

(7) Notwithstanding any other provision in this Law, the Authority may cancel a licence if the licensee has ceased, or wishes to cease, to carry on securities investment business, or has not commenced business within 1 year of the date of the grant of the licence.

(8) Whenever the Authority revokes or cancels a licence under this section or section 9 notice of such revocation or cancellation shall forthwith be published in the Gazette.

Injunctions and
restitution and
disgorgement orders

18. (1) If, on the application of the Authority the court is satisfied-

- (a) that there is a reasonable likelihood that a person will contravene section 5(1) or that a licensee will contravene this Law or any regulations made under this Law;
- (b) that a person has contravened section 5(1) or that a licensee has contravened this Law or any regulations made under this Law and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that a licensee has engaged in any fraudulent activity in relation to securities investment business,

it may grant an injunction restraining the contravention or anticipated contravention or the fraudulent activity.

(2) If, on the application of the Authority, the court is satisfied that a person has entered into any transaction in contravention of section 5 (1) or any other provision of this Law or any regulations made under this Law, the court may order that person, and any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct for restoring the parties to the transaction to the position in which they were before the transaction was entered into.

(3) The court may, on the application of the Authority, and subject to any other considerations the court finds relevant, make an order under subsection (4) if satisfied that a person has been carrying on securities investment business in contravention of this Law or any regulations made hereunder and-

- (a) that profits have accrued to that person as a result of his contravention; or
- (b) that one or more clients have suffered loss or been otherwise adversely affected as a result of his contravention.

CAYMAN ISLANDS



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**THE SECURITIES INVESTMENT BUSINESS LAW, 2001
(LAW 44 OF 2001)**

THE SECURITIES INVESTMENT BUSINESS LAW, 2001

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- (ix) in the case of a reasonable belief that the licensee has materially contravened the Money Laundering Regulations 2000, report the same to the Attorney-General;
- (x) require such action to be taken by the licensee as the Authority reasonably believes necessary for the purposes of dealing with the circumstances referred to in paragraphs (a) to (f).

(3) Where the Authority decides to take action under subsection (2)(i) to (ix), it shall notify the licensee in writing, specifying the following-

- (a) the action that the Authority has taken or intends to take;
- (b) the reasons for the action, with reference to statutory provisions, and when it is to take effect;
- (c) whether, in addition to (d), the licensee may make representations to the Authority within such period as may be specified in the notification; and
- (d) the licensee's right to appeal under section 22 or section 23 and the procedure therefor.

(4) Where action is proposed to be taken by the Authority under subsection (2) and the licensee is a broker member of the Exchange, the Authority shall consult with the Exchange and provide it with a copy of any notification issued under subsection (3).

(5) A person appointed under subsection (2)(vii) or (viii) or whose appointment has been extended under subsection (6)(b) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment prepare and furnish to the Authority a report of the affairs of the licensee and of his recommendations thereon.

(6) On receipt of a report under subsection (5), the Authority may-

- (a) revoke the appointment of the person appointed under subsection (2)(vii) or (viii);
- (b) extend the period of his appointment;
- (c) subject to such conditions as the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by it; or
- (d) revoke the licence and apply to the court for an order that the licensee, if the licensee is a company, be wound up by the court in which case the provisions of the Companies Law (2001 Second Revision) relating to the winding up of a company shall apply.

- (b) is carrying on business fraudulently or otherwise in a manner detrimental to the public interest, to the interest of its clients or to the interest of its creditors;
- (c) has contravened any provision of this Law or any regulations made under this Law, or the Money Laundering Regulations 2000;
- (d) has failed to comply with a condition of its licence;
- (e) has not conducted the direction and management of its business in a fit and proper manner, or has senior officers, managers or persons who have acquired ownership or control who are not fit and proper persons; or
- (f) has failed to comply with any lawful direction from the Authority,

it may-

- (i) revoke the licence;
- (ii) impose conditions or further conditions upon the licence or amend or revoke any such conditions;
- (iii) apply to the Court for any order which is necessary to protect the interests of clients or creditors of the licensee, including an injunction or restitution or disgorgement order under section 18;
- (iv) publish in the Gazette and in any official publications of the Authority, a breach by any person of this Law, of any regulations made under this Law or of any lawful direction issued by the Authority;
- (v) at the expense of the licensee, require the licensee to obtain an auditor's report on the licensee's anti-money laundering systems and procedures for compliance with the Money Laundering Regulations, 2000;
- (vi) require the substitution of any director or officer of the licensee whenever appointed, or the divestment of ownership or control acquired under section 8;
- (vi) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon ;
- (viii) at the expense of the licensee, appoint a person who shall be known as the Authority's appointed controller, to assume control of the licensee's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the Bankruptcy Law (1997 Revision);

