
EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION



**PUBLIC OFFERINGS OF SECURITIES:
GUIDANCE ON THE EXEMPTION FROM PROSPECTUS REQUIREMENTS**

**PUBLIC OFFERING OF SECURITIES:
GUIDANCE ON THE EXEMPTION FROM PROSPECTUS REQUIREMENTS**

INTRODUCTION

In exercise of the authority conferred on the Commission by section 163 of the Securities Act 2001, the Commission has found it relevant to issue the following guidance designed to inform stakeholders, including issuers, investment advisors and other interested parties, on the interpretation of legislation concerning the application of regulation 3 of the Securities (Prospectus) Regulations¹.

LEGISLATION

Whereas it is stated in **section 92(3) of the Securities Act 2001** that:

Subject to the provisions of this Part, no person shall make a public offer of securities unless the issuer or offeror of the securities has submitted for approval to the Commission a prospectus which complies with this Act, and the Commission has approved the prospectus

and whereas it is stated in the Securities (Prospectus) Regulations 2001 regulation 3 that:

(1) A public offer of securities shall not be required to be the subject of a prospectus if any one of the conditions specified in the sub-regulation (2) is satisfied in relation to the offer.

¹ The citation for the Regulations are as follows:
Anguilla R.A No. 19 Of 2002
Antigua & Barbuda S.R.O No. 43 of 2002
Commonwealth of Dominica S.R.O No 26 of 2002
Grenada S.R.O No 54 of 2001
Montserrat S.R.O No. 22 of 2002
Saint Lucia S.R.O No. 102 of 2001
St Christopher and Nevis S.R.O No.44 of 2001
St Vincent and the Grenadines S.R.O No. 35 of 2002

- (2) *The following are the conditions specified:*
- (a) *the securities offered are not generally advertised to the public;*
 - (b) *the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;*
 - (c) *the securities are offered by the issuer to*
 - (i) *members of employees of the issuer;*
 - (ii) *members of the families of any such members or employees; or*
 - (iii) *holders of debentures of the issuer;*
 - (d) *the total consideration payable for the securities cannot exceed \$25,000.00 even in the case where the offering is made pursuant to (c);*
 - (e) *the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer.*
- (3) *If a class of shares has been admitted to dealings on a securities exchange, the Commission may authorise the making of an offer without a prospectus, provided that*
- (a) *the number or estimated market value of the shares amounts to less than 10% of the number or of the corresponding market value of shares of the same class already admitted to dealings; and*
 - (b) *up-to-date information equivalent to that required by this regulation is available as a result of the requirements of that exchange*

ASSESSMENT

The Eastern Caribbean Securities Commission has concluded that:

- a) Clarity is needed for determining matters concerning regulation (3) of the Securities (Prospectus) Regulations;
- b) Regulation (3) of the Securities (Prospectus) Regulations is ambiguous as one is uncertain whether regulation 3(2)d relates only to ‘c’ or whether it relates to all categories. There is also uncertainty as to whether the affirmation established in regulation 3(1) is negated by regulation 3(2)d;
- c) There is no definition of the term “public offer” as used in the Securities Act or the Securities (Prospectus) Regulation.

CONCLUSION

In determination of what is to be regarded as a ‘public offer’ support should be drawn from the Companies Act² which states:

‘(1) Any reference to this Act to offering shares or debentures to the public includes, unless contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; and references in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, but similarly construed.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all circumstances, as not being

² Note that this section is found in all the Companies Act of member territories except St Kitts. The citations are as follows:

Antigua and Barbuda Act 18 of 1995 S. 542;

Anguilla Chapter C.65 S.4;

Commonwealth of Dominica Act 21 of 1994 S.542;

Grenada Act 35 of 1994 S.542;

Montserrat Chapter 11:12 S.542;

Nevis Ordinance No. 4 of 1999 542;

Saint Lucia Act 19 of 1996 S.542;

St Vincent and the Grenadines Act 8 of 1996. S.542

calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern or the persons making and receiving the offer or invitation.'

Regulation 3(2)(d) functions as a proviso and should be interpreted asserting that notwithstanding the provision listed in 'a', 'b' and 'c', where the total consideration payable for securities exceeds \$25,000.00 there shall be no exemption of the prospectus.

These guidelines do not change the liability provisions of the Securities Legislation of the Eastern Caribbean Securities Regulatory Commission. The Commission may revise and reissue this guidance in the light of experience and other developments in the law and practice.

CONTACT

Ms Sharon Welcome
Secretary
Eastern Caribbean Securities Regulatory Commission
ECCB Financial Complex
PO Box 1855
Basseterre
St Kitts

Email: info@ecsrc.com