in the security holder's name shall be voted or withheld from voting in respect of the appointment of an auditor, the remuneration of the auditor or the election of directors.
- (8) A form of proxy, management proxy statement or dissident proxy statement shall state that the shares represented by the proxy will be voted or withheld from voting in accordance with the instructions of the security holder on any ballot that may be called for and that, if the security holder specifies a choice with respect to any matter to be acted upon, the shares shall be voted accordingly.
- Discretionary authority – form of proxy 128. (1) Discretionary authority may be conferred by way of a form of proxy in respect of amendments or variations to matters identified in the notice of meeting or other matters that may properly come before the meeting where –
- (a) the person by or on whose behalf the solicitation is made is not aware within a reasonable time before the solicitation that the amendments or other matters are to be presented for action at the meeting; and
- (b) the form of proxy, management proxy statement or dissident proxy statement states specifically that it confers such discretionary authority.
- (2) Discretionary authority to vote shall not be conferred for –
- (a) the appointment of an auditor or the election of a director unless a good faith proposed nominee for the appointment or election is named in the form of proxy, a management proxy statement, a dissident proxy statement or a security holder proposal under regulation 129; or
- (b) any meeting other than the meeting specified in the notice of meeting or any adjournment of that meeting.
- Security holder proposals 129. (1) A holder of securities that are entitled to be voted at a meeting of security holders may –
- (a) submit to the public issuer notice of a proposal; and
- (a) discuss at the meeting any matter about which the security holder would have been entitled to submit a proposal.

- (2) If a public issuer receives notice of a proposal and the public issuer solicits proxies, it shall set out the proposal in the management proxy statement required by regulation 126 or attach the proposal to the proxy statement.
  - (3) If so requested by the person who submits notice of a proposal, the public issuer shall include in the management proxy statement, or attach to it, a statement in support of the proposal from the person submitting the proposal and the name and address of that person.
  - (4) The proposal referred to in subsection (2) and the statement referred to in subsection (3) shall together not exceed any maximum number of words prescribed by the Commission.
  - (5) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five per cent of the shares or five per cent of the shares of a class or series of shares of the public issuer entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations being made at a meeting of security holders.
  - (6) A public issuer is not required to comply with subsections (2) and (3) where –
    - (a) the proposal is not submitted to the public issuer at least sixty days before the anniversary date of the last annual meeting, if the matter is proposed to be raised at an annual meeting, or at least sixty days before a meeting other than the annual meeting, if the matter is proposed to be raised at a meeting other than the annual meeting;
    - (b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the public issuer or its directors, officers or security holders;
    - (c) it clearly appears that the proposal does not relate in a significant way to the business or affairs of the public issuer; or
    - (d) substantially the same proposal was submitted to security holders in a management proxy statement or a dissident proxy statement relating to a meeting of security holders held within two years preceding the receipt of the security holder's request and the proposal was defeated.
  - (7) No public issuer or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this regulation.
  - (8) If a public issuer refuses to include a proposal in a management proxy statement, the public issuer shall, within 10 days after receiving the proposal, send to the person who submitted the proposal notice of its intention to omit the proposal from the management proxy statement and the reasons for the refusal.
  - (9) On the application of a person submitting a proposal who claims to be aggrieved by a public issuer's refusal under subsection (8), the Commission may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.
  - (10) The public issuer or any person aggrieved by a proposal may apply to the Commission for an order permitting the public issuer to omit the proposal from the management proxy statement, and the Commission, if it is satisfied that subsection (6) applies, may make such order as it thinks fit.
  - (11) In this regulation, "proposal" means a matter that a holder of securities entitled to be voted proposes to raise at a meeting of security holders.
- Proxy Statements – General
130. (1) The information in a management proxy statement or a dissident proxy statement shall be given as of a specified date not more than thirty days prior to the date upon which the proxy statement is first sent to any of the security holders of the public issuer.

- 
- (2) Where practicable and appropriate, the information required by Forms 21 and 22 of Schedule 2 shall be presented in table form.
- (3) All amounts required by Forms 21 and 22 of Schedule 2 shall be stated in figures.
- (4) Information required by more than one applicable item need not be repeated.
- (5) No statement need be made in response to any item that is inapplicable and negative answers to any item may be omitted.
- (6) A proxy statement may omit any information contained in any other proxy statement, notice of meeting or form of proxy sent to the persons whose proxies are solicited in connection with the same meeting if reference is made to the particular document containing the information.
- Requirement to file draft copies of proxy materials 131. (1) If the Commission gives notice that it intends to require the filing of draft copies of proxy-related materials by a public issuer under subsection 103(5) of the Act, the public issuer shall file with the Commission the required copies of all materials proposed to be sent to security holders in connection with a meeting not less than the number of days set out in the Commission notice prior to the proposed date that such materials are to be sent to its security holders.
- (2) If the Commission takes no action within the specified notice period following the date the materials were filed with the Commission under subsection (1), the materials may be sent to security holders by the public issuer.
- (3) The Commission may, by notice, require dissidents to file draft copies of all proxy related materials that the dissidents propose to send to security holders under section 103 of the Act and such notice shall specify the materials that must be filed with the Commission and the required procedure for review.
- Commission authority 132. The Commission may issue an order prohibiting a public issuer from holding a scheduled meeting of security holders or from transacting any business at such a meeting, even after a notice of meeting has been sent.