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- (b) be responsible for supervision and enforcement in respect of persons to whom this Law applies, and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of section 5 (1);
- (c) whenever the Authority considers it necessary, examine, by way of the receipt of regular returns, on-site inspections, auditor’s reports or in such other manner as the Authority may determine, the affairs or business of any licensee for the purpose of-
 - (i) assessing whether a licensee is undertaking its authorised activities in accordance with this Law and any regulations made under this Law;
 - (ii) confirming that the provisions of the Money Laundering Regulations 2000 are being complied with;
 - (iii) confirming that the licensee is in a sound financial position; or
 - (iv) carrying out any other functions of the Authority.

(2) The Authority may in writing authorise any other person to assist it to perform its functions under this Law.

(3) This Law is deemed to be a regulatory law for the purposes of the Monetary Authority Law (2001 Revision).

(4) Whoever knowingly or recklessly provides any information to the Authority which is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for 6 months or to both.

17. (1) Without prejudice to any other action that may be instituted or taken against a licensee, if at any time it appears to the Authority that a licensee has failed to comply with any of the requirements under this Law or any regulation made under it the Authority may by written notice direct the licensee to ensure that the requirement is complied with within such period and on such terms and conditions as the authority may specify and the licensee shall comply with the notice.

Enforcement powers of the Authority

(2) If the Authority knows or has reasonable grounds to believe that a licensee-

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

(2001 Revision), signed by the licensee or if a company, a director of the licensee.

(3) A licensee may not change its auditor without the prior written approval of the Authority and the licensee shall explain the circumstances giving rise to the change of auditor prior to such approval being given.

(4) Whoever signs a certificate under subsection (2)(b) knowing or believing that such certificate is false is guilty of an offence and liable on summary conviction to a fine of \$5000 and such person-

- (a) may have his licence or the licence held by the company of which he is a director revoked; and
- (b) may not be granted a further licence, nor be permitted to be a director of a company which holds a licence.

(5) Any licensee who fails to comply with subsection (2) within the prescribed period or any extension to such granted by the Authority for good cause shown, shall be liable to a late filing fee of \$50 for each day or part thereof that compliance remains outstanding.

Certain prohibitions on licensee

14. (1) A licensee shall not without the prior written approval of the Authority, open outside the Islands a subsidiary, branch, agency or representative office or change its name.

(2) A licensee shall notify the Authority immediately of any change of address of its place of business.

Number and approval of directors

15. (1) A licensee which is a company or a corporate general partner of a limited partnership which is a licensee shall at no time have fewer than 2 directors or, if the licensee is a company that does not have directors, 2 managers.

(2) No alterations in the senior officers of a licensee that is a company shall be made without the prior written approval of the Authority.

(3) A licensee shall remove or replace a senior officer who is convicted in any country of an offence involving dishonesty forthwith upon conviction.

Powers and duties of the Authority

16. (1) The Authority shall-

- (a) maintain a general review of securities investment business in the Islands, and submit an annual report thereon to the Governor in Council;

CAYMAN ISLANDS

Law 44 of 2001.

I Assent

P.J. Smith

Governor.

Date: 12 March, 2002

A LAW TO PROVIDE FOR THE LICENSING AND CONTROL OF PERSONS ENGAGED IN SECURITIES INVESTMENT BUSINESS, AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART I - INTRODUCTORY

1. (1) This Law may be cited as the Securities Investment Business Law, 2001.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Council, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law unless the context otherwise requires -

Interpretation

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2001 Revision),

“broker member” means a broker member of the Exchange;

“client” means a person with or for whom securities investment business is transacted;

“company” means a body corporate constituted under the Laws of the Islands or any other jurisdiction;

“court” means the Grand Court;

“customer” means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and where the customer is a member of a group of companies, any other company which is a member of that group of companies;

“document” includes an electronic record as defined in the Electronic Transactions Law 2000;

“Exchange” means the Cayman Islands Stock Exchange, established under section 4 of the Stock Exchange Company Law (2001 Revision);

“group of companies” has the meaning assigned by section 3;

“high net worth person” means-

- (i) an individual whose net worth is at least \$800,000 or its equivalent in any other currency; or
- (ii) any person that has total assets of not less than \$4,000,000 or its equivalent in any other currency;

“instrument” includes any record whether or not in the form of a document;

“joint enterprise” means an enterprise into which two or more persons enter for commercial reasons related to a business or businesses (other than securities investment business) carried on by them;

“licence” means a licence granted under this Law;

“listed security” means any security which is listed on the Exchange;

“market maker” means a person who engages in activities specified in Schedule 2 (1) (b) in compliance with the rules of any market in securities operating under the oversight of or rules made by a recognised securities exchange or a recognised overseas regulatory authority;

“members of the public” means any person other than a person-

- (a) referred to in paragraphs 1 to 5 of Schedule 4;

(g) specify the nature and extent of any insurance arrangements required of the licensee.

