



17-November-2016

REF: SEC-C2/16
Section 8(1)(f) FSC Act

CIRCULAR

AUDITORS OF QUALIFYING REGISTRANTS – EXEMPTION REGIME

To: Qualifying Registrants

“Qualifying Registrant” means a registrant (i.e. a market actor or a reporting issuer) under the Securities Act Cap. 318A (Securities Act) who is registered under the Companies Act, Cap. 308 (Companies Act) as an external company.

1. Purpose of the Circular

1.1 This circular outlines the requirement for approval of auditors in respect of external companies. The Commission has determined that with immediate effect, qualifying registrants may seek to be exempted from section 11 of the Financial Services Commission Act, 2010-21 (FSC Act), regarding appointment of an auditor and the requirement for approval of an auditor.

2. The existing legislative requirements

2.1 Section 11 of the FSC Act requires financial institutions to appoint an auditor annually to conduct an audit of the institution; and the auditor must be approved by the Commission prior to appointment. The term “auditor” under the FSC Act refers to a person who is qualified to practice in Barbados and is a member of the Institute of Chartered Accountants of Barbados (ICAB).

2.2 The Commission notes that a number of persons registered under the Securities Act, in particular reporting issuers and securities companies; who are incorporated in another jurisdiction and registered as external companies under the Companies Act have been

unable to fully comply with the legislative requirement to have an “approved auditor”. This is because the auditors of such entities do not meet the definition of “auditor” as set out in the FSC Act, namely members of ICAB.

3. Exemption from auditor approval

3.1 The FSC Act provides that the Commission may exempt any financial institution from any requirement under this Act where in the opinion of the Commission it is necessary to do so. In accordance with this power, qualifying registrants of the Commission can seek to be exempted from the requirements of section 11 of the FSC Act.

3.2 A qualified registrant may seek to be exempted from section 11 of the FSC Act i.e. the requirement to obtain the Commission’s approval to appoint an auditor. An exemption may be facilitated through section 8(1)(f) of the FSC Act which provides that the Commission may exempt any financial institution from any requirement under the Act where in the opinion of the Commission it is necessary to do so.

Criteria to qualify for an exemption

3.3 A registrant must demonstrate that it meets the definition of a qualified registrant.

4. Request for an exemption required

Information required to be submitted with the request for exemption

4.1 A written request to be exempted from section 11 of the FSC Act in accordance with section 8(1)(f) of the FSC; accompanied by the following:

4.1.1 The name and contact information of the auditor; the name and contact information of the person with primary responsibility for the audit; details of any conflicts of interest; confirmation of the length of time the auditor has acted as auditor for the registrant; and the auditor acceptance letter.

4.1.2 An indication of whether the auditor is required to be approved in the qualified registrant’s home jurisdiction and if so, whether the auditor has been so approved.

4.1.3 Confirmation that the proposed foreign auditor is:

- i. the auditor appointed for the qualified registrant in its home jurisdiction; and
- ii. a member in good standing with a professional standard setting body for accounting and auditing in the home jurisdiction of the qualified registrant.

4.1.4 Copy of a written agreement that the registrant has authorized the auditor to (i) provide information, directly to the Commission, whether on request or on its own initiative, in instances relating to section 11(7) and (8) of the FSC Act and (ii) release information, including management letters directly to the Commission, particularly as it relates to section 13 of the FSC Act.

5. Ongoing Requirements

5.1 Once an exemption has been granted by the Commission, a registrant will not be required to apply for the exemption annually. A new request must however be submitted where the auditor for the registrant has changed.

5.2 The registrant will be required to provide written confirmation on an annual basis (i.e. by January 31 of each year) that the auditor and the information about the auditor as it relates to conflicts of interest, the contact information and person assigned to the audit etc. remain the same. The auditor appointment letters must also be provided.