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SECURITIES INDUSTRY (AMENDMENT) ACT, 2019

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No. 5 of 2019

SECURITIES INDUSTRY (AMENDMENT) ACT, 2019

AN ACT TO AMEND THE SECURITIES INDUSTRY ACT

[Date of Assent - 30th April, 2018]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Securities Industry Act, may be cited as the Securities Industry (Amendment) Act, 2019.

2. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is amended—

- (a) in paragraph (a) of the definition of “approved foreign issuer”, by the deletion of the words “securities laws” and the substitution of the words “securities legislation”;
- (b) by the insertion immediately after the definition of “control block holder”, of the following —
““**custodian**” means a person providing custodial services with respect to securities or other property;
“**custodial services**” includes:
 - (a) holding, possessing or controlling securities or other property in safekeeping or segregation for the benefit of another person, whether on trust, or under a custodial agreement or other arrangement;
 - (b) acting as a custodian or depository of an investment fund; or
 - (c) carrying out such other activities as may be prescribed;”;
- (c) in paragraph (a) of the definition of “**decision**”, by the insertion immediately after the words “securities laws”, of the words “with the exception of a final decision” ;

- (d) in the definition of the term “**file**” by the deletion of the words “securities laws” and substitution of the words “the Act”;
- (e) by the insertion, immediately after the definition “**file**”, of the following new definition –
“**final decision**” means any decision reached by the Commission at the conclusion of a hearing under section 139 and any decision made in the context of such hearing;”
- (f) by the insertion, immediately after the definition “**financial institution**”, of the following new definition—
““**Financial Transactions Reporting Act**” means the Financial Transactions Reporting Act, 2018 (No. 5 of 2018);” and
- (g) by the deletion of the definition of “regulated person” and the substitution as follows, ““**regulated person**” means a registrant or a person registered under Part V of the Act;”.

3. Insertion of new section 9A into the principal Act.

Part II of the principal Act is amended by the insertion immediately before section 10 of the following new section —

“9A. Interpretation.

For the purposes of this Part “regulated person” includes a registrant, a person registered under Part V of the Act, an investment fund, an investment fund administrator, an investment fund manager and an AIFM as defined in the Investment Funds Act, 2019”.

4. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended —

- (a) by the deletion of subsection (3) and the replacement as follows –
“(3) The Commission shall —
 - (a) consist of a Chairman, a Deputy Chairman and such other members as the Minister may from time to time appoint; and
 - (b) have a maximum of eight members, including the Chairman, Deputy Chairman, and those appointed ex-officio under subsection (6).”
- (b) the deletion of subsection (6) and the replacement as follows—
“(6) The Executive Director of the Commission shall be an ex-officio member of the Commission.”.

5. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended –

- (a) in paragraph (c), by the deletion of the words “registrants, marketplaces, investment fund administrators” and the substitution of the words “regulated persons”;
- (b) by the insertion immediately after paragraph (g) of the following new paragraph —
 - “(gg) supervise the activities of regulated persons and other market participants with respect to compliance with the provisions of the Financial Transactions Reporting Act, 2018;” and
- (c) in paragraph (h), by the insertion immediately after the words “securities laws” of the words “or the Financial Transactions Reporting Act, 2018”.

6. Repeal and replacement of section 15 of the principal Act.

Section 15 of the principal Act is repealed and replaced as follows—

“15. Executive Director.

- (1) The Minister shall appoint an Executive Director on the recommendation of the Commission.
- (2) The Executive Director shall hold office for five years and shall be eligible for reappointment for only one additional term on the recommendation of the Commission.
- (3) The remuneration, allowances and other terms and conditions in respect of the Executive Director’s office shall be as the Commission may determine from time to time.
- (4) The Minister may terminate the appointment of the Executive Director on the recommendation of the Commission if the Commission is satisfied that the person—
 - (a) has become bankrupt or made arrangements with his creditors;
 - (b) is incapacitated by physical or mental illness;
 - (c) has been, in The Bahamas or in any other jurisdiction, convicted of a criminal offence involving fraud or dishonesty, or found liable in a civil or regulatory action for activities involving fraud or dishonesty; or
 - (d) is otherwise unable or unfit to discharge the functions of the position to which that person was appointed.”.

7. Amendment of section 33 of the principal Act.

Subsection (6) of section 33 is amended by the insertion immediately after the word “appeal” of the words “or a review under section 157A”.

8. Amendment of section 37 of the principal Act.

Section 37 of the principal Act is amended by the insertion immediately after subsection (1), of the following new subsection—

“(1A) Without limiting the generality of subsection (1), the material the Commission may order be furnished under subsection (1) includes

-
- (a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;
- (b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and
- (c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the identity of subscribers (name and address), payment details, length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.” .

9. Amendment of the heading of Part IV of the principal Act.

The heading of Part IV of the principal Act is deleted and substituted as follows

—
“Part IV Investigations, Inspection and General Access to Information”.