(3) Regulations made under this Law may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.

12. (1) The Authority may, after consultation with the Financial Secretary and such persons as the Authority considers representative of the conduct of securities investment business, issue guidance notes for the purpose of giving practical guidance with respect to this Law and any regulations made under section 11.

Guidance notes

(2) The Authority shall publish in the Gazette any guidance notes and such notice shall indicate the date on which the guidance notes come into effect.

(3) The Authority may also adopt any rules or codes issued by the Exchange or any recognised securities organisation and shall give notice of such adoption in the Gazette.

(4) In determining whether a person has complied with any of the requirements under this Law or any regulation made under it-

- (a) a court shall take into account any relevant guidance notes issued under subsection (1) which apply to that person; and
- (b) a court may take into account any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

13. (1) A licensee shall have its accounts audited annually, or at such other time as the Authority may require, by an auditor who shall be a member of-

Accounts

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Canadian Institute of Chartered Accountants;
- (c) the Chartered Association of Certified Accountants;
- (d) the American Institute of Certified Public Accountants; or
- (e) any other professional body or institute approved by the Authority.

(2) Within six months of the end of a licensee’s financial year he shall forward to the Authority-

- (a) his audited accounts for the financial year just ended; and
- (b) a certificate of compliance with the provisions of this Law and any regulations made under this Law or Monetary Authority Law

- (b) in the opinion of the Authority connotes, falsely, the patronage of or connection with a person whether within the Islands or not;
- (c) in the opinion of the Authority connotes, falsely, that it has a special status in relation to or derived from the Government, or has the official backing of or acts on behalf of the Government or of any of its departments or officials;
- (d) in the opinion of the Authority is liable to mislead investors, or constitute a misrepresentation; or
- (e) includes any prescribed word or expression,

forthwith to change its name, and in default of compliance within 3 calendar months of the receipt of notice from the Authority of its requirements, the Authority may revoke its licence.

Segregation of property

10. A licensee shall separately account for the funds and property of each client and for the licensee's own funds and property.

Regulations

11. (1) The Governor in Council may, after consultation with the Authority, make regulations-

- (a) prescribing anything which is to be prescribed under this Law; and
- (b) generally for carrying the purposes and provisions of this Law into effect.

(2) Without prejudice to the generality of the foregoing, such regulations may in respect of licensees-

- (a) specify standards for the form and content of any advertising or promotion of securities or of securities investment business;
- (b) require a licensee to make full and proper disclosure to clients of the capacity in which he is acting in relation to a particular securities investment business transaction and whether the transaction is being effected for his own account or that of any person other than the client;
- (c) specify standards for dealings with clients and clients' assets, including the holding upon trust of clients' assets by the licensee;
- (d) establish financial requirements and specify standards for financial conduct and record keeping and reporting;
- (e) specify disclosure requirements in respect of the amount, value or arrangements for the payment or provision, of commissions or other inducements;
- (f) specify arrangements for the settlement of disputes; and

- (b) regulated by the Authority; or
- (c) regulated by a recognised overseas regulatory authority;

"net worth" means the excess of assets over liabilities;

"partnership" means a general or limited partnership established under the Partnership Law (1995 Revision), an exempted limited partnership registered under the Exempted Limited Partnership Law, (2001 Revision) or a partnership established under the laws of a jurisdiction other than the Islands;

"prescribed" means prescribed by any regulation made under this Law;

"proprietary assets" means the total assets of any company, partnership or trust;

"recognised overseas regulatory authority" means a regulatory authority which, in a country or territory outside the Islands, exercises one or more functions corresponding to the Authority's under this Law and which the Authority has declared by notice published in the Gazette to be recognised for the purposes of this Law:

"recognised securities exchange" means the Exchange or any other securities exchange which the Authority has declared by notice published in the Gazette to be so recognised for the purposes of this Law;

"recognised securities organisation" means an organisation which regulates its members in relation to the carrying on of activities constituting securities investment business which the Authority has declared by notice published in the Gazette to be so recognised for the purposes of this Law;

