

A BILL FOR

AN ACT to amend the Securities Act, 2001.

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BE IT ENACTED by the Parliament of [] as follows:

- Short title 1. This Act may be cited as the Securities (Amendment) Act, 2004.
- Amendment of section 2(1) of the principal Act No. of 2001 2. Section 2(1) of the Securities Act, in this Act referred to as the principal Act is amended by deleting the definition of “company” and substituting the following; “Company” includes a company, limited partnerships, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory.

- Insertion of new Part 3. The Securities Act hereinafter referred to as the Principal Act is amended by inserting after Part XV of the principal Act, the following Part XVA:
“PART XVA

LISTING AND TRADING FOREIGN SECURITIES, LICENSING AND EXCHNAGE MEMBERSHIP OF FOREIGN MARKET PARTICIPANTS

Listing and trading foreign securities 153A. The securities of a foreign company or a foreign government may be listed and traded on a securities exchange licensed by the Commission as provided in this Part.

Application of other Parts 153B. Except as expressly exempted or modified by the provisions of this Part, the provisions of all other Parts of this Act and all Regulations made under the Act shall apply *mutatis mutandis* to the listing and trading of foreign securities.

Interpretation 153C. In this Part “foreign company” includes a company, limited partnerships, unit trust or other business entity, which is incorporated or otherwise established under the laws of a jurisdiction other than a member territory; “foreign custodian” means a custodian

incorporated in and governed by the laws of a country other than a member territory;
“foreign government” means a government or political subdivision of a government other than one of a member territory;

“foreign individual” means any individual who is a citizen of, resident of, or belongs to any country other than a member territory;

“foreign investment adviser” means an investment adviser incorporated in and governed by the laws of a country other than a member territory;

“foreign security” means a security issued by a foreign company or foreign government;

“foreign securities exchange” means a licensed securities exchange, incorporated in and governed by the laws of a country other than a member territory;

“foreign securities registry” includes a share registry incorporated in and governed by the laws of a country other than a member territory;

“member territory” has the same meaning as in the Eastern Caribbean Securities Regulatory Commission Agreement of 24th November, 2000.

Approval of the Commission required

153D. (1) a securities exchange may list or trade foreign securities with the approval of the Commission in particular cases or classes of cases.

(2) The Commission may licence a foreign company as a broker dealer, limited service broker, or investment adviser in particular cases or classes of cases.

(3) A foreign broker dealer or limited service broker licensed by the Commission may become a member of a securities exchange provided it meets the securities exchange’s requirements for membership as set out in its rules.

(4) An investment adviser that is licensed by the Commission must be licensed by the Commission as an investment adviser under sections 54 and 55, but only if he **conducts business** or holds himself out as

conducting business in a member territory.

(5) A principal of, a foreign broker dealer or limited service broker that is licensed by the Commission, must be licensed by the Commission as a principal under sections 60 and 61, but only if he **conducts business** or holds himself out as **conducting business** in a member territory.

(6) A representative of, a foreign broker dealer or limited service broker that is licensed by the Commission, must be licensed by the Commission as a representative under sections 62, 63 and 64, but only if he **conducts business** or holds himself out as **conducting business** in a member territory.

(7) The term “**conducting business, or holds himself out as conducting business**” as used in subsections (4, 5 and 6) shall include but not be limited to

- (a) use of the telephone, telegraph, mails, Internet, e-mail or any other means to communicate with investors or potential investors located in a member territory, whether on a regular or sporadic basis;
- (b) visiting investors or potential investors in a member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis; or
- (c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker’s membership in a securities exchange;
- (d) engaging in any other activity or combination of activities described in
 - (i) section 47 in the case of foreign broker dealers or limited service brokers, or
 - (ii) section 53 in the case of foreign investment advisers,if any part of the activity

or activities takes place in a member territory or is designed or intended to communicate with the persons present in a member territory.

(8) A person is subject to the requirements of subsections (4), (5) and (6) if he participates in any of the activities listed in subsection (7) even if he is not physically present in a member territory when he participates in the activity.

Public offer 153E. (1) In determining whether or not a public offer of foreign securities has been made in a member territory, or whether the requirements of this Act relating to public offers apply in a particular case, the listing or trading of foreign securities on a securities exchange shall not be taken into account.

Registration with the Commission 153F. (1) The listing and trading of foreign securities on a securities exchange pursuant to this Part shall not, either by itself or in conjunction with other activities by a person, require the issuer of the foreign securities to register with the Commission under section 97.

(2) Subsection (1) shall not be interpreted to exempt issuers and offerors who are otherwise required to register with the Commission under section 97 from that requirement.

Insider dealing and other market abuses 153G. The provisions of Part X shall not apply to the conduct of a foreign company occurring on a foreign securities exchange or otherwise occurring in a foreign jurisdiction, unless the Commission determines on consultation with the securities exchange where the security of the foreign company is listed, that the conduct has a significant impact on the market in []

Disclosure of shareholding of directors and substantial shareholders 153H. (1) Subject to the provisions of subsection (2), the provisions of Part XI of the Act shall not apply to foreign securities listed or traded on a securities exchange.

(2) If the Commission determines, after an investigation, that the law of a foreign issuer's jurisdiction of incorporation, or other laws that are applicable to the conduct of the foreign issuer, its directors, and substantial shareholders, are not adequate to protect the interests of the investing public in the member territory, the Commission may require the issuer of foreign securities listed on a securities exchange and its directors and substantial shareholders to comply with Part XI.

Application of Part XII 153I. The provisions of Part XII of the Act shall apply

(a) in the case of foreign securities listed or traded on a

securities exchange, only to the acts of the issuer within the member territory or to transactions effected on or information provided to, that securities exchange; and

- (b) in the case of a foreign broker dealer, limited service broker, investment adviser or the principal or representative of that person, only to acts of the licensee within the member territory or to transactions effected on, or information provided to, a securities exchange.

Transfer and ownership of foreign securities

153J. Notwithstanding any other provision of any law to the contrary

- (a) the exclusive method of transferring the ownership of foreign securities listed and traded on a securities exchange shall be a transfer made in accordance with the rules and procedures of a clearing agency licensed by the Commission under section 25 where the foreign securities are transferred; and
- (b) the exclusive method of determining the ownership of foreign securities listed and traded on a securities exchange shall be the records of a securities registry licensed by the Commission under section 42 where the foreign securities are registered.

Custodians and share registries for foreign securities

153K. (1) Foreign securities listed and traded on a securities exchange may be held by a foreign custodian and registered with a foreign securities registry pursuant to a written contract between the foreign custodian or registry and a custodian licensed under section 57 or a securities registry licensed under section 42.

(2) A securities exchange may, by rules, determine the form and content of the contracts referred to in subsection (1).

Simplified listing and membership procedures in certain cases

153L. (1) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified listing procedures for foreign securities that are already listed on a foreign securities exchange if the foreign securities exchange has suitable listing, compliance and regulatory standards and practices.

(2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for foreign broker dealers or foreign limited service brokers that are already subject to regulation in a suitable jurisdiction if that jurisdiction is recognized for the purposes of this Part by the Commission

