

MEDIA RELEASE

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Securities Commission of The Bahamas Opens Consultation Period for DARE Bill 2023

Nassau, The Bahamas, Tuesday 25 April 2023 – The Securities Commission of The Bahamas (the Commission) today published the Digital Assets and Registered Exchanges (DARE) Bill 2023 for consultation. The DARE Bill 2023 expands the definition and list of digital asset business activities and includes robust consumer and investor protection, risk management, and market innovation and development provisions. The Bill strengthens financial and reporting requirements for digital asset businesses and requirements related to: 1) custody and custodial wallet services; 2) operating a digital asset exchange; 3) providing advice on and management of digital assets; 4) provision of staking services; and 5) a comprehensive approach to the regulation of stablecoins. The Bill aims to become effective in The Bahamas by the end of Q2 2023.

“I am pleased to present for consultation the Digital Asset and Registered Exchanges Bill 2023, which will modernize and strengthen requirements for conducting digital asset businesses in The Bahamas, and for the protection of consumers, investors, and the markets,” said Ms. Christina Rolle, Executive Director of the Securities Commission of The Bahamas. “We invite the public to respond to this consultation process as we seek to develop and expand the legislative framework. Once passed, DARE 2023 will be among the most advanced pieces of digital asset-legislation in the world and will align with The Bahamas’ commitment to facilitating development and innovation in a well-regulated environment.”

Review of the DARE Act 2020

The Securities Commission of The Bahamas has continually sought industry feedback, internal reviews, and international assessments of the DARE Act 2020. Additionally, the Commission’s continuous monitoring of the digital asset sector reflects a comprehensive and proactive approach that includes the ongoing evaluation of international regulatory advancements as well as benchmarking the DARE Act 2020, with comparable frameworks from jurisdictions such as the European Union, Hong Kong and New York, USA.

In April 2022, the Commission began consolidating its ongoing review of the DARE Act for the purposes of addressing any legislative gaps, ambiguities, and procedural concerns within the legislation. The Commission engaged the international law firm Hogan Lovells to draft the new Digital Assets and Registered Exchanges Bill 2023 (the DARE Bill), and will continue to collaborate with them in the consultation process until the amendments are complete.

The revisions are designed to minimize systemic and contagion risks. The amendments strengthen the protection mechanisms such as new disclosure and reporting requirements, specific registration obligations, and enhanced ongoing supervision for operators in the digital asset space. The proposed enhancements to the DARE legal framework allow room for digital asset businesses to innovate as the

space continues to evolve and provides the flexibility for the Commission to prescribe additional rules applicable to digital asset exchanges and bespoke requirements for different categories of registrants.

Highlights of the DARE Bill 2023

The Digital Assets and Registered Exchanges Bill 2023 will establish new regulatory frameworks to ensure the Bahamian legislative regime is current, proactive, and compliant with international standards and best practices.

1. Digital Asset Business Activities Expanded

The DARE Bill 2023 will capture a wider range of digital asset activities relative to international standards. Examples include providing advice on, or the management of digital assets, providing digital assets derivative services, providing DLT network node services, and providing staking services. The Bill provides the ability for the Commission to prescribe additional activities as digital asset businesses, as necessary.

2. Operating Digital Asset Exchanges

Operators of a digital asset exchange must ensure the systems and controls used in its activities are adequate and appropriate for the scale and nature of its business.

3. Custody of digital assets or custodial wallet services

The DARE Bill provides a robust approach to protecting client interests and custody or wallet service providers' ability to return client assets, maintain procedures to ensure continued safekeeping and accessibility of digital assets, and make the required client disclosures.

4. Staking

This is a first-of-its-kind, dedicated disclosure regime that captures the activity of the staking of digital assets belonging to clients or the operation or management of a staking pool as a business.

5. Issuers of Digital Assets

A voluntary registration regime will be established for persons who issue digital assets from outside of The Bahamas to persons outside of The Bahamas or otherwise not in scope of the issuer requirements under the DARE Bill 2023. The Commission will keep a register of initial token offerings containing specified information.

6. Stablecoin Issuers

The DARE Bill 2023 establishes a new and comprehensive regulatory framework for stablecoins. The amendments provide a clear definition for stablecoins, provide for the registration of existing stablecoins, specify acceptable forms of reserve assets and establish new requirements for custody and management, segregation, reporting and redemption of reserve assets.

The issuance of algorithmic stablecoins is expressly prohibited.

7. Guardrails and other aspects of the DARE Bill 2023

Non-fungible tokens (NFTs) are categorised between whether they are financial or consumer assets, with financial NFTs now falling within the scope of regulation.

Liquidity requirements and reporting are addressed with flexibility for additional requirements by the Commission.

Standards for addressing conflicts of interest and/or connected third party relationships are established.

The new Bill provides certain restrictions on proof of work mining of digital assets in or from within The Bahamas.

The issuance of privacy tokens is prohibited.

The public is invited to provide feedback on the DARE Bill 2023. The public consultation will run from Tuesday 25 April 2023 through Wednesday 31 May 2023. The public consultation documents are available on the Securities Commission of The Bahamas website www.scb.gov.bs/legislative-framework/consultation-documents. Interested parties may submit their comments via email to DAREconsultation@scb.gov.bs indicating “Public Consultation” in the subject line. Where feedback relates to specific sections of the Bill, these should be identified (e.g. Section 2(a)(i)). Reviewing comments without these references may lead to misinterpretation of the comments. All feedback must be received by 31 May 2023.

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Editor’s Information:

- 1. The Securities Commission of The Bahamas (the Commission) is a statutory body established in 1995 pursuant to the Securities Board Act, 1995. That Act has since been repealed and replaced by new legislation.**
- 2. The Commission’s mandate is defined in the Securities Industry Act, 2011 (SIA, 2011).**
- 3. The Commission is responsible for the administration of the SIA, 2011 and the Investment Funds Act, 2019 (IFA), which provides for the supervision and regulation of the activities of the investment funds, securities and capital markets.**
- 4. The Commission is responsible for the administration of the Financial and Corporate Service Providers Act, 2020.**
- 5. The Commission is responsible for the administration of the Digital Assets and Registered Exchanges Act, 2020.**
- 6. The Commission is responsible for the administration of the Carbon Credit Trading Act, 2022.**
- 7. The functions of the Commission are to:**
 - advise the Minister on all matters relating to the capital markets and its participants;**

- **maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;**
- **foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;**
- **protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices;**
- **promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;**
- **create and promote conditions that facilitate the orderly development of the capital markets; and**
- **perform any other function conferred or imposed on it by securities laws or Parliament (SIA, 2011, s.12).**