10. Repeal and replacement of section 41 of the principal Act.

Section 41 of the principal Act is repealed and replaced as follows —

“41. Interpretation.

For the purposes of this Part, “securities laws” means the Act“.

11. Amendment of section 42 of the principal Act.

Subsections (1)(a) and (1)(b) of section 42 of the principal Act is amended by the insertion, immediately after the words “securities laws” of the words “or the Financial Transactions Reporting Act, 2018”.

12. Amendment of section 43 of the principal Act.

Section 43 of the principal Act is amended by the insertion, immediately after subsection (1), of the following new subsection—

- “(1A) Without limiting the generality of subsection (1), the information, documents and explanations that the Commission may request or access during an investigation includes —
- (a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;
 - (b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and
 - (c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the identity of subscribers (name and address), payment details, length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.”

13. Amendment of Part IV of the principal Act.

The subheading of Division 4 of Part IV of the principal Act is deleted and substituted as follows—

“ Division 4 Provision of Other Information to the Commission”.

14. Insertion of new section 50A into the principal Act.

The principal Act is amended by the insertion immediately after section 50 of the following new section —

“50A. General authority to access records and to request information.

- (1) The Commission shall be entitled at all reasonable times to exercise its authority to have access to or to request the books, records or any information of or from a regulated person for the purpose of—
 - (a) satisfying itself that the provisions of this Act are being complied with;
 - (b) satisfying itself that the provisions of the Financial Transactions Reporting Act, 2018 (No. 5 of 2018) are being complied with; or
 - (c) assisting in the administration of the securities legislation in another jurisdiction.
- (2) After the conclusion of any examination conducted under subsection (1), the Commission may prepare a report on its findings.
- (3) In any case where the Commission is unable to conduct an examination described in subsection (1), it may appoint an auditor, at the expense of the regulated person or market participant, to conduct such examination and to report thereon to the Commission.
- (4) The Commission may assess charges to recover the cost of such examination.
- (5) If requested to do so by the Commission, a regulated person shall give the Commission access to or provide at any reasonable time all records relating to the regulated person.
- (6) The Commission may copy or take an extract of a document it is given access to, or provided with in accordance with this section.
- (7) If requested to do so by the Commission, a regulated person shall give the Commission such information or such explanation in respect of the regulated person as Commission may reasonably request to enable the Commission it to carry out its duties under this Act.”

15. Amendment of section 58 of the principal Act.

Subsection (6) of section 58 of the principal Act is amended by the deletion of the words “file an appeal pursuant to section 157” and the substitution of the words “apply for review under section 157A.”

16. Amendment of section 69 of the principal Act.

Section 69 of the principal Act is amended—

- (a) by the insertion immediately after subsection (3), of the following new subsections –
 - “(3A) The categories of registration and the applicable terms, conditions and requirements for initial registration and on an on-going basis, including for any ancillary services provided, shall be as prescribed.
 - (3B) The terms, conditions and requirements for each prescribed category may, without limitation, impose provisions that differ by:
 - (a) the type of securities activity carried on or proposed to be carried on;
 - (b) the securities or class of securities in which the person carries on or proposes to carry on a securities activity;
 - (c) the characteristics of the clients of the person; or
 - (d) such other basis as is prescribed.”;
- (b) by the deletion of the word “or” at the end of paragraph (11)(c);
- (c) by the insertion immediately after paragraph (d) of the following new paragraphs (e) and (f) –
 - “(e) the registrant fails to pay within the time prescribed –
 - (i) all prescribed annual fees and charges; and
 - (ii) any penalties imposed as prescribed; or
 - (f) the registrant fails to file within the time prescribed –
 - (i) all applicable notices required under section 70;
 - (ii) all applicable documents and reports required under section 77; and
 - (iii) all other documents and materials as may be prescribed;”;
- (d) by the deletion in subsection (12) of the word “appeal” and the substitution of the words “apply for a review under section 157A of”.

17. Amendment of section 75 of the principal Act.

Section 75 of the principal Act is amended by the deletion of the words “and parties related to an investment fund”.

18. Repeal and replacement of section 78 of the principal Act.

Section 78 of the principal Act is repealed and replaced as follows—

“78. Responsibility for actions of persons acting on behalf of registered firm.

A registered firm shall be responsible for all acts and omissions of each partner, director, officer, representative, employee and agent acting on its behalf.”.

19. Amendment of section 91 of the principal Act.

Subsection (3) of section 91 of the principal Act is amended by the deletion of the word “appeal” and the substitution of the words “apply for a review under section 157A of”.

20. Amendment of section 104 of the principal Act.

Paragraph (c) of section 104 of the principal Act is amended by the deletion of the words “securities laws” and the substitution of the words “securities legislation”.

21. Insertion of new section 106A into the principal Act.

The principal Act is amended by the insertion immediately after section 106, of the following new section –

“106A. Separation of role of Chairman and Chief Executive Officer of public issuer.

