



CONSULTATION PAPER

GUIDELINE – MATERIAL CHANGES DISCLOSURES

Executive Summary

Financial Institutions encounter a number of planned and unplanned changes in the course of their operations which have varying degrees of materiality or significance. These changes may impact a financial institution's operations, fitness and propriety, governance and financial status. Certain changes however are significant enough that timely notification to the regulator is not only desirable, it is imperative, as such changes have the potential to impact the regulator's regulation and supervision of a financial institution.

The Material Change Disclosures Guideline (Guideline) is intended to assist financial institutions in identifying the types of changes that must be reported to the Financial Services Commission ("the Commission"), and in completing the requisite disclosures. The Guideline includes changes that are outlined in the legislation and changes for which approvals may be required. However, the material changes in the Guideline are not an exhaustive list of the legislative requirements. Financial institutions are therefore reminded to refer to the legislation to ensure that they are compliant with any obligations that are not contained in the Guideline.

In addition to establishing the types of changes that must be disclosed, the Guideline also outlines the deadlines for reporting and how the Commission will respond to such filings.

The Guideline is accompanied by an Application Guide, which provides further explanatory information. The Commission will provide templates as needed to facilitate disclosure by financial institutions.

Responding to the consultation

Financial Institutions are invited to submit comments via form-based response regarding the Guideline. The deadline for submission of comments is **15 June 2021**. Please utilize the following URL and refer to the instructions therein :-

- <https://bit.ly/3v9VEJY>

GUIDELINE

MATERIAL CHANGES DISCLOSURES

This Guideline is intended to assist financial institutions in monitoring and reporting changes that impact or potentially significantly impact, among other things, their operations, fitness and propriety, financial status; and consequently the regulator's ability to effectively supervise and regulate such entities.

It is issued by the Financial Services Commission ("the Commission") pursuant to section 53 of the Financial Services Commission Act 2010-21 ("the Act") and comes into effect [date].

Financial institutions are expected to put measures in place in order to consistently comply with the Guideline. Non-compliance with the Guideline may result in regulatory or enforcement actions including, the imposition of conditions or restrictions on a licence or registration, suspension or revocation of a licence or registration.

The accompanying Application Guide provides explanatory information to assist financial institutions in understanding their obligations under the Guideline. The Application Guide does not form part of the Guideline.

Applicability

This Guideline is applicable to all financial institutions licensed or registered with the Financial Services Commission.

Disclosure vs Approval

All material changes require notification or disclosure to the Commission. However, some material changes also require the Commission's prior approval¹. Financial institutions should review the relevant legislation in order to identify changes that also require the Commission's approval. Where the legislation requires prior approval, it is important that financial institutions obtain the Commission's written approval before proceeding.

¹ See Appendix 2 for a list of material changes that require prior approval. The list is not exhaustive. Financial institutions are required to ensure that they are compliant with the relevant statutory obligations.

Interpretation

“Business day” means any day except any Saturday, any Sunday, or any day which is a public holiday or any day on which financial institutions are authorized or required by law or other governmental action to close

“Day(s)” means calendar day(s)

“Key person” includes a person outlined in Table 1 of the Appendix 1

“Key party” includes a person outlined in Table 2 of the Appendix 1

1. MATERIAL CHANGE

1.1 A material change is an event or decision which is likely to have or has had a significant impact on among other things:

- i. fitness and propriety of a financial institution and individuals associated with the financial institution
- ii. a financial institution's ownership/control, operations, governance, capital, solvency, risks, risk management, and customers
- iii. supervision and regulation of a financial institution or a registered/licensed individual associated with the financial institution
- iv. the sector, by posing or heightening systemic risk.

1.2 A material change can be:

- i. a planned change including a decision of directors or officers to implement the change; A material change that requires the Commission's prior approval is considered a planned change;
- ii. an unplanned change; or
- iii. a foreseeable event.

Assessing whether to report a foreseeable event

1.3 In assessing whether a foreseeable event will trigger is a material change disclosure a financial institution should consider:

- i. the likelihood of the event happening
- ii. the seriousness/severity of the event
- iii. disclosure/notification/approval requirements outlined in the legislation

2. TIMING OF NOTIFICATION OF CHANGES

2.1 A financial institution is required to provide timely notification to the Commission of a material change. Events which are likely to have serious regulatory impact should be treated and communicated to the Commission, as a matter of urgency notwithstanding the deadlines established for disclosure.

