

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
Part 1	2	Interpretation	<p>The definition of “accredited investor” has a high level of subjectivity since the issuer or selling security holder also makes a determination as to who is reasonably believed to be an accredited investor. Is this an industry standard?</p> <p>In subsection (1) paragraph (i), what exactly is being referred to as “the prescribed amount”? Is there a substantive provision in the body of the legislation that makes provision for the amount to be prescribed. It is submitted that there should be greater certainty in respect of this particular definition so that on the face of it, it would be clear who exactly would qualify to be an accredited investor.</p> <p>In subsection (1) paragraph (p), are there any particular grounds that the Commission would be using to recognise or designate a person as an accredited investor.</p>	<p>The definition was amended to delete the phrase “<i>or whom the issuer or selling security holder reasonably believes comes within any of the following categories</i>”</p> <p>The definition was amended to include the qualifying amounts for income and net worth for accredited individuals and the corresponding asset value for a company.</p> <p>Item (p) was deleted.</p>
			<p>Definition of “company” – We note that a trust is included in the definition of company. The expression “trust”</p>	<p>The definition of a company has been amended to remove trust.</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			describes the fiduciary arrangement or relationship. A trust is not a legal person or legal entity with separate legal personality as a company is in law. Accordingly, we are of the view that a trust should not be included in the definition of company.	
			Definition of “distribution” – We are of the view that a trade in a previously issued security of an issuer by a control block holder should not be considered a distribution.	<p>The Bill defines a control block holder to mean a person that-</p> <ul style="list-style-type: none"> (a) holds more than 30 per cent of the voting rights attached to all of an issuer’s outstanding securities; or (b) is able to affect materially the control of the issuer, whether alone or acting in concert with others. <p>We are of the view that 30% of the voting rights attached to all of an issuers outstanding shares may constitute a significant amount of shares being sold (especially where the new issue will be a public issue/sale to members of the public).</p>
			The definition of “dishonest conduct” should be deleted. It is not necessary to include this definition and additionally the wording “according to the standards of ordinary people.	Dishonest conduct deleted

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			In the definition of “document”, paragraph (b) is vague and should be reworded. It is recommended that a possible rewording as follows should be considered: “in relation to information recorded otherwise than in hard copy, references to its production include reference to producing a copy of the information in hard copy.	Definition amended to reflect suggestion.
			In the definition of “financial institution”, the definition seems to be quite narrow and could be misleading or inaccurate.	Definition amended.
			Definition of “investment contract” – We have some concerns about introducing the US concept of investment contract into the Securities Bill. Under US Securities Law the concept of investment contract has been extended to contracts typically not considered securities. Also, in the USA there are various legal theories regarding the meaning of the words “common enterprise” used in the definition of investment contract.	This is not a new concept and the term investment contract exists in the current Securities Act. Under section 99 of the current Act, collective investment scheme is defined to mean (c) <i>investment contracts, investment programmes or other arrangements with respect to the property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;</i>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
				<p>"the term 'security' follows the US definition to be sufficiently broad and general so as to include within that definition the many types of instruments that may in our commercial world fall within the ordinary concept of a security." These definitions include the term "investment contract,"</p> <p>The US Supreme Court stated that its definition of investment contracts "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."</p>
			<p>Definition of "market charge" – We are of the view that a market charge be a fixed charge and in no circumstances a floating charge.</p>	<p>The ECSRC is of the view that reference to floating charge should remain (as per above) to allow for flexibility rather than static transactions.</p>
			<p>Definition of "person" - We note that a trust is included in the definition of company. The expression "trust" describes the fiduciary arrangement or relationship. A trust is not a legal entity with separate legal personality as a company is in law. Accordingly, we are of the view that a trust should not be included in the definition of person either.</p>	<p>The reference to trust and fund has been omitted.</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			<p>The definition of “person” also includes a fund. Fund is not defined, however, investment fund is defined. An investment fund may have legal personality if it is constituted in the form of a company but if it is constituted as a unit trust it will not have legal personality. Including expressions as “trust” and “fund” are not necessary as the obligations on a trustee will be included by other words in the definition. If greater clarity is required then the definition should be extended to include trustees or persons in a representative capacity.</p>	
			<p>Definition of “private company” – This definition should be deleted. The companies’ legislation in most, if not all, of the ECCU is based on the CARICOM Model Companies Act. The CARICOM model removed the concept of private companies from company law. The Securities Bill should not seek to reintroduce the concept of private companies but should properly define public company.</p>	<p>Private issuer was substituted here for a private company. The definition now reads:</p> <p>“private issuer” means an issuer-</p> <ul style="list-style-type: none"> (a) that is not a reporting issuer; (b) whose securities, other than non-voting debt securities- <ul style="list-style-type: none"> (i) are subject to restriction on transfer; and (ii) are beneficially owned by no more than fifty persons, not including senior officers and employees or

