



*EXTRAORDINARY*  
**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
PUBLISHED BY AUTHORITY

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NASSAU

30<sup>th</sup> April, 2019

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## TABLE OF CONTENTS

<u>Act No.</u>	<u>TITLE</u>	<u>PAGE</u>
2	Investment Funds Act, 2019	1-104
3	Automatic Exchange of Financial Account Information (Amendment) Act, 2019	1-2
4	Multinational Entities Financial Reporting (Amendment) Act, 2019	1-2

# INVESTMENT FUNDS ACT, 2019

## Arrangement of Sections

Section	
<b>PART I – PRELIMINARY</b>	<b>6</b>
1. Short title and commencement.....	6
2. Purposes of Act.....	6
3. Interpretation.....	7
4. Application.....	17
<b>PART II - LICENCING AND REGISTRATION</b>	<b>17</b>
<b>INVESTMENT FUND</b>	<b>17</b>
5. Licensing requirement for an investment fund. ....	17
6. Professional and standard fund. ....	17
7. SMART fund. ....	18
8. Self-Administered fund.....	18
9. Non-Bahamas based fund.....	18
10. Offering document.....	19
11. Application for licensing. ....	19
12. Licensing of investment fund by unrestricted investment fund administrator. . .	20
13. Conditions on licensing.....	21
14. Grant or refusal of licence. ....	22
15. Refusal to license an investment fund.....	22
16. Duty to provide reasons. ....	22
17. Restriction on licensing. ....	22
18. Representation as investment fund. ....	23
19. Transfer from The Bahamas.....	23
20. Transfer to The Bahamas.....	23
21. Voluntary surrender of licence by investment fund. ....	24
22. Voluntary suspension of investment fund activity. ....	24
23. Misrepresentation.....	25
<b>INVESTMENT FUND MANAGER</b>	<b>26</b>
24. Appointment of investment fund manager.....	26
25. Conditions for licensing or registration of an investment fund manager. ....	26
26. Licensing or registration requirement for an investment fund manager.....	26
<b>AIFM</b>	<b>27</b>
27. Licensing requirement of AIFM.....	27
28. Power to grant AIFM licence. ....	27
29. Restriction on licensing. ....	27

30.	Notification of changes in information provided. ....	28
31.	Revocation of AIFM licence.....	28
32.	Commission to inform ESMA. ....	28
33.	Compliance with this Act.....	29
	<b>INVESTMENT FUND ADMINISTRATOR</b>	<b>29</b>
34.	Appointment of investment fund administrator.....	29
35.	Licensing requirement of investment fund administrator.....	29
36.	Conditions for licensing of an investment fund administrator.....	29
37.	Refusal to grant licence.....	30
38.	Chief Executive Officer of an investment fund administrator.....	30
39.	Appointment and responsibilities of Compliance Officer of investment fund administrator.....	31
	<b>GENERAL REGULATORY MATTERS</b>	<b>31</b>
40.	Application for licensing, registration or approval.....	31
41.	Requirement for licence, registration or approval.....	31
42.	Imposition, variation or revocation of terms and conditions of licence, registration or approval.....	32
43.	Renewal of licence or registration.....	33
44.	Investment funds register.....	34
45.	Fees.....	34
	<b>PART III - ADMINISTRATION, ACCOUNTS, REPORTS AND AUDITING</b>	<b>34</b>
	<b>INVESTMENT FUNDS</b>	<b>34</b>
46.	Directors and general partners of fund.....	34
47.	Books and accounting records.....	34
48.	Reconciliations.....	35
49.	Winding up, dissolution and termination.....	35
50.	Commission may apply to court or present petition.....	35
51.	Commission may attend proceedings.....	36
	<b>INVESTMENT FUND ADMINISTRATOR</b>	<b>37</b>
52.	Obligations of an investment fund administrator. ....	37
53.	Minimum number of directors. ....	37
54.	Annual fees.....	37
55.	Termination of administration agreement.....	38
56.	Name of investment fund administrator restricted. ....	39
57.	Transfer or disposal of shares.....	39
58.	Requirements for paid up capital and professional indemnity insurance.....	40
59.	Annual audit of investment fund administrator.....	40
60.	Requirement to report certain matters. ....	40
	<b>OPERATOR</b>	<b>41</b>
61.	Operator to ensure investment fund compliance. ....	41
	<b>INVESTMENT FUND MANAGER</b>	<b>41</b>

62.	General duties of an investment fund manager.....	41
63.	Requirements for capital, own funds and professional indemnity insurance.....	42
64.	Protection of interests.....	42
65.	Delegation of investment fund manager's functions.....	43
66.	Sub-delegation.....	44
67.	Liability following delegation.....	45
	CUSTODIAN	45
68.	Appointment of custodian.....	45
69.	Independence of custodian.....	45
70.	Obligations of a custodian.....	45
71.	Segregation of investment fund assets.....	46
	AIFM	46
72.	Notification to the Commission.....	46
73.	Obligations and duties of an AIFM.....	46
74.	Requirements for capital, own funds and professional indemnity insurance.....	47
75.	Confirmation of status.....	48
76.	Compliance with this Act.....	48
77.	General organisational requirements.....	48
78.	General operating conditions.....	49
79.	Remuneration.....	50
80.	Conflicts of interest.....	50
81.	Risk management.....	51
82.	Liquidity management.....	54
83.	Valuation.....	54
84.	Qualifications of valuer.....	55
85.	Appointment of valuers.....	55
86.	Duties of valuer.....	56
87.	Liability of AIFM.....	56
88.	Delegation of AIFMs functions.....	56
89.	Sub-delegation.....	58
90.	Liability following delegation.....	58
	AIFMD CUSTODIAN	59
91.	Appointment of an AIFMD custodian.....	59
92.	AIFMD custodian conflicts of interest.....	59
93.	AIFMD custodian cash flow monitoring.....	60
94.	Safekeeping of assets for financial instruments.....	60
95.	Safekeeping of other assets.....	61
96.	AIFMD custodian general compliance.....	61
97.	Delegation of AIFMD custodian functions.....	62
98.	AIFMD custodian liability for loss of financial instrument.....	63
99.	AIFMD custodian liability for other losses.....	64
100.	Liability of overseas AIFMD custodians.....	64
101.	Annual report.....	66
102.	Disclosure to investors.....	67
103.	Reporting obligations to the Commission.....	70

104. AIFMs managing leveraged investment funds.....	72
105. Limits on leverage.....	72
<b>GENERAL ADMINISTRATION AND FINANCIAL MATTERS</b>	<b>73</b>
106. Compliance with directions.....	73
107. Approval by the Commission.....	73
108. Instructions to audit accounts.....	74
109. Auditors to report.....	74
110. General financial reporting.....	75
111. Ongoing statutory reporting obligations.....	75
112. Reporting to investors.....	78
113. Complaints.....	78
114. Anti-money laundering and anti-terrorism financing obligations.....	78
<b>PART IV - INVESTIGATION AND INSPECTION</b>	<b>78</b>
<b>INVESTIGATION</b>	<b>78</b>
115. Power to investigate.....	78
116. Power to obtain information for investigation.....	79
117. Uncooperative witness liable for contempt.....	80
<b>INSPECTION</b>	<b>80</b>
118. Compliance inspections for regulated persons.....	80
119. Power to require reports.....	81
120. Compliance inspection of a party related to an investment fund.....	81
121. General inspection matters.....	82
122. Participation of other regulatory authorities in inspections under this Part.....	82
<b>PART V - GENERAL REGULATORY AUTHORITY OF THE COMMISSION</b>	<b>83</b>
123. Authority to access records and to request information.....	83
124. General review of operations.....	84
125. Authority to regulate.....	84
126. Compliance with Financial Transactions Reporting Act.....	84
<b>PART VI - DISCIPLINARY AND ENFORCEMENT AUTHORITY OF THE COMMISSION</b>	<b>85</b>
127. Power of the Commission to conduct regulatory hearings.....	85
128. Hearings.....	85
129. Compliance notice.....	87
130. Orders in the public interest.....	87
131. Application to court.....	91
132. Administrative penalty.....	91
133. Removal of benefits.....	91
134. Payment of costs.....	91
135. Order to freeze property.....	92
136. Limitation period.....	92

137. Liability of directors and officers.....	92
<b>PART VII - INFORMATION SHARING</b>	<b>93</b>
138. Co-operation with other regulatory authority.....	93
<b>PART VIII - MARKET MISCONDUCT</b>	<b>93</b>
139. Misleading or deceptive conduct.....	93
140. Misleading the Commission.....	93
141. False or misleading statements.....	94
142. Inducing persons to deal.....	94
143. Dishonest conduct.....	95
144. Prohibited representations.....	95
145. Market misconduct offences.....	95
<b>PART IX - MISCELLANEOUS</b>	<b>95</b>
146. Exemptions and modifications.....	95
147. Administrative proceedings and reviews.....	96
148. Power to remove exemption contained in Commission rule.....	96
149. Filing documents and public availability.....	96
150. Verification.....	97
151. Register and other documents as evidence.....	97
152. Conditions on decisions.....	97
153. Discretion to revoke or vary decisions.....	97
154. Stamp duty exemption.....	97
155. Right to appeal to court.....	97
156. Offences.....	97
157. Order to be fit and proper.....	98
158. Amendment of Schedule.....	99
159. Minister to make regulations.....	99
160. Rules.....	99
161. Rule-making process.....	99
162. Regulation prevails over rule.....	101
163. Guidelines.....	101
164. Repeal.....	101
165. Savings.....	101
166. Transitional provisions.....	101
167. Consequential amendments.....	101
<b>SCHEDULE</b>	<b>102</b>



No. 2 of 2019

## **INVESTMENT FUNDS ACT, 2019**

**AN ACT TO UPDATE THE LAW RELATING TO THE REGULATION OF INVESTMENT FUNDS BUSINESS; TO BRING THE LAW INTO HARMONY WITH INTERNATIONAL STANDARDS AND BEST PRACTICES; TO EXPAND THE SCOPE OF THE POWERS OF THE SECURITIES COMMISSION OF THE BAHAMAS IN RELATION TO REGULATED PERSONS AND PARTIES RELATED TO INVESTMENT FUNDS; TO PROTECT INVESTORS, THE PUBLIC AND THE REPUTATION OF THE BAHAMAS; TO REPEAL AND REPLACE THE INVESTMENT FUNDS ACT, CHAPTER 369A AND FOR CONNECTED MATTERS**

[Date of Assent -30<sup>th</sup> April, 2019]

**Enacted by the Parliament of The Bahamas**

### **PART I – PRELIMINARY**

#### **1. Short title and commencement.**

- (1) This Act may be cited as the Investment Funds Act, 2019.
- (2) This Act shall come into operation on such day as the Minister by notice published in the *Gazette*, may appoint and the Minister may cause different provisions of this Act to come into operation on different days by notice or notices published in the *Gazette*.

#### **2. Purposes of Act.**

The purpose of this Act is to —

- (a) modernize the regulatory framework for investment funds in The Bahamas to achieve international standards and best practices of the investment funds industry;



- (b) enhance the provisions of the Securities Industry Act, 2011 (*No. 10 of 2011*) to maintain the status of The Bahamas as a reputable international financial centre.

### 3. Interpretation.

In this Act –

“**accredited investor**” has the same meaning as in the Securities Industry Regulations, 2012 (*S.I. No. 1 of 2012*);

“**administrator**” or “**governing administrator**” in relation to an investment fund that is an investment condominium, has the same meaning as in section 2 of the Investment Condominium Act, 2014 (*No. 38 of 2014*);

“**AIFM**” means a company incorporated under the Companies Act (*Ch. 308*) or the International Business Companies Act (*Ch. 309*) who —

- (a) markets an investment fund or an EU AIF in the EU; or
- (b) manages an EU AIF whether or not it is marketed in the EU, and is licenced under section 29;

“**AIFMD**” means Directive 2011/61/EU of the European Parliament and of the Council of the 8th June, 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

“**AIFMD custodian**” means a person appointed under section 91;

“**alternative investment fund**” has the same meaning assigned to an AIF under article 41(a) of AIFMD;

“**auditor**” means a person who is —

- (a) a professionally qualified accountant; or
- (b) an accountant licensed to practice as such under The Bahamas Institute of Chartered Accounts Act, 2015 (*No. 13 of 2015*); and
- (c) approved by the Commission to act on behalf of a regulated person;

“**carry on business in or from The Bahamas**”, and its derivatives, means —

- (a) to incorporate, register or establish an investment fund in The Bahamas;
- (b) to establish a unit trust where the governing law is the Commonwealth of The Bahamas;
- (c) to operate as a fund licensed under this Act;

- (d) to make an invitation to a person in The Bahamas who is not an accredited investor to subscribe for equity interests in an investment fund, regardless of where the investment fund is incorporated, registered or established; or
- (e) to engage in investment funds business in The Bahamas as an investment fund manager, investment fund administrator, investment fund advisor or AIFM;

**“Chief Executive Officer”** means a person appointed under section 38;

**“clearing facility”** has the same meaning as in section 4 of the Securities Industry Act, 2011 (*No. 10 of 2011*);

**“Commission”** means the Securities Commission of The Bahamas established under the Securities Industry Act, 2011 (*No. 10 of 2011*);

**“company”** means a body corporate incorporated or registered under the laws of The Bahamas or of any other jurisdiction;

**“competent authority”** means the regulatory authority that is empowered by the laws of a foreign jurisdiction to supervise AIFMs, EU AIFMs, investment funds, EU AIFs and AIFMD custodians in that jurisdiction;

**“Compliance Officer”** means a person appointed under section 39;

**“connected person”** means —

- (a) any individual or company beneficially owning, directly or indirectly, ten per cent or more of the ordinary share capital of an investment fund or able to exercise, directly or indirectly, ten per cent or more of the total votes in that fund;
- (b) any individual or company controlled by an individual or company referred to in paragraph (a);
- (c) any member of a group where the fund or a person referred to in (a) or (b) forms a part;
- (d) any director or officer of the fund or any director or officer of a company referred to in paragraphs (a), (b) or (c); or
- (e) any person being a promoter, broker, underwriter, banker, investment banker or professional advisor who has a special relationship with any person described in paragraph (a), (b) or (c);

**“constitutive documents”** means the principal documents governing the formation of the investment fund, and includes the trust deed in the case of a unit trust, the memorandum and articles of association in the case of a company, the governing regulations in the case of an investment condominium, the partnership agreement or articles of

partnership in the case of a partnership and all other material agreements;

**"counsel and attorney"** has the same meaning as in section 2 of the Legal Profession Act (*Ch. 64*);

**"court"** means the Supreme Court of The Bahamas;

**"custodian"** means a person appointed under section 68;

**"Directive 2004/109/EC"** means Directive 2004/109/EC of the European Parliament and of the Council of the 15th December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

**"document"** includes, in addition to a document in writing —

- (a) an electronic communication as defined in the Electronic Communications and Transactions Act (*Ch. 337A*);
- (b) any map, plan, graph or drawing;
- (c) any photograph;
- (d) any disc, tape, sound track or other device in which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced; and
- (e) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

**"domestic regulatory authority"** means an authority in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions and includes —

- (a) authorities that regulate or supervise financial institutions;
- (b) securities exchanges;
- (c) self-regulatory organisations;
- (d) law enforcement agencies;
- (e) governmental or regulatory agencies not mentioned in paragraphs (a) to (d); and
- (f) any other Bahamian authority as prescribed;

**"equity interest"** means a share, a trust unit, a participation interest or a partnership interest that carries an entitlement to participate in the profits or gains of the issuer thereof and that, except where the issuer is a closed-ended fund, is redeemable or re-purchasable at the option of the investor;

**“ESMA” or “European Securities and Markets Authority”** means the Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the European Union;

**“EU”** means the European Union established by the Treaty on European Union signed in Maastricht on 7<sup>th</sup> February 1992;

**“EU AIF”** means an alternative investment fund established in a Member State;

**“EU AIFM”** means a company who is —

- (a) established or has its principal office in a Member State; and
- (b) authorised by a Member State —
  - (i) to manage one or more investment funds or EU AIFs whether or not the investment funds or the EU AIFs are marketed in the EU; or
  - (ii) to market investment funds in the EU;

**“EU passport”** means an authorization from a Member State that facilitates —

- (a) the marketing by an EU AIFM of an investment fund that is managed by the EU AIFM to professional investors in the EU;
- (b) the management by an AIFM of an EU AIF;
- (c) the marketing by an AIFM of an investment fund or an EU AIF to professional investors in the EU, in accordance with AIFMD;

**“euros”** mean the basic unit of currency of the member states of the European Union;

**“Executive Director”** means the person appointed as such under the Securities Industry Act, 2011 (*No. 10 of 2011*);

**“feeder fund”** means an investment fund that conducts more than fifty-one per cent of its investing in a master fund either directly or through an intermediary entity;

**“fit and proper”** has the prescribed meaning;

**“foreign jurisdiction”** means a jurisdiction other than The Bahamas;

**“former act”** means the Investment Funds Act (*Ch. 369A*);

**“general partner”** means —

- (a) in respect of an exempted limited partnership constituted under the laws of The Bahamas, a general partner as defined under section 2 the Exempted Limited Partnership Act (*Ch. 312*); or

(b) in respect of a partnership constituted under the laws of a jurisdiction other than The Bahamas, a person equivalent to a general partner under the laws of The Bahamas;

**“Hearing Panel”** means the hearing panel established under rule 9 of the Securities Industry (Disciplinary Proceedings)(Hearings and Settlements) Rules, 2017 (*S.I. No. 11 of 2017*);

**“investment condominium”** means an investment condominium established and registered under the Investment Condominium Act, 2014 (*No. 38 of 2014*);

**“investment fund”** or **“fund”** means a unit trust, company, partnership or investment condominium that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains arising from the acquisition, holding, management or disposal of investments;

**“investment fund administration”** means —

- (a) to administer the operations and administrative affairs of an investment fund;
- (b) to provide the administrative services for an investment fund including the accounting, valuation or reporting services; or
- (c) to provide the principal office of an investment fund;

but does not include —

- (i) the provision of a registered office to an investment fund where the usual corporate secretarial and related services are provided;
- (ii) in relation to an investment fund, the maintenance of any register of equity interests or the registration and payment of fees;
- (iii) the provision of investment advice or investment management or trading execution services;

**“investment fund administrator”** means a person licensed under section 36 who provides investment fund administration in or from The Bahamas;

**“investment fund administrator’s licence”** means a licence referred to under section 36;

**“investment fund advisor”** means a person not being an officer or employee of an investment fund who for valuable consideration, provides or is entitled to provide an investment fund with investment advice only, and who does not provide any investment management services to such investment fund;

**“investment fund licence”** means a licence granted under section 5;

**“investment fund manager”** means a person licensed or registered under section 26;

**“investor”** means a person who holds or owns an equity interest issued by an investment fund;

**“licensee”** means a person to whom a licence is granted under this Act;

**“licensor”** means the Commission or an investment fund administrator licensed under section 35(1)(a);

**“marketing”** means a direct or indirect offering or placement of shares, trust units, partnership interests or participation interests of an investment fund, to potential investors.