The person appointed Chairman of the board of directors of a public issuer may not, at the same time, also serve as Chief Executive Officer of that public issuer.”

22. Amendment of section 108 of the principal Act.

Subsection (1) of section 108 of the principal Act is amended by the deletion of the words “Sections 109, 110, 111, 114, 119 and 120 do” and the substitution of the words “This Part does”.

23. Insertion of new section 131A into the principal Act.

The principal Act is amended in Part XV by the insertion immediately before section 132, of the following new section—

“131A. Interpretation.

For the purposes of this Part, “securities laws” means the Act.”.

24. Amendment of section 132 of the principal Act.

Section 132 of the principal Act is amended by the insertion, immediately after the words “securities laws”, of the words “or the Financial Transactions Reporting Act, 2018 ”.

25. Amendment of section 133 of the principal Act.

Section 133 of the principal Act is amended —

- (a) in subsection (1) –
 - (i) by the deletion and the substitution of paragraph (n) as follows –
 - “(n) apply to the court for an order to take such action as it considers necessary to protect the interests of –
 - (i) clients or creditors of a registrant; or
 - (ii) investors or creditors of a public issuer;” and
 - (ii) by the deletion of the word “or” at the end of paragraph (r); and
 - (iii) by the insertion immediately after paragraph (r) of the following new paragraph –
 - “(rr) impose any sanctions or remedies that are available to the Commission under the Financial Transactions Reporting Act 2018; or”; and
- (b) in Paragraphs (b) and (c) of subsection (2) by the deletion of the words “securities laws” and the substitution of the words “securities legislation”.

26. Repeal and replacement of section 133A of the principal Act.

Section 133A of the principal Act is repealed and replaced as follows –

“133A. Powers of Commission to conduct investigations and hearings and impose sanctions.

The Commission may, where it appears that a person has breached a provision of securities laws or the Financial Transactions Reporting Act, or failed to comply with a requirement, directive or order given by the Commission, –

- (a) conduct investigations;
- (b) conduct hearings under section 139 or such other hearings as may be prescribed; and
- (c) impose one or more of the sanctions, remedies or other relief as may be prescribed in securities laws or the Financial Transactions Reporting Act.”

27. Amendment of section 135 of the principal Act.

Section 135 of the principal Act is amended by the insertion of the following new subsections –

- “(3) If the Commission considers that it is not contrary to the public interest, the Commission may waive the whole or any part of any automatic penalty imposed under subsection (2).

- (4) The Commission may publish notice of the imposition of an automatic penalty under subsection (1) in a periodical published by the Commission, on its website, or in a daily newspaper circulating in The Bahamas.”.

28. Insertion of new section 147A into the principal Act.

Part XVII of the principal Act is amended by the insertion immediately before section 148 of the following new section –

“147A. Interpretation.

For the purposes of this Part, "securities laws" means the Act.”

29. Repeal and replacement of section 157 of the principal Act

Section 157 of the principal Act is repealed and replaced as follows–

“157. Appeals from hearing decisions.

- (1) A person directly affected by a final decision of the Commission, other than those stated not to be subject to appeal, may appeal to the Supreme Court in accordance with the rules of court – Supreme Court Order 55 - within thirty days after the making of the final decision or the issuing of the reasons for the final decision whichever is the latter.
- (2) Notwithstanding the fact that an appeal is taken under this section, the final decision appealed from takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the appeal.
- (3) The Secretary shall certify to the Supreme Court –
 - (a) the final decision of the Commission, together with a statement of reasons for that decision;
 - (b) the record of the proceedings before the Commission; and
 - (c) all written submissions to the Commission or other material that is relevant to the appeal.
- (4) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorised and empowered to do under securities laws and as the court considers proper, having regard to the material and submissions before it and to securities laws, and the Commission shall make such decision or do such act accordingly.
- (5) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.”

30. Insertion of new section 157A into the principal Act

The principal Act is amended by the insertion immediately after section 157 of new section –

“157A. Judicial review of other Commission decisions.

- (1) A person directly affected by a decision of the Commission, other than a final decision or a decision stated not to be subject to appeal, may apply to the Supreme Court for judicial review of that decision in accordance with the Rules of The Supreme Court within thirty days after the making of the decision or the issuing of reasons for the decision whichever is the latter.
- (2) Notwithstanding the fact that an application for judicial review is taken under this section, the decision under review takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the application.
- (3) Where a judicial review takes place under this section, the court may make such orders as are set out in the Supreme Court rules of court for a judicial review.
- (4) Notwithstanding an order of the court on a judicial review, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.”.

31. Amendment of First Schedule to the principal Act.

Part 3 of the First Schedule to the principal Act is amended —

- (a) by the deletion of sections 1(8), 2(10), 3(2) and 4(1);
- (b) in section 2(4) by the insertion immediately after the words “section 1(1) of the words “ of this Part”.