2.2 A financial institution is required to provide notification to the Commission within the deadlines specified in Table 1. Where a deadline for disclosure of a material change is outlined in the legislation, a financial institution is expected to make its notification using the shorter deadline.

Table 1:

	Type of material change	Deadline
i.	Proposed or planned	At least 30 days prior to implementation
ii.	Event based	Within 5 business days of the event
iii.	Foreseeable	Within 5 business days of a Board discussion of the foreseeable event

2.3 A financial institution is required to obtain written confirmation from the Commission that it has no objection to certain planned material changes prior to taking steps to effect the change.

2.4 Material changes that require prior approval of the Commission² must be filed/submitted with the notification of the material change, and by the deadline for reporting planned changes.

2.5 **Section 2.3 does not apply to circumstances where a financial institution is required to seek the Commission’s prior sanction or approval in order to effect a change. Financial institutions must ensure that they have received written prior approval or sanction in order to proceed with such a change.**

Late notification

2.5 Where a financial institution fails to notify the Commission of a material change within the relevant deadline the financial institution is required to submit notification of the material change without further delay together with:

- i. an explanation for the delay in submitting the notification
- ii. cogent reasons as to why regulatory or enforcement action should not be taken against the financial institution.

² See Appendix 2 for a list of changes that require prior approval. The list is not exhaustive. Financial institutions are reminded that they should ensure that they are compliant with their statutory obligations.

3. FULL, ACCURATE DISCLOSURE

A financial institution is expected to be transparent and forthcoming in its communications with the Commission regarding material changes.

3.1 A financial institution is required to ensure that complete and accurate information is provided to the Commission about a material change. The notification must include certification by a director or an appropriate person authorised by the financial institution to file the notification.

3.2 Notifying the Commission of a material change includes providing information on the circumstances related to the change. A financial institution is required to provide additional information that the Commission may request in respect of the change.

3.2 Where a financial institution becomes aware or has information that reasonably suggests that it has or may have provided the Commission with information that was or may have been incorrect, misleading, incomplete or false, or that the information has changed in a material aspect, it is required to notify the Commission as a matter of urgency. The disclosure in this regard must include:

- i. the details of the information that was or may be incorrect, misleading, incomplete, false or materially altered;
- ii. an explanation of why the information was or may have been submitted; and
- iii. the correct or updated information.

4. FORM & METHOD OF DISCLOSURE

4.1 A financial institution is required to provide **written** notification to the Commission of a material change. A financial institution must use the templates provided by the Commission for disclosure. Where a template has not been provided a letter addressed to the Chief Executive Officer disclosing all relevant information regarding the material change must be sent the Commission.

4.2 A financial institution should consider whether the circumstances and urgency of a change necessitate oral notification to the Commission prior to submission of a written notification. Where oral notification is made the financial institution is required to ensure

that it has submitted the information to its usual supervisory contact or other appropriate person at the Commission.

4.3 Written notification must be delivered by one of the following methods:

- i. Email to the address for the relevant sector³
- ii. Hand delivery to the Commission's offices
- iii. Post to the Commission's postal address
- iv. Online submission (where provided).

5. POLICIES & PROCEDURES

A financial institution is required to develop and maintain such policies and procedures as may be necessary to enable it to comply with this Guideline including ensuring that only appropriate persons make notifications to the Commission on its behalf.

6. SHAREHOLDING OF A FINANCIAL INSTITUTION

6.1 A financial institution is required to disclose:

- i. direct or indirect acquisition of a significant interest by a person in the financial institution.
- ii. a change in shareholding that is in a range of $\geq 5\%$ and $< 10\%$ of the stated capital held by a shareholder of the financial institution.

6.2 A financial institution must provide such information regarding a new shareholder that demonstrates that the shareholder is fit and proper.

7. KEY PERSONS AND PARTIES

7.1 A financial institution is required to notify the Commission of a change involving a key person or party associated with a financial institution that is likely to impact among other things the supervision of the financial institution or a key person. Such changes include:

- i. Termination the relationship however caused
- ii. Change in the identification and contact information of certain key persons. A change of this nature should be reported as an unplanned change.

³ See Appendix 3

- 7.2 The reason for the change as well as the date that the change takes effect or took effect must be disclosed.
- 7.3 Key persons are defined and set out in tables 1 and 2 of Appendix 1 and include but are not limited to individuals who have control or management of a financial institution or who discharge certain responsibilities on behalf of a financial institution.