**“master fund”** means a company, partnership, unit trust or investment condominium that—

- (a) has as its investors other investment funds or feeder funds;
- (b) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the feeder funds; or
- (c) has as its investors one or more feeder funds either directly or through an intermediary entity established to invest in the master fund,

and for the purposes of this Act such master fund shall be deemed to be an investment fund;

**“Member State”** means a state which is a member of the EU in which the AIFMD has been implemented;

**“Minister”** means the Minister of Finance;

**“Non-Bahamas based investment fund”** means an investment fund that is incorporated, registered or established in a jurisdiction other than The Bahamas but has a nexus to The Bahamas through it being administered or managed in or from The Bahamas;

**“Non-EU AIF”** means an alternative investment fund that is not established in a Member State;

**“NPPR”** or **“National Private Placement Regime”** means the national regulatory regime of each Member State which determines how —

- (a) investment funds or EU AIFs are marketed by AIFMs in the Member State; and
- (b) EU AIFs established in the Member State are managed by EU AIFMs, AIFMs and investment fund managers;

**“offering document”** in respect of an investment fund, means a document or series of documents on the basis of which —

- (a) equity interests in the investment fund are offered for sale; or

- (b) persons are invited to subscribe for or purchase equity interests in the investment fund, but does not include any other notice, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the investment fund or the invitation to any person to subscribe for or purchase any equity interest in the investment fund if before the offer or invitation is accepted or taken up the prospective investor is given the opportunity to consider an offering document containing the information set out under section 10(1);

**“operator”** in respect of the investment fund, means where the investment fund is —

- (a) a unit trust, a trustee of that trust;
- (b) a partnership, a general partner in that partnership;
- (c) a company, a director of that company; or
- (d) an investment condominium, the governing administrator as defined in section 2 of the Investment Condominium Act, 2014 (*No 38 of 2014*);

**“overseas regulatory authority”** means an authority in a jurisdiction outside The Bahamas that exercises functions corresponding to any function of the Commission;

**“own funds”** means assets that are set aside to cover risks and includes paid-up share capital, reserves and undistributed profits;

**“party related to an investment fund”** or its derivatives means an investment fund administrator, operator, promoter, custodian, valuer, investment fund manager, investment fund advisor, EU AIFM, AIFM or AIFMD custodian;

**“participation interest”** means a unit of ownership interest in an investment condominium;

**“partnership”** means a partnership, general or otherwise, constituted under the laws of The Bahamas or any other jurisdiction;

**“partnership interest”** means the interest of a partner general or otherwise, in respect of profit, capital and voting or other rights, benefits or obligations to which he is entitled or subject under the partnership agreement or the laws of The Bahamas or any other jurisdiction;

**“person”** includes an individual, company, partnership, party, trust, fund, association and any other organized or incorporated group of persons and the personal or other legal representatives of any person to whom the context can apply;

**“prescribe”** or **“prescribed”** means prescribed by regulations or rules;

**“prescribed jurisdiction”** means a jurisdiction prescribed by the Commission in rules;

**“prime broker”** means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

**“principal office”** means the address of the primary place of business of an investment fund;

**“professional advisor”** means —

- (a) an investment fund advisor or investment fund manager;
- (b) a counsel and attorney; or
- (c) an accountant;

**“professional fund”** means an investment fund that is offered to any person who comes within any of the following categories at the time of issue of the equity interest —

- (a) any bank or trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) or licensed under the laws of another jurisdiction; whether acting in its individual or fiduciary capacity;
- (b) any firm registered under Part VI of the Securities Industry Act, 2011 (*No. 10 of 2011*) that maintains a minimum capital of one hundred and twenty thousand dollars of regulatory capital or is registered or licenced to carry on equivalent securities activities in a prescribed jurisdiction;
- (c) any insurance company licensed under the Insurance Act (*Ch. 347*) or licensed under the laws of another jurisdiction;
- (d) any investment fund licensed or registered under this Act or regulated under the laws of another jurisdiction;
- (e) any pension fund where a professional investment fund manager has been appointed to manage the fund's assets;
- (f) any natural person whose individual net worth, or joint net worth with the person's spouse exceeds one million dollars;
- (g) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;



- (h) any trust with total assets in excess of five million dollars;
- (i) any entity where all the equity owners satisfy one of the requirements in paragraphs (a) to (g); or
- (j) any entity with net assets in excess of five million dollars;

**“promoter”** in respect of an investment fund or proposed investment fund, means any person whether within or outside The Bahamas who directly or indirectly is responsible for the formation of an investment fund and who causes the preparation or distribution of an offering document in respect of the investment fund or proposed investment fund but does not include a professional advisor or underwriter acting for or on behalf of such a person;

**“qualifying holding”** means a direct or indirect holding in an AIFM which represents ten per cent or more of the capital or of the voting rights, in accordance with Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation of the holding laid down in Article 12(4) and (5) of Directive 2004/109/EC, or which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

**“record”** means any means by which information may be stored;

**“registered marketplace”** means a marketplace registered under Part V of the Securities Industry Act (*No. 10 of 2011*);

**“registered office”** means in the case of—

- (a) a company incorporated under the Companies Act (*Ch. 308*), an office registered in accordance with section 17 of that Act;
- (b) a foreign company registered under section 172 of the Companies Act (*Ch. 308*), an office registered in accordance with section 181 of that Act;
- (c) a company incorporated under the International Business Companies Act (*Ch. 309*), an office registered in accordance with section 37 of that Act;
- (d) a partnership registered under the Exempted Limited Partnership Act (*Ch. 312*), the registered office of that partnership for the purposes of that Act;
- (e) any other partnership, its principal place of business;
- (f) a unit trust, the registered office of the trustee in The Bahamas or the place of business of an individual trustee; or
- (g) an investment condominium, the registered office of the administrator;

- “regulated investment fund”** means an investment fund that is licensed under this Act to carry on business in or from the Bahamas;
- “regulated person”** includes a person licenced or registered under this Act;
- “restricted investment fund administrator’s licence”** means an investment fund administrator’s licence issued under section 35.(1)(b);
- “self-administered investment fund”** means an investment fund that has not appointed an external investment fund administrator but is administered by its own operators who are responsible for the functions of the investment fund administrator;
- “share”** means the interest of a member in a company limited by shares and in the case of a company limited by guarantee, includes an interest of a member of that company;
- “SMART fund”** means an investment fund established by the Commission as a Specific Mandate Alternative Regulatory Test Fund that satisfies certain prescribed parameters and requirements of a category, class or type of investment fund previously approved by the Commission;
- “standard fund”** means an investment fund that does not satisfy the requirements of a professional fund or a SMART fund;
- “suspended investment fund”** means an investment fund to which section 22 of this Act applies;
- “trade”** includes —
- (a) any purchase or sale of an equity interest in an investment fund for valuable consideration; or
  - (b) any participation as a regulated person or agent in any transaction involving an equity interest in an investment fund;
- “trust unit”** means a unit of ownership interest in a unit trust;
- “unit trust”** means a trust which, for valuable consideration, issues units in the undertaking of the trust entitling the holder thereof to a share in the profits or gains arising from the acquisition, holding, management or disposal of investments;
- “unleveraged closed-ended investment fund”** means a closed-ended investment fund that does not use borrowed money to acquire assets;
- “unleveraged investment fund”** means an investment fund that does not use borrowed money to acquire assets;
- “unrestricted investment fund administrator”** means an investment fund administrator licensed under section 35.(1)(a);

“**valuer**” means an AIFM who performs a valuation of the assets of an EU AIF or an investment fund that is marketed in the EU or a person appointed by an AIFM to perform an independent valuation of the assets of an EU AIF or an investment fund that is marketed in the EU.

**4. Application.**

This Act applies to all persons who carry on or intend to carry on investment fund business in or from The Bahamas.

## **PART II - LICENCING AND REGISTRATION**

### **INVESTMENT FUND**

**5. Licensing requirement for an investment fund.**

- (1) An investment fund shall not carry on or attempt to carry on business in or from The Bahamas unless it is licensed as —
  - (a) a professional fund;
  - (b) a standard fund;
  - (c) a SMART fund; or
  - (d) a master fund.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine of up to five hundred thousand dollars or imprisonment of two years or both.

**6. Professional and standard fund.**

Notwithstanding section 5, a professional fund or standard fund shall not carry on or attempt to carry on business in or from The Bahamas unless —

- (a) it has appointed an investment fund administrator and an investment fund manager or AIFM;
- (b) if it is a unit trust, it has as its trustee —
  - (i) a trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) with an unrestricted licence;
  - (ii) a bank licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*) with an unrestricted licence;
  - (iii) such other bank or trust company as shall have a minimum paid-up capital and non-distributable reserves of two million dollars and is otherwise acceptable to the Commission; or

- (iv) a person approved by the Commission; and
- (c) a current offering document of the investment fund has been filed with the Commission that complies with section 10; and
- (d) the prescribed fees have been paid in respect of the investment fund.

**7. SMART fund.**

- (1) Notwithstanding section 5, a SMART fund shall not carry on or attempt to carry on business in or from The Bahamas unless —
  - (a) it complies with any written rule of the Commission establishing the parameters or requirements in respect of the category, class or type of investment fund; and
  - (b) the prescribed fees have been paid in respect of the investment fund.
- (2) The Commission may establish such parameters and requirements as to the administration of a SMART Fund or the contents of the constitutive documents and offering documents of the SMART fund as it deems fit.
- (3) The Commission shall make rules establishing parameters and requirements in respect of each category, class or type of investment fund that it approves as a SMART Fund.

**8. Self-Administered fund.**

- (1) Notwithstanding section 6(a), an investment fund may operate and conduct business as a self-administered investment fund.
- (2) A reference to an investment fund administrator of a self-administered investment fund shall be deemed to be a reference to the operator of the self-administered investment fund who is performing the function of an investment fund administrator.
- (3) An operator of a self-administered fund shall not deal with the fund as principal.
- (4) A self-administered fund shall be licensed by the Commission only.

**9. Non-Bahamas based fund.**

Where a Non-Bahamas based investment fund —

- (a) is being administered in or from The Bahamas, the investment fund administrator;
- (b) is being managed in or from The Bahamas, the investment fund manager,

shall notify the Commission in writing of the nature of the fund's nexus to The Bahamas within fourteen days of the start of such relationship and the fund shall advise the Commission within fourteen days of the termination of such relationship.

**10. Offering document.**

- (1) An offering document of an investment fund shall —
  - (a) describe the equity interests in all material respects;
  - (b) contain the prescribed details; and
  - (c) contain such other information as is necessary to enable the prospective investor in the investment fund to make an informed decision with respect to subscribing for or purchasing such equity interests.
- (2) Subsection (1) shall be without prejudice to any duty of disclosure under the common law or any other law.
- (3) Every investment fund, including a Non-Bahamas based investment fund, where the equity interests are being sold in The Bahamas, shall be required to have filed with the Commission a current offering document of the investment fund.
- (4) An investment fund shall not have satisfied the requirement under subsection (3), where there is a continuing offering of equity interests and any promoter, operator or the investment fund administrator of the investment fund —
  - (a) is aware of any material information that affects the offering document of the investment fund filed with the Commission; and
  - (b) has not, within twenty-one days of becoming so aware, filed with the Commission an amended offering document of the investment fund, incorporating the amendment, which may be in the form of a sticker or a supplement.
- (5) An investment fund is not in compliance with subsections (3) and (4) if it has —
  - (a) changed its principal office;
  - (b) changed its operators; or
  - (c) amended documents or offering documents, and it has failed to inform the Commission.

**11. Application for licensing.**

- (1) An application for an investment fund licence as a standard fund, professional fund or SMART fund shall be made to the licensor in the prescribed form and shall be accompanied by —

- (a) in the case of a standard or professional fund, the current offering document, or if one has not been finally settled, the latest draft of the offering document.
  - (b) in the case of a SMART fund, all documents as required by the Commission for the relevant approved structure;
  - (c) a certified copy of the constitutive documents of the investment fund;
  - (d) details necessary to satisfy the licensor that the applicant is a fund as provided for under sections 6 or 7;
  - (e) the prescribed fee; and
  - (f) such other information and documentation as the licensor may reasonably require for the purpose of determining the application.
- (2) An application for licensing as a master fund shall be in the prescribed form and shall be accompanied by —
- (a) such information and documentation as may be required for the purpose of satisfying the Commission that the investment fund meets the conditions for being classified as a master fund; and
  - (b) the prescribed application fee.

**12. Licensing of investment fund by unrestricted investment fund administrator.**

- (1) Subject to subsection (4), an unrestricted investment fund administrator may licence an investment fund that it administers subject to all rules or regulations as may be prescribed by the Commission.
- (2) An unrestricted investment fund administrator shall, in respect of any investment fund that it licenses, within thirty days of such licensing, file with the Commission —
  - (a) the offering document of the investment fund as applicable accompanied by written certification from the investment fund administrator of the investment fund or from a counsel and attorney that the offering document is in compliance with this Act;
  - (b) a certified copy of the constitutive documents of the investment fund accompanied by written certification from the investment fund administrator of the investment fund or from a counsel and attorney that the constitutive documents are in compliance with this Act;
  - (c) documentation establishing the identity and fitness and propriety of the promoter, operator, investment fund advisor or investment fund manager or both, the EU AIFM, the AIFM and the AIFMD custodian if applicable, the custodian and auditor of the investment fund;
  - (d) a copy of the licence issued by the licensor; and

- (e) the prescribed fee.
- (3) Subject to subsection (4) an unrestricted investment fund administrator may licence professional and SMART and master funds only.
- (4) An unrestricted investment fund administrator may licence a master fund where —
  - (a) the master fund and feeder fund are part of the same master fund and feeder fund structure, that it administers; or
  - (b) the master fund is a Bahamas based fund that it administers and the feeder funds are Non-Bahamas based funds.
- (5) An unrestricted investment fund administrator may only licence investment funds for which it is the investment fund administrator and for which it provides the principal office.
- (6) An unrestricted investment fund administrator may not licence an investment fund until it has been satisfied that —
  - (a) each promoter, operator, investment fund advisor, investment fund manager, auditor, custodian, EU AIFM, AIFM and AIFMD custodian if applicable, is fit and proper as prescribed by the Commission; and
  - (b) the business of the investment fund and any offer of equity interests in it will be carried out in a proper manner.
- (7) An unrestricted investment fund administrator who fails to file the prescribed documents of an investment fund which it has licensed on or before the thirtieth day following the date of the licence shall pay to the Commission a fine equal to twice the amount of the annual registration fee payable by the fund.
- (8) The Commission may, for good cause, waive the fine imposed under subsection (7).

**13. Conditions on licensing.**

- (1) The Commission may license an investment fund subject to such conditions as it considers appropriate.
- (2) The operator of an investment fund shall use all reasonable efforts to ensure that, when carrying on or attempting to carry on business in or from The Bahamas, the investment fund complies with all conditions under which it was licensed.
- (3) The Commission may at any time, by notice in writing, waive, vary or revoke any condition attached to an investment fund licence granted under section 5.

- (4) An investment fund may request in writing that the Commission waive, vary or revoke any condition attached to its licence.

**14. Grant or refusal of licence.**

On application for an investment fund licence made under this Act, the Commission, may —

- (a) grant the application and issue the relevant licence;
- (b) refuse to grant the application and serve a notice in writing of its decision on the applicant.

**15. Refusal to license an investment fund.**

- (1) The Commission may refuse to license an investment fund where —
  - (a) the investment fund has not satisfied the provisions of this Act;
  - (b) for reasons of public interest, the Commission determines that the investment fund should not be licensed; or
  - (c) the name of the investment fund is —
    - (i) identical to that of any other investment fund that is licensed under this Act or which so nearly resembles the name of an investment fund licensed under this Act so as to be likely to deceive or cause confusion in the investment funds industry;
    - (ii) likely to suggest, falsely, the patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or
    - (iii) likely to suggest falsely, that the fund has a special status in relation to or derived from the Government of The Bahamas.
- (2) No person other than a regulated investment fund shall carry on or attempt to carry on business with the words “fund” or “investment fund” in its name.
- (3) If, in the opinion of the Commission, an investment fund is carrying on business in a name that the Commission would have refused by virtue of subsection (1)(c), the Commission may direct the investment fund to change its name to a name approved by the Commission.

**16. Duty to provide reasons.**

The Commission shall provide reasons for decisions made in respect of an application for licensing or its refusal to license an investment fund.

**17. Restriction on licensing.**

The Commission or an unrestricted investment fund administrator shall not license an investment fund until it is satisfied by the applicant that —



- (a) each promoter, operator, investment fund advisor, investment fund manager, investment fund administrator, auditor, custodian, EU AIFM or AIFM and AIFMD custodian if applicable, is fit and proper;
- (b) the administration of the investment fund will be undertaken by persons who have sufficient expertise to administer the investment fund;
- (c) the investment management of the investment fund will be undertaken by persons who have sufficient expertise to manage the investment fund;
- (d) the business of the investment fund and any offering of equity interests in it will be carried out in a proper manner.

**18. Representation as investment fund.**

No person other than a regulated investment fund shall represent in any way that it is an investment fund.

**19. Transfer from The Bahamas.**

- (1) A regulated investment fund may transfer from The Bahamas to a foreign jurisdiction and shall notify the Commission in the prescribed form of such transfer within fourteen days of the issue of the licence from the foreign jurisdiction.
- (2) Where notification is given under subsection (1), the investment fund shall at the same time —
  - (a) surrender to the Commission the original certificate issued as evidence of its being licensed in The Bahamas; or
  - (b) in the event the original certificate is lost, submit to the Commission an affidavit attesting to the fact of such loss.
- (3) The Commission upon being satisfied that the provisions of this section have been met, shall cause to be published in the *Gazette* a notice that the investment fund is no longer licensed in The Bahamas.

**20. Transfer to The Bahamas.**

- (1) An investment fund that intends to transfer to The Bahamas from another jurisdiction shall notify the Commission in the prescribed form of such transfer and shall apply to the Commission to be licenced not later than twenty-one days prior to transferring to The Bahamas.
- (2) An investment fund under subsection (1) shall submit to the Commission, the information prescribed by the Commission in support of its application for licensing.

- (3) The Commission may upon the written application of the investment fund transferring to The Bahamas, extend the period within which the fund must obtain an investment fund licence.

## **21. Voluntary surrender of licence by investment fund.**

- (1) An investment fund shall not voluntarily surrender its license without the prior approval of the Commission.
- (2) An investment fund shall notify the Commission in writing of its intention to surrender its licence, at least twenty one days prior to the intended date of the surrender.
- (3) The Commission may, on receiving notification by an investment fund under subsection (2) —
  - (a) approve the voluntary surrender of the licence of the investment fund if the Commission is satisfied that the surrender of the licence would not be prejudicial to the public interest and the surrender shall not take effect until twenty one days after the notice has been received by the Commission;
  - (b) approve, subject to such terms and conditions as it may impose, the voluntary surrender of the licence of the investment fund if the Commission is satisfied that the surrender of the licence would not be prejudicial to the public interest and the surrender of the license shall not take effect until all conditions imposed by the Commission have been complied with; or
  - (c) without providing an opportunity to be heard, suspend the licence or impose any condition or restriction on the licence that the Commission deems appropriate.
- (4) On the effective date of the surrender, where the Commission has approved the voluntary surrender of a licence, the investment fund shall —
  - (a) surrender to the Commission the original certificate issued as evidence of its being licensed in The Bahamas; or
  - (b) in the event the original certificate is lost, submit to the Commission an affidavit attesting to the fact of such loss.
- (5) The Commission shall within fourteen days of approval of the investment fund's voluntary surrender of its licence under subsection (3)(a) and (b), cause to be published in the Gazette a notice that the investment fund is no longer licensed in The Bahamas.

