

# **FINANCIAL SERVICES COMMISSION**

## **POST-CONSULTATION PAPER**

**To: All Securities Industry Entities**

**Subject: Post-Consultation Paper - Guidelines and Paper on the Regulation of Repurchase Agreements**

The Financial Services Commission of Barbados (the “Commission”) as the regulator of non-banking financial services in Barbados will introduce a series of guidelines that applies to entities licensed and/or registered pursuant to the Financial Services Commission Act 2010-21, the Mutual Funds Act, Cap. 320B (the “Mutual Funds Act”) and Securities Act, Cap. 318A (the “Securities Act”). The rationale of these guidelines, as well as a consultation paper on repurchase agreements was outlined in a consultation document which was circulated to the industry for comments in December 2012.

The period for submission of comments has ended and the Commission has summarized and reviewed the comments received. Accordingly, the Commission has amended the guidelines and has provided feedback with respect to comments. However, the Commission welcomes the dialogue with the industry and will consider proposals and comments from the industry outside of consultation periods.

A summary of the substantive comments received with regards to recommended amendments to the guidelines and the Commission’s response to those comments are included in the attached document. The guidelines will be finalized and issued to the sector thereafter. Both the guidelines and the post-consultation document will be posted on the Commission’s website.

Questions related to the guidelines should be addressed to the following:

**Chief Executive Officer**  
**Financial Services Commission**  
**#34 Warrens Industrial Park**  
**St. Michael**  
**Email: [info@fsc.gov.bb](mailto:info@fsc.gov.bb)**  
**Attention: Securities Division**

**FINANCIAL SERVICES COMMISSION**  
**MEASURES TO ENHANCE THE REGULATION OF THE SECURITIES SECTOR IN**  
**BARBADOS**  
**POST CONSULTATION PAPER**

The guidelines circulated to the industry during the December 2012 consultation period are listed below:

- 1. Market Conduct Guideline**
- 2. Compliance Program Guideline**
- 3. Insider Trading Guideline**
- 4. Corporate Governance Guideline**

A summary of the substantive comments and the Commission's responses in respect of each of the guidelines is outlined below.

Also outlined below is an update relative to the comments received regarding the consultation paper on the regulation of repurchase agreements.

**Guideline 1: Market Conduct Guideline**

The objective of the Market Conduct Guideline is to ensure that a financial institution:

- acts with high standards of integrity and fair dealing in the conduct of investment business; and
- acts with due skill, care and diligence in providing any services which it provides or indicates a willingness to provide.

The guideline is applicable to Market Actors registered pursuant to the Securities Act and Mutual Fund Administrators licensed pursuant to the Mutual Funds Act.

Industry Comments and the Commission's responses

The substantive comments made during the consultation centred on paragraphs 2.6 and 5.2 of the Guideline. The comments and the Commission's responses are more specifically outlined in the tables below.

Reference	<i>Paragraph 2.6(2) – Customer Confidentiality</i>
Industry comment	A recommendation was made that the term “properly” should be defined in order to avoid confusion as to what may warrant a proper disclosure to the Commission. It was recommended that the section should be amended to provide that disclosures be made if ordered by a court of competent jurisdiction or where statute or legislation requires a financial institution to disclose. The commenter expressed concern that the regulated entities would not wish to be in a position to interpret this section vis-à-vis any obligations they may otherwise have to maintain customer confidentiality.
Commission's response	The concern of the commenter is noted. The Commission is of the view however that the wording of the section should remain unchanged. It is anticipated that requests for information by the Commission or the other authorities identified, would be made pursuant to the frameworks, whether legislative or otherwise e.g. agreements and the like which govern the relationship between the requesting entity and the regulated entity.

Reference	<i>Paragraph 5.2 – Conflict of Interest</i>
Industry comment	It was recommended that the term “material interest” should be defined. Further, in the event that the recommendation was adopted sub-paragraph 2 should be amended to restrict a financial institution from undertaking or recommending an investment transaction in which it has a material interest without the prior knowledge and consent of the client.
Commission’s response	<p>While the guideline remains unchanged at this time, the Commission notes that it may be useful to provide guidance as to the meaning of “material interest”. The following interpretation is being considered by the Commission. A final determination will be circulated to the industry.</p> <p><i>Material Interest:</i></p> <ul style="list-style-type: none"> <li><i>i. the holding of securities of the issuer as a beneficial owner;</i></li> <li><i>ii. any compensation arrangement with any person;</i></li> <li><i>iii. the acting as underwriter in any distribution of securities of the issuer in the three immediately preceding years; or</i></li> <li><i>iv. any direct or indirect financial or other interest in the security or the issuer of the security held by the financial institution."</i></li> </ul>

Other Amendments

Amendments were otherwise made to the circulated Guideline following the review of the industry comments, those of an industry consultant and as a result of internal review. Those amendments were made to improve the clarity of the document and to ensure consistency with respect to the terminology used.

