



SECURITIES INDUSTRY BILL, 2024 CONSULTATION BRIEFING

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Scope and Objectives of Overhaul

- ✓ Clarify anomalies and inconsistencies
- ✓ Expand purview of the Commission
- ✓ Clarify and enhance enforcement authority
- ✓ Meet current international standards
 - IOSCO
 - CFATF
 - OECD
- ✓ Address current industry practices and operations
- ✓ Enhance overall performance of the legislation and the Commission



Continuation of the Commission

- ✓ The Minister appoints Members and Chairman
- ✓ Members to have capacity in industry, commerce, law, finance or administration
- ✓ The Executive Director only ex-officio Member of the Commission
- ✓ Change in Terms of Members
 - Members – 3 years (4 renewals)
 - Chairman – 5 years (2 renewals)
 - Executive Director – 5 years (2 renewals)
- ✓ 15 year maximum – consecutive or cumulative
- ✓ Amendments to the Commission's authority to build its reserve funds

4 Key Terms and Framework

Key Terms and Framework

✓ “securities business” versus “capital markets business”

- “**capital markets business**” means engaging in one or more regulated activities in the course of business and includes entering or offering to enter into an agreement the making or performance of which by either party constitutes a regulated activity.
- “**capital markets instruments**” means securities, derivatives and such other instruments and interests that the Commission may prescribe as capital markets instruments.

✓ “laws administered by the Commission”

- SIA
- Investment Funds Act
- Anti Terrorism Act
- Digital Assets and Regulated Exchanges Act
- Financial and Corporate Service Providers Act
- Financial Transactions Reporting Act
- Other legislation administered by the Commission



- ✓ Legislative trigger – ‘Carrying on business in or from within The Bahamas’
- ✓ Overall objective is to ensure that the regime captures –
 - Persons outside The Bahamas conducting capital markets business inside The Bahamas
 - Persons inside The Bahamas conducting capital markets business outside the jurisdiction
 - Persons conducting capital markets business inside in The Bahamas
- ✓ Section 8(1) largely remains but will now capture –
“Carries on capital markets business from a place of business maintained by or on behalf of such person in The Bahamas, which are business premises in The Bahamas that the person occupies, and at which the person employs staff and pays salaries and other expenses in connection with that business”

- ✓ Section 69 (1) - Requires registration of persons carrying on capital markets business
- ✓ Person excluded under Part 4 of the First Schedule or exempt from registration by regulation or Commission order continue to fall outside of registration requirements
- ✓ As in 2011 SIA a person may be considered to purport to carry on capital markets business where that person –
 - (a) uses word(s) which connote capital markets business,
 - (b) represents that the person is carrying on capital markets business; or
 - (c) otherwise holds itself out as carrying on capital markets business.
- ✓ (3A) The categories of registration and applicable terms, conditions and requirements to be prescribed.
- ✓ (3B) The terms, conditions and requirements for each prescribed category may, without limitation, impose provisions that differ by:
 - (a) type of regulated activity;
 - (b) securities or class of securities;
 - (c) derivatives or class of derivatives;
 - (d) characteristics of the clients of the person; or
 - (e) such other basis as is prescribed.

- ✓ The Bill establishes a new framework for the revocation of a registrant's registration where it fails to renew.
- ✓ The framework is automatic and applies where a registrant fails to –
 - Renew prior to renewal date
 - Submit annual declaration
 - Reinstate insurance policy
 - Pay annual fee
- ✓ The framework includes monetary penalties for revocation and reinstatement.
- ✓ Fine for revocation is ten percent of the prescribed annual fee.
- ✓ Restoration within 30 days with –
 - Written application;
 - Administrative Penalty of 20% annual fee; and
 - Rectifies outstanding deficiencies.

- ✓ The following provisions remain the same as no substantive changes were made –
 - Duties to Clients - Act honestly and fairly, in the best interests of its clients and integrity of the market; and act with due skill, care and diligence.
 - Reporting to the Commission.
 - Responsibility for representatives.
 - Remains obliged to get Commission approval for certain transactions.