## **22. Voluntary suspension of investment fund activity.**

- (1) An investment fund that has not commenced its operation, or that ceases trading and liquidates and distributes its assets without formally

- liquidating its structure, within one year of licensing, shall inform the Commission of the voluntary suspension of its activity.
- (2) An investment fund shall inform the Commission in writing within fourteen days of suspending its activity.
  - (3) Upon being notified that an investment fund has suspended its activity under subsection (1), the Commission shall suspend the licence of the investment fund and cause to be published in the Gazette a notice that the licence of the fund has been suspended.
  - (4) An investment fund whose licence has been suspended under subsection (3) may resume its operation within one year from the date of suspension failing which the Commission may revoke the licence of such suspended investment fund.
  - (5) An investment fund whose licence has been suspended under subsection (3) that intends to resume its operation shall apply to the Commission to have the suspension of its licence lifted, and such application shall be made in the prescribed manner, and the investment fund shall pay the prescribed fee.
  - (6) The Commission may upon the written application of the investment fund extend the period of suspension of a licence to a period not exceeding eighteen months.
  - (7) Upon being satisfied that the investment fund is in compliance with all provisions of this Act, the Commission shall lift the suspension of the licence of the investment fund imposed under subsection (3) and cause to be published in the Gazette a notice that the investment fund has been re-launched.

**23. Misrepresentation.**

- (1) A person who applies for an investment fund licence shall not supply the licensor with information that he knows or should reasonably know is false or misleading.
- (2) Where an unrestricted investment fund administrator acting in its capacity as a licensor becomes aware that an applicant has provided it with false or misleading information, it shall immediately notify the Commission in writing.

## INVESTMENT FUND MANAGER

### **24. Appointment of investment fund manager.**

- (1) Subject to subsection (3) and section 26(1), an investment fund shall appoint an investment fund manager upon commencement of operations as a regulated investment fund.
- (2) An investment fund manager appointed under subsection (1) shall provide or is entitled to provide an investment fund with investment management services and may provide investment advice for valuable consideration.
- (3) Where an investment fund appoints an investment fund manager, the investment fund shall be required to be licensed or registered as an investment fund manager.

### **25. Conditions for licensing or registration of an investment fund manager.**

An investment fund manager shall satisfy the Commission that the investment fund manager —

- (a) is capable of complying with the capital, assets and organizational requirements;
- (b) has sufficient experience;
- (c) is suitably qualified for the performance of its functions; and
- (d) is of good repute,

to the standard prescribed by the Commission.

### **26. Licensing or registration requirement for an investment fund manager.**

- (1) A person shall not act as the investment fund manager of an investment fund unless it is licensed or registered as such by the Commission.
- (2) The Commission may licence a person as an investment fund manager where that investment fund manager intends to manage —
  - (a) a standard fund; or
  - (b) any other investment fund in any jurisdiction, other than the EU, whose equity interests are not limited to being offered to accredited investors.
- (3) Subject to subsection (4), a person shall apply to the Commission for a licence to operate as an investment fund manager.
- (4) The Commission may register a person as an investment fund manager where that investment fund manager —
  - (a) intends to manage professional funds or SMART funds;

- (b) intends to manage any investment fund in a jurisdiction, other than the EU, whose equity interests are offered to accredited investors only; or
- (c) is licensed or registered in a prescribed jurisdiction.

## AIFM

### **27. Licensing requirement of AIFM.**

- (1) Subject to subsection (3), an investment fund that intends to offer its equity interests for sale in the EU shall appoint no more than one AIFM.
- (2) A person that intends to —
  - (a) market an investment fund or an EU AIF in the EU with an EU passport; or
  - (b) manage an EU AIF with an EU passport irrespective of where the EU AIF is marketed,

shall apply for a licence as an AIFM in the manner prescribed by the Commission.

### **28. Power to grant AIFM licence.**

Where an application is made under subsection 27(2), the Commission may grant an AIFM licence where the applicant has satisfied all requirements as prescribed by the Commission.

### **29. Restriction on licensing.**

- (1) The Commission shall not grant a licence under this Part unless —
  - (a) it is satisfied that the applicant will be able to meet the conditions of this Sub Part;
  - (b) the applicant has sufficient capital, own funds and professional indemnity insurance in accordance with section 74;
  - (c) the persons who effectively conduct the business of the applicant are of good repute and are experienced in relation to the investment strategies pursued by the investment funds to be managed by the applicant, and the conduct of the business of the applicant is decided by at least two persons meeting such conditions;
  - (d) the shareholders or members of the applicant that have qualifying holdings are suitable, taking into account the need to ensure the sound and prudent management of the applicant; and
  - (e) the principal office and the registered office of the applicant are located in The Bahamas.

- (2) The names of the persons referred to in subsection (1)(c) shall be communicated to the Commission prior to the grant of a licence and the names of every person succeeding them in office shall be communicated to the Commission.
- (3) The Commission in granting a licence under this Part may restrict the scope of the licence, with respect to the investment strategies of investment funds and EU AIFs the AIFM is allowed to manage or market.

### **30. Notification of changes in information provided.**

- (1) An AIFM shall notify the Commission of any changes that are material to the conditions for the initial granting of a licence prior to implementing any changes.
- (2) The Commission shall, within thirty days of receipt of the notification referred to in subsection (1), inform the AIFM of —
  - (a) any restrictions imposed by the Commission; or
  - (b) any proposed changes rejected by the Commission.
- (3) The proposed changes under subsection (1) shall be implemented where the Commission does not oppose the changes within the period referred to in subsection (2).

### **31. Revocation of AIFM licence.**

The Commission may revoke a licence issued to an AIFM under this Sub Part where that AIFM —

- (a) does not commence its operation within one year of the grant of its licence;
- (b) expressly requests that the licence be revoked;
- (c) has ceased the activity for which the licence was obtained for the preceding six months;
- (d) obtained the licence by making false statements or by any other unlawful conduct;
- (e) no longer meets the conditions under which the licence was granted; or
- (f) has failed to comply with the provisions of this Act.

### **32. Commission to inform ESMA.**

The Commission shall, on a quarterly basis, inform ESMA of the licences granted or revoked in accordance with this Sub Part.

**33. Compliance with this Act.**

An AIFM that is licensed under section 29. shall comply with the applicable provisions of this Act.

**INVESTMENT FUND ADMINISTRATOR**

**34. Appointment of investment fund administrator.**

Subject to section 8, an investment fund shall appoint an investment fund administrator prior to the commencement of operations as a regulated investment fund.

**35. Licensing requirement of investment fund administrator.**

- (1) The Commission may, subject to such conditions as it deems fit, grant —
  - (a) an unrestricted investment fund administrator's licence that authorizes the holder to licence an unlimited number of investment funds that it administers;
  - (b) a restricted investment fund administrator's licence that authorizes the holder to administer only the investment funds specified by the Commission from time to time.
- (2) An investment fund administrator shall not act on behalf of an investment fund unless it is —
  - (a) the holder of an unrestricted investment fund administrator's licence under this Act;
  - (b) the holder of a restricted investment fund administrator's licence under this Act;
  - (c) established and operating in accordance with the laws of a prescribed jurisdiction.
- (3) An investment fund administrator who contravenes subsection (2) commits an offence and is liable on conviction to a fine of up to two hundred thousand dollars.

**36. Conditions for licensing of an investment fund administrator.**

- (1) The Commission may grant an investment fund administrator's licence if it is satisfied that the applicant —
  - (a) is a company incorporated or registered under the Companies Act (*Ch. 308*) or incorporated under the International Business Companies Act (*Ch. 309*);
  - (b) has sufficient expertise to administer investment funds;

- (c) is of sound reputation;
  - (d) will administer investment funds in a proper manner;
  - (e) has directors, officers, and senior management who meet the fit and proper requirements as prescribed by the Commission;
  - (f) has a principal office in The Bahamas;
  - (g) has a minimum of two senior officers residing in The Bahamas who shall include —
    - (i) the Chief Executive Officer;
    - (ii) the Compliance Officer; and
  - (h) complies with prescribed financial requirements.
- (2) An investment fund administrator shall notify the Commission within fourteen days of any change of its principal office, registered office or any individuals acting as its agents.

**37. Refusal to grant licence.**

- (1) The Commission may refuse to grant an investment fund administrator's licence where the applicant's name is —
- (a) identical to that of any investment fund administrator or which so nearly resembles the name of an investment fund administrator as to be likely to deceive or cause confusion in the investment funds industry;
  - (b) likely to suggest falsely, patronage of or connection with some person or authority, whether within The Bahamas or elsewhere; or
  - (c) likely to suggest, falsely, that the investment fund administrator has a special status in relation to or derived from the Government.
- (2) If, subsequent to granting an investment fund administrator's licence, the Commission discovers that the investment fund administrator is carrying on business as an investment fund administrator in or from The Bahamas in a name that, in the opinion of the Commission, it would have refused by virtue of subsection (1), the Commission may direct the investment fund administrator to change its name to a name approved by the Commission.
- (3) An investment fund administrator shall comply with a direction given to it in accordance with subsection (2).

**38. Chief Executive Officer of an investment fund administrator.**

- (1) Subject to subsection (3), an investment fund administrator shall appoint an individual as a Chief Executive Officer.
- (2) An investment fund administrator shall not appoint an individual as a Chief Executive Officer under subsection (1) unless it is satisfied that the



individual is fit and proper and has satisfied the requirements established by the Commission.

- (3) A person shall not act as the Chief Executive Officer unless approved by the Commission.
- (4) The Commission may, by notice in writing to the Chief Executive Officer, attach conditions to the approval under subsection (3) that appear to the Commission to be necessary.

**39. Appointment and responsibilities of Compliance Officer of investment fund administrator.**

- (1) Subject to subsection (4), an investment fund administrator shall appoint a person as a Compliance Officer, subject to such conditions as prescribed by the Commission.
- (2) A Compliance Officer is responsible for ensuring that an investment fund administrator complies with all applicable laws.
- (3) An investment fund administrator shall not appoint a person as Compliance Officer under subsection (1) unless it is satisfied that the person is fit and proper and has satisfied the requirements established by the Commission.
- (4) A person shall not act as a Compliance Officer unless approved by the Commission.
- (5) The Commission may, by notice in writing to the Compliance Officer, attach conditions to the approval under subsection (4) that appear to the Commission to be necessary.

## GENERAL REGULATORY MATTERS

**40. Application for licensing, registration or approval.**

An application for a licence, registration or approval by the Commission shall be made by the applicant to the Commission in the prescribed form and shall be accompanied by —

- (a) such information as the Commission requires to determine the application;
- (b) the relevant prescribed form; and
- (c) the relevant prescribed fee.

**41. Requirement for licence, registration or approval.**

A licence, registration or approval is effective unless —

- (a) it is revoked;

- (b) it expires;
- (c) the conditions for continuing the licence, registration or approval have not been satisfied; or
- (d) the Commission accepts a surrender of the regulated person's licence under the provisions of this Act.

**42. Imposition, variation or revocation of terms and conditions of licence, registration or approval.**

- (1) The Commission may, if it thinks fit, by notice in writing served on the regulated person or party related to an investment fund, impose, vary or revoke a condition of a licence, registration or approval for a specified period, until the occurrence of a specified event or until specified conditions are complied with, where the regulated person or party related to an investment fund —
  - (a) has furnished misleading or inaccurate information to the Commission under or for the purposes of any provision of this Act;
  - (b) is in breach of the prescribed minimum regulatory capital requirement;
  - (c) has failed to maintain the prescribed own funds or professional indemnity insurance requirement;
  - (d) has become insolvent or goes into liquidation or is wound up or otherwise dissolved; or
  - (e) has been convicted of a criminal offence, except where the offence is a minor traffic offence or has been spent under the Rehabilitation of Offenders Act (*Ch. 100*);
- (2) Whenever the Commission is of the opinion that any action under subsection (1) should be taken, it may attach conditions to the licence, registration or approval of such person but before taking such action the Commission shall give that person notice in writing of its intention so to do setting out in the notice the ground on which it proposes to act and shall afford such person, within such time as may be specified, being not less than seven days, an opportunity to respond in writing to such action, and thereafter the Commission shall advise the person of its decision.
- (3) Where the Commission attaches a condition to a licence, registration or approval under subsection (2) it shall immediately cause notice of the condition to be published on the Commission's website.
- (4) Where the regulated person or party related to an investment fund is of the opinion that the publication required under subsection (3) would be unduly detrimental to its interests or that the publication should be withheld in the public interest, it must within the time provided under

subsection (2) advise the Commission in writing of the reasons why it is of the opinion that publication should be withheld.

- (5) The Commission shall consider the reasons given for withholding the publication of a condition under subsection (4) and shall advise the regulated person or party related to an investment fund of its decision.
- (6) Any conditions attached to a licence, registration or approval under subsection (2) shall remain until the Commission takes action under subsection (2) or until the Commission notifies the regulated person or party related to an investment fund that the conditions have been removed, whichever period is shorter.
- (7) Where the Commission deems it necessary it may apply to the court for an order that the investment fund, investment fund manager, AIFM or investment fund administrator, as the case may be, shall be wound up, dissolved, liquidated or otherwise terminated, as appropriate.
- (8) The Commission may, in the case of a person that is or has been licensed, registered or approved under this Act apply to the court for directions if it considers that the winding up is not being conducted in the best interests of the investors or creditors of such investment fund, investment fund manager, AIFM or investment fund administrator and the court shall make such order as it deems fit.

#### **43. Renewal of licence or registration.**

- (1) A regulated person shall renew its licence or registration, as applicable, on an annual basis by submitting to the Commission on or before the 31<sup>st</sup> day of January of each year —
  - (a) a written declaration in the prescribed form stating that all of the information filed with the Commission is current and applicable; and
  - (b) the prescribed annual licence or registration fee.
- (2) If the prescribed annual fee referred to in subsection (1) is not paid on or before the 31<sup>st</sup> day of January, the regulated person shall be required to pay an additional fee equal to that annual fee for each month or part of a month during which the annual fee and any additional fee imposed under this subsection remains unpaid, up to the 1<sup>st</sup> day of April of the relevant year.
- (3) Where the regulated person has failed to pay the required fee and any additional fee imposed under subsection (2) on or before the 1<sup>st</sup> day of April, of the relevant year, the Commission may revoke the licence or registration of the regulated person.

- (4) The Commission may, for good cause, waive any additional fee imposed under subsection (2).

**44. Investment funds register.**

- (1) The Commission shall maintain an investment funds register to show details of all regulated persons under this Act.
- (2) The register under subsection (1) shall contain information to include —
  - (a) the name of the regulated person;
  - (b) the contact information for all parties related to an investment fund;
  - (c) any conditions, under which the licence or registration was granted;
  - (d) a listing of any related master funds and feeder funds; and
  - (e) any other information as may be prescribed by the Commission.
- (3) It shall be the duty of the Commission to keep the register current.
- (4) A person may, upon payment of the prescribed fee, inspect and make copies of or take extracts from the register.

**45. Fees.**

For the purpose of carrying out its powers or functions, the Commission may, by rule, prescribe the fees payable to the Commission.

## **PART III - ADMINISTRATION, ACCOUNTS, REPORTS AND AUDITING**

### **INVESTMENT FUNDS**

**46. Directors and general partners of fund.**

Where an investment fund is a company or a partnership, the Commission shall prescribe the minimum number of directors or general partners required by an investment fund.

**47. Books and accounting records.**

- (1) An investment fund shall cause reliable accounting records to be kept in relation to —
  - (a) all sums of money received and expended by the investment fund and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and
  - (b) the assets and liabilities of the investment fund.

- (2) For the purposes of subsection (1), accounting records shall —
  - (a) correctly explain all transactions;
  - (b) enable the financial position of the investment fund to be determined with reasonable accuracy at any time;
  - (c) represent results of operations, changes in owner's equity and cash flows;
  - (d) allow financial statements to be prepared; and
  - (e) include relevant underlying documentation, as may be necessary to facilitate compliance with paragraphs (a), (b) and (c).
- (3) Accounting records maintained under this section shall be kept for a minimum period of six years from the date of the transaction to which such records relate.
- (4) An investment fund shall not destroy, conceal or alter books of accounts, records and other documents relating to the operations required to be kept under this section for the purpose of an audit or examination by the Commission or its staff or agents.

**48. Reconciliations.**

- (1) An investment fund shall perform reconciliations as often as necessary to ensure the accuracy of its records, and shall perform reconciliations at least once every month —
  - (a) on all balances with banks; and
  - (b) on all balances with a custodian;
- (2) An investment fund shall immediately correct any differences discovered as a result of a reconciliation performed under subsection (1).

**49. Winding up, dissolution and termination.**

A regulated investment fund, investment fund manager, AIFM or investment fund administrator shall inform the Commission of its intent to wind up, dissolve or terminate within thirty days or such other time period as may be prescribed by the Commission before the formal winding up, dissolution or other termination procedure has commenced.

**50. Commission may apply to court or present petition.**

- (1) Where a regulated person's licence, registration or approval has been suspended or revoked by the Commission, the Commission may —
  - (a) in the case of a company, present a petition to the court for the winding up of the company in accordance with the Companies Act, (*Ch. 308*) or the International Business Companies Act (*Ch. 309*);

- (b) in the case of a partnership, apply to the court for a decree of dissolution in accordance with the Exempted Limited Partnership Act (*Ch. 312*);
  - (c) in the case of an investment condominium, present a petition for a decree of dissolution to the court in accordance with the Investment Condominium Act, 2014 (*No. 38 of 2014*);
  - (d) in the case of a unit trust, apply to the court to terminate the unit trust.
- (2) Where an investment fund is established as a unit trust, the trust deed under which the unit trust is established shall be deemed to provide that the Commission may apply to the court to terminate the unit trust where the licence of the investment fund has been suspended or revoked.

**51. Commission may attend proceedings.**

- (1) Where a petition for the winding-up of —
  - (a) a regulated person; or
  - (b) a person who has at any time been a regulated person,
 is presented by a person other than the Commission, the Commission shall be served by the petitioner with a copy of the petition and may appear at the hearing of the petition and the provisions of subsections (3) and (4) shall apply.
- (2) Where an application for a dissolution or termination of —
  - (a) a regulated person; or
  - (b) a person who has at any time been a regulated person,
 is presented by a person other than the Commission, the Commission shall be served by the applicant with a copy of the application and may appear at the hearing of the application and the provisions of subsections (3) and (4) shall apply.
- (3) A document that relates to a petition for winding-up or an application for a dissolution or termination and that is required to be sent to any person specified in subsections (1) or (2) or to any of their respective creditors, shall be sent to the Commission.
- (4) A person appointed for the purpose by the Commission may attend a meeting of —
  - (a) creditors of a person specified in subsections (1) or (2);
  - (b) a committee, established to discuss a compromise or arrangement of a person specified in subsections (1) or (2),
 and make representations as to any matter for decision at any such meeting.

## INVESTMENT FUND ADMINISTRATOR

### 52. Obligations of an investment fund administrator.

An investment fund administrator appointed under section 34 shall —

- (a) provide the principal office for an investment fund that it administers in or from The Bahamas;
- (b) pay the fees for each investment fund for which it provides the principal office in The Bahamas;
- (c) make such reports to the Commission regarding the investment funds for which it acts as the investment fund administrator as the Commission may require.

### 53. Minimum number of directors.

The Commission shall prescribe the minimum number of directors required by an investment fund administrator.