Key parties are defined and set out in tables 1 and 2 of Appendix 1 and include but are not limited to external persons who perform certain services or undertake certain functions for, or on behalf of the financial institution.

8. FITNESS AND PROPRIETY

- 8.1 Financial institutions are expected to ensure that they remain fit and proper in order to maintain their registration or licence. They are also expected to monitor key persons or parties associated with the financial institution on an on-going basis, in order to ensure that persons performing activities for them or on their behalf are fit and proper as well.
- 8.2 A financial institution is required to disclose a material change that impacts or has the potential to impact the fitness and propriety of:
- i. the financial institution and key persons of a financial institution (as defined in tables 1 and 2 of Appendix 1) including but not limited to, shareholders, ultimate beneficial owners, directors and other persons responsible for the control and management of the financial institution.
 - ii. Key parties to the financial institution (as defined in tables 1 and 2 of Appendix 1) including but not limited to individuals who are registered or licenced to carry on business for or on behalf of the financial institution; and service providers such as external auditors.
- 8.3 A material change disclosure regarding fitness and propriety status includes events affecting:

- i. Reputation, honesty and integrity
- ii. Competence and capability
- iii. Financial soundness

9. OPERATIONS

A financial institution is required to disclose significant changes which impact its operations. Such material changes include but are not limited to:

- i. formation of a new subsidiary or branch in Barbados or overseas
- ii. acquisitions and amalgamations
- iii. change in business strategy
- iv. a decision to re-domicile
- v. expanding into new lines of business, providing a new product or introducing a significant change in means of delivering services
- vi. entering into outsourcing arrangements
- vii. it becomes subject to or ceases to be subject to the regulatory regime of another regulator including an overseas regulator
- viii. other changes which have a significant impact on a financial institution's operations.

10. BANKRUPTCY, INSOLVENCY, RECEIVERSHIP OR LIQUIDATION

A financial institution is required to disclose:

- i. an application to dissolve the financial institution; strike it off the register of companies; appoint an administrator or trustee pursuant to a bankruptcy proceeding
- ii. a petition otherwise presented to wind-up the financial institution
- iii. appointment of a receiver to the financial institution
- iv. any other actions taken or likely to be taken by a third party that has resulted or is likely to result to in bankruptcy, insolvency, receivership, liquidation or wind-up of the financial institution.

11. CHANGES RELATED TO FINANCIAL SOUNDNESS & REPORTING

A financial institution is required to disclose serious or significant changes impacting its financial soundness or reporting obligations and include changes related to:

- i. capital requirements including increased requirement for capital or adverse changes in capital
- ii. parental support and guarantee arrangements
- iii. solvency
- iv. investment losses
- v. change of financial year end
- vi. qualified opinion by an auditor or an auditor's refusal to issue an opinion
- vii. termination of professional indemnity coverage where the legislation requires such coverage
- viii. other significant events which impact the completeness of the financial information to be filed with the Commission.

12. RISK MANAGEMENT AND INTERNAL CONTROL

Material failures in a financial institution's internal controls and risk management systems must be reported to the Commission. These include serious failures impacting among other things:

- i. corporate governance
- ii. operational risk
- iii. market conduct
- iv. business conduct

13. REGULATORY BREACHES, FRAUD AND OTHER IRREGULARITIES

A financial institution is required to report significant changes in respect of among other things:

- i. non-compliance with requirements of the relevant legislation and regulatory guidelines, by the financial institution and key persons.

Insurance sector

A financial institution must also report this information in respect of salesmen representing the financial institution.

- ii. fraud committed by an employee or other key persons or certain key parties (e.g. an internal auditor or member of a supervisory committee) against the financial institution or a customer.,

Insurance sector

A financial institution must also report this information in respect of salesmen representing the financial institution.

- iii. significant accounting irregularities

Credit union sector

- iv. non-compliance with by-laws

Mutual funds sector

- v. non-compliance with constituent documents including offering documents of a mutual fund

Securities sector

- vi. non-compliance with the rules of a self-regulatory organisation
- vii. a self-regulatory organisation is required to report breaches of its rules by a member or issuer
- viii. market misconduct or manipulation by an employee of the financial institution, or the financial institution itself.

14. INVESTIGATIONS, REGULATORY ACTION, AND OTHER PROCEEDINGS

A financial institution must disclose:

- i. investigation, regulatory action or enforcement action initiated or undertaken by other regulators in respect of itself, its overseas branches and key persons
- ii. criminal proceedings in respect of itself, its overseas branches and key persons
- iii. civil proceedings in respect of itself

Insurance sector

A financial institution must also report similar information in respect of salesmen representing the financial institution.

