



Consultation Paper

Key Principles for the Regulation of New Financial Instruments

1. Introduction

The mission of the Financial Service Commission (Commission) is “to promote soundness and transparency within Barbados’ non-bank financial sector, using professional staff to provide effective and efficient supervision and regulation in line with acceptable global best practices.”. To carry out this mission, the Commission registers/authorises, monitors, and supervises the activity of non-bank financial institutions. This includes monitoring developments in the financial space and engaging with other regulatory institutions to determine the best practices for the oversight of the sector. As part of its approach to regulatory transparency the Commission consults with the industry, develops policies and regulations and provides guidance on its approach to the oversight of new products and services.

The Commission recognises that new offerings have in some cases supplanted or eliminated traditional intermediaries and centralised institutions to facilitate greater efficiencies and lower cost. Though suppliers of new financial services and products may provide many benefits, there may be a need for restrictions to be imposed on persons engaged in the business of offering, trading, or advising on investments. Internationally, regulatory authorities are examining the issues surrounding these matters and, in particular, how to address unique issues that may be associated with new products and services such as securities, trading, exchanges, and issuances in the digital space.

2. Purpose

This consultation paper has been prepared to share the key principles that guide the Commission’s approach to the regulation of new financial products and services.

3. Key Principles

The Commission takes the position that despite differences in the modalities of delivering financial services, where the underlying instrument is a security, the regulatory concerns at stake are the same. The Commission will therefore treat new products that have the characteristics of an investment as if they are securities, irrespective of the form or mode of delivery. This approach permits the Commission to focus on the substance and nature of a product or service and ensures that all participants in the securities market are afforded similar guidance and protection. Given the above, the existing securities laws and guidelines are applicable to any person offering securities within the digital space. Operators/actors within the digital space are required to adhere to the key principles that follow:

1. *Intermediated Access*

The Commission maintains a higher threshold for participation in products by retail investors and, as such, requires that all investments by retail market participants in instruments considered by the Commission be securities moderated by a fiduciary who acts in their best interest. This approach is consistent with the gatekeeping role played by intermediaries in the existing financial space and aims to limit participation in these ventures to eligible investors.

2. *Suitability Criteria*

Fiduciaries providing access to novel securities opportunities are required to ensure that the product being offered is suitable for the intended investor. Prior to the opening of an account, the offeror or broker must ensure that a suitability assessment of the investor relative to the product/ service has been conducted. These assessments are a critical component of investor protection as they reduce the risk that investors will participate in investments that do not match their risk tolerance. With respect to securities, the Commission will limit the amount of investment in novel instruments that may be taken by a retail investor. This limit has been set for retail consumers at 20% of their liquid savings. Sophisticated purchasers in the securities sector are expected to have greater knowledge of and be better able to assess the risks posed by an instrument or investment opportunity. In keeping with this expectation, sophisticated purchasers or investors with greater financial capacity to absorb risks may invest BBD\$100,000 (in any single purchase) or more in novel instruments consistent with the definition of sophisticated purchaser as seen in the [Securities Act](#). This restriction may be relaxed over time as an instrument becomes more familiar.

3. *Appropriate Disclosure and Equity of Treatment*

Disclosure and fairness of the marketplace is a pivotal tenet of consumer protection and Securities regulation. It is, therefore, essential that consumers have full access to the requisite information required to participate in an investment opportunity. Similarly, all market participants in the same class of investment should be treated equitably and have access to the same information. Further, it is critical that, as with any security, novel instruments are not marketed in a misleading manner in primary and secondary markets. The Commission expects that persons acting in a fiduciary capacity on behalf of investors will make available adequate information to clients in a comprehensive and timely fashion to facilitate informed decision making. The Commission may require specific information to be disclosed should the risks of the security not be deemed to be readily apparent. In this instance, the owners of a platform on which the disclosure is being made have the responsibility of ensuring that the information shared therein is accurate and timely.

4. *Safeguarding of Consumer Assets*

Intermediaries/Fiduciaries who exercise control of or are otherwise responsible for cash and assets owned by clients must ensure the safe custody of these assets and must maintain segregation of client assets from those of the other clients, intermediaries, or that of the fiduciary.

5. *Adequate Financial Resources*

Another key tenet of financial services regulation and investor protection is the requirement of the maintenance of capital to support risks and that financial institutions have the requisite financial resources to remain solvent. The [Securities Act](#) sets out the capital requirements for various types of registerable activities. Additionally, the Financial Services Commission Act, via the exemption and other powers, allows the Commission to vary the regulatory capital requirements of intermediaries to ensure that capital is commensurate with the risk exposure.

6. *Management of Conflict of Interest*

Unmitigated conflicts may negatively impact investor protection and confidence and undermine the fairness, transparency, and efficacy of markets. Operators in the space will be required to have appropriate policies and processes in place to manage conflicts.

7. *Operational Resiliency*

Operational resiliency is imperative for any entity offering novel investment opportunities. It is critical that any such entity implement mechanisms that support the resiliency, integrity, and reliability of critical systems. This should include having in place adequate business recovery/business continuity plans to ensure uninterrupted services are provided.

CONCLUSION

Balancing the benefits offered by new innovative products and services with public protection is the central mandate of the Financial Services Commission. The Commission is supportive of eliminating barriers to innovation, modernising regulation, and assisting businesses in their compliance with the applicable law. This consultation paper aims to bring clarity and certainty to suppliers and consumers of innovative financial services by outlining the principles that will guide the Commission's approach. The Commission is committed to consulting and providing guidance on any changes to the regulatory framework and welcomes feedback and comment on this consultation paper.