### 54. Annual fees.

- (1) An investment fund administrator shall be deemed to be providing the principal office of the investment fund immediately upon the licensing of such investment fund.
- (2) An investment fund administrator shall on or before the 31<sup>st</sup> day of January in each year pay the prescribed annual licence fee for its own licence, and submit to the Commission, in writing, a declaration that all information filed with the Commission is current and applicable.
- (3) If an annual fee referred to in subsection (2) is not paid on or before the 31<sup>st</sup> day of January, there is payable an additional fee equal to the annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid, up to the 1<sup>st</sup> day of April of the relevant year.
- (4) Where the investment fund administrator has failed to pay the fee required by subsection (2) and the additional fee imposed under subsection (3) on or before the 1<sup>st</sup> day of April, of the relevant year, the Commission may revoke the licence of the investment fund administrator.
- (5) The Commission may, for good cause, waive an additional fee imposed under subsection (3).

**55. Termination of administration agreement.**

- (1) An investment fund administrator shall notify the investment fund in writing of its intention to terminate its administration agreement with the investment fund in accordance with the terms of the administration agreement, and shall at the same time notify the Commission in writing of such intention.
- (2) An investment fund may dismiss its investment fund administrator by notice in writing from the operators of the fund —
  - (a) if the investment fund administrator goes into liquidation, becomes bankrupt or has a receiver appointed over its assets;
  - (b) if investors whose equity interests carry voting rights representing at least fifty percent in value of the equity interests outstanding, deliver to the operators of the investment fund a written request to dismiss the investment fund administrator, setting out good and sufficient reason for the requested dismissal; or
  - (c) for any other good and sufficient reason, that the operators of the investment fund think fit.
- (3) Where an investment fund administrator has given notice of its intention to terminate its administration agreement under subsection (1), the investment fund shall —
  - (a) appoint another investment fund administrator upon the expiration of the notice period provided under the administration agreement;
  - (b) immediately notify the Commission of the appointment of the new investment fund administrator; and
  - (c) seek the Commission's written approval of the appointment of the new investment fund administrator.
- (4) Where the investment fund has dismissed the investment fund administrator under subsection (2), the operators of the investment fund shall within fourteen days of the dismissal —
  - (a) notify the Commission of the dismissal of the investment fund administrator;
  - (b) appoint a new investment fund administrator;
  - (c) seek the Commission's written approval of the appointment of the new investment fund administrator; and
  - (d) notify the Commission of the prescribed particulars regarding the appointment of the new investment fund administrator.
- (5) Where an investment fund has not appointed an investment fund administrator in accordance with subsections (3) or (4), the investment fund may apply to the Commission —



- (a) before the expiration of the notice period under the administration agreement; or
- (b) before the expiration of the fourteen-day period under subsection (4),

for an extension of time, not to exceed sixty days, within which to appoint a new investment fund administrator.

- (6) An investment fund that has obtained an extension of time under subsection (5), shall, upon the expiration of the notice period or the fourteen-day period under subsection (4) —
  - (a) report to the Commission its failure to appoint a new investment fund administrator; and
  - (b) refuse to accept any new subscription or process any redemption of shares,

and its licence shall be automatically suspended.

- (7) An investment fund that fails to appoint a new investment fund administrator under subsections (3) or (4) and fails to obtain from the Commission an extension of time under subsection (5) or within any period of extension granted under subsection (5), shall upon the expiration of the notice period under the administration agreement, the expiration of the fourteen-day period under subsection (4) or the expiration of any period of extension granted by the Commission under subsection (5), cease operations as an investment fund, surrender its licence and submit a wind-up plan to the Commission.

**56. Name of investment fund administrator restricted.**

No person other than an investment fund administrator shall carry on or attempt to carry on business in or from The Bahamas with the words "fund administrator" in its name or title and shall not represent in any way that it is carrying on business in or from The Bahamas as an investment fund administrator.

**57. Transfer or disposal of shares.**

An investment fund administrator shall not issue shares and no person owning or having an interest in shares in the investment fund administrator shall transfer or otherwise dispose of such shares or deal in such shares or such interest unless —

- (a) the Commission has given its approval for the issue, transfer, disposal or dealing in such shares or such interest, as the case may be; or

- (b) the Commission has waived the obligation to obtain that approval, and any conditions of the approval or waiver are complied with; and
- (c) the prescribed fee has been paid.

**58. Requirements for paid up capital and professional indemnity insurance.**

- (1) If the Commission is satisfied that there is reasonable cause to do so or if the shareholders' equity of an investment fund administrator is less than any amount prescribed by the Commission, it may direct the investment fund administrator to —
  - (a) provide such guarantee or professional indemnity insurance coverage or other financial support as the Commission shall think fit; or
  - (b) increase its shareholders' equity to such amount as the Commission shall consider appropriate.
- (2) If the investment fund administrator fails to comply with a direction given under subsection (1) the Commission shall —
  - (a) request other financial guarantees acceptable to the Commission to be supplied by the investment fund administrator within ninety days; or
  - (b) where the investment fund administrator is unable to provide the guarantees under paragraph (a), revoke the licence.

**59. Annual audit of investment fund administrator.**

An investment fund administrator shall —

- (a) have its financial statements audited annually by an auditor within one hundred and twenty days of the end of its fiscal year; and
- (b) submit its audited financial statements in respect of the financial year of the investment fund administrator to the Commission within six months of the end of that financial year or within such extension of that period as the Commission may reasonably allow.

**60. Requirement to report certain matters.**

If an investment fund administrator knows or has reason to believe that an investment fund for which it provides a principal office, or a promoter or operator of such an investment fund —

- (a) is or is likely to become unable to meet any of its obligations as they fall due;

- (b) is carrying on or attempting to carry on business otherwise than in accordance with this Act or any other applicable law; or
- (c) is carrying on or attempting to carry on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund,

the investment fund administrator shall immediately give the Commission written notice of its knowledge or belief, giving its reason for such knowledge or belief.

## OPERATOR

### **61. Operator to ensure investment fund compliance.**

An operator of an investment fund shall ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to the provisions of this Act.

## INVESTMENT FUND MANAGER

### **62. General duties of an investment fund manager.**

- (1) An investment fund manager appointed under section 24 shall —
  - (a) act honestly and fairly, with due skill, care and diligence in conducting its activities;
  - (b) act in the best interests of each investment fund or the investors of each investment fund it manages and the integrity of the market;
  - (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
  - (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose those conflicts of interest in order to prevent them from adversely affecting the interests of each investment fund and its investors and to ensure that each investment fund it manages is fairly treated;
  - (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of each investment fund or the investors of each investment fund it manages and the integrity of the market;
  - (f) treat all investment fund investors fairly and ensure that no investor in an investment fund shall obtain preferential treatment, unless

such preferential treatment is disclosed in the relevant investment fund's constitutive documents; and

- (g) be responsible for ensuring compliance with the provisions set out in this Sub Part.
- (2) Where an investment fund has not appointed a custodian under section 68(1) the investment fund manager shall ensure that —
    - (a) the sale, issue, repurchase, redemption and cancellation of equity interests effected on behalf of an investment fund are carried out in accordance with the offering documents and constitutive documents of the fund;
    - (b) the value of the equity interests is calculated in accordance with the offering documents and constitutive documents of the fund; and
    - (c) the income of an investment fund is applied in accordance with the offering documents and constitutive documents of the fund.
  - (3) Where an investment fund manager is unable to ensure compliance with the requirements of this section for which an investment fund or another entity on its behalf is responsible, it shall immediately inform the Commission of the investment fund concerned and shall forthwith take the necessary steps to remedy the situation.
  - (4) Where there is further non-compliance, the Commission shall require that the investment fund manager resign as investment fund manager of that investment fund.

**63. Requirements for capital, own funds and professional indemnity insurance.**

- (1) A licensed investment fund manager shall have an initial capital as prescribed by the Commission.
- (2) An investment fund manager shall —
  - (a) have own funds or additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
  - (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

**64. Protection of interests.**

An investment fund manager shall take all reasonable steps to ensure that the investment fund is not carrying on its business in a manner which is or is likely to be prejudicial to investors or creditors of the investment fund.

**65. Delegation of investment fund manager's functions.**

- (1) An investment fund manager that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (2) An investment fund manager may delegate its functions to third parties where —
  - (a) the investment fund manager is able to justify its entire delegation structure on objective reasons;
  - (b) the delegate has sufficient resources to perform the delegated functions;
  - (c) the persons who effectively conduct the business of the delegate are fit and proper, are of good repute and are sufficiently experienced to perform the functions delegated to them;
  - (d) the delegation does not prevent the effectiveness of supervision of the investment fund manager and, in particular, does not prevent the investment fund manager from acting, or the investment fund from being managed, in the best interests of its investors.
- (3) The investment fund manager must be able to demonstrate to the Commission that —
  - (a) the delegate is qualified and capable of undertaking the functions in question;
  - (b) the delegate was selected for appointment with all due care;
  - (c) the investment fund manager is in a position to effectively monitor the delegated activity;
  - (d) the investment fund manager is able at any time to give the delegate further instructions;
  - (e) the investment fund manager is able at any time to revoke the delegation with immediate effect when this is in the best interests of investors.
- (4) The investment fund manager must review the services provided by each delegate on an ongoing basis.
- (5) An investment fund manager must not delegate, and a delegate must not sub-delegate, portfolio management or risk management functions to —
  - (a) a custodian or a delegate of the custodian;
  - (b) any other undertaking whose interests may conflict with those of the investment fund manager or the investors of the investment fund,

unless such undertaking has functionally and hierarchically separated its portfolio management or risk management functions from its other potentially conflicting functions, and the potential conflicts of interest are

properly identified, managed, monitored and disclosed to the investors of the investment fund.

- (6) An investment fund manager must not delegate its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the investment fund.
- (7) For the purposes of subsection (1)(d), delegation shall be deemed to prevent the effective supervision of the investment fund manager where —
  - (a) the investment fund manager, its auditors and the Commission do not have effective access to data related to the delegated functions and to the business premises of the delegate, or the Commission is not able to exercise those rights of access;
  - (b) the delegate does not cooperate with the Commission or the investment fund manager in connection with the delegated functions;
  - (c) the investment fund manager does not make available on request to the Commission all information necessary to enable the Commission to supervise the compliance of the performance of the delegated functions.
- (8) An investment fund manager shall not delegate its portfolio management or risk management functions without the approval of the Commission.
- (9) Notwithstanding subsection (7), the Commission may allow an investment fund manager to delegate either its portfolio management or risk management functions upon approval, but not both.

#### **66. Sub-delegation.**

- (1) A delegate may sub-delegate any of the functions delegated to it provided that —
  - (a) the delegate has received consent from the investment fund manager prior to the sub-delegation;
  - (b) the investment fund manager has notified the Commission in writing before the arrangements have become effective; and
  - (c) in relation to the conditions set out in section 65, on the understanding that all references to the “delegate” include references to a “sub-delegate”.
- (2) A delegate or sub-delegate which has delegated such functions must review on an ongoing basis the services and functions provided by the delegate or sub-delegate.

**67. Liability following delegation.**

Notwithstanding any contractual arrangements that provide otherwise, any liability of an investment fund manager towards the investment fund it manages or towards investors of such an investment fund is not affected by —

- (a) the delegation by the investment fund manager of any of the investment fund manager functions;
- (b) any sub-delegation of such functions by the delegate to another person; or
- (c) any further sub-delegation of such functions by a sub-delegate.

**CUSTODIAN**

**68. Appointment of custodian.**

- (1) An investment fund shall appoint one or more persons as custodian of the assets of the investment fund.
- (2) The custodian shall satisfy requirements as prescribed by the Commission from time to time.

**69. Independence of custodian.**

An investment fund shall have a custodian that is independent of the investment fund administrator, the investment fund manager and the operator of the fund.

**70. Obligations of a custodian.**

A custodian of an investment fund shall ensure that —

- (a) the sale, issue, re-purchase, redemption and cancellation of equity interests of the investment fund is carried out;
- (b) the values of the equity interests of the investment fund are calculated;
- (c) the instructions of the investment fund manager are carried out;
- (d) in transactions involving the sale of the investment fund's assets, any consideration is remitted to the investment fund without delay;
- (e) an investment fund's income is applied,

in accordance with this Act, the constitutive documents and offering documents of the investment fund, and the law of the jurisdiction where the investment fund is authorised or established.

**71. Segregation of investment fund assets.**

- (1) A custodian that holds assets on behalf of an investment fund, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the investment fund.
- (2) A custodian that holds cash on behalf of an investment fund must hold the cash separate and apart from the property of the custodian in a designated trust account with a bank holding an unrestricted licence under the Banks and Trust Companies Regulation Act (*Ch. 316*) or other deposit-taking institution outside The Bahamas as may be approved by the Commission or an unrestricted investment fund administrator for this purpose.
- (3) A custodian may allow a registered marketplace or clearing facility to hold or control cash belonging to an investment fund for the purpose of —
  - (a) a transaction for the investment fund with or through that marketplace or facility; or
  - (b) meeting the investment fund's obligation to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

**AIFM**

**72. Notification to the Commission.**

- (1) A person who prior to the coming into operation of this Act, was —
  - (a) marketing an investment fund or EU AIF in the EU;
  - (b) managing an EU AIF, whether or not the EU AIF is marketed in the EU,and who continues to market an investment fund or EU AIF in the EU or manage an EU AIF in the EU or elsewhere under the authority of an NPPR, shall notify the Commission in the prescribed manner.
- (2) A person that fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of five thousand dollars.

**73. Obligations and duties of an AIFM.**

- (1) An AIFM shall satisfy all requirements as prescribed by the Commission.
- (2) An investment fund may appoint an external AIFM or an internal AIFM.
- (3) For the purposes of this Sub Part —
  - (a) an external AIFM means the legal person appointed by the investment fund, or on behalf of the investment fund, and who is responsible for managing the investment fund;



- (b) an internal AIFM means the investment fund itself, where the legal form of the investment fund permits it and where the operator of an investment fund chooses not to appoint an external AIFM.
- (4) An internal AIFM under subsection (3)(b) shall be required to be licensed as an AIFM.

**74. Requirements for capital, own funds and professional indemnity insurance.**

- (1) An AIFM shall have an initial capital as prescribed by the Commission.
- (2) Where the value of the portfolios of investment funds managed by the AIFM exceeds the amount prescribed by the Commission, the AIFM shall provide an additional amount of own funds as prescribed by the Commission.
- (3) For the purposes of determining under subsection (2) the value of the portfolios of investment funds managed by the AIFM, investment funds for which the AIFM has delegated functions in accordance with section 88. shall be deemed to be the portfolios of the AIFM but not investment fund portfolios that the AIFM is managing under delegation.
- (4) An AIFM shall —
  - (a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
  - (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.
- (5) Own funds, including any additional own funds referred to in subsections (2) and (4) shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.
- (6) The Commission may prescribe measures specifying —
  - (a) the risks the additional own funds or the professional indemnity insurance must cover;
  - (b) the conditions for determining the appropriateness of additional own funds or the coverage of the professional indemnity insurance; and
  - (c) the manner of determining ongoing adjustments of the additional own funds or of the coverage of the professional indemnity insurance.
- (7) Where an external AIFM is unable to ensure compliance with the requirements of this Sub Part for which an investment fund or another entity on its behalf is responsible, it shall immediately inform the Commission and, if applicable, the competent authority of the investment

fund concerned and shall take the necessary steps to require the investment fund or other entity to remedy the situation.

- (8) Where there is further non-compliance, the Commission shall require that —
- (a) the AIFM resign as the AIFM of that investment fund;
  - (b) the investment fund no longer be marketed in The Bahamas.

**75. Confirmation of status.**

- (1) The Commission may provide confirmation of the status of an AIFM where the AIFM has satisfied the requirements of this Act.
- (2) For the purposes of this section “**confirmation of status**” means the method as prescribed by the Commission, by which the Commission may confirm the status of an AIFM to an overseas regulatory authority or a Member State.

**76. Compliance with this Act.**

The Commission, with respect to an AIFM, may request information from or about the AIFM to comply with any obligation that the Commission may have under a memorandum of understanding entered into with any Member State.

**77. General organisational requirements.**

- (1) An AIFM shall at all times use adequate and appropriate human and technical resources that are necessary for the proper management of the investment funds that it manages.
- (2) The AIFM must in particular adopt —
  - (a) sound administrative and accounting procedures;
  - (b) control and safeguard arrangements for electronic data processing;
  - (c) adequate internal control mechanisms including, in particular—
    - (i) policies and procedures for personal transactions by its employees,
    - (ii) policies and procedures for the holding or management of investments in order to invest on its own account,
    - (iii) ensuring, at least, that each transaction involving an investment fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place it was effected,
    - (iv) ensuring that the assets of the investment fund managed by the AIFM are invested in accordance with the law of the jurisdiction where the investment fund is authorised,

registered, or established, and the constitutive documents and offering documents of the investment fund.

- (3) The Commission shall prescribe measures specifying the procedures and arrangements referred to in subsections (1) and (2).

## **78. General operating conditions.**

- (1) An AIFM shall at all times —
  - (a) act honestly and fairly, with due skill, care and diligence when conducting its activities;
  - (b) act in the best interests of the investment fund, or the investors of the investment fund it manages;
  - (c) have and employ the resources and procedures that are necessary for the performance of its business activities;
  - (d) take all reasonable steps to avoid conflicts of interest and where this cannot be avoided, ensure that those conflicts of interest are disclosed in order to prevent them from adversely affecting the interests of the investment fund and its investors;
  - (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the investment fund, the investors of the investment fund, and the integrity of the market;
  - (f) ensure that the investment fund and its investors are treated fairly;
  - (g) except where disclosed in the investment fund's constitutive documents and offering documents, ensure that no investor in an investment fund should receive preferential treatment.
- (2) Where an AIFM undertakes to carry on portfolio management on a discretionary basis which was not approved as one of the conditions of licensing by the Commission, it must notify the Commission.
- (3) An AIFM whose licence permits it to perform portfolio management services on a discretionary basis must not invest all or part of the investment fund's portfolio in equity interests of any investment fund that it manages —
  - (a) without having first obtained the investment fund's approval to do so; and
  - (b) without giving the Commission notice of at least fourteen days, of its intention to do so.

## 79. Remuneration.

- (1) An AIFM shall establish and maintain remuneration policies and practices as prescribed, for persons whose professional activities have a material impact on the risk profile of the AIFM.
- (2) Remuneration policies shall —
  - (a) be consistent with the risk management policy of the AIFM;
  - (b) promote sound and effective risk management;
  - (c) not encourage risk-taking which is inconsistent with the risk profiles or constitutive documents of the investment fund the AIFM manages.
- (3) In this section, **“persons whose professional activities have a material impact on the risk profile of the AIFM”** include, but are not limited to, chief executive officers, senior executives or any employee carrying out a risk related activity and whose remuneration puts them in the same category as senior executives.

## 80. Conflicts of interest.

- (1) An AIFM shall establish and maintain policies and procedures relating to identifying, preventing, managing and monitoring conflicts of interest in accordance with subsection (2).
- (2) An AIFM shall, in the course of managing investment funds, identify conflicts of interest that may arise between —
  - (a) the AIFM, including its managers, employees or any person directly or indirectly connected to the AIFM by control, and the investment fund managed by the AIFM or the investors in that investment fund and the investment fund or any of its investors;
  - (b) the investment fund or the investors of that investment fund and another investment fund or the investors in that investment fund;
  - (c) the investment fund or the investors of that investment fund another investment fund managed by the AIFM; or
  - (d) two investment funds managed by the AIFM.
- (3) An AIFM shall segregate, within its own operating environment, tasks and responsibilities that may be regarded as incompatible with each other or that may potentially generate systematic conflicts of interest.
- (4) An AIFM shall regularly assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors of the investment fund it manages.
- (5) Where the organisational arrangements made by an AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors’

interests will be prevented, the AIFM shall disclose the general nature or sources of conflicts of interest to the Commission, the investment fund and its investors, before undertaking business on behalf of the investment fund and shall develop appropriate policies and procedures.