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
				<p><i>former senior officers and employees of the issuer and its affiliates ;</i></p> <p><i>(c) that have distributed securities only to persons who fit within prescribed categories; and</i></p> <p><i>(d) that meets such other requirements as may be prescribed;</i></p>
			Definition of “public company” – This definition would result in all companies that are limited by guarantee, non-profit companies or limited life companies being deemed to be public companies under the Securities Bill.	The term public company is deleted. A reporting issuer as defined in the Bill is sufficient to capture provisions referencing public company.
			Definition of “published” – In part (a) of the definition delete the word “daily newspaper” and replace with “newspaper”. This definition may need further refining as the object is for the information being published to come to the attention of investors or potential investors. An issuer in Grenada publishing in Grenada and St Kitts will satisfy the definition of published but not the spirit of the legislation.	<p>Amendment made to remove the word “daily” in part (a).</p> <p>Further, the provision has been amended to require the issuer to publish the notification in two newspapers of general circulation in all ECCU member territories as opposed to “each member territory.”</p>
			Definition of “security” – See comments under “investment contract”. Consider removing investment contract from the definition of security. In relation to the exceptions, also consider exceptions for	<p>See previous comments on the interpretation section on investment contracts.</p> <p>The ECSRC considers it unnecessary to include bankers’ acceptances, repurchase agreements and reverse</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			<p>bankers acceptances, repurchase agreements and reverse repurchase agreements between financial institutions or with a regulator. Also, it can be clearer that loans from financial institutions are not securities but secondary trading of such loans are securities.</p>	<p>repurchase agreements between financial institutions or with a regulator as specific exceptions in the definition of 'security' as these instruments by definition, explicitly and implicitly do not fall within the scope of the definition of a 'security'.</p> <p>The secondary trading of loans from financial institutions may be covered in item (f) asset-backed security or item (k), depending on the substance of the specific transaction.</p>
			<p>The definition of securities laws is a vague reference that would not be satisfactory for Drafting purposes. There should be specific cross-referencing with the particular provision of the law intended to be referred to. It is also not desirable to seek to make direct changes to other pieces of legislation in the Bill.</p> <p>Finally, the reference to a decision of the Commission as being included in the definition of "securities laws" is not workable and has a distinct flavour of unconstitutionality about it. Only Parliament can make laws and therefore a decision of the Commission</p>	<p>Definition amended:</p> <p>The term "securities laws" was amended to mean the Securities Bill and the ECCU Investments Funds Act.</p> <p>This suggestion was effected by the amendment to the definition of "Securities laws".</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			should not be referred to or included in the meaning of “securities laws”.	
Part 11 Licensing of marketplaces and ancillary facilities	9	Licensing	Several ideas are articulated in clause 7 of the Bill. A restriction is placed, application provisions are included, revocation is dealt with and the grant or refusal of the application and issue of the licence. All these provisions can be separated and dealt with appropriately.	Section of the Bill was divided into five parts: Licensing which provides for a prohibition for conducting securities business without a licence 5(1) and the application process under 5(2); Grant of application for licensing section 6; Conditions for the grant of a licence section 7; Renewal or reinstatement of a licence section 8; and Revocation of the licence section 9.
	10		Where are the provisions relating to the procedure for obtaining a securities exchange licence? These provisions should include a restriction, application procedure and the issue of the licence as well as provisions for suspension or revocation.	
	11	Market charge or collateral	In relation to the types of assets that may be the subject of a market charge	The relevant section was amended to reflect the recommended changes. The change is now section