"securities" means assets, rights or interests specified in Schedule 1;

"securities investment business" has the meaning assigned to it in section 4;

"senior officer" means a director, managing director, president, or chief executive officer;

"sophisticated person" means a person-

- (a) regulated by the Authority;
- (b) regulated by a recognised overseas regulatory authority;
- (c) any of whose securities are listed on recognised securities exchange; or
- (d) who -

- (i) by virtue of knowledge and experience in financial and business matters is reasonably to be regarded as capable of evaluating the merits of a proposed transaction; and
- (ii) participates in a transaction with a value or in monetary amounts of at least \$80,000 or its equivalent in any other currency, in the case of each single transaction; and

“supplier” means a person whose main business is to dispose of goods or supply services and not to carry on any of the activities specified in Schedule 2.

Group of companies

3. (1) For the purposes of this Law, a group of companies comprises every company which, directly or indirectly, is a subsidiary of the same holding company, and such a group includes the holding company.

(2) A company shall be treated as a subsidiary (“the subsidiary”) of another company (“the holding company”) where-

- (a) the holding company is a member of the subsidiary and controls the composition of the subsidiary’s board of directors; or
- (b) the holding company, directly or indirectly, controls more than half of the votes which may be cast at general meetings of the subsidiary; or
- (c) the subsidiary is a subsidiary of any other company which is itself a subsidiary of the holding company.

(3) In subsection (2) (a), the composition of a company’s board of directors shall be treated as controlled by another company if that other company, by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

PART II –SECURITIES INVESTMENT BUSINESS

Meaning of securities investment business

4. (1) For the purposes of this Law and subject to section 5(2), a person carries on securities investment business if that person is engaged in the course of business, in any one or more of the activities set out in Schedule 2 and that person-

- (a) is-
 - (i) a company incorporated under the Companies Law (2001 Second Revision);
 - (ii) a general partnership established under the Partnership Law (1995 Revision);

(2) Notwithstanding subsection (1), the Authority may exempt from the provisions of this section a licensee whose shares or interests are publicly traded on a recognised securities exchange, and any such exemption-

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of-
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten percent of the licensee’s issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten percent of the issued share capital or total voting rights of the licensee’s parent company
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such other terms and conditions as the Authority may deem necessary.

(3) In subsection (1) the reference to shares or interests being transferred or disposed of includes the transfer or disposal of the legal or the beneficial interest in the shares or interests.

(4) In the event of shares in a company or the interests in a partnership which is licensed under this Law vesting involuntarily or through process of law in a person, the company or partnership, as soon as it becomes aware of such vesting, shall inform the Authority of the number of shares or interests and the identity of the person in whom they have vested, and the company or partnership and the person in whom they have vested shall comply with any instructions as to the licence or the business of the company or partnership as may be given by the Authority.

9. The Authority may require a licensee with a name which-

- (a) is identical with that of another person, whether within the Islands or not, or which so nearly resembles that name as to be likely to deceive;

Use of words connoting securities investment business

permitted to carry on and such other information as may be prescribed and such register shall be available to the public.

(13) A person licensed under this Law or a person specified in Schedule 4 is not required to be licensed under-

- (a) the Local Companies (Control) Law (1999 Revision);
- (b) the Banks and Trust Companies Law (2001 Revision);
- (c) the Insurance Law (2001 Revision);
- (d) the Companies Management Law (2001 Second Revision)
- (e) the Mutual Funds Law (2001 Revision); or
- (f) the Trade and Business Licensing Law (1997 Revision),

in respect of the carrying on of securities investment business.

Fees and returns

7. (1) Every person to whom a licence is first granted shall at the date of such grant pay the prescribed fee.

(2) The holder of a licence shall, on or before 15 January in each year, pay the prescribed renewal fee, and there shall be payable by a licensee who fails to pay the prescribed renewal fee by that date a surcharge of one-twelfth of that fee for every month or part of a month after 15 January in each year that the fee is not paid.

(3) A licence in respect of which the prescribed renewal fee remains unpaid for 3 full months after 15 January in any year shall lapse forthwith but if, within a period of one month after the date of lapse, the person who held the licence prior to its lapse pays-

- (a) the prescribed renewal fee;
- (b) the surcharges due under subsection (2); and
- (c) an administration fee of ten per cent of the prescribed renewal fee.

the licence may be renewed for the period from the 1st January to the 31st December, inclusive, of the year in question.