- (6) Where the AIFM on behalf of an investment fund engages the services of a prime broker, the terms of such engagement shall be set out in writing.
- (7) Where an engagement for services under subsection (6) has been entered into, the AIFM must inform the custodian of an investment fund of such engagement.
- (8) An AIFM must exercise due skill, care and diligence in the selection of a prime broker.
- (9) Any provisions that enable the transfer and re-use of investment fund assets shall be set out in the terms of the engagement under subsection (6) and must be consistent with the investment fund's constitutive documents and offering documents.

#### **81. Risk management.**

- (1) An AIFM shall —
  - (a) functionally and hierarchically separate the function of risk management from its operating units, including from the function of portfolio management;
  - (b) ensure that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this section;
  - (c) implement adequate risk management systems, policies and procedures in order to identify, measure, manage and monitor on an ongoing basis all risks relevant to each investment fund's investment strategy and to which each investment fund is or may be exposed;
  - (d) review its risk management systems at least once a year and adapt them when necessary.
- (2) An AIFM shall set a maximum level of leverage which it may employ on behalf of each investment fund it manages and the extent of the right to re-use collateral or guarantees that could be granted under the leveraging arrangement, taking into account —
  - (a) the type of investment fund;
  - (b) the investment strategy of the investment fund;
  - (c) the sources of leverage of the investment fund;

- (d) any other interlinkage or relationships with other financial services institutions, which could pose systemic risk;
  - (e) the need to limit the exposure to any single counterparty;
  - (f) the extent to which the leverage is collateralised;
  - (g) the asset-liability ratio; and
  - (h) the scale, nature and extent of the activity of the AIFM on the markets concerned.
- (3) Where an AIFM determines that it is no longer operating within the maximum leverage limits disclosed to the Commission at the time of licensing, it shall immediately notify the Commission.
- (4) An AIFM shall establish and maintain qualitative or quantitative risk limits, or both, for each investment fund it manages, taking into account all relevant risks.
- (5) The qualitative and quantitative risk limits for each investment fund shall, at least, cover the following risks —
- (a) market risks;
  - (b) credit risks;
  - (c) liquidity risks;
  - (d) counterparty risks;
  - (e) operational risks.
- (6) Where an AIFM determines that it is no longer operating within its risk limits disclosed to the Commission at the time of licensing or subsequently, it shall immediately notify the Commission.
- (7) An AIFM shall—
- (a) when investing on behalf of an investment fund, establish and maintain a documented and regularly updated due diligence process, according to the investment strategy, the objectives and risk profile of the investment fund;
  - (b) ensure that the risks associated with each investment position of the investment fund and their overall effect on the investment fund's portfolio can be identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
  - (c) ensure that the risk profile of the investment fund corresponds to the size, portfolio structure, investment strategies, and objectives of the investment fund as required under its constitutive documents and offering documents;
  - (d) ensure that the risk profile of the investment fund is disclosed to investors and is consistent with the risk limits set out in this section;

- (e) monitor compliance by the investment fund with the risk limits set out in this section.
- (8) An AIFM shall implement procedures relating to notification of the governing body of the AIFM when the investment fund's risk profile is, or will be, inconsistent with required risk limits.
- (9) An AIFM's procedures shall make provision for periodic updates to be provided to the AIFM's governing body regarding the following matters—
  - (a) consistency between, and compliance with, the risk limits and the risk profile as disclosed to investors of the investment fund; and
  - (b) the adequacy and effectiveness of the risk management process, indicating in particular, whether appropriate remedial measures have been or will be taken in the event of any actual or anticipated deficiencies.
- (10) The procedures required in accordance with subsection (12) shall also make provision for regular updates to be given to senior executives which outline the current level of risk incurred by each managed investment fund and any actual or foreseeable breaches of risk limits.
- (11) When setting risk limits, an AIFM shall take into account —
  - (a) the strategies and assets employed in respect of each investment fund it manages;
  - (b) the law of the jurisdiction where the investment fund is authorised or established; and
  - (c) that the risk limits must also be aligned with the risk profile of the investment fund approved by the investment fund's governing body and disclosed to its investors.
- (12) The Commission shall prescribe measures specifying —
  - (a) the risk management systems to be employed by AIFMs in relation to the risks which they incur on behalf of the investment funds that they manage;
  - (b) the appropriate frequency of review of the risk management system;
  - (c) how the risk management function is to be functionally and hierarchically separated from the operating units, including the portfolio management function;
  - (d) specific safeguards against conflicts of interest;
  - (e) the requirements under subsection (4);
  - (f) that investment funds shall not rely solely or mechanistically on credit ratings for assessing the creditworthiness of the investment fund's assets.

## 82. Liquidity management.

- (1) An AIFM shall, for each investment fund that it manages that is not an unleveraged closed-ended investment fund, employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the investment fund and ensure that the liquidity profile of the investments of the investment fund complies with its underlying obligations.
- (2) An AIFM shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess and monitor the liquidity risk of the investment fund it manages.
- (3) An AIFM shall ensure that for each investment fund it manages the investment strategy, the liquidity profile, and the redemption policy are consistent with one another.
- (4) The Commission shall prescribe measures specifying —
  - (a) the liquidity management systems and procedures; and
  - (b) the alignment of the investment strategy, liquidity profile and redemption policy.

## 83. Valuation.

- (1) An AIFM shall, for each investment fund that it manages, ensure that —
  - (a) policies and procedures appropriate to the nature, scale and complexity of the business are adopted and implemented so that a proper and independent valuation of the assets of the investment fund can be performed in accordance with the constitutive documents and offering documents of the investment fund;
  - (b) the valuation shall be performed impartially and with all due skill, care and diligence;
  - (c) that the net asset value of the equity interests of an investment fund is calculated and disclosed to the investors of such investment fund in accordance with the constitutive documents and offering documents of the investment fund;
  - (d) the assets of the investment fund are valued and the net asset value of the equity interests is calculated at least once every year.
- (2) Where the investment fund is open-ended, the AIFM shall ensure that such valuations and calculations are carried out at a frequency which is appropriate to the assets held by the investment fund and its issuance and redemption frequency.
- (3) Where an investment fund is closed-ended, an AIFM shall carry out such valuations and calculations in the event of an increase or decrease of the capital by the relevant investment fund.



- (4) An AIFM shall inform investors of the investment fund of the valuation of the investment fund's assets and the calculation of the net asset value as set out in constitutive documents and offering documents of the investment fund.
- (5) The Commission shall prescribe —
  - (a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value of the equity interests;
  - (b) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function;
  - (c) the frequency of valuation carried out by an open-ended investment fund that is both appropriate to the assets held by the investment fund and its issuance and redemption policy.

#### **84. Qualifications of valuer.**

- (1) Where an external valuer performs the valuation function, the AIFM shall ensure and demonstrate that —
  - (a) the external valuer is subject to mandatory registration under the law or to rules of professional conduct;
  - (b) the external valuer can provide sufficient professional guarantees to be able to effectively perform the relevant valuation function in accordance with this Act;
  - (c) the appointment of the external valuer complies with the requirements of section 86. and the delegation of functions under that section.
- (2) For the purposes of this Sub Part an external valuer means a person that is independent of the investment fund, the AIFM and any other persons with close links to the investment fund or the AIFM.

#### **85. Appointment of valuers.**

- (1) An AIFM shall ensure that the valuation function is performed by—
  - (a) an external valuer; or
  - (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management, and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.
- (2) An AIFM shall ensure that the AIFMD custodian of an investment fund is not appointed as the external valuer of that investment fund unless it is satisfied that the AIFMD custodian has functionally and hierarchically

separated the performance of its custodian function from its tasks as an external valuer, and that it is able to manage the potential conflicts of interest, and monitor and disclose them to the investors of the investment fund.

- (3) An AIFM shall ensure that a valuer is suitably qualified as set out under section 84.
- (4) Where the Commission is not satisfied that a valuer is suitably qualified under section 84 the Commission may require another valuer to be appointed.
- (5) Where the valuation function is not performed by an external valuer, the Commission may require the AIFM to have its valuation procedures or valuations, or both, verified by an external valuer or, where appropriate, an auditor.

**86. Duties of valuer.**

- (1) An external valuer shall perform the valuation function impartially and with all due skill, care and diligence.
- (2) An external valuer shall not delegate the valuation function to a third party.

**87. Liability of AIFM.**

- (1) An AIFM is responsible for the proper valuation of investment fund assets, the calculation of the net asset value of the equity interests of the investment fund, and the publication of that net asset value.
- (2) The liability of the AIFM to the investment fund and its investors shall not be affected by the appointment by the AIFM of an external valuer in respect of that investment fund.
- (3) Notwithstanding any contractual arrangement that provides otherwise, an external valuer is liable to the AIFM of an investment fund in respect of which the valuer is appointed, for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

**88. Delegation of AIFMs functions.**

- (1) An AIFM that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (2) An AIFM may delegate its functions to third parties where —
  - (a) the AIFM is able to justify its entire delegation structure on objective reasons;

- (b) the delegate has sufficient resources to perform the delegated functions;
  - (c) the persons who effectively conduct the business of the delegate are fit and proper, are of good repute and are sufficiently experienced to perform the functions delegated to them;
  - (d) the delegation does not prevent the effectiveness of supervision of the AIFM and, in particular, does not prevent the AIFM from acting, or the investment fund from being managed, in the best interests of its investors.
- (3) The AIFM must be able to demonstrate to the Commission that—
- (a) the delegate is qualified and capable of undertaking the functions in question;
  - (b) the delegate was selected for appointment with all due care;
  - (c) the AIFM is in a position to effectively monitor the delegated activity;
  - (d) the AIFM is able at any time to give the delegate further instructions;
  - (e) the AIFM is able at any time to revoke the delegation with immediate effect when this is in the best interests of investors.
- (4) The AIFM must review the services provided by each delegate on an ongoing basis.
- (5) An AIFM must not delegate, and a delegate must not sub-delegate, portfolio management or risk management functions to —
- (a) an AIFMD custodian or a delegate of the AIFMD custodian;
  - (b) any other undertaking whose interests may conflict with those of the AIFM or the investors of the investment fund,
- unless such undertaking has functionally and hierarchically separated its portfolio management or risk management functions from its other potentially conflicting functions, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the investment fund.
- (6) An AIFM must not delegate its functions to the extent that it becomes a letter- box entity and can no longer be considered to be the manager of the investment fund.
- (7) For the purposes of subsection (2)(d), delegation shall be deemed to prevent the effective supervision of the AIFM where —
- (a) the AIFM, its auditors and the Commission do not have effective access to data related to the delegated functions and to the business premises of the delegate, or the Commission is not able to exercise those rights of access;

- (b) the delegate does not cooperate with the Commission or the AIFM in connection with the delegated functions;
  - (c) the AIFM does not make available on request to the Commission all information necessary to enable the Commission to supervise the compliance of the performance of the delegated functions.
- (8) An AIFM shall not delegate its portfolio management or risk management functions without the approval of the Commission.
- (9) Notwithstanding subsection (7), the Commission may allow an AIFM to delegate either its portfolio management or risk management functions upon approval, but not both.

**89. Sub-delegation.**

- (1) A delegate may sub-delegate any of the functions delegated to it provided that —
- (a) the delegate has received consent from the AIFM prior to the sub-delegation;
  - (b) the AIFM has notified the Commission in writing before the arrangements have become effective; and
  - (c) in relation to the conditions set out in section 88, on the understanding that all references to the “delegate” include references to a “sub-delegate”.
- (2) A delegate or sub-delegate which has delegated such functions must review on an ongoing basis the services and functions provided by the delegate or sub-delegate.

**90. Liability following delegation.**

- (1) Notwithstanding any contractual arrangements that provide otherwise, any liability of an AIFM towards the investment fund it manages or towards investors of such an investment fund is not affected by—
- (a) the delegation by the AIFM of any of the AIFM functions;
  - (b) any sub-delegation of such functions by the delegate to another person; or
  - (c) any further sub-delegation of such functions by a sub-delegate.
- (2) For the purposes of this Sub Part, “**investment fund**” includes an EU AIF.

## AIFMD CUSTODIAN

### 91. Appointment of an AIFMD custodian.

- (1) An AIFM shall ensure that a single AIFMD custodian is appointed for each investment fund that it manages.
- (2) Persons eligible to be appointed as an AIFMD custodian are—
  - (a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*); or
  - (b) a person registered under the Securities Industry Act, 2011 (*No. 10 of 2011*);
  - (c) any other institution that is subject to prudential regulation and ongoing supervision in a prescribed jurisdiction; or
  - (d) an undertaking authorised by a competent authority of a Member State to carry out the functions of an AIFMD custodian.
- (3) An AIFMD custodian shall be engaged by written contract which specifies the obligations required for the AIFMD custodian to perform its functions for the investment fund.
- (4) An AIFM shall notify the Commission in writing of any change to the appointment of an AIFMD custodian.
- (5) The Commission may prescribe specific measures in the appointment and obligations of an AIFMD custodian under this Sub Part.

### 92. AIFMD custodian conflicts of interest.

- (1) An AIFM shall not act as the AIFMD custodian of any investment fund that it manages.
- (2) An AIFMD custodian shall act honestly, fairly, professionally, independently and in the best interests of the investment fund and its investors.
- (3) An AIFMD custodian shall not carry out activities with regard to the investment fund or the AIFM on behalf of the investment fund that may create conflicts of interest between the investment fund, the investors in the investment fund, the AIFM and itself, unless the AIFMD custodian has functionally and hierarchically separated the performance of its custodian functions from its other potentially conflicting tasks.
- (4) An AIFMD custodian shall ensure that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the investment fund.
- (5) An AIFMD custodian shall not re-use assets of the investment fund, or of the AIFM acting on behalf of the investment fund, that have been

entrusted to it for safe-keeping without the prior consent of the investment fund or the AIFM acting on its behalf.

- (6) An AIFM shall not appoint a prime broker, who is acting as counterparty to an investment fund, to be its AIFMD custodian unless it is satisfied that the prime broker —
  - (a) has functionally and hierarchically separated its AIFMD custodian function from its prime broker function;
  - (b) is able to properly identify, manage, and monitor conflicts of interest; and
  - (c) will disclose such conflicts of interest to investors of the investment fund.

### **93. AIFMD custodian cash flow monitoring**

- (1) An AIFMD custodian shall properly monitor an investment fund's cash flows and must ensure that all payments made by or on behalf of investors of the investment fund upon subscription for equity interests of an investment fund have been received.
- (2) An AIFMD custodian shall ensure that all cash of the investment fund is booked in cash accounts opened in the name of —
  - (a) the investment fund;
  - (b) the AIFM acting on behalf of the investment fund; or
  - (c) the AIFMD custodian acting on behalf of the investment fund.
- (3) Where an AIFMD custodian opens a cash account in its own name, acting on behalf of the investment fund, it must not use the account to book the custodian's own cash.
- (4) The Commission may make regulations in respect of the AIFMD custodian cash flow monitoring under this section.

### **94. Safekeeping of assets for financial instruments.**

- (1) The assets of the investment fund, or the AIFM acting on behalf of the investment fund, that comprise financial instruments that can be held in custody, must be entrusted to the AIFMD custodian for safe-keeping under subsection (2).
- (2) The AIFMD custodian must —
  - (a) hold in custody all financial instruments that can be registered in a financial instruments account opened in the AIFMD custodian's books and all financial instruments that can be physically delivered to the AIFMD custodian; ~~and~~
  - (b) ensure that all those financial instruments that can be registered in a financial instruments account opened in the AIFMD custodian's

books are registered in the AIFMD custodian's books within segregated accounts opened in the name of the investment fund, or the AIFM acting on behalf of the investment fund, so that they can at all times be clearly identified as belonging to the investment fund in accordance with the law which applies to the AIFMD custodian in the jurisdiction where it is authorised.

- (3) The Commission may make regulations in respect of the safekeeping of financial instruments under this section.

#### **95. Safekeeping of other assets.**

- (1) An AIFMD custodian shall —
  - (a) verify that the other assets it holds on behalf of an investment fund, or the AIFM acting on behalf of an investment fund, are owned by the investment fund or the AIFM acting on behalf of the investment fund;
  - (b) maintain a record of all assets that it has verified; and
  - (c) verify ownership on the basis of information and documents provided to it by the investment fund, or the AIFM acting on behalf of the investment fund, or other evidence of ownership available to it.
- (2) An AIFMD custodian shall keep its records up to date.
- (3) The Commission may make regulations in respect of the safekeeping of other assets under this section.

#### **96. AIFMD custodian general compliance**

An AIFMD custodian of an investment fund, or an AIFM acting on behalf of an investment fund, shall ensure that —

- (a) the sale, issue, re-purchase, redemption and cancellation of equity interests of the investment fund is carried out;
- (b) the values of the equity interests of the investment fund are calculated;
- (c) the instructions of the AIFM are carried out;
- (d) in transactions involving the investment fund's assets, any consideration is remitted to the investment fund without delay; and
- (e) the investment fund's income is applied,

in accordance with this Act, constitutive documents and offering documents of the investment fund, and the law of the jurisdiction where the investment fund is authorised or established.

**97. Delegation of AIFMD custodian functions.**

- (1) An AIFMD custodian shall not delegate its functions, with the exception of those relating to safe-keeping of assets.
- (2) Where an AIFMD custodian delegates any of the activities outlined in sections 94 and 95, the AIFMD custodian shall ensure that —
  - (a) the AIFMD custodian has not delegated any functions to a person if the purpose of the delegation is to enable it to avoid compliance with its obligations under this Act;
  - (b) there are objective reasons for the delegation;
  - (c) the AIFMD custodian has exercised all due skill, care and diligence in the selection and appointment of the delegate, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any delegate to whom it has delegated some of its tasks, and the arrangements of the delegate in respect of the matters delegated to it; and
  - (d) at all times during the performance of the delegated tasks, the AIFMD custodian satisfies the conditions of subsection (3).
- (3) In addition to obligations under subsection (2) the AIFMD custodian shall ensure that —
  - (a) the delegate has the structure and the expertise that are adequate and proportionate to the nature and complexity of the assets of the investment fund, or of the AIFM acting on behalf of the investment fund, which have been entrusted to it;
  - (b) in relation to custody tasks under sections 94 and 95, the delegate is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned, and the delegate is subject to an external periodic audit to ensure that the financial instruments are in its possession;
  - (c) the delegate segregates the assets of the AIFMD custodian from the investment fund's assets in such a way that they can, at all times, be clearly identified as belonging to the investment fund;
  - (d) the delegate does not make use of the assets without the prior consent of the investment fund, or the AIFM acting on behalf of the investment fund, and prior notification to the AIFMD custodian; and
  - (e) the delegate complies with the general obligations and prohibitions set out in this Sub Part.
- (4) A delegate to whom functions have been delegated under this section may sub-delegate any or all of the delegated functions to a sub-delegate and, in such a case, the requirements of this section apply *mutatis mutandis* to the sub-delegate.