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			<p>in paragraph (a) of section 11 of the Securities Bill, it should be noted that not all letters of credit, bankers' drafts and certified cheques may be negotiable instruments. In relation to bankers' drafts and certified cheques these may be not negotiable due to the crossings. We suggest that paragraph (a) should read "<i>money and negotiable instruments</i>".</p> <p>Also, we are of the view that market charges should only be fixed charges over the specific assets charged.</p> <p>From the general tenor of Division 3 and in particular sections 11, 13, 16 and 18 it appears that Market Charges in favour of a Clearing Facility can be taken without the Clearing Facility investigating the pre-existing priority of fixed and floating charges as banks typically do before taking a charge or debenture. Also, it may be possible for a Clearing Facility with a subsequent market charge to obtain priority over pre-existing debentures taken by banks over fixed and floating assets of companies duly registered under the</p>	<p>13(1)(a) which reads "<i>money and other similar negotiable instruments</i>".</p> <p>The definition of 'market charge' was amended to remove the phrase "whether fixed or floating...."</p> <p>The provisions in Division III are not meant to provide a Clearing Facility with blanket authority to secure market charges over the assets of a defaulting participant irrespective of whether other charges are already in place on these assets.</p> <p>In light of the peculiar arrangements in the ECCU in regard to securities settlement, specifically the inter-relationship between the securities settlement system and the payment system, these provisions are deemed to be critical for reducing systemic risk.</p> <p>The reduction of systemic risk is one of the core objectives of securities market regulation. In this case, it requires that the legal system must support effective and legally secure arrangements for handling defaults by market participants. Principle 37 of the International Organisation of Securities Commission (IOSCO) Objectives and Principles of Securities Regulation provides that "<i>the legal system must support effective and legally secure arrangements for default handling. This is a matter that extends beyond securities law to the insolvency provisions of a jurisdiction. Insolvency law must support isolating risks, and retaining</i></p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			Companies Act and land laws. While we understand the desire to give certainty to clearing facility transactions, it will be ill advised to do so by creating uncertainty to the law relating to collateral security and insolvency priorities. These insolvency preferences in favour of clearing facilities potentially increase lending risks in the Eastern Caribbean.	<p><i>and applying margin previously paid into the system, notwithstanding a default or commencement of an administration or bankruptcy proceedings</i>". IOSCO's recommendations on how this can be achieved include the following mechanisms:</p> <ul style="list-style-type: none"> a) the use of the defaulting firm's proprietary funds and assets to meet its obligations to market counterparties; and b) National insolvency laws that specifically accommodate market default procedures.
	13	Proceedings of clearing facility taking precedence over laws of insolvency.	The laws relating to insolvency are clear and well established. We would not support this provision being included since it deviates for appropriate and established legal rules.	<p>In light of this comment and to correctly reflect what the provision states, the short note has been amended to read "<i>Validity of default proceedings of Clearing Facility</i>".</p> <p>The provision does not deviate from established legal rules but simply provides that</p> <ul style="list-style-type: none"> (a) a market contract; (b) the rules of a clearing facility for the settlement of a market contract; (c) proceedings or other action taken under the rules of a clearing facility for the settlement of a market contract; (d) a market charge; (e) the default rules of a clearing facility; or (f) default proceedings. <p>shall not be invalidated by any laws that permit the distribution of the assets of a person on insolvency,</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
				bankruptcy or winding up or on the appointment of a receiver over the assets of the person. (now section 15)
	14, 16 and 18		The net effect of sections 14, 16 and 18 are that the clearing facility determines the amount if any due to be paid over on insolvency and is not subject to any checks or judicial review. We do not support this approach.	The provisions provide for adequate transparency in the default process as it not only requires the Clearing Facility to submit a report to the Commission but the proceedings would also be subject to a judgement or order of the court. (now sections 16, 18 and 20)