- ✓ The amendments to section 76 (auditors) were mainly related to clarifications and consistency –
 - Requirement to have approved auditor and audit remains the same;
 - Changes to language in section 76(2) ensure that the language is consistent with the provisions relating to public issuers and to simplify the language in sub b.
- ✓ Subsection (4) and (5) have been reformatted and organized for clarity. However, the substantive requirements for the auditor remain the same –
 - to notify the Commission immediately if of the view that –
 - There is basis for a qualification in the audit report on the financial statements; or
 - There is a material weakness, deficiency in or non-compliance with prescribed requirements.
- ✓ Amendments to Section 77 on Reporting to the Commission seek to ensure that the language is consistent with similar provisions relating to public issuers.

- ✓ Provisions around voluntary liquidation remain and require prior approval of the Commission and notice of proceedings for an involuntary liquidation must be immediate and in writing.

- ✓ New provision –

“A registrant that has voluntarily surrendered his or its registration or whose registration has been revoked by the Commission shall continue to be subject to the jurisdiction of the Commission for any actions that took place prior to the effective date of surrender or revocation, provided any regulatory action by the Commission is filed within one year after the effective date of the surrender or revocation”.

✓ ***New regime for Trading in Derivatives -***

- Requires compliance by -
 - registered firm or counterparty to a trade of a derivative; and
 - such other persons as may be prescribed.
- Requires compliance with such conditions, restrictions and requirements as may be prescribed; relating to derivative transactions and participation in the transactions.
- Provides that a person must not enter into -
 - a transaction for a prescribed derivative; or
 - into a prescribed transaction for a derivative, without a disclosure document prepared, filed and sent in accordance with the regulations.
- Authorizes Commission to issue exemption Orders for -
 - a trade, intended trade, derivative or person, or (class of
 - application can be by an interested person or on the Commission's own motion.
 - Commission to consider that to do so would not be prejudicial to the public interest

✓ **Derivatives Transactions NOT void for non-compliance**

✓ **Rules may require prescribed classes of derivatives to be –**

- traded in a marketplace or other approved trading platform;
- cleared through a central counterparty;
- subject to suitable margining and other risk management requirements; and
- subject to the requirement that transactions be reported to a registered trade repository or a trade repository in an recognized foreign jurisdiction.

- ✓ Commission may designate a Digital Asset as a Security –
 - By Order
 - In the public interest
 - Without providing an opportunity to be heard



Bill Includes Regime for Management of Systemic Risk

- ✓ **Definitions**
 - “market participant”
 - “systemic risk in the capital market”
- ✓ **Authority to gather Information**
 - Commission considers necessary for monitoring, mitigating or managing systemic risk in the capital market.
 - Mandatory obligation on any person asked to provide the required information notwithstanding
 - obligation under any law, any rule of law;
 - any contract, agreement or arrangement;
 - any rule of professional conduct to the contrary.
 - Failure to comply is an offence
- ✓ **Power of Commission to issue directives**
 - Where the Commission considers it necessary for monitoring, mitigating or managing systemic risk in the capital market, requiring any person to take such measures as the Commission may consider necessary.
 - Commission shall take into consideration -
 - financial stability
 - reputational damage.
- ✓ **Before issuing a directive the Commission shall**
 - give the person an opportunity to be heard, but
 - may issue a directive without first giving the person an opportunity to be heard if, delay would aggravate systemic risk
- ✓ **Failure to comply is an offence**

- ✓ Prohibits “authorised persons” (directors, officers, employees, or agents) from disclosing any information to a subject person or any of that person’s associates, where the information relates to –
 - a domestic or overseas regulatory authority request for assistance; or
 - an investigation regarding a subject person.
- ✓ Defines - “subject person”
- ✓ The non-disclosure applies notwithstanding any obligation under contract or agreement with subject person.
- ✓ Failure to comply is an offence.