- (5) Where the law of the jurisdiction where the investment fund is authorised or established requires that assets be held in the custody of a local entity and no local entity satisfies the requirements of subsection (3)(b), the AIFMD custodian may delegate the custody of such financial instruments to the local entity only to the extent required by the law of that jurisdiction and only for as long as there are no local parties that satisfy the delegation requirement but subject to the requirements specified in subsection (6).
- (6) For the purposes of subsection (5) the delegation requirements are —
  - (a) the investors of the relevant investment fund must be duly informed that the delegation is required owing to legal constraints under the law of the jurisdiction where the relevant investment fund is authorised or established, and of the circumstances justifying its delegation prior to their investment; and
  - (b) the investment fund, or AIFM on behalf of the investment fund, must instruct the AIFMD custodian to delegate the custody of such financial instruments to the local entity.
- (7) An AIFMD custodian that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (8) The Commission shall prescribe measures specifying —
  - (a) the conditions for fulfilling the requirement set out in subsection (1);
  - (b) the conditions under which an AIFMD custodian shall be deemed to have delegated its functions.
- (9) For the purposes of this Sub Part a local entity means an entity that is incorporated or established in the jurisdiction in which the assets of the investment fund are located or required to be held in custody.

**98. AIFMD custodian liability for loss of financial instrument.**

- (1) This section applies where a financial instrument, held in custody in accordance with this Act by an AIFMD custodian, delegate, or sub-delegate, is lost.
- (2) Subject to subsections (3) and (4), where a financial instrument has been lost, the AIFMD custodian must return a financial instrument of identical type or the corresponding amount to the investment fund, or the AIFM acting on behalf of the investment fund, without undue delay.
- (3) The AIFMD custodian is not required to comply with the obligations in subsection (2) if it can prove that the loss occurred owing to an external event beyond the AIFMD custodian's reasonable control.

- (4) In the case of the loss of a financial instrument held in custody by a delegate, the AIFMD custodian is not required to comply with the obligation in subsection (2) where —
  - (a) the conditions around delegation of custody were met in accordance with this Act;
  - (b) a written contract between an AIFMD custodian and the delegate expressly transfers the liability of the AIFMD custodian to that third party and makes it possible for the investment fund, or the AIFM acting on behalf of the investment fund, to make a claim against the delegate in respect of the loss of financial instruments or for the AIFMD custodian to make such a claim on their behalf; and
  - (c) a written contract between the AIFMD custodian and the investment fund, or the AIFM acting on behalf of the investment fund, expressly discharges the AIFMD custodian from liability and establishes an objective reason for such discharge.
- (5) Notwithstanding any contractual arrangements that provide otherwise, the obligation of the AIFMD custodian under subsection (2) or any liability of the AIFMD custodian under subsection (4)(b) is not affected by any delegation or sub-delegation under this Act.

**99. AIFMD custodian liability for other losses.**

- (1) If an investment fund, or investors of an investment fund, have suffered losses other than the loss referred to in section 98, the AIFMD custodian is liable to the investment fund, or investors of the investment fund, if the losses are a result of the custodian's negligent or intentional failure to comply with a provision that applies to it.
- (2) Notwithstanding any contractual arrangements that provide otherwise, any liability of the AIFMD custodian to the investment fund, or to investors of the investment fund, under subsection (1) is not affected by any delegation by the AIFMD custodian of its functions.

**100. Liability of overseas AIFMD custodians.**

- (1) This section applies where —
  - (a) the law of the jurisdiction where the investment fund is authorised or established requires certain financial instruments to be held in custody by a local entity; and
  - (b) there is no local entity that satisfies the delegation requirements in this Act.
- (2) The AIFMD custodian is not liable for a failure to comply with the obligation under section 98 (2), provided that the following conditions are met —

- (a) the constitutive documents of the investment fund concerned expressly allow for a discharge of the obligation;
  - (b) the investors of the investment fund were informed of the discharge and of the circumstances justifying it prior to their investment;
  - (c) the investment fund, or the AIFM on behalf of the investment fund, instructed the AIFMD custodian to delegate the custody of the financial instruments to a local entity;
  - (d) a written contract between the AIFMD custodian and the investment fund, or the AIFM acting on behalf of the investment fund, expressly allows for such a discharge; and
  - (e) a written contract between the AIFMD custodian and the local entity expressly transfers the AIFMD custodian's liability to the third party making it possible for the investment fund, or the AIFM acting on behalf of the investment fund, to make a claim against the local entity with regard to loss of financial instruments or the AIFMD custodian to make such a claim on their behalf.
- (3) Liability to the investors of the investment fund may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the AIFMD custodian, the AIFM and the investors.
- (4) An AIFM shall provide the AIFMD custodian, upon commencement of its duties and on an ongoing basis, with all relevant information it needs in order to comply with its obligations, including information to be provided to the AIFMD custodian by third parties.
- (5) The Commission shall prescribe measures specifying —
- (a) the particulars that need to be included in the written contract under section 91(3);
  - (b) general criteria for assessing whether the prudential regulation and supervision of other jurisdictions referred to in section 91.(2)(c) have the same effect as the laws of The Bahamas and are effectively enforced;
  - (c) the conditions for performing the AIFMD custodian functions under sections 93, 95 and 96, including —
    - (i) the type of financial instruments to be included in the scope of the custodian's custody duties in accordance with sections 94.(2) and (3);
    - (ii) the conditions subject to which the AIFMD custodian is able to exercise its custody duties over financial instruments registered with a central custodian; and
    - (iii) the conditions subject to which the AIFMD custodian is to safekeep the financial instruments issued in a nominative

form and registered with an issuer or a registrar, in accordance with section 95;

- (d) the due diligence duties of the AIFMD custodian under section 97(2)(c);
- (e) the segregation obligation of the AIFMD custodian under section 97(3)(c);
- (f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered as lost;
- (g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary under section 98;
- (h) the conditions subject to which and circumstances in which there is an objective reason to contract a discharge under section 98(4)(c).

#### **101. Annual report.**

- (1) An AIFM shall, in such form as the Commission may require, for each investment fund that it manages and markets, prepare an annual report for each financial year which shall be submitted to the Commission no later than six months following the end of the relevant financial year of the investment fund.
- (2) The annual report shall, where applicable, be submitted to the competent authority of the jurisdiction where the investment fund is authorised or established.
- (3) The annual report shall be provided to investors of the relevant investment fund upon request made to the AIFM.
- (4) The AIFM shall ensure that the information provided in the annual report is presented in a form that provides materially relevant, reliable, comparable and clear information relating to each investment fund.
- (5) The annual report must contain all information investors require in relation to investment fund structures managed by the AIFM.
- (6) In addition to the information required in subsection (5), the annual report shall comprise —
  - (a) a balance-sheet or a statement of assets and liabilities;
  - (b) an income and expenditure account for the financial year;
  - (c) a report on the activities of the financial year;
  - (d) written confirmation of any changes that are material to the information required to be disclosed to investors of the investment fund during the financial year covered by the report;
  - (e) written confirmation of the total amount of remuneration for the financial year, divided into fixed and variable remuneration, paid by

the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the investment fund;

- (f) a description of the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the investment fund.
- (7) The accounting information provided in the annual report must be prepared in accordance with the accounting standards set out in subsection (8) in the case of an investment fund established in The Bahamas, or prepared in accordance with the requirements of the jurisdiction where the investment fund is authorised or established.
- (8) The accounting information provided in the annual report is required to be audited by one or more persons authorised in accordance with the law of the jurisdiction where the investment fund is authorised or established.
- (9) A person authorised to provide accounting information in accordance with subsection (8) shall also provide an auditor's report to the AIFM prior to the submission of the annual report by the AIFM to the Commission.
- (10) The auditor's report required in accordance with subsection (9), which shall include any qualifications made by the auditor, must be reproduced in full in the annual report.

#### **102. Disclosure to investors.**

- (1) An AIFM shall, for each of the investment funds that it manages or markets, make available to the investment fund investors —
  - (a) a description of the investment strategy and objectives of the investment fund;
  - (b) information on where any master fund is authorised or established, and where the underlying funds are authorised or established, if the investment fund is a fund of funds;
  - (c) a description of the types of assets in which the investment fund may invest;
  - (d) the techniques the investment fund may employ and all associated risks;
  - (e) any applicable investment restrictions;
  - (f) the circumstances in which the investment fund may use leverage;
  - (g) the types and sources of leverage permitted and the associated risks;
  - (h) any restrictions on the use of leverage and any collateral and asset re-use arrangements;
  - (i) the maximum level of leverage which the AIFM is entitled to employ on behalf of the investment fund;

- (j) a description of the procedures by which the investment fund may change its investment strategy or investment policy, or both;
- (k) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on —
  - (i) the jurisdiction;
  - (ii) the applicable law;
  - (iii) the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the jurisdiction where the investment fund is authorised or established;
  - (iv) the identity of the AIFM, the AIFM custodian, auditor and any other service providers of the investment fund, and a description of their duties and the investors' rights;
- (l) a description of how the AIFM is complying with the requirements of section 74 regarding professional liability risks;
- (m) a description of any delegated management function by the AIFM, and any safe-keeping function delegated by the AIFMD custodian including identification of the delegate and any conflicts of interest that may arise from such delegations;
- (n) a description of the valuation procedure of the investment fund and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with sections 77 to 80;
- (o) a description of the liquidity risk management of the investment fund, including the redemption both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- (p) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- (q) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain the preferential treatment and, where relevant, their legal or economic links with the investment fund or AIFM;
- (r) the most recent annual report prepared in accordance with section 101;
- (s) the procedure and conditions for the issue and sale of equity interests;

- (t) the latest net asset value of the investment fund or the latest market price of the equity interests of the investment fund, in accordance with section 83 on valuation principles;
  - (u) where available, the historical performance of the investment fund;
  - (v) the identity of any prime broker and a description of any material arrangements of the investment fund with its prime brokers;
  - (w) the way the conflicts of interest are managed in relation to a prime broker;
  - (x) provision in the contract between a prime broker and an AIFMD custodian on the transfer and re-use of investment fund assets;
  - (y) information about any transfer to the prime broker of any liability of the investment fund;
  - (z) a description of the means and timing of disclosure of information on periodic disclosures and leverage.
- (2) The information under subsection (1) should be disclosed in accordance with the constitutive documents and offering documents of the investment fund and at a minimum, at the same time as the annual report is made available to investors.
- (3) An AIFM shall inform the investors before they invest in the investment fund of the information under subsection (1) and upon any change that is material to the information.
- (4) An AIFM shall inform the investors, before they invest in the investment fund, of any arrangement made by the AIFMD custodian to contractually discharge itself of liability under section 94.
- (5) An AIFM shall immediately inform investors of the investment fund of any changes with respect to the liability of the AIFMD custodian.
- (6) Where an investment fund is required to publish an offering document in accordance with the investment fund or in accordance with the law of the jurisdiction where it is authorised or established, only such information referred to in this section which is in addition to that contained in the offering document shall be disclosed separately or as additional information in the offering document.
- (7) An AIFM shall, for each of the investment funds it manages or markets, periodically disclose the following information to investors of the relevant investment fund —
- (a) the percentage of the investment fund's assets which are subject to special arrangements arising from their illiquid nature;
  - (b) any new arrangements for managing the liquidity of the investment fund;

- (c) the current risk profile of the investment fund and the risk management systems employed by the AIFM to manage those risks.
- (8) An AIFM managing an investment fund employing leverage or marketing in the EU an investment fund employing leverage, must for each such investment fund, periodically disclose to investors of the relevant investment fund within the time periods specified —
- (a) without undue delay, any changes to the maximum level of leverage which the AIFM may employ on behalf of the investment fund as well as any right of re-use of collateral or any guarantee granted under the leverage arrangement;
  - (b) the total amount of leverage employed by the investment fund in accordance with the constitutive documents and offering documents of the investment fund and at least at the same time as the annual report is made available to investors.

### **103. Reporting obligations to the Commission.**

- (1) An AIFM must report the following information to the Commission in the manner the Commission may direct, not later than one month after the end of the reporting periods set out in subsection (5) —
  - (a) the main instruments in which it is trading, including a breakdown of financial instruments and other assets, including the investment strategies and the geographical and sectoral investment focus of the investment fund it manages;
  - (b) the markets of which it is a member or where it actively trades;
  - (c) the diversification of the portfolio of the investment fund it manages, including but not limited to, its principal exposures and most important concentrations.
- (2) Where the investment fund is a fund of funds, upon written request by the AIFM to the Commission, the reporting periods set out in subsection (5) may be extended by up to fifteen days by the Commission.
- (3) An AIFM must, for each of the investment funds it manages or markets, report the following information to the Commission in the manner as the Commission may direct, in accordance with the reporting periods set out in subsection (5) —
  - (a) the percentage of the assets of the investment fund which are subject to special arrangements arising from their illiquid nature as disclosed to investors;
  - (b) any new arrangements for managing the liquidity of the investment fund;



- (c) the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
  - (d) the current risk profile of the investment fund, including —
    - (i) the market risk profile of the investments of the investment fund, including the expected return and volatility of the investment fund in normal market conditions;
    - (ii) the liquidity profile of the investments of the investment fund, including the liquidity profile of the assets of the investment fund, the profile of redemption terms and the terms of financing provided by counterparties to the investment fund;
  - (e) information on the main categories of assets in which the investment fund is investing, including the corresponding short market value and long market value, the turnover and performance during the reporting period; and
  - (f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with sections 81(10)(b) and 82(2).
- (4) An AIFM managing investment funds employing leverage on a substantial basis must make available to the Commission —
- (a) the overall level of leverage employed by each investment fund it manages;
  - (b) a breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives;
  - (c) the extent to which the assets of the investment fund have been re-used under leveraging arrangements; and
  - (d) the identity of the five largest sources of borrowed cash or securities for each of the investment funds managed or marketed by the AIFM, and the amounts of leverage received from each of those sources for each of those investment funds.
- (5) The information required in subsection (4) must be reported to the Commission —
- (a) every six months, by an AIFM managing portfolios of investment funds whose assets under management in total do not exceed the equivalent of one billion euros or the equivalent currency acceptable to the Commission, for each of their investment funds;
  - (b) on a quarterly basis, by an AIFM managing portfolios of investment funds whose assets under management in total exceed the equivalent of one billion euros or the equivalent currency acceptable to the Commission, for each of their investment funds;

- (c) on a quarterly basis, by an AIFM which is subject to the requirements referred to in subparagraph (a), for each investment fund whose assets under management, including any assets acquired through use of leverage, in total exceed the equivalent of five hundred million euros or the equivalent currency acceptable to the Commission, in respect of that investment fund;
  - (d) on an annual basis, by an AIFM in respect of each unleveraged investment fund under its management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.
- (6) The Commission may require all or part of the information required in subsection (5) to be reported within different time frames and in such manner as the Commission may direct.
- (7) The Commission may require an AIFM to provide it with any of the following documents upon request—
  - (a) an annual report of each investment fund managed by the AIFM for each financial year;
  - (b) a list of all investment funds which the AIFM manages on a quarterly basis;
  - (c) where necessary, for the effective monitoring of systemic risk, the Commission may require other information to be provided to it on a periodic and *ad hoc* basis.
- (8) For the purposes of this paragraph, “leverage” shall be considered by the Commission to be employed on a substantial basis when the exposure of an investment fund (calculated in accordance with the commitment method) exceeds three times its net asset value.
- (9) The Commission shall prescribe measures specifying —
  - (a) the quantitative reporting requirements of an AIFM;
  - (b) when leverage is to be considered to be employed on a substantial basis for the purposes of subsection (4); and
  - (c) the obligations to report and provide information provided for in this section.

#### **104. AIFMs managing leveraged investment funds.**

An AIFM shall ensure and demonstrate that the leverage limits set by it for each investment fund that it manages are appropriate, and that the investment fund complies with such limits at all times.

#### **105. Limits on leverage.**

- (1) The Commission must —

- (a) assess the risks arising out of the use of leverage by an investment fund managed by an AIFM;
- (b) if required, impose the measures in subsection (2) on an AIFM, in order to ensure the stability and integrity of the financial system in The Bahamas or the jurisdiction where an investment fund is authorised or established, and to limit the extent to which the use of leverage by an investment fund managed by an AIFM contributes to —
  - (i) the build-up of systemic risk in the financial system; or
  - (ii) the risks of disorderly markets.
- (2) The measures referred to in subsection (1)(b) are—
  - (a) to impose limits on the level of leverage that such an AIFM may employ; or
  - (b) to impose other restrictions on the AIFM.
- (3) The Commission may use its powers under section 42 of the Act to impose limits on leverage or other restrictions on an AIFM, but this subsection does not limit the powers of the Commission.
- (4) For the purposes of this Sub Part, “investment fund” includes an EU AIF.

## GENERAL ADMINISTRATION AND FINANCIAL MATTERS

### 106. Compliance with directions.

A regulated person shall use reasonable efforts to ensure that it complies with any direction given to it by the Commission in accordance with the provisions of this Act.

### 107. Approval by the Commission.

- (1) A regulated person shall not appoint or change a director, operator, chief executive officer (or the equivalent position) as the case may be, or any other person for whom initial approval by the Commission was required, unless —
  - (a) the prior written approval of the Commission to the appointment has been obtained; ~~and~~
  - (b) the prescribed fee has been paid.
- (2) A regulated person shall notify the Commission immediately of any change in the information furnished to the Commission in support of its application.
- (3) A regulated person who contravenes subsection (1) may be required to —

- (a) cease operations;
  - (b) surrender its licence or registration, as the case may be; or
  - (c) commence winding-up or dissolution,
- as required by the Commission.

**108. Instructions to audit accounts.**

- (1) The Commission may at any time instruct a regulated person —
  - (a) to have its accounts audited by an auditor; and
  - (b) to submit the audited financial statements to the Commission, within such time as the Commission shall specify.
- (2) The audited financial statements referred to in subsection (1) shall be prepared at the expense of the regulated person.

**109. Auditors to report.**

- (1) The regulated person shall have its financial statements audited annually by an auditor.
- (2) The auditor under subsection (1) shall —
  - (a) make an examination of the annual financial statements and other regulatory filings of the regulated person in accordance with generally acceptable auditing standards and shall prepare a report on the audit in accordance with generally accepted accounting principles; and
  - (b) when requested to do so by the Commission, provide a report on any matter relating to the financial affairs of the regulated person.
- (3) The Commission may, where the report of the auditor required by subsection (2)(a) is qualified in any respect or the report required by subsection (2)(b) discloses that there are any material weaknesses or deficiencies in or non-compliance with any of the prescribed requirements, take any action that is deemed necessary until the matters giving rise to the qualified audit report are resolved or the matters giving rise to the weaknesses or deficiencies or non-compliance are rectified.
- (4) Where in the course of performing the duties required by subsection (2), the auditor comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements is present or that there is a material weakness or deficiency in or non-compliance with any of the provisions of the Act relating to the financial affairs of the regulated person, he shall provide notice to the Commission immediately in writing and a copy of the notice must be delivered promptly to the regulated person.
- (5) The Commission may require the auditor of a regulated person to —

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- (a) submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
  - (b) enlarge or extend the scope of the audit of the business and affairs of the regulated person;
  - (c) carry out any other examination or establish any procedure in any particular case;
  - (d) submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c), and the auditor shall carry out such additional duty or duties.
- (6) Except where exempted or waived by the Commission —
- (a) an investment fund shall submit its audited financial statements in respect of a financial year of the investment fund to the Commission within six months of the end of that financial year or within such extension of the period as the Commission may reasonably allow;
  - (b) a regulated person, that is not an investment fund, shall submit its audited financial statements in respect of a financial year of the regulated person to the Commission within four months of the end of that financial year or within such extension of the period as the Commission may reasonably allow.
- (7) The regulated person shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (5).

#### **110. General financial reporting.**

A regulated person shall report financial information to the Commission as required by the Commission.