	22(2)	Amendment of rules	This section makes reference to publishing in “one daily newspaper of general circulation in each member territory”, however, not all member territories have daily newspapers.	Section amended delete the word “daily”. (now section 24)
	24	Licensing of Marketplaces and Ancillary Facilities	Is there any indication as to what matters the Commission would consider to be in the public interest? It would be helpful if some guidance was provided so as to reduce the likelihood of arbitrary action.	To be addressed by the Regulations (now section 26)
	27	Contingency funds	In section 27, what is the difference between a contingency fund and settlement assurance fund?	<p>“contingency fund” means a fund established by a securities exchange or self-regulatory organisation under section 29 created for the purpose of compensating customers for losses resulting from the insolvency, bankruptcy or default of a member of the stock exchange;</p> <p>“settlement assurance fund” mean a fund established by a clearing facility under section 29 to ensure continuity in securities clearing and settlement in the event of the failure to settle transaction by a participant of a clearing facility;</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			Are contributions to be made to the contingency fund and the amount?	<p>The definitions have been included in the interpretation section of the Bill. (now section 29)</p> <p>Procedural matters to be discussed and agreed. (now section 29)</p>
	29		In section 29, what is the reason for not providing an opportunity to the applicant to be heard – especially where it is proposed to impose conditions or restrictions on the licensee.	Part IV of section 29 was deleted. (Now section 31)
	30		These are very heavy penalties that are being proposed in sections 30 and 33. What was the rationale in making the offences summary in nature?	<p>The language with respect to the summary offence was brought over from the Securities Act 2001. The summary classification of the offence was removed.</p> <p>The penalties has been revised to reflect the 2001 Act. (now section 32)</p>
Part III Licensing of Intermediaries and Individuals		General comment/observation	The heading is misleading as it refers to Others but the provisions do not speak to other persons being licensed.	<p>Heading has been amended to “Licensing of Intermediaries and Individuals”.</p> <p>Definition of intermediaries in the interpretation section provides that an intermediary means a broker-dealer, custodian or investment adviser;</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
				Individuals as such here refers to the representative and principal employed by the intermediaries
	31	Licensing of Intermediaries and Others	We are of the view that custodian should not be a class of licensed intermediary. Alternatively, licensed financial institutions should be permitted to act as custodians without having to obtain an additional licence. Section 10(h) of the Banking Act, 2015 permits financial institutions to act as custodians.	<p>The functions of the custodian which are permitted under the Banking Act are different to the ones referenced in the Securities Bill.</p> <p>The function of the securities custodian is that of taking securities into custody for safe keeping. Under the Securities Bill, the following definition has been included:</p> <p><i>“Custodian” means a person to whom securities is entrusted for safe keeping.”</i></p> <p><i>(Section 31 now section 33)</i></p>
	31		Clause 31 of the Bill provides a restriction on intermediaries but the term is not used. If the definition of intermediaries referred to these persons then the term could be used. Again, this clause deals with many different aspects of the process of obtaining a licence and the provisions should be separated to deal with the application etc.	<p>The definition of intermediaries was amended.</p> <p>As per section 9 above the section was amended to reflect the prohibitions, licensing applications, grant for licence, conditions for grant of licence, compliance function, offices and branches, authorisation of location and approval of new business premises, renewal or reinstatement of licence and revocation of licence. (now section 33)</p>
	31(11)		Please provide clarification? For example, can an intermediary have two branch offices in the Currency Union	A new section 37 has been included to provide clarification. As such section 37 now provides “All offices and branches of a licensed intermediary in the

