

Session No. 2006

Bill No. 46

Hon. Vincent Peet
or a Member of Parliament
10th January, 2007

**AN ACT TO AMEND THE SECURITIES INDUSTRY ACT
TO ENABLE THE COMMISSION TO COOPERATE
WITH OTHER FINANCIAL REGULATORS**

Enacted by the Parliament of The Bahamas.

Short title 1.(1) This Act which amends the Security Industry Act may be cited as
and commence- the Securities Industry (Amendment) Act, 2007.
ment. (2) This Act shall be deemed to have come into force on the 2nd
Ch. 363. January, 2007.

Insertion of 2. The principal Act is amended by the insertion immediately
new sections following section 34 of the following as new sections 34A and 34B -

34A and 34B “**Information** 34A.(1) The Commission may
into the **from** require any financial institution as
principal **financial** designated under the Financial
Act. **institutions.** Transactions Reporting Act, or any
Ch. 368. director, officer or servant of such
institution, or a person regulated under
No. 20 of 2003. this Act or the Investment Funds Act, or

any connected person to supply to the Commission in such form and within such time as the Commission may determine

such information as the Commission considers necessary to enable the Commission to carry out its functions under this Act.

(2) A person or institution under subsection (1) shall upon request or an inquiry -

- (i) provide the Commission with specified information or information of a specified description with respect to any matter relevant to the request or inquiry;

(ii) produce specified documents or documents of a specified description relevant to the request or inquiry ;
or

(iii) give to the Commission such assistance in connection with the request or inquiry as the Commission may specify in writing.

(3) Where a person fails to comply with a requirement under subsections (1) or (2) within three days

from the date of the requirement, or such longer period as the Commission may

permit, the Commission may apply to a Stipendiary and Circuit Magistrate for an order requiring the person to comply with the requirement.

(4) Where, in connection

with

a requirement under subsections (1) or

(2),

the Commission considers it necessary to

examine a person on oath, the

Commission may apply to a Stipendiary

and Circuit Magistrate to have that

person examined by the court and to

have the results of that examination sent

to the Commission.

(5) The court shall process

an application under subsection (4)

within seven days of its receipt and shall

send the result of the examination to the

Commission within fourteen days of the

examination.

(6) Where documents are produced pursuant to subsections (1) or (2) the Commission may take copies of them or extracts from them.

(7) A person shall not be required under this section to disclose information or to produce a document

which

he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(8) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(9) In this section “document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, the power to require its

production includes power to require the production of a copy of it in legible and intelligible form.

(10) For the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him -

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the advisor; or
- (c) by any person -

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings.

(11) No information or other matter shall be treated as coming to a professional legal advisor in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(12) For the purposes of subsections (1) and (2) a person is connected with a person regulated under this Act or the Investment Funds Act (the

“regulated person”) if he is or has at any relevant time been -

(i) a member of the regulated person’s group;

(ii) a controller of the regulated person;

(iii) any other member of a partnership of which the regulated person is a member; or

(iv) a member, officer, manager, employee or agent of the regulated person.

(13) A person who without reasonable cause -

(a) fails to comply with a requirement of the Commission under

subsection (1) or

(2);

(b) with intent to avoid the

provisions of

subsections (1) or

(2) destroys,

mutilates, defaces,

hides or removes a

document; or

(c) wilfully obstructs an

inquiry by the

Commission made

in accordance with

subsections (1) or

(2),

commits an offence and shall be liable

on conviction thereof to a fine not

exceeding one hundred thousand dollars

and if the offence of which he is

convicted is continued after conviction

he commits a further offence and is

liable to a fine of ten thousand dollars for every day on which the offence is continued.

(14) Where -

- (a) an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in

any such capacity,
he, as well as the
body corporate,
commits that
offence and is
liable to be
proceeded against
and punished
accordingly;

- (b) the affairs of a body
corporate are
managed by its
members, paragraph
(a) shall apply in
relation to the acts
and defaults of a
member in
connection with his
functions of
management as if he
were a director of

the body corporate.

**Assistance
in obtaining
information.**

34B.(1) The Commission may -

- (a) seek the assistance of the Commissioner of Police in the exercise of its powers under this law; and
- (b) authorise a competent person to exercise any of those powers.

(2) No such assistance shall be sought or authority granted under subsection (1) except for the purpose of investigating -

- (a) the affairs, or any aspect of the affairs, of a person specified by the Commission;

or

(b) a subject matter specified by the Commission, being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Commission.

(3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.

(4) Where the Commission seeks assistance or grants an authority

under subsection (1), the assistance or authority shall be provided or executed in such manner as the Commission may determine; and where the Commission grants such an authority to a person, he shall make a report to the Commission in such manner as the Commission may require, on the exercise of that authority and the results of exercising it.”.

**Amends
section 91
of the
principal
Act.**

3. Subsection (8) of section 91 of the principal Act is repealed and replaced as follows-

“ (8) The Commission may cooperate with any other regulatory authority in the Bahamas, including, by sharing information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the functions of such regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.”.

OBJECTS & REASONS

This Bill seeks to amend the Securities Industry Act, Ch. 363.

Clause 1 of the Bill provides for the short title and the commencement.

Clause 2 of the Bill empowers the Commission to gather information from financial institutions to enable the Commission to carry out its domestic and international functions.

Clause 3 of the Bill enables the Commission to cooperate with other regulatory authorities in The Bahamas.