- ✓ If it appears that a person has failed to comply with any of the requirements under —
 - the Act;
 - the Financial Transactions Reporting Act; or
 - the Anti-Terrorism Act,the Commission may direct the person to comply with the requirement
- ✓ Such a directive is without prejudice to any other action that may be instituted or taken against a person.

- ✓ Commission empowered to file police complaint.

“Where the Commission reasonably suspects that an offence has been committed under this or any other law administered by the Commission, the Commission may refer the matter to either the Commissioner of Police or the Director of Public Prosecutions.”

- ✓ Enhanced Administrative Authority - Automatic fines/penalties
- ✓ Revocation for failure to renew -
 - Registration is revoked automatically and there is a proposed framework for reinstatement
 - Framework for reinstatement also includes fines and penalties as deterrent
 - Fines and penalties cannot be set off against the prescribed annual fee
 - Provisions updated for consistency between Marketplaces and Regulated persons
 - To be updated to reflect frameworks in IFA and FCSPA
- ✓ Failure to file/deliver any document or Notice
 - automatic penalty of up to \$1,000/prescribed
 - for every day after the day the document or fee, charge or penalty was due
- ✓ Failure to pay any fee, charge or penalty payable or before the due date
 - automatic penalty of up to \$1,000/prescribed
 - for every day after the day the document or fee, charge or penalty was due



Specific Orders

- ✓ Bill authorizes various administrative Orders.
- ✓ Order a person to comply with –
 - the Act or a Commission decision;
 - the regulatory instruments; or
 - a decision of a person registered as a marketplace.
- ✓ Cease trading -
 - a security, a class of securities or all securities; or
 - a derivative, a class of derivatives or all derivatives.
- ✓ Order that exemptions do not apply to a person.
- ✓ Prohibit a person from acting –
 - as a partner, director or officer of another person;
 - as a registrant, or representative of a registrant;
 - as a party related to an investment fund;
 - as an auditor of a market participant; or
 - in a management or consultative capacity in connection with activities.




- ✓ SCB authority to access/request books, records or any information from a regulated person to –
 - Satisfy itself that Act is being complied with;
 - Satisfy itself that the provisions of the FTRA and ATA complied with; and
 - Assist in the administration of securities legislation in another jurisdiction.
- ✓ Commission may direct a market participant to prepare and submit information concerning its business or affairs. Information may be used for –
 - analyzing and developing relevant statistical data;
 - facilitating the supervisory functions of the Commission;
 - meeting any obligations of the Commission because of membership, association/institution/organization, domestic or international standard, or commitment;
 - some other purpose consistent with the duties and functions of the Commission.
- ✓ Information provided to the Commission must be accurate and complete.

The provision mainly remains the same but, there are a few changes -

- ✓ Derivatives included within the ambit of the Commission's freezing authority.
- ✓ Commission has the discretionary authority to seek the assistance of the Attorney General or Director of Public Prosecution, when exercising its power to freeze assets.
- ✓ The assistance shall solely be for the purposes of extending the freeze order.
- ✓ Commission can require assistance to be provided in a specific form.
- ✓ Failure to comply with the freezing order and/or its terms will result in the Commission imposing an administrative penalty.




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- ✓ The Commission is required to publish ANY decision imposing a penalty on a person for any breach of the Act.
 - ✓ Publication to include –
 - final decision and reasons;
 - summary; and
 - the identity of the person(s) responsible.

The Commission may, by rule, amend the First Schedule by deleting or amending any of the provisions or adding new provisions.



AMENDMENT

- ✓ Transition details to be finalized
- ✓ Nothing to worry about
- ✓ Existing unregistered market participants newly subject to registration under the Act
- ✓ Existing – to be grandfathered
- ✓ Interim financial statement requirements for public issuers - Section 174 -the obligations on a public issuer to prepare and file interim financial statements with the Commission shall take effect on the issuer's first financial year that begins after the effective date.
- ✓ Insider reporting obligations – Section 175 - the reporting obligations on insiders of public issuers under section 128 of the Act shall not take effect until the day that is 90 days after the effective date.



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