

DRAFT For Consultation 08/08/02

THE BANKS AND TRUST COMPANIES REGULATION ACT, 200_ (No. __ of 200_)

THE BANKS AND TRUST COMPANIES (LARGE EXPOSURES) (No.1) REGULATIONS, 2002 (Section __)

The Governor of The Central Bank of The Bahamas in the exercise of the powers conferred on him by Section 20 of The Banks and Trust Companies Regulation Act, 2000 makes the following Regulation-

1. These Regulations may be cited as the Banks and Trust Companies (Large Exposures) Regulations, 2002 and shall come into force on the 1st day of August, 2002.

2. These Regulations apply to all banks and trust companies incorporated in The Commonwealth of The Bahamas hereafter referred to as “licensees”.

3. In these Regulations –

“Central Bank” means The Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act, 2000;

“Inspector” means the office of Inspector of Banks and Trust Companies established under section 9 of The Banks and Trust Companies Regulation Act, 2000.

Single Exposure Limit

4. A licensee may not incur an exposure to an individual counterparty or group of connected counterparties, which exceeds twenty-five percent of its capital base.

5. A licensee may not hold investments in securities of an issuer which exceed ten percent of its capital base.

Limit on Exposures to Related Parties

6. A licensee may not incur an exposure on an individual basis or incur exposures on an aggregate basis to related parties of greater than fifteen percent of its capital base.

(a) All exposures to related parties must be:

- i. Fully collateralised through their tenure;
- ii. Negotiated on an arms length basis for clear commercial advantage of the licensee at market rates and without concessive terms;
- iii. Be specifically approved by the Board of Directors.

7. The Central Bank will closely monitor all exposures to related parties and those related party exposures which, in the opinion of the Central Bank, are of the nature of a capital investment or made on particularly concessionary terms will be deducted the from the capital base of the licensee.

Aggregate Limits on Large Exposures

8. A licensee may not incur large exposures which in aggregate exceed eight hundred percent of capital base.

Exempt Exposures

9. The following exposures are exempted from the limits outlined in sections 4, 5, 6 and 8:-

- (a) Exposures to the Government of The Bahamas and non-commercial Bahamian government institutions;
- (b) Exposures the Zone A Central Governments;
- (c) Exposures to the Central Bank of The Bahamas and Zone A Central Banks;
- (d) Exposures secured by Bahamian and Zone A Central Government securities/ guarantees.

10. The following exposures should be pre-notified to and approved by the Central Bank in the manner prescribed by the Central Bank to be considered for exemption from the limits outlined in sections 4, 5, 6 and 8:-