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			under one license, hence the minimum requirement will be only one Principal and one Representative for the intermediary?	Currency Union shall be deemed to be one licensed intermediary”. However, please note that the minimum requirement will not be for one principal or representative where the intermediary is operating separate branch offices. A principal and representative must be present at each of the locations where the licensed intermediary transacts the securities business with the public.
	32	Exemptions	The expression “deal” is used in section 32(1)(b) but is not defined in the Securities Bill. Consider if Section 32(1)(b) should be reworded. The provisions may have the unintended effect of requiring all licensed financial institutions to have to be licensed as broker-dealers as typically for treasury or cash management purposes banks invest in securities for their own accounts in the course of their business.	The word “deal” was amended to “dealing.” (now section 41)
	32(3)		Please provide clarification on whether a broker dealer license can cover investment advice?	Yes, but only when it is incidental to its business. (now section 41)
	38		How is it intended that this subsection would be enforced in practical terms.	The provision referred to (38)(4) was deleted. (now section 41)
	41(5)		Section 41 subsection (1) is vague and may not actually be necessary. If an event is being prescribed to be done in another section and a time period given	The relevant provision (now numbered as 50(1) was amended as follows:

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			for the performance of that event, would it not be preferable to place the requirement for notice in that specific section. The particular time for the notice and whatever penalty is to be imposed could also be provided for in the same place.	<i>“A licensee under Part I and II shall notify the Commission in writing, of the occurrence of an event relating to any matter under this Part, within the time periods specified.”</i>
Part V Distribution of securities	47	Prospectus required	Consider revising the wording of section 47(1) to make it subject to section 54 of the Securities Bill. Also, as drafted the provision is too broadly drafted and will discourage persons from doing business in the ECCU. As presently drafted a control block holder (person owning more than 30% of an issuer) may be required to issue a prospectus to sell part or all of its holding. Also, section 47(1) as currently drafted when read together with the definitions of “distribution”, “security” and “issuer” would capture all issues of shares by all companies, which is not the intent of the legislation.	Section 47, now 58 amended to be subject to section 65 of the Bill. The section has been amended to read <i>“Subject to section 65, no person shall trade in a security on that person’s own account or on behalf of any other person where the trade would be a distribution of the security requiring registration pursuant to section (57) (1), unless a prospectus has been filed with the Commission with the prescribed fee and a receipt evidencing payment of the fee has been issued by the Commission”</i> . New section 56, “Registration of reporting issuers and Section 57, Registration of securities included in the Bill.
	50	Content of prospectus	Is there a definition of exactly what “full and true disclosure” means? It is not certain if “in plain language” is needed here. That may be a subjective standard as to what is plain language or not.	Section amended replacing “ full and true disclosure to <i>“all material information”</i>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
				<p><i>“A prospectus shall disclose all material information concerning the issuer and the securities to be distributed and shall comply with the prescribed requirements”.</i></p> <p>(now section 61)</p>
	51	Amendments	<p>Clarification on the release of updated audited financials considered as prospectus material changes. There is a 2-month period for the prospectus to be reviewed and amended and therefore it is not practical to cease distribution while issuing a new prospectus for updated financials.</p>	<p>The provision was amended to allow the issuer to file an addendum to the prospectus reflecting the material change, within 10 days. <i>Refer to section 61.</i></p> <p>The requirement to cease distribution of the securities pending the issue of a receipt for the addendum by the Commission is a discretionary one, which the Commission may invoke if the circumstances so require. Based on the wording of the provision this will not be an unconditional requirement.</p>
	54	Exemptions	<p>Since section 54 is a limitation of section 47 and is some distance away from it, section 47 should have the words, “Subject to the provisions of section 54”.</p> <p>The fact that section 54 sets out so many limitations on the filing of a prospectus underscores the need to clearly provide exactly when a prospectus should be filed as indicated above in note 6.</p> <p>In 54(1)(j), the words “but in such circumstances” should be deleted as</p>	<p>See note above on ‘prospectus required’.</p> <p>The words “<i>but in such circumstances</i>” were deleted.</p> <p>Section 51(1)(k)(iii) now renumbered as section 65(1)(k)(iii) was amended to read:</p> <p><i>the accredited investor is a person other than as described in paragraph (b) or (d) of the definition of accredited investor under section 2(1), and the person has</i></p> <p><i>i) obtained investment advice in respect of the distribution from-</i></p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			<p>they appear unnecessary to the meaning of the sentence.</p> <p>It is not clear what is the meaning of section 54(1)(k)(iii). The several conditions make it difficult to understand clearly what is the idea that is being conveyed.</p>	<p>(a) <i>a licensee; or</i></p> <p>(b) <i>any prescribed person who receives no remuneration from the issuer or selling security holder in connection with the distribution;</i></p>
	55(2)(b)	Exemptions for approved foreign issuers	<p>We note that foreign investment funds do not qualify as approved foreign issuers. Under the current Securities (Foreign Securities and Intermediaries) Regulations, 2004 foreign investment funds could not be registered in the Eastern Caribbean as many funds while registered with a Securities Regulator are not listed on an exchange. Investment funds whose unit prices are determined by net asset value will not be listed on an exchange. Appropriate rules are required to permit the registration and sale of foreign funds.</p>	<p>This will be addressed by the ECCU Investment Funds Bill</p> <p>(now section 66)</p>
	56	Resale restrictions	<p>A restriction on re-sale for private placements is very prohibitive. This does not promote capital market developments. Clarification needed on whether the registrar can approve all transfers instead to ensure that the</p>	<p>The restriction on re-sale for securities that were initially issued via private placement is an international standard. The provision in the Securities Bill places conditions on the further resale to protect investors.</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			maximum number of investors for a private placement is not exceeded. Can the ECSCD act as registrar for the private placement and have that responsibility?	Section 56 now 68 is amended to include the conditions which must be met to remove the trade from the class of a distribution.
	57(1)	Receipt for prospectus	The timeframe for the Commission to review the prospectus to issue the receipt should be more specific (e.g. 30 days, 60 days etc). The legislation should also contain a provision for the Commission extend the time to review the prospectus for an additional period in extenuating circumstances by notice to the applicant.	Amended to reflect a time frame of 30 business days. (now section 68)
	58	Commencement and cessation of distribution	Is it clear in section 58 and the following related sections which distribution is being referred to? The definition of distribution conveys the idea that distribution is possible in several different ways. Some of the section refer to “distribution” while others refer to “distribution of a security”. It is not always clear what is being referred to.	A new section 57 has now been included to clarify reference to the term “distribution”. (now section 69)