#### **111. Ongoing statutory reporting obligations**

- (1) A regulated person shall submit documentation and other information as prescribed by the Commission from time to time.
- (2) A regulated person shall deliver to the Commission, within five days of a change, written notice of —
  - (a) any change in any information provided in the regulated person's application for licence, registration or approval; and
  - (b) any change with respect to any other matter as may be set out in the Act.
- (3) In addition to the notice requirements under subsection (2), a regulated person shall deliver to the Commission immediate written notice of the occurrence of any of the following in relation to the regulated person —

- (a) the commencement of a winding up or a dissolution of any regulated person or a subsidiary or holding company of the regulated person;
- (b) the application by a person for the appointment of a receiver, receiver-manager, administrator or trustee of the regulated person or a subsidiary or holding company of the regulated person;
- (c) the making or any proposal for the making of an arrangement with a creditor or creditors of the regulated person or a subsidiary or holding company of the regulated person;
- (d) the appointment of inspectors by a domestic regulatory authority or overseas regulatory authority to investigate the affairs of the regulated person or a subsidiary or holding company of the regulated person;
- (e) the bringing of any action under the Act against the regulated person or a subsidiary or holding company of the regulated person;
- (f) where applicable, any change to the insurer, any claim made by the regulated person against the insurer, or any change to the amount of coverage of the regulated person's insurance arrangements;
- (g) any resignations or dismissals of directors, officers or senior employees of the regulated person or holding company of the regulated person;
- (h) where the regulated person 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 regulated person proposes to take to correct the problem;
- (j) the date on which the regulated person proposes to cease to carry on business and the reasons for the cessation;
- (k) the inability of the regulated person to perform any of the calculations or re-conciliations required by any regulations or to correct any deficiencies identified by the calculations or re-conciliations;
- (l) a breach by the regulated person of the requirements regarding financial resources, books and records and risk management and internal controls, together with details of the steps that the regulated person is taking to remedy the breach;
- (m) where the regulated person has reason to believe that it may be unable to —

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- (i) submit a financial report as required; or
  - (ii) pay its annual renewal fees to the Commission;
- (n) the failure of any bank, registered marketplace, clearing facility or other entity with which the regulated person has deposited or to which it has passed money belonging to an investment fund or to the investors in an investment fund;
  - (o) where the regulated person becomes aware of any actual or contingent claim in relation to its investment fund business by or against the regulated person where any amount claimed or disputed is likely to exceed 10 per cent of the regulated person's assets;
  - (p) where the regulated person is the subject of any written customer complaint involving allegations of forgery, fraud, theft or misappropriation of property belonging to the investment fund or an investor;
  - (q) where the regulated person is associated in any way in any business or financial activity with any person who has —
    - (i) been convicted of an offence punishable by one year or more in prison under Bahamian law;
    - (ii) been convicted of an offence punishable by one year or more in prison under any foreign law; or
    - (iii) been barred or suspended by any domestic or overseas regulatory authority;
  - (r) where the regulated person is named as a defendant or respondent in any domestic or foreign criminal or regulatory proceeding;
  - (s) where the regulated person is named as a defendant or respondent in any civil proceeding, exceeding twenty-five thousand dollars; or
  - (t) any other matter relevant to the supervision of the regulated person.
- (4) Upon receipt of a notice under this section, the Commission may review the regulated person's continued fitness for licensing or registration and take any action it deems necessary as a result.
  - (5) Where a regulated person fails to submit documentation and other information as required under this section it may be subject to conditions imposed on its licence, registration or approval as prescribed by the Commission.
  - (6) For the purposes of this section —
    - “**failure**” means the appointment of a liquidator, receiver, administrator, or trustee in bankruptcy or any equivalent procedure in the relevant jurisdiction;
    - “**a regulated person**” does not include an investment fund.
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## **112. Reporting to investors.**

The Commission may require reporting or information to be provided to the investors as prescribed by the Commission.

## **113. Complaints.**

- (1) An investment fund shall establish and maintain an effective complaints handling system 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 fourteen days of receipt of the complaint; and
  - (c) each complaint is effectively and fairly resolved.
- (2) A record of complaints shall be kept by the investment fund administrator acting on behalf of an investment fund.

## **114. Anti-money laundering and anti-terrorism financing obligations.**

An investment fund administrator, investment fund manager and an investment fund shall comply with the anti-money laundering and anti-terrorism financing standards as prescribed by the Commission.

# **PART IV - INVESTIGATION AND INSPECTION**

## **INVESTIGATION**

### **115. Power to investigate.**

- (1) The Commission may conduct such investigations as it considers necessary or expedient for any of the following purposes —
  - (a) to determine whether any person has contravened, is contravening or is about to contravene the provisions of this Act;
  - (b) for the administration of this Act; or
  - (c) to provide assistance to the regulatory authority of another jurisdiction.
- (2) For the purposes of subsection (1), the Commission may conduct the investigation or may, in writing, appoint another person for that purpose.
- (3) The Commission may, notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, exercise any of its powers under this Sub Part for the purposes of conducting an investigation under subsection (1).



**116. Power to obtain information for investigation.**

- (1) Where the Commission considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may —
  - (a) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;
  - (b) enter, during reasonable hours, the business premises of such person for the purpose of —
    - (i) inspecting and copying information or documents stored in any form on such premises; and
    - (ii) removing from the premises any information or documents;
  - (c) require such person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require;
  - (d) require such person to produce, or procure the production of, specified documents or documents of a specified description;
  - (e) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (c) and (d);
  - (f) require such person to give the Commission all assistance in relation to the investigation that the person is reasonably able to give.
- (2) If a person, acting on behalf of the Commission, enters premises under subsection (1)(b), the person must present proof of his or her authority to do so.
- (3) The Commission may, in exercising its power under this section, seek the assistance of the Commissioner of Police.
- (4) The assistance sought under subsection (3) shall be —
  - (a) for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified by the Commission; and
  - (b) provided in such manner as the Commission may require.
- (5) Any information or document removed under subsection (1)(b) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.

### **117. Uncooperative witness liable for contempt.**

On application by the Commission to the court, a person summoned under section 116 is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

- (a) attend;
- (b) give evidence; or
- (c) produce a document in the custody, possession or control of that person.

## **INSPECTION**

### **118. Compliance inspections for regulated persons.**

- (1) At any time, the Commission may conduct an on-site or off-site inspection of the business of a regulated person for the purpose of —
  - (a) determining if the person is complying with —
    - (i) provisions of this Act;
    - (ii) the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*); or
    - (iii) any other law that is administered by the Commission; or
  - (b) providing assistance to an overseas regulatory authority in an investigation or in its supervisory functions or duties.
- (2) The Commission may, in writing, appoint another person to conduct the inspection under subsection (1).
- (3) The Commission may, by notice in writing, require a person subject to an inspection to produce information or documents, or a class of information or documents that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.
- (5) The Commission may during reasonable hours, enter the business premises of a person who is the subject of an inspection under subsection (1), for the purpose of —
  - (a) inspecting and copying information or documents stored in any form on such premises; and
  - (b) removing from the premises any information or documents.

- (6) The Commission may require a person who is the subject of an inspection under subsection (1), to give an explanation of, or further particulars regarding, any information or document produced under subsection (4).
- (7) If a person, acting on behalf of the Commission, enters premises under subsection (5), the person must present proof of his or her authority to do so.
- (8) Any information or document removed under subsection (5) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.

#### **119. Power to require reports.**

- (1) The Commission may require a regulated person to provide the Commission with a report, in such form as may be specified in the notice, by the person's auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the regulated person to provide information under section 118.
- (2) The report referred to in subsection (1) shall be prepared at the expense of the regulated person.
- (3) The person appointed by a regulated person to make the report required under subsection (1) shall immediately give written notice to the Commission of any fact or matter of which that person becomes aware which indicates —
  - (a) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the regulated person; and
  - (b) that the matters are likely to be of material significance for the exercise, in relation to such person, of the Commission's functions under this Act.
- (4) The person appointed to make a report required under this section must be a person approved by the Commission.

#### **120. Compliance inspection of a party related to an investment fund.**

- (1) The Commission may inspect the business of a party related to an investment fund, for the purpose of —
  - (a) determining if the person is complying with —
    - (i) investment funds laws;
    - (ii) the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*); or
    - (iii) any other law that is administered by the Commission; or

- (b) providing assistance to an overseas regulatory authority in an investigation or in its supervisory functions or duties.
- (2) For the purpose of subsection (1), the Commission may, in writing, appoint another person to conduct the inspection.
- (3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents, that reasonably relates to the inspection.
- (4) After receiving a notice under subsection (3), a person must, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

**121. General inspection matters.**

- (1) After the conclusion of an inspection of a regulated person under section 118 or party related to an investment fund under section 120, a report shall be prepared setting out the findings of that inspection.
- (2) The Commission shall consider and make recommendations on any information or report prepared under this Sub Part.
- (3) The Commission shall assess charges to recover the cost of any inspection performed under this Sub Part.
- (4) Upon application, the Commission may grant an exemption regarding the payment of cost where the Commission considers it appropriate.

**122. Participation of other regulatory authorities in inspections under this Part.**

- (1) Subject to subsection (2), the Commission may, upon the request of a domestic regulatory authority or an overseas regulatory authority, permit the domestic regulatory authority or an overseas regulatory authority to take part in a compliance inspection undertaken by the Commission.
- (2) The Commission shall not permit an overseas regulatory authority to take part in a compliance inspection under subsection (1) unless it is of the opinion that the participation of the overseas regulatory authority is reasonably required —
  - (a) for the effective supervision of a regulated person; or
  - (b) for the purposes of the regulatory functions of the overseas regulatory authority.
- (3) The Commission may, in deciding whether to permit an overseas regulatory authority to take part in a compliance inspection under subsection (1), take into account, in particular, whether the overseas regulatory authority is subject to adequate legal restrictions on further

disclosure and whether it is likely, without the written permission of the Commission —

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in supervision; or
  - (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.
- (4) For the purposes of this section, “**overseas regulatory authority**” includes an authority in a foreign jurisdiction that exercises regulatory or supervisory functions over entities carrying on banking, insurance, securities, investment funds or other financial services business.

## **PART V - GENERAL REGULATORY AUTHORITY OF THE COMMISSION**

### **123. 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 the regulated person or party related to the investment fund under this Act for the purpose of satisfying itself that —
  - (a) the provisions of this Act or any regulations made under the Act are being complied with; and
  - (b) the provisions of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*) or any regulations made thereunder are being complied with, and after the conclusion of such examination to prepare a report on its findings.
- (2) 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 party related to the investment fund, to conduct such examination and to report thereon to the Commission.
- (3) The Commission may assess charges to recover the cost of such examination.
- (4) If requested to do so by the Commission, a regulated person or a party related to an investment fund shall give the Commission access to or provide at any reasonable time all records relating to the regulated person or the party related to an investment fund.
- (5) The Commission may copy or take an extract of a document it is given access to, or provided with in accordance with this section.

- (6) If requested to do so by the Commission, a regulated person or a party related to an investment fund shall give the Commission such information or such explanation in respect of the regulated person or a party related to an investment fund as the Commission may reasonably request to enable it to carry out its duties under this Act.
- (7) A person giving information or an explanation for the purpose of subsection (1) or (2) shall not give the Commission information or an explanation that he knows or should reasonably know is false or misleading.

#### **124. General review of operations.**

- (1) It shall be the duty of the Commission —
  - (a) to maintain a general review of the operations of regulated persons and parties related to investment funds in The Bahamas;
  - (b) to monitor, by way of receipt of regular reports or in such other manner as it thinks necessary the affairs or business of any investment fund in The Bahamas.
- (2) The Commission may make rules providing for such matters as may be necessary or expedient for giving effect to its duties.

#### **125. Authority to regulate.**

- (1) The Commission shall have the authority to regulate the investment fund industry and the operation and duties of investment funds and parties related to investment funds.
- (2) Without prejudice to the generality of the foregoing the Commission shall have the authority to establish by rules the standards or education criteria, if any, which govern the suitability of a party related to an investment fund or contracted to provide any of the services of a party related to an investment fund.

#### **126. Compliance with Financial Transactions Reporting Act.**

In the exercise of its functions under this Act the Commission shall satisfy itself that the provisions of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*) are being complied with.

## PART VI - DISCIPLINARY AND ENFORCEMENT AUTHORITY OF THE COMMISSION

### 127. Power of the Commission to conduct regulatory hearings.

- (1) The Commission may, where it appears that a person has breached a provision of this Act or failed to comply with a requirement, directive or order given by the Commission —
  - (a) conduct investigations and regulatory hearings; and
  - (b) impose one or more of the sanctions, remedies or other relief as may be prescribed in investment funds laws.
- (2) The Commission shall have authority to conduct regulatory hearings to determine whether —
  - (a) there has been or there is likely to be a failure to comply with the provisions of this Act, regulations or rules;
  - (b) a regulated person is carrying on its business in a manner detrimental to the public interest;
  - (c) a regulated person is carrying on or attempting to carry on business or is winding up, dissolving or terminating its business voluntarily in a manner that is prejudicial to —
    - (i) the investors in the investment fund;
    - (ii) any investment fund being administered by an investment fund administrator;
    - (iii) the creditors or the investment fund;
    - (iv) the creditors of the investment fund administrator;
    - (v) an investment fund being managed by an investment fund manager or AIFM; or
    - (vi) the creditors of the investment fund manager or AIFM;
  - (d) a regulated person is carrying on or attempting to carry on investment fund business without complying with the conditions of its licence, registration or approval.
- (3) A regulatory hearing of the Commission shall be conducted as prescribed by the Commission from time to time.

### 128. Hearings.

- (1) At a hearing, the Commission shall provide a reasonable opportunity for each person directly affected to be heard and shall give reasonable notice to each such person and may give notice to any interested party related to an investment fund, which notice shall include the prescribed information.

- (2) The Commission may —
  - (a) issue a subpoena or other request or summons requiring a person to attend a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in the person's possession or under the person's control, whether they are located in or outside The Bahamas; and
  - (b) compel a person to give evidence on oath, orally or in writing.
- (3) Notwithstanding subsection (2), no persons giving evidence before the Commission shall be compelled to incriminate themselves, and every person shall be entitled to all privileges that a witness giving evidence before a court is entitled to in respect of the evidence given by the person to the Commission.
- (4) On application by the Commission to the court, a person summoned under subsection (1) is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —
  - (a) attend;
  - (b) give evidence; or
  - (c) produce a document in the custody, possession or control of the person.
- (5) A hearing under this section shall be open to the public unless the Commission directs otherwise.
- (6) A person who is entitled to notice of a hearing under subsection (1) may be represented by a counsel and attorney and, subject to the procedural rules made by the Commission under this Act, may present evidence and argument and may cross-examine witnesses at the hearing.
- (7) A counsel and attorney may advise a witness at a hearing under subsection (1).
- (8) The Commission may admit as evidence any oral testimony or documentary exhibit that it considers relevant to the subject-matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.
- (9) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.
- (10) The Commission shall —
  - (a) make a final decision in writing and state the findings of fact on which it is based and the reasons for it;
  - (b) send a copy of the final decision and reasons to each person given notice under subsection (1) and to each person who appeared at the hearing; and



- (c) publish a copy of the final decision and reasons or a summary of the decision and reasons in a periodical published by the Commission, on its website or in a daily newspaper circulating in The Bahamas but the Commission may omit the name of an affected person from a decision so published.

#### **129. Compliance notice.**

Without prejudice to any other action that may be instituted or taken against a person, if at any time it appears to the Commission that a person has failed to comply with any of the requirements under this Act including any requirement of the Hearing Panel, the Commission may, by written notice, direct the person to comply with the requirement within such period and on such terms and conditions as the Commission may specify and the person shall comply with the notice.

#### **130. Orders in the public interest.**

- (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement with the person or after a hearing —
  - (a) order a person to comply with the provisions of this Act, a decision of the Hearing Panel or a compliance notice of the Commission;
  - (b) order a person, a class of persons or all persons to cease trading an investment fund, a category of investment fund or all investment funds;
  - (c) order that any or all of the exemptions in this Act do not apply to a person;
  - (d) prohibit a person from —
    - (i) acting as a partner, director or officer of another person;
    - (ii) acting as a regulated person, or representative of a regulated person;
    - (iii) acting as a party related to an investment fund;
    - (iv) acting as an auditor of a regulated person or party related to an investment fund;
    - (v) acting in a management or consultative capacity in connection with activities in the investment funds industry; or
    - (vi) promoting the trading of an investment fund or of investment funds generally;
  - (e) issue a censure or reprimand;
  - (f) suspend the licence or registration of the regulated person;
  - (g) reclassify the licence or registration of a regulated person;

- (h) require the substitution of any party related to the investment fund or any senior officer of a regulated person;
- (i) appoint a person to advise a regulated person on the proper conduct of its affairs;
- (j) appoint a person to assume control of the regulated person's affairs;
- (k) apply to the court for an order to take such other action as it considers necessary to protect the interests of —
  - (i) the investors of an investment fund;
  - (ii) any investment fund being administered by an investment fund administrator;
  - (iii) the creditors of the investment fund;
  - (iv) the creditors of the investment fund administrator;
  - (v) an investment fund being managed by an investment fund manager or AIFM; or
  - (vi) the creditors of the investment fund manager or AIFM;
- (l) restrict the trading or advising activities of a regulated person, or licensee;
- (m) order a person to change a document;
- (n) order a person to publish information or a document;
- (o) order a person not to publish information or a document;
- (p) impose conditions or restrictions on a registration or licence, or suspend or revoke a registration or licence;
- (q) order a person that is a party related to an investment fund to make changes to its practices and procedures;
- (r) appoint a person to advise a regulated person on the proper conduct of its affairs and to report to the Commission thereon;
- (s) appoint a person to assume control of a regulated person's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver-manager of the assets and property of the regulated person;
- (t) 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 regulated person;
  - (ii) investors or creditors of an investment fund;
  - (iii) investment funds administered by an investment fund administrator;
  - (iv) creditors of an investment fund administrator;
  - (v) investment funds managed by an investment fund manager or AIFM; or

- (vi) creditors of the investment fund manager or AIFM; or
  - (u) apply to the court for an order that the person be wound up or dissolved by the court;
  - (v) order that all subscriptions and redemptions cease and that any subscriptions collected be repaid to investors.
  - (w) order the disgorgement of profits or other unjust enrichment and a penalty not to exceed twice the amount of such profits or unjust enrichment;
  - (x) order restitution; or
  - (y) impose any other sanctions or remedies as the justice of the case may require.
- (2) The Commission may make an order under subsection (1)(e) to (1)(o) against a person, without a hearing —
- (a) if the person has been convicted in any jurisdiction of a criminal offence arising from a transaction, business or course of conduct related to investment funds;
  - (b) if the person has been found by a court to have contravened the laws relating to investment funds of any jurisdiction;
  - (c) if the person has been found by an overseas regulatory authority to have contravened the laws relating to investment funds of that jurisdiction; or
  - (d) if the Commission considers it necessary and in the public interest to do so.
- (3) Where the Commission makes an order under subsection (1), other than an order under subsection (1)(m), (1)(n) or (1)(o), such order remains effective for no more than fifteen days.
- (4) If the Commission considers it necessary and in the public interest to do so, the Commission may, without providing an opportunity to be heard, extend an order made under subsection (3) until the Commission makes a final decision after —
- (a) a hearing under subsection (1) is held; or
  - (b) an opportunity to be heard under subsection (2) is provided.
- (5) If the Commission makes an order under this section, the Commission must send the order to each person named in the order.
- (6) If the Commission sends an order made under subsection (3) or (4), the Commission must send a notice of hearing, or a notice of opportunity to be heard, with the order.
- (7) A person appointed under subsection (1)(i) or (1)(j) is appointed at the expense of the relevant regulated person and any expenses reasonably

incurred by the Commission by virtue of the appointment is an amount due to the Commission and is payable by the regulated person.

