

SECURITIES (AMENDMENT) ACT, 2003

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SECURITIES (AMENDMENT) ACT, 2003

**A
BILL
ENTITLED**

AN ACT to amend the Securities Act, 2001.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the National Assembly of St.Kitts and Nevis and by the authority of the same as follows:

Short title

1. This Act may be cited as the
SECURITIES (AMENDMENT) ACT, 2003.

**Amendment of
section 2 of the
principal Act**

2. The Securities Act, 2001, (No 12 of 2001) in this Act, referred to as the “principal Act”, is amended by inserting immediately after the definition of “broker dealer’s representative” in section 2(1) the following definition:

“*charge*” includes any mortgage, assignment, pledge, or lien (other than a lien of a company on shares issued by it) on any security for securing money or money’s worth.

**Insertion of
new section
136A**

3. The principal Act is amended by inserting immediately after section 136 the following new section 136A:

**“Instituting
disciplinary
proceedings**

136A. (1) If it appears to the Commission in the light of an inspection under section 135 or an investigation under section 136 that -

- (a) there are circumstances suggesting that the licensee may not be a fit and proper person to continue to hold a licence;
- (b) there has been a contravention by the licensee of the Act or any regulation made thereunder; or
- (c) it is desirable for the protection of

investors,

and the Commission decides that the matter should be the subject of disciplinary proceedings, the Commission shall refer the matter to the Disciplinary Committee for a determination.”

Repeal and replacement of section 140

4. Section 140 of the principal Act is repealed and replaced by the following:

“Establishment of Disciplinary Committee

140. (1) There shall be, for the purposes of this Act, a Disciplinary Committee.

(2) Subject to subsection (4), the Disciplinary Committee shall consist of five members appointed by the Monetary Council as follows:

(a) one member with at least ten years standing as an attorney-at-law who shall be the Chairman of the Committee, selected from persons nominated by the OECS Bar Association;

(b) four other members with recognised standing and experience in law, securities, accounting, banking, economics, commerce and industry or finance comprising:

i. one member from persons nominated by Stock Exchanges; and

ii. three members from persons nominated by the Chambers of Industry and Commerce, the Institutes of Chartered Accountants, or from such other relevant professional bodies of the territories of the Participating Governments.

(3) The members of the Disciplinary Committee shall hold office for a period of three years but are eligible for re-appointment.

(4) No member or staff of the Commission shall be

appointed to be a member of the Disciplinary Committee.

- (5) The office of a member of the Disciplinary Committee is vacated -
 - (a) upon the death of the member;
 - (b) if the member is adjudged bankrupt;
 - (c) if the member is absent from three consecutive meetings of the Disciplinary Committee without its permission or reasonable excuse;
 - (d) if the member is certified by a Medical Board or Tribunal or declared by a Court to be mentally or physically incapable of performing the duties of a member;
 - (e) if the member is convicted of fraud or any other offence involving dishonesty;
 - (f) at any time by the member resigning from office by letter sent to the Chairperson of the Monetary Council and copied to the Secretary of the Commission.
- (6) The Disciplinary Committee may act notwithstanding a vacancy among its members or any disability affecting any member.
- (7) The Monetary Council may, by instrument in writing, revoke the appointment of any member of the Disciplinary Committee if the Monetary Council considers it to be desirable for the effective performance by the Disciplinary Committee of its functions.”

**Insertion of a
new section
140A**

5. The principal Act is amended by inserting after section 140 the following new section as section 140A:

“Jurisdiction of 140A. (1) The Disciplinary Committee shall hear and

Disciplinary Committee

determine disciplinary proceedings against a licensee referred to it by the Commission under section 136A.

- (2) The Disciplinary Committee may, where it is satisfied, after due inquiry that a licensee is in contravention of any provision of this Act or any regulations made thereunder, exercise in relation to that licensee any one or more of the following sanctions as it deems appropriate in the circumstances:
 - (a) issue a private warning or reprimand;
 - (b) issue a notice of public censure;
 - (c) issue an order requiring the licensee to cease and desist from the activity or non-activity causing the licensee to be in contravention; or
 - (d) issue an order debaring the licensee from carrying on securities business whilst the contravention subsists.
- (3) The procedure and related matters concerning the exercise of the jurisdiction of the Disciplinary Committee shall be as prescribed.”

Amendment of section 153(1) of the principal Act

6. Section 153(1) of the principal Act is amended by inserting the words “*or rights in*” after “*ownership of*” in line two thereof.

Amendment of section 153(2) of the principal Act

7. Section 153(2) of the principal Act is amended by re-numbering section 153(2)(e) as (g) and inserting new subsections (e) and (f) as follows:

“(e) providing for recording liens held by companies pursuant to their articles of association to be recorded and procedures in respect thereof.

(f) providing for recording of charges in respect of securities (and transfer of such charges) to be recorded and procedures in respect thereof”

Amendment of section 154 of principal Act

8. Section 154 of the principal Act is amended by inserting the words “*bona fide*” after the word “done” appearing in line three thereof.

Insertion of a new section 157A

9. The principal Act is amended by inserting after section 157 the following new section as section 157A:

“Right of appeal 157A

- (1) An interested person who is aggrieved by a decision or action of the Commission or of the Disciplinary Committee may appeal the High Court within thirty days of the decision or action.
 - (a) the decision of the Commission or the Disciplinary Committee was based on an error of law or a misinterpretation of the Act or regulations made under the Act;
 - (b) the Disciplinary Committee misdirected or misconducted itself contrary to the rules of natural justice; or
 - (c) the decision of the Disciplinary Committee was against the weight of the evidence.
- (2) The interested person may within the time stipulated in subsection (1) appeal to the High Court by serving a written notice of appeal on the Commission or Disciplinary Committee.
- (3) A written notice of appeal (other than in respect of costs only) shall set out each charge relevant to the appeal, the ground or grounds of appeal in relation to each charge and a brief statement of the matters relied on in respect of each ground.
- (4) An appeal shall be written submissions of the interested person and the Commission or the Disciplinary Committee.
- (5) After considering the written submissions of the interested person and the Commission or the

Disciplinary Committee, the High Court may confirm, reverse or vary the decision of the Commission or the Disciplinary Committee and may make any order which the Commission or the Disciplinary Committee could have made.

- (6) For the purposes of this section an interested person refers to a person having a right, claim, legal share, duty or liability connected with the subject-matter of a decision or action referred to in sub-section (1).

Passed in the National Assembly on the day of , 2003.

Clerk to the National Assembly