(4) A holder of a licence under this Law shall inform the Authority of any changes made relating to any of the information furnished in accordance with section 6(4) within 7 days after any such change has occurred.

Shares not to be issued or transferred without the prior approval of the Authority

8. (1) No shares in a company or interests in a partnership which is a licensee under this Law shall be issued, and no issued shares or interests shall be voluntarily transferred or disposed of, without the prior approval of the Authority.

- (iii) a limited partnership registered under the Partnership Law (1995 Revision);
- (iv) an exempted limited partnership registered under the Exempted Limited Partnership Law (2001 Revision);
- (v) a foreign company registered under Part IX of the Companies Law (2001 Second Revision); or

(b) has established a place of business in the Islands through which such activities are carried on.

(2) The activities set out in Schedule 3 do not constitute securities investment business for the purposes of this Law.

PART III- LICENSING AND REGULATION OF LICENSEE

5. (1) A person shall not carry on or purport to carry on securities investment business unless that person holds a licence granted under this Law or is exempt from holding a licence.

Requirement for a licence

(2) The persons specified in Schedule 4 do not require a licence to conduct securities investment business.

(3) For the purposes of subsection (1) a person may be considered to purport to carry on securities investment business where he-

- (a) uses one or more words which connote securities investment business, either in English or in any other language, in the description or title under which he carries on business;
- (b) makes a representation in a document or in any other manner that he is carrying on securities investment business; or
- (c) otherwise holds himself out as carrying on securities investment business.

(4) Notwithstanding subsection (2), a person to whom paragraphs 1, 4 or 5 of Schedule 4 refers shall register with the Authority and such person, in order to be registered, shall –

- (a) file with the Authority, on or before 31 January in each year, an annual declaration, in such form as the Authority may approve, declaring that he is a person to whom any of paragraphs 1, 4 or 5 of Schedule 4 applies; and
- (b) pay to the Authority an annual fee of \$1,000 at the time of filing the declaration.

(5) The Authority may, from time to time, require a person to whom Schedule 4 applies to provide the report specified under section 17(2)(v).

(6) Subject to subsection (2) and section 40, a person who carries on or purports to carry on securities investment business without being the holder of a current licence under this Law commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of 1 year or to both, and in the case of a continuing offence, to a fine of \$10,000 for each day during which the offence continues.

(7) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with securities investment business carried on by that person in contravention of subsection (1).

Application for a licence

6. (1) A person, other than a person to whom section 5 (2) refers, who wishes to carry on securities investment business shall apply in writing to the Authority for the grant of a licence under this Law.

(2) The Authority shall, in relation to an application received under subsection (1), either-

- (a) grant the licence; or
- (b) grant the licence subject to conditions; or
- (c) refuse the licence.

(3) A licence shall specify one or more of the activities set out in Schedule 2 that the licensee is permitted to carry on.

(4) An application under this section shall include such information and shall be accompanied by such fee as may be prescribed.

(5) A licence shall not be granted to an applicant unless the applicant has satisfied the Authority that-

- (a) the applicant will be able to comply with the provisions of this Law and any regulations made under this Law;
- (b) the applicant will be able to comply with the requirements of the Money Laundering Regulations 2000;
- (c) it will not be against the public interest, including, but not limited to, the need to protect investors, for the application to be approved;

- (d) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Authority considers appropriate having regard to the nature and scale of the business; and
- (e) the applicant's senior officers and managers are fit and proper persons,

and where the Authority is satisfied it may grant a licence to the applicant either unconditionally or subject to such conditions as the Authority considers appropriate.

(6) For the purposes of this section and sections 8 and 17, in determining whether the person is a fit and proper person, regard shall be had to all circumstances, including that person's-

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) in the case of an applicant, financial soundness.

(7) The conditions which the Authority may impose on a licensee may include conditions-

- (a) limiting the nature and scope of the securities investment business which may be carried on by the licensee;
- (b) specifying whether or not the licensee may hold clients' assets; and
- (c) requiring the licensee or a senior officer or manager of the licensee to acquire and maintain membership of a recognised securities exchange or a recognised securities organisation.

(9) The Authority may, by notice in writing to a licensee, revoke at any time any condition attached to the licence.

(10) The Authority may grant a restricted licence by limiting the number of clients to whom the licensee may provide services or setting the minimum value of an individual client's investment, as may be prescribed under this Law.

(11) Where the Authority has granted a licence under this section, it shall as soon as reasonably possible after the grant publish notification of such grant in the Gazette.

(12) The Authority shall maintain a current register of licensees setting out the business address of the licensee and details of the activities that the licensee is