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			15% minimum recommended exemption for extenuating circumstances (natural disasters) eg: Dominica Hurricane	The provision was amended accordingly. (refer to section 69(2))
	59	Post distribution statement	For a Repurchase Agreement prospectus with no end date, when do you file a post distribution statement?	<p>If there is no end date of an issue of securities which is subject to a prospectus, then pursuant to this section, the requirement to file a post distribution statement does not have to be met.</p> <p>The wording of the provision clearly states:</p> <p><i>“A person who distributes a security, other than a security which is issued by an investment fund -..... shall within ten business days of the completion of the distribution.....”</i></p> <p>(now section 70)</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
	60	Offence	<p>Under this section the fine is daily from the first solicitation until the Commission issues a receipt for a prospectus. The fine should also stop the earlier of the Commission issuing a receipt for a prospectus or the person ceases soliciting in connection with the distribution.</p> <p>There needs to be more parity with respect to offences and the attendant penalties throughout the Bill. The fine associated with making a distribution without a prospectus (\$750,000) which is a specific offence should not be lower than the fine for committing general offences (\$1,000,000.00).</p>	<p>The section had been redrafted to provide better clarity and now reads:</p> <p><i>“If a distribution is carried out other than in compliance with this Part, the issuer and every person who is knowingly a party to the distribution is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for six months or to both, and in the case of a continuing offence, to a fine not exceeding \$50,000 for every day, or part of a day, from the date of the first solicitation in connection with the distribution until a receipt has been issued for a prospectus, by the Commission.”</i></p> <p><i>(now section 71)</i></p>
	General comment/ observation		<p>It appears that reporting issuers are no longer required to register with the Commission or pay an annual renewal registration fee. Ask them to confirm</p>	<p>New Section 56 included to capture the registration of reporting issuers.</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
	General comment/observation		It appears that securities for distribution are not required to be registered. There is reference to the submission of a prospectus to the Commission before distribution of the security (section 47 of the Bill), which is the case in the T&T Securities legislation, but in T&T legislation, the security still has to be registered in addition to the prospectus. Ask them to confirm.	New section 57 included to capture the registration of securities with the commission before distribution.
Part VI Continuing obligations of reporting issuers	61(2)	Disclosure to the public	61(2) is vague. It does not specify what information is required to be disclosed to the public nor does it provide a referencing for any relevant sections that might require such a disclosure. Additionally, is the information to be disclosed to the public the same as “all material facts” that is required to be disclosed in subsection (1)? If they are the same	This Part refers to “Continuing Obligations of Reporting Issuer”. Sections 64, 65, 66, 67, 68 sets out the categories of information that must be reported by the reporting issuers. However to avoid this ambiguity, section 61(2) has been redrafted and is now section 72(2)(a) and now reads as follows: <i>“The information disclosed to the public by a reporting issuer under subsection(1) shall – include all information required to be disclosed under this Part;”</i>
	64(1)	Timely disclosure of	We note that the requirement under section 64(1)(a) of the Securities Bill is	The section was amended to reflect the reporting and publication period, the authorisation of the notice by a

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
		material changes	<p>for a material change to be published in a newspaper in general circulation within one business day. Many newspapers in the ECCU are weekly publications and in some jurisdictions it may not be possible to publish within one business day of the material change. We are of the view that publication should be within 7 business days and notification to the Commission under section 64(1)(b) should be within 7 business days of the material change. We also note that the notice to be published can only be authorised by a director of the reporting issuer. We are of the opinion that a senior officer should be able to authorise the publication. In relation to section 64(1)(a) the provision does not specify when the reporting issuer is to send to the Commission either a copy of the notice to be published or the newspaper clipping of the notice. The word “publish” is used in this section with a different meaning of the word “published” in section 2 of the Securities Bill.</p>	<p>senior officer and the submission of a report to the Commission along with a copy of the published notice, with immediate effect or within 7 business days of the material change. (now section 75)</p>
	64(5)	Timely disclosure of	<p>We note that where the Commission permits non-disclosure of a material</p>	<p>The section has been amended to give the Commission the discretion to determine the time period for the</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
		material changes	change, after 30 business days the reporting issuer is required to issue a press release. This provision does not leave any scope for the Commission to use its discretion to consider if at the 30 th business day if it is still premature for publication of the material change. In many instances a board decision not yet acted upon may trigger material change reporting, but operationalising the decision may be complex, involve regulator approval, etc. and it may be premature to publish the material change at the 30 th business day. This may result in the publication being more disruptive to the market than beneficial.	<p>publication of a notice of material change where the reporting issuer had requested non-disclosure.</p> <p>Section 64(5) which is now section 75(5) is amended as follows:</p> <p><i>“Notwithstanding any permitted non-disclosure under subsection (3)(b), the reporting issuer shall disclose to the public such material change no later than thirty business days or in any event on a date to be determined by the Commission.”</i></p>
	64		A guideline as to scenarios which constitute a material change should be issued by the Commission which provides clarification and encourages uniformed reporting by the industry.	The definition of what constitutes a material change is already defined in the Securities (Accounting and Financial Statements) Rules No. 2 of 2015 specifically in Form ECSRC-MC. (now section 75)
	68	Annual reports	Deadline for submitting the annual report should be included in this section and the suggested time period should be ninety business days or one hundred and twenty days, which is consistent with other jurisdictions.	Amendment made to 120 days, which is consistent with the timeframe currently existing in the Securities Act 2001. (now section 79)