**Part X**  
**Misconduct**

- Application 133. This Part also applies to investment funds and parties related to investment funds.
- Policies and procedures to prevent insider trading 134. Any market participant that may, in the course of that person's business, have access to material information about an issuer or its securities shall establish and maintain policies and procedures to prevent the use or transmission of that information in a manner contrary to law.
- Exemption to prohibited representations 135. (1) The prohibition in subsection 118(1) of the Act regarding a representation that any person will resell or repurchase a security, shall not apply to a representation that is contained in an enforceable written agreement and the person to whom the representation is made is an accredited investor.
- (2) The prohibition in subsection 118(3) of the Act regarding a representation regarding listing of a security on a securities exchange, shall not apply if the securities exchange has granted approval to the listing, conditional or otherwise, or has consented to, or indicated that it does not object to the listing representation.

**Part XI**  
**Reporting by Securityholders of Public Issuers**

- Insider reports 136. The report required to be filed with the Commission under section 128 of the Act shall be –
- (a) made in Form 23 of Schedule 2; and

(b) filed with the Commission and sent to the public issuer no later than the fifth day after the date of the event triggering the obligation to file a report under section 128 of the Act.

- |   |      |  |
|---|------|--|
| Register of security holders of public issuer | 137. | <ol style="list-style-type: none"><li>(1) A public issuer shall keep an up to date register of its directors, officers and significant security holders that shall contain details of all holdings of and transactions in the securities of the public issuer carried out by those persons, including all information required by section 128 of the Act.</li><li>(2) The register shall be kept at the issuer's registered office or at the place where the issuer's register of security holders is kept and be open to inspection for a reasonable period each business day.</li><li>(3) Inspection of the register shall be permitted –<ol style="list-style-type: none"><li>(a) without charge to any security holder of the issuer; and</li><li>(b) to any other person by payment of such sum as may be prescribed.</li></ol></li><li>(4) The register shall be produced at the commencement of the issuer's annual general meeting and be kept open and accessible during the meeting to any person attending the meeting.</li><li>(5) Any person may require a copy of the whole or any part of the register on payment of such sum as may be prescribed.</li></ol> |
|---|------|--|

## **Part XII**

### **Civil Liability for Misrepresentations**

- |   |      |   |
|---|------|---|
| Promoter liability for misrepresentation in a prospectus. | 138. | For the purposes of section 143(1)(d) of the Act, the prescribed period is two years. |
|---|------|---|

## **Part XIII**

### **General Provisions**

- |   |      |   |
|---|------|---|
| Application                             | 139. | This Part also applies to investment funds and parties related to investment funds.   |
| Rulemaking                              | 140. | <ol style="list-style-type: none"><li>(1) A rule, or any amendment to a rule, shall be effective only if the Commission has received the written approval of the Minister to that rule or amendment.</li><li>(2) A rule, or any amendment to a rule, shall be effective on the date it is published in the Gazette or such later date as may be specified in the rule or amendment.</li></ol>   |
| Recognized foreign jurisdictions        | 141. | <ol style="list-style-type: none"><li>(1) Pursuant to section 164(a) of the Act, the foreign jurisdictions set out in Schedule 4 are recognised.</li><li>(2) Pursuant to section 164(b) of the Act, the foreign securities exchanges set out in Schedule 4 are recognised.</li></ol>  |
| Recognized foreign securities exchanges |      |   |
| Official Register - contents            | 142. | <ol style="list-style-type: none"><li>(1) The Commission's Official Register shall contain information on current and former –<ol style="list-style-type: none"><li>(a) registrants;</li><li>(b) approved auditors;</li><li>(c) public issuers;</li><li>(d) persons registered under Part V of the Act; and</li><li>(e) investment funds and parties related to investment funds regulated by the Investment Funds Act, 2003.</li></ol></li><li>(2) The information required under subsection (1) shall include –<ol style="list-style-type: none"><li>(a) information which was filed with the Commission;</li></ol></li></ol> |

- (b) final decisions of any disciplinary or criminal proceedings by any regulatory or judicial authority, domestic or foreign; and
  - (c) orders arising from any bankruptcy, insolvency or similar filing, whether domestic or foreign.
- (3) The Official Register may contain any other information that the Commission deems necessary or appropriate.

**Part XIV**  
**Transition**

Definition	143.	In this Part, the "effective date" is the date on which the Act comes into force.
Transition provisions – general	144.	<p>(1) Any licence, authority, approval or exemption granted by the Commission which is in force immediately before the effective date –</p> <ul style="list-style-type: none"><li>(a) shall be deemed to continue as if granted by the Commission or the Executive Director under the Act; and</li><li>(b) in the case of a grant for a specific period, shall be deemed to remain in force for so much of that period as falls after the effective date,</li></ul> <p>until the day that is twelve months following the effective date and thereafter shall cease to be in effect.</p> <p>(2) The obligation set out in regulation 51 to provide an auditor's report on a registered firm's operations shall apply to each financial year of the registered firm beginning on or after the effective date.</p>
Transition provisions – Part IX application of continuous disclosure requirements	145.	<p>(1) The 90 day deadline, set out in regulation 120(1), governing the date by which a public issuer is required to file its audited annual financial statements, shall apply for financial years beginning on or after the effective date.</p> <p>(2) The 45 day deadline, set out in regulation 121(1), governing the date by which a public issuer is required to file its interim financial statements, shall apply for financial years beginning on or after the day that is twelve months after the effective date.</p> <p>(3) The 90 day deadline, set out in regulation 122(1), governing the date by which a public issuer is required to file its annual report, shall be read as if the deadline were 120 days for the financial year of the public issuer that began before and ended after the effective date.</p> <p>(4) The obligations regarding preparing and filing management discussion and analysis shall apply for financial years beginning on or after the effective date.</p> <p>(5) The proxy solicitation and proxy statement requirements in Division III of Part IX apply to security holder meetings that take place from and after the day that is six months after the effective date.</p>
Extension of time	146.	The Commission may, at its discretion, grant extensions to any time period set out in this Part.