- (8) A person appointed under subsection (1)(j) has all the powers necessary, to the exclusion of any other person, other than a liquidator or receiver or receiver-manager, to administer the affairs of the relevant regulated person in the best interests of the clients, investors and creditors of the regulated person.
- (9) The powers referred to in subsection (8) include the power to terminate the business of the regulated person if it is judged to be insolvent.
- (10) A person appointed in respect of a regulated person under subsection (1) (i) or (1)(j) shall —
  - (a) supply the Commission with such information in respect of the regulated person, when requested to do so by the Commission;
  - (b) within three months of the person's appointment, or within such other period as the Commission may specify, prepare and supply to the Commission a report on the affairs of the regulated person and where appropriate make recommendations in respect of the regulated person;
  - (c) if the person's appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission shall require.
- (11) If a person appointed under (1)(i) or (1)(j) —
  - (a) fails to comply with an obligation under subsection (1); or
  - (b) in the Commission's opinion, is not carrying out the person's obligations in respect of the relevant regulated person satisfactorily, the Commission may revoke the appointment and appoint some other person in the person's place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment.
- (12) On receipt of any information or report under subsection (1) in respect of a regulated person, the Commission may —
  - (a) require the regulated person to reorganise its affairs in a manner specified by the Commission; or
  - (b) apply to the court for an order to wind up, dissolve, liquidate or otherwise terminate, as appropriate, the regulated person upon such terms and conditions as the court thinks fit;
  - (c) take such action in respect of the appointment or continued appointment of the person appointed under subsections (1)(i) or (1) (j) as the Commission considers appropriate.

- (13) If the Commission takes action under subsection (12) it may —
- (a) apply to the court for an order to take such other action as it considers necessary to protect the interests of the clients or creditors of, or investors in, the regulated person; or
  - (b) take any other action provided for in subsection (1) or (2).

**131. Application to court.**

Notwithstanding any other provision, if the Commission considers it in the public interest to do so, the Commission may, at any time and without a hearing, apply to the court for an order to take any action as it considers necessary.

**132. Administrative penalty.**

- (1) If the Commission considers it in the public interest to do so, the Commission may, [upon a settlement or after a hearing], order a person that has breached any provision of this Act to pay the Commission an administrative penalty of not more than five hundred thousand dollars as prescribed by the Commission, for each contravention.
- (2) Any person in breach of any provision of this Act solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an automatic penalty of up to one thousand dollars, or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document is filed or delivered.

**133. Removal of benefits.**

If the Commission considers it in the public interest to do so, the Commission may, after a hearing, order a person to pay to the Commission any amount obtained, or payment or loss avoided, as a result of a contravention of the provisions of this Act, plus a penalty, not to exceed twice the amount obtained or payment or loss avoided.

**134. Payment of costs.**

- (1) The Commission shall order a person subject to a hearing to pay the costs of the Commission's investigation, the hearing and related costs.
- (2) For the purposes of this section, the costs that the Commission may order the person to pay include —
  - (a) costs incurred in respect of services provided by persons appointed or engaged under section 115 (2);
  - (b) costs of matters preliminary to the hearing;

- (c) costs for time spent by the Commission or the staff of the Commission;
- (d) any fee paid to and costs of a witness; and
- (e) costs of legal services provided to the Commission.

**135. Order to freeze property.**

- (1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of this Act or to give assistance to an overseas regulatory authority in the administration of the laws relating to investment funds of such other jurisdiction, by order for a period not to exceed five days direct —
  - (a) a person having on deposit, under control or for safekeeping any moneys, investment funds or other property of the person named in the order to hold them; or
  - (b) a person —
    - (i) not to withdraw any moneys, investment funds or other property from any person having them on deposit, under control or for safekeeping; or
    - (ii) to hold all moneys, investment funds or other property of a client of that person, or of others, in the person's possession or control pending the appointment of a receiver, receiver-manager, trustee or liquidator.
- (2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the Commission's order shall remain in effect until it is set aside or it expires.
- (3) Unless expressly stated, an order made under subsection (1) does not apply to moneys, equity interests in investment funds or other property at a clearing facility, or to equity interests in investment funds in the process of transfer by a transfer agent.

**136. Limitation period.**

No proceedings against any person for a breach or for a failure to comply with any of the provisions of this Act, may be commenced after the expiration of six years from the day upon which the breach or non-compliance was or ought to have been discovered.

**137. Liability of directors and officers.**

- (1) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, any director or officer of the person who knowingly or recklessly authorized, permitted or acquiesced

in the offence commits an offence and is liable to the penalty specified for it.

- (2) Reasonable reliance, including reliance on advice of counsel, an auditor or other expert, in good faith, is a defence in a proceeding under this section.

## **PART VII - INFORMATION SHARING**

### **138. Co-operation with other regulatory authority.**

The Commission may cooperate with any other regulatory authority in The Bahamas or elsewhere, 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 other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the investment funds industry.

## **PART VIII - MARKET MISCONDUCT**

### **139. Misleading or deceptive conduct.**

- (1) A person must not engage in conduct, in or from The Bahamas, in relation to investment funds business that is misleading or deceptive or is likely to mislead or deceive.
- (2) The reference in subsection (1) to engage in conduct in relation to an investment fund includes —
  - (a) trading in or marketing of an investment fund;
  - (b) issuing or establishing an investment fund;
  - (c) publishing a notice in relation to an investment fund; or
  - (d) carrying on negotiations or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of paragraphs (a) to (c).

### **140. Misleading the Commission.**

A person must not, in compliance with any requirement imposed by or under investment funds laws, knowingly or recklessly provide the Commission or the public with information that —

- (a) is false;
- (b) is misleading in a material particular; or

- (c) fails to state a fact that is required to be stated or that is necessary to make the statement not misleading.

#### **141. False or misleading statements.**

A person must not, whether in The Bahamas or elsewhere, make a statement, or disseminate information, if —

- (a) the statement or information is false in a material particular or is materially misleading;
- (b) the statement or information is likely —
  - (i) to induce persons in The Bahamas to acquire an interest in an investment fund; or
  - (ii) to have the effect of increasing, reducing, maintaining or stabilising the price for acquiring an interest in an investment fund; and
- (c) when the person makes the statement, or disseminates the information —
  - (i) the person is reckless as to whether the statement or information is true or false; or
  - (ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

#### **142. Inducing persons to deal.**

A person must not, in or from The Bahamas, induce another person to acquire an interest in an investment fund —

- (a) by making or publishing a statement, promise or forecast if the person knows or is reckless as to whether the statement is misleading, false or deceptive;
- (b) by a dishonest concealment of material information; or
- (c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if —
  - (i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and
  - (ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to others.



**143. Dishonest conduct.**

A person must not, in the course of carrying on investment funds business in or from The Bahamas, engage in dishonest conduct in relation to investment funds business or an investment fund.

**144. Prohibited representations.**

- (1) Except as provided in the Act, no person, for the purpose of inducing another person to acquire an interest in an investment fund, shall make any representation, written or oral that any person —
  - (a) will resell or repurchase the equity interests in an investment fund; or
  - (b) will refund all or any of the purchase price of such equity interests.
- (2) No person, for the purpose of inducing another person to acquire an equity interest in an investment fund, shall make any representation, written or oral, relating to the future value or price of such investment fund.
- (3) Except as provided in the Act, no person, for the purpose of inducing another person to acquire an interest in an investment fund, shall make any representation, written or oral, that such investment fund will be listed on any securities exchange.

**145. Market misconduct offences.**

- (1) Any person who contravenes a provision under this Part, commits an offence and shall be liable —
  - (a) on summary conviction to a fine of one hundred and fifty thousand dollars, or imprisonment for a term of one year, or to both;
  - (b) on conviction upon information to a fine of five hundred thousand dollars, or to imprisonment for a term of ten years or to both.
- (2) Any person who commits an offence under this Part, shall return any gains made or loss avoided from contravention of the sections, and if the court so directs, pay a penalty not to exceed twice the amount of such gains or loss avoided.

## **PART IX – MISCELLANEOUS**

**146. Exemptions and modifications.**

The Commission may grant exemption and modification to —

- (a) a person or class of persons from all or specified provisions of this Act; or

- (b) an investment fund or category of investment funds from all or specified provisions of this Act,

pursuant to regulations made by the Minister pursuant to section 159.

**147. Administrative proceedings and reviews.**

- (1) Any person directly affected by a decision of the Executive Director or any employee exercising delegated authority from the Commission may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review of that decision by the Commission.
- (2) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.
- (3) Notwithstanding the fact that a person requests a hearing and review under subsection (2), the decision under review takes effect immediately but the Commission may grant a stay pending the disposition of the hearing and review.

**148. Power to remove exemption contained in Commission rule.**

If the Commission considers it in the public interest to do so, the Commission may order that an exemption in a rule made under section 160 does not apply to a person or class of persons or an investment fund.

**149. Filing documents and public availability.**

- (1) All documents or information required to be filed with, delivered to or provided to the Commission shall be submitted to the Commission in the prescribed manner.
- (2) Subject to subsection (3), the Commission —
  - (a) shall make all documents or information required to be filed with it available for public inspection; and
  - (b) may make all documents or information filed with it available to the public by posting such documents to the website of the Commission.
- (3) The Commission may hold in confidence all or part of a document or information referred to in subsection (1) if it considers that —
  - (a) a person whose information appears in the document or information would be unduly prejudiced by disclosure of the information; and
  - (b) the person's privacy interest outweighs the public's interest in having the information disclosed.

- (4) Where a document or information is not expressly required to be filed but is required to be delivered or provided to the Commission under this Act, the document or information shall not be disclosed under subsection (2) unless the Commission determines that such disclosure is in the public interest.

**150. Verification.**

The Commission may by notice in writing require the person furnishing any information to the Commission to verify such information by oath or affirmation, within a reasonable period as specified in the notice.

**151. Register and other documents as evidence.**

Where it is provided in this Act that a register be established and maintained or kept, or a book of accounts be kept, or a list be prepared or published, any entry in such register, book of account or list, or the production of any licence or certificate issued under this Act, shall be *prima facie* evidence of the contents thereof.

**152. Conditions on decisions.**

The Commission may impose terms, conditions, requirements and restrictions on any decision it makes, as the Commission deems fit.

**153. Discretion to revoke or vary decisions.**

The Commission may, at any time by notice in writing, vary any term, condition, requirement or restriction imposed in any decision of the Commission or may revoke any decision of the Commission as it deems fit.

**154. Stamp duty exemption.**

Notwithstanding any provision of the Stamp Act (*Ch. 370*) or any other law to the contrary, stamp duty shall not be payable in respect of the transfer in The Bahamas of any equity interest in an investment fund listed on a registered securities exchange.

**155. Right to appeal to court.**

A person aggrieved by a decision of the Commission under this Act has a right of appeal to the court but the Commission's decision on any matter of an administrative nature shall be final.

**156. Offences.**

- (1) Any person who contravenes —

- (a) sections 9, 18, 20(1), 24, 61 or 106, commits an offence and shall be liable on conviction on information to a fine of one hundred and fifty thousand dollars or to imprisonment for three years or to both such fine and imprisonment;
  - (b) sections 43, 54, 57, 58, 59, 60 or 112, commits an offence and shall be liable on summary conviction to a fine of seventy five thousand dollars or to imprisonment for two years or to both fine and imprisonment;
  - (c) sections 108, or 123 (4), (5) and (6), commits an offence and shall be liable on summary conviction to a fine of twenty thousand dollars plus five hundred dollars in respect of each day during which the person failed to comply with the direction or to imprisonment for twelve months or to both such fine and imprisonment;
  - (d) sections 15(2) and 38(3), commits an offence and shall be liable on summary conviction to a fine of ten thousand dollars plus two hundred dollars in respect of each day after the specified time during which the person failed to comply with the instruction or to imprisonment for six months or to both such fine and imprisonment.
- (2) Any person who —
- (a) refuses to do anything that is properly required to be done by him under this Act;
  - (b) fails to pay any fee that is due and payable under this Act; or
  - (c) without reasonable cause contravenes any section of this Act for which no other penalty is provided,
- commits an offence and shall be liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.
- (3) A person who —
- (a) upon an examination, oath or affirmation required under this Act; or
  - (b) otherwise in or about any matter arising under this Act,
- commits an offence of perjury is liable on conviction to imprisonment for ten years.

### **157. Order to be fit and proper.**

The Commission may by Order —

- (a) prescribe persons who are required to be fit and proper;
  - (b) determine persons that are considered to be fit and proper,
- for the purposes of the Act.

#### **158. Amendment of Schedule.**

The Minister may, on the recommendation of the Commission, by Order published in the Gazette, amend the *Schedule* to this Act.

#### **159. Minister to make regulations.**

- (1) The Minister, after consultation with the Commission, may make regulations necessary for carrying out the purposes of this Act and such regulations may provide for or in relation to —
  - (a) the operation of investment funds or any regulated person;
  - (b) investment fund administrators in relation to their investment fund administration;
  - (c) the role and obligation of any party related to an investment fund;
  - (d) the requirements of Non-Bahamas based investment funds;
  - (e) any matter to which the Commission may make a rule; and
  - (f) the nature, purpose and duration of exemptions that may be granted by the Commission to a person or class of persons or an investment fund or category of investment funds;
  - (g) any other matter or thing which may be or is required to be prescribed under this Act.
- (2) Regulations made under this section may, notwithstanding the provisions of section 25(e) of the Interpretation and General Clauses Act (*Ch. 2*) prescribe greater penalties than those specified in that section provided that the maximum penalty that may be imposed by any such regulation shall be a fine of seventy-five thousand dollars or imprisonment for two years or both such fine and imprisonment.

#### **160. Rules.**

The Commission may make rules providing for such matters as may be necessary or expedient for giving effect to the purposes, functions and responsibilities under this Act.

#### **161. Rule-making process.**

- (1) The Commission shall publish, in a daily newspaper of general circulation in The Bahamas, in any regular periodical published by the Commission or on its website, at least sixty days before the proposed effective date —
  - (a) a copy of any rule that it proposes to make; and
  - (b) a concise statement of the substance and purpose of the proposed rule.

- (2) After a proposed rule is published in accordance with subsection (1), the Commission shall give interested parties a reasonable opportunity to make written representations with respect to the proposed rule.
- (3) The Commission shall publish each final rule, with any amendments that the Commission deems appropriate to make as a result of the public comment process under this section, as prescribed on or before its effective date.
- (4) The Commission is not required to comply with subsections (1) and (2) if
  - (a) all persons who will be subject to the rule are named and the information required by subsections (1)(a) and (1)(b) is sent to each of them;
  - (b) the rule only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
  - (c) the rule makes no material substantive changes in an existing rule;
  - (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or
  - (e) The Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1) and (2) would be prejudicial to the public interest.
- (5) The Commission must give a copy of any final rule to the Minister without delay.
- (6) A rule, or any amendment to a rule, shall be effective if the Commission has provided the Minister with a copy of the rule or amendment and the Commission has not received an objection to the rule or amendment from the Minister within thirty days after the rule or amendment was delivered to the Minister.
- (7) Where the Minister objects to a rule or any amendment to a rule, the Commission shall be provided with notice in writing of the reasons for the objection.
- (8) 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.
- (9) If the Commission alters or revokes a rule, it must —
  - (a) publish notice of the alternation or revocation; and
  - (b) give written notice to the Minister without delay; and
  - (c) include in such notices details of the alternation or revocation.

**162. Regulation prevails over rule.**

Where a rule made by the Commission conflicts with a regulation made by the Minister, the regulation made by the Minister prevails.

**163. Guidelines.**

The Commission may publish guidelines regarding any regulations or rules made under investment funds laws, or of any provisions of investment funds laws, provided however that such guidelines shall not be taken as having the force of law.

**164. Repeal.**

The Investment Funds Act (*Ch. 369A*) is repealed.

**165. Savings.**

Any statutory instrument or notice made under the former Act remains in force unless revoked.

**166. Transitional provisions.**

- (1) An investment fund licensed under the former Act is deemed to be licenced as an investment fund under section 5 of the Act with effect from the date of the commencement of this Act.
- (2) An investment fund administrator licensed under the former Act is deemed to be licenced as an investment fund administrator under section 36 of this Act with effect from the date of the commencement of this Act.
- (3) An investment fund manager that is managing an investment fund prior to this Act coming into force, shall, within six months from the date of the commencement of this Act, apply for licensing or registration as required, in accordance with section 26 of this Act as required.
- (4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and in the case of a continuing offence, to a further fine of one thousand dollars for each day for which the offence continues.

**167. Consequential amendments.**

The Acts specified in Column 1 of the table in *Schedule* are amended to the extent specified in Column 2 of *Schedule*.

**SCHEDULE**

(section 167)

ACT	EXTENT OF AMENDMENT
Securities Industry Act, 2011 ( <i>No. 10 of 2011</i> )	<p>1. In section 4, delete the definition of “<b>regulated person</b>” and substituting the following definition —</p> <p style="padding-left: 40px;">“ <b>“regulated person</b>” means a registrant or a person registered under Part V of the Act;”.</p> <p>2. In section 13, insert the following subsection —</p> <p style="padding-left: 40px;">“ (2) For purposes of this section “regulated person” includes a registrant, a person registered under Part V of the Act, an investment fund, investment fund administrator, an investment fund manager and an AIFM.”.</p> <p>3. In Part 3 of the First Schedule, repeal paragraphs 1(8), 2(10), 3(2) and 4(1).</p>
The Investment Funds (Prescribed Securities Exchanges and Jurisdictions) Notice, 2004 ( <i>S.I. No. 7 of 2004</i> )	Repeal the notice.
Partnership Act ( <i>Ch. 310</i> )	<p>1. Insert immediately after section 2, the following new section 2A —</p> <p><b>“2A. Definition of regulator.</b></p> <p style="padding-left: 40px;">For the purposes of this Act, regulator means the Securities Commission of The Bahamas continued under section 10 of the Securities Industry Act, 2011 (<i>No. 10 of 2011</i>).”.</p> <p>2. In section 36 —</p> <p style="padding-left: 40px;">(a) renumber section 36 to</p>



	<p>subsection 36(1);</p> <p>(b) insert immediately after subsection 36(1), the following new subsection 36(2) as follows —</p> <p>“(2) Notwithstanding subsection (1), a regulator may present a notice of dissolution to the court in respect of a partnership over which it has regulatory authority and whose licence or registration has been suspended or revoked.”</p>
<p>Exempted Limited Partnership Act (Ch. 312)</p>	<p>1. In section 2, insert the following definition in the appropriate alphabetical order —</p> <p>““regulator” means the Securities Commission of The Bahamas;”</p> <p>2. In section 15 —</p> <p>(a) insert immediately after subsection (2), the new subsection (3) as follows —</p> <p>“(3) On application by a regulator, in respect of an exempted limited partnership over which it has regulatory authority and whose licence or registration has been suspended or revoked, the court may decree dissolution of the exempted limited partnership and may make such orders and may give such directions as to the winding up of the affairs of the exempted limited partnership.”; and</p>

	(b) renumber the existing subsection (3) as subsection (4).
Companies Act (Ch. 308)	<p>In section 172, delete subsection (3) and substituting the following –</p> <p>“(3) This section shall not apply to a foreign company that carried on an undertaking in The Bahamas —</p> <ul style="list-style-type: none"> <li>(a) prior to the commencement of this Act; or</li> <li>(b) as an investment fund administrator under the Investment Fund Act, 2018.”. </li></ul>