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
	69(1)	Delivery of continuous disclosure	Requirement to forward information to address of security holder, particularly interim and annual financial statement, given the annual report is also forwarded, appears onerous and may be costly. Suggestion for requirements (a) and (b) to be made available electronically.	<p>Suggestion for electronic transfer included in the provision.</p> <p><i>“As soon as practicable after filing with the Commission, a reporting issuer shall send to each security holder, at the address provided to the reporting issuer as the preferred delivery address of the security holder or at the last address of the security holder shown on the securities register of the reporting issuer or by <u>electronic mail</u> and at no cost to the security holder, the following documents-“</i></p> <p>(now section 68)</p>
	69(2)	Delivery of continuous disclosure	<p>In 69(2)(a) it would be clearer if the provision stated the sections in the Bill requiring the documents to be published.</p> <p>Reporting interim statements to the public? This was not previously a requirement. Interim statements are unaudited and this should be a requirement only for equity security holders.</p>	<p>In the interest of clarity, section 69(2)(a) now renumbered as 80(2)(a) has been redrafted to read:</p> <p><i>“The obligation to send documents to security holders under subsection (1) does not apply – in relation to documents published under section 75;”</i></p> <p>The requirement to deliver the <i>“interim financial statements”</i> to each security holder of a reporting issuer was deleted.</p> <p>(now section 80)</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
	70	Failure to file	<p>Remove the words “<i>within ninety business days of the end of the financial year.</i>” It appears the intention is to create a general offence for failure to file any report under this Part within the various time periods stipulated. Leaving these words in seems to restrict the offence to an end of year filing which does not appear to be the intention.</p> <p>Furthermore, the fine seems unreasonable. It is suggested that the administrative penalties under section 119(2) i.e. \$1,000.00 a day, should be more applicable, which is consistent with other jurisdictions.</p>	<p>Amendment made to delete wording ““within ninety business days of the end of the financial year.”</p> <p>Amendment also made to section 70(1) to address the concern raised:</p> <p><i>Where a reporting issuer fails to file a report or statement required to be filed under this Part, it is liable to a penalty of \$1000 for every day from the day of the default except when an extension to the period has been granted by the Commission pursuant to section 160.</i> (now section 81)</p>
	71	Proxies and proxy solicitation	<p>The various Companies Acts in the ECCU contain provisions on proxy solicitation. The provisions on proxy solicitation in the Securities Bill should work in harmony with the proxy provisions in the various Companies Acts in the ECCU. We disagree with section 71(5) of the Securities Bill as</p>	<p>The provisions on proxies and proxy solicitation does not deviate from the requirements of the companies Act.</p> <p>In so far as section 71(5) is concerned, this requirement is discretionary and may be a necessary authority that the Commission may wish to exercise from time to time</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			the Commission's decision to review proxy documents prior to mailing or issuing can result in time delays resulting in meetings being invalid due to insufficient notice to convene the meeting. This may have adverse effects for reporting issuers as litigation regarding invalid meetings, suddenly cancelling meetings and increased cost relating to booking meeting venues and rescheduling meetings.	to ensure that reporting issuers continue to meet their disclosure obligations to shareholders. (now section 82)
	74	Offences	We are of the view that the proposed fine on indictment for a contravention of Part VI of the Securities Bill is too onerous.	The amount of the fine has been reconsidered and reviewed. <i>"Where a reporting issuer fails to file a report or statement required to be filed under this Part, it is liable to a penalty of \$1000 for every day from the day of the default except when an extension to the period has been granted by the Commission pursuant to section 160."</i> (now section 84)
Part VII Governance of reporting issuers	75	Compliance with prescribed requirements	Compliance with prescribed requirements – What are the proposed qualifications for Board Of Directors?	These matters along with other Corporate Governance requirements will be addressed in a Corporate Governance Rule to be issued by the Commission. (now section 86)
Part VIII Takeovers	76		This Part contains one provision and clause 76 of the Bill makes a	New section 88 imposing penalty for breach of the takeover provisions was included.

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
			restriction but does not impose any penalty.	
Part IX Disclosure of shareholdings of Directors, officers and Significant security holders	77	Reports of certain connected persons	The provision is designed to ensure that connected persons holding securities in markets capable of manipulation report on their holdings. However, not all securities as defined by the draft Bill would be capable of market manipulation. The inclusion of the words “traded on a securities exchange” immediately after the word “securities” in each case, would ensure that the intent of the provision is captured. This will also ensure that the ECSRC is receiving disclosure reports in respect of the exchange it regulates rather than a multiplicity of reports which do not affect its area of regulation. Sub-section (1) uses the expression “working days”, this should be replaced with “business days”.	Redraft of this section to include securities traded on securities exchange as opposed to all issued securities will exclude the reporting requirement of the current market, i.e majority of companies who have issued shares in the ECCU are not listed on the exchange. <i>(now section 89)</i>
	77(3)		In 77(3), what is the meaning of “ <i>direct beneficial ownership</i> ” and “ <i>indirect beneficial ownership</i> ” How does this reconcile with the definition of “beneficial owner” and “beneficial ownership” as set out in the Interpretation Section.	For the purpose of clarity, the terms ‘direct’ and ‘indirect’ have been deleted. Instead the provision now renumbered 89(2) will now read “ <i>beneficial ownership.</i> ”