## **Guideline 2: Compliance Program Guideline**

The purpose of the Market Conduct Guideline is to:

- Establish a requirement for financial institutions to institute a compliance program and internal controls based on best practices; and
- To ensure that a minimum standard of best practice is set for all financial institutions for an effective and sound compliance program.

The guideline is applicable to Market Actors registered pursuant to the Securities Act and Mutual Fund Administrators licensed pursuant to the Mutual Funds Act.

### Industry Comments and the Commission's responses

The guideline was generally accepted by the industry. The main notable comment was related to paragraph 4.2. The comments and the Commission's responses are more specifically outlined in the tables below.

Reference	<i>Paragraph 4.2</i>
Industry comment	It was recommended that the skill levels and experience of staff in the business should be added as a factor to be considered by a financial institution in designing its compliance program.
Commission's response	The Commission is of the view that the job functions and responsibilities of the staff would be a more appropriate consideration than their specific skills set. The guideline has therefore been amended accordingly.

### Other Amendments

Amendments were otherwise made to the circulated Guideline following the review of the industry comments, those of an industry consultant and as a result of internal review. Those amendments were made to improve the clarity of the requirements of the guideline and to ensure consistency with respect to the terminology used.

### **Guideline 3: Insider Trading Guideline**

The objective of the Insider Trading Guideline is to:

- establish a requirement for reporting issuers to put policies and procedures in place to address insider trading activities;
- assist reporting issuers in understanding their obligations as it relates to insiders' holdings and transactions in securities of public companies; and
- promote consistency in disclosures to ensure that reporting issuers understand and enforce the obligations of insiders, including their obligations to report ownership of, and transactions in, securities of public companies, both listed and unlisted.

The guideline is applicable to Reporting Issuers registered pursuant to the Securities Act who are not listed on the Barbados Stock Exchange.

#### *Industry Comments and the Commission's responses*

The guideline was generally accepted by the industry. Recommendations to re-word certain sections to give clarity to the requirements were considered and the Commission largely adopted the recommendations. Otherwise the Guideline remains substantively unchanged. Consideration has been given to a recommendation to provide a definition for "insider information". There are no objections to providing a definition and further guidance will be provided to the industry in this regard.

#### **Guideline 4: Corporate Governance Guideline**

The purpose of the Guideline is to provide guidance to boards of directors and management of registrants and licensees of the Commission about its expectations on corporate governance and related matters.

The guideline is applicable to Market Actors registered pursuant to the Securities Act and Mutual Fund Administrators licensed pursuant to the Mutual Funds Act.

#### *Industry Comments and the Commission's responses*

This guideline was also generally accepted by the industry. Recommendations to re-word certain sections to give clarity to the requirements were considered and the Commission largely adopted the recommendations. Otherwise the Guideline remains substantively unchanged.

## Consultation Paper on the Regulation of Repurchase Agreements

The purpose of the consultation paper was to seek the industry's views on the different approaches to regulation of repurchase agreements and the persons who propose to undertake repurchase agreements business. This feedback will be useful as the Commission considers the development of guidelines related to repurchase agreements business.

### Industry Comments and the Commission's responses

The main source of comments on the consultation paper was from legal practitioners. A summary of the comments is outlined under the headers related to the questions raised in the consultation paper.

Reference	Registration Requirements (persons undertaking repurchase agreements business)
Industry comment	<p>There were no objections to the preferred option of the Commission with respect to the manner in which entities undertaking repurchase agreements should be required to register.</p> <p>One commenter however noted that the registration of such entities as Securities Companies would be the more appropriate option than one which required their registration as reporting issuers. Concern was expressed however that there should be jurisdictional limitations in respect of the applicability of the registration requirement. In addition, it was suggested that the requirement for registration should also be based on the nature of the repurchase agreements transactions themselves. It was recommended for example that transactions undertaken as part of the undertaking of insurance or banking business by entities registered under the Insurance Act, the Financial Institutions Act and related legislation should not be captured and required to register.</p>
Reference	Model Repurchase Agreement
Industry comment	<p>While there were no objections to the use of a model repurchase agreement, one of the commenters noted however that its use is not required in light of the current market participants and the practice in the financial instruments industry.</p>

Reference	Other requirements
	There were no other recommendations for additional requirements that should be encompassed in the repurchase agreement guidelines.
Commission's response	The Commission notes all of the responses to the consultation paper and in particular the industry's views relative to the registration requirement that should apply to persons engaged in repurchase agreements business. The comments have provided further direction to the Commission as it seeks to develop guidelines for regulating repurchase agreements business.

**Conclusion**

The Commission recognises that all regulatory change has an impact on the commercial decision making and the internal procedures of those entities affected by it. The Commission is therefore seeking to create an environment in which business decisions can be made in a rational and orderly manner and in a way which avoids causing unnecessary disturbance to markets and to the interests of industry stakeholders, while also enhancing transparency in the process.

The Commission appreciates the benefit of having the industry involved in the consultative process and welcomed the comments from the sector. The guidelines have been issued concurrently with this document. The effective date of the guidelines will be communicated to the industry.