15. BUSINESS CONTINUITY

Events which significantly interrupt a financial institution's ability to continue operations including natural disasters and cyber-security related threats/events must be disclosed to the Commission by the financial institution.

16. CHANGES RELATED TO REGISTRATION/LICENSING, CONDITIONS, AUTHORISATIONS OR APPROVALS, EXEMPTION OR WAIVERS

16.1 A financial institution's licence, registration or operations may be subject to certain conditions, duties or obligations. In addition, approval or sanctions of certain matters, exemptions, and waivers may be granted to a financial institution subject to specified conditions or requirements.

16.2 A financial institution is required to report a serious or significant change related to:

- i. the information submitted for the purposes of its registration or licence
- ii. the conditions, duties or obligations attached to its registration or licence; an approval, exemption, waiver or sanction granted

16.3 A financial institution is required to report similar material changes in respect of certain key persons and parties including persons registered or licensed to carry on business on behalf of the institution.

17. NAME CHANGE

17.1 A financial institution is required to disclose information related to a proposal to change its name including the proposed name, the rationale for the change and the date the change is expected to take effect.

17.2 Financial institutions are reminded that there may be requirements for certain language to be included in the name.

17.3 A financial institution shall disclose a change of name of certain key persons and parties including persons registered or licensed to carry on business on behalf of the institution.

18. REGISTERED OFFICE/PRINCIPAL OFFICE/CONTACT INFORMATION

A financial institution is required to notify the Commission of change in its registered office, or principal office, and telephone numbers.

APPENDIX 1

Tables 1 and 2 provide guidance on key persons or parties.

Table 1 – Key/relevant persons

Sector	Types of key persons
All sectors	<ul style="list-style-type: none"> • Director • Senior officer including president, vice president, chief executive officer, deputy chief executive officer, general manager, deputy general manager, chief financial controller, financial controller • Internal auditor • Compliance officer <p>Any other individual who performs the functions similar to those normally performed by an individual occupying any such office by whatever name called.</p>
Credit Union	<ul style="list-style-type: none"> • Member of supervisory committee • Member of credit committee <p>Any other person empowered by the regulations or by-laws to give directions respecting the business of a registered society</p>
Insurance	Principal representative of an insurance company
Mutual Funds/Mutual Fund Administrator	Partner in respect of an entity that is a partnership
Securities	An employee of a financial institution registered or required to be registered to carry on business or hold himself out as carrying on business in a category requiring registration e.g. a broker, dealer, investment adviser, trader
Other	Such other persons that the Commission has otherwise identified as a key person

Key parties include persons who provide services or carry on certain functions on behalf of a financial institution.

Table 2 – Key/relevant parties

Sector	Types of key/relevant parties
All sectors	External Auditor Actuary
Insurance	Agent Sub-agent Broker Management company Reinsurer Salesman
Mutual Fund	Operator Investment manager Investment adviser Fund administrator/manager

APPENDIX 2

Types of material changes which require approval/sanction and notification⁴

Financial Services Commission Act, 2010-21

- Appointment of a replacement auditor
- Intention to terminate the appointment of an auditor
- Direct or indirect acquisition of significant interest in a financial institution

Co-operative Societies Act, Cap. 378A and regulations

- Change of name
- By-law amendments
- Transfer of assets
- Dissolution of a credit union

Insurance Act, Cap. 310A and regulations

- Transfer, acquisition, amalgamation of an insurance business
- Carrying on of variable insurance business
- Conversion to mutual companies
- Publishing offer of shares for subscription

Mutual Funds Act, Cap. 320B and regulations

- Approval of director or similar senior officer of a mutual fund administrator
- Issue, transfer, disposal or dealing in shares of a mutual fund administrator
- Appointment of a new administrator
- Appointment of a new custodian or trustee
- Replacement of an agent
- Permanent changes in the method and frequency of dealing in a mutual fund's shares
- Suspension or cessation of dealing in shares of a mutual fund

Securities Act, Cap. 318A and regulations

- A proposed amendment to the rules of a self-regulatory organisation

⁴ The list is not exhaustive. Financial institutions are required to ensure that they are compliant with the relevant statutory obligations

APPENDIX 3

Sector	Email address
Credit Unions	creditunions@fsc.gov.bb
Insurance	insurance@fsc.gov.bb
Securities	securities@fsc.gov.bb