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
Part X Uncertificated Securities	81	Uncertificated Securities	What are the prescribed provisions referred to in section 81? How is it proposed that uncertificated securities would be evidenced? There should be a clear provision for the sake of transparency as to how the transactions would be recorded.	These are provided for in the Uncertificated Securities Regulations (now section 93)
Part XI Market Misconduct	91	Prohibited misrepresentation	The language of the section is quite wide in respect of making a representation. There is no actual definition for this term and it is recommended that a definition be included. Is it that the definition of “representative” is intended to cover the expression, “making a representation.”	Amended to include a definition of “representation” in the Interpretation section. (now section 103)
	100	Listing and Trading foreign securities, licensing and exchange membership of foreign participants	Which are the sections referring to the specified requirements?	Regulations will developed to outline the specified requirements. (now section 112)
Part XIII Division 1 Investigation, Inspections	102(1)(b)	Power to obtain information	1. This provision treats with the power to obtain information from anyone including persons not subject to regulation by the ECSRC. Powers of	The ECSRC recognises the possible constitutional breach of this provision and has provided the following alternative wording.

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
and Enforcement			<p>entry, search and seizure should always be subject to the authorization of the Court so as not to impeach the constitutional rights of persons, particularly those which are not subject to regulation by the ECSRC. Sub-section 1 (b) should be deleted and consolidated with subsection (2).</p> <p>2. In subsection (2) it is suggested that the words “including under oath or affirmation that the statements that the person will make will be true” be deleted. The words are not necessary and may give the impression that the Commission may be exercising powers of a Court or Tribunal.</p>	<p><i>“Where the Commission considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, the Commission may, at any time if the circumstances so require, apply to a judge of the High Court for an ex parte order authorising the Commission or a person appointed under section 101(2) to-</i></p> <p><i>(a) require such person to attend before the Commission at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;</i></p> <p><i>(b) enter, during reasonable hours, the business premises of such person for the purposes of-</i></p> <ul style="list-style-type: none"> <i>i. conducting an examination;</i> <i>ii. inspecting and copying information or documents stored in any form on such premises; or</i> <i>iii. seizing and taking possession of any information or documents; and</i> <p><i>require such person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require.</i></p> <p>(now section 114)</p>

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
Division 4	116	Power of the Commission to issue directions	The Commission is empowered to regulate the securities industry and should therefore have enforcement powers over persons who it regulates. The section purports to have the Commission regulate at large and this does not appear to be consistent with the objectives of the Bill. The references should be to directions being made against market participants.	This section (now section 128) generally empowers the Commission to administer the Securities Bill by addressing market misconduct and breaches of the Securities Bill. Therefore, this power should extend to include persons who may not be licensed or authorised by the Commission and are engaged in unauthorised securities business. (now section 128)
	117(1)(d)(i)	Orders in the public interest	The Commission should be empowered to make orders affecting those which it regulates as opposed to orders at large. The word “person” should therefore be deleted and the words “licensee or reporting issuer” should be substituted.	This suggestion will inhibit the powers of the Commission to issue any order against a person where: (b) a person is contravening, has contravened or is about to contravene any provision of or requirement under the this Act; (c) a person has failed to comply with any provision of or requirement under the this Act; or A person in this sense may not be a reporting issuer registered with the Commission or a licensee. (now section 129)
	119	Administrative penalty	In section 119(1) the administrative penalty of \$500,000.00 seems quite excessive for this type of penalty and may be seen as venturing too far over into the jurisdiction of the Court	Fine was amended to \$50,000.

Eastern Caribbean Securities Regulatory Commission
Comments and Responses to Comments following Public Consultation on the Draft Securities Bill 2018

Part/Division in Bill	Section No.	Title	Comments	ECSRC Response
Part XVI Repeal and transitional provisions	168	Repeal and Transitional Provisions	The activities which licensed financial institutions in the ECCU may engage in are limited by section 10(1) and (2) of the Banking Act, 2015. Licensed financial institutions in the ECCU should also be permitted to be broker-dealers under the Securities Bill. Accordingly, we are of the view that the Securities Bill should contain a consequential amendment to section 10 of the Banking Act, 2015 to authorise licensed financial institutions to act as broker-dealers.	The matter would have to be discussed and agreed with the Eastern Caribbean Central Bank (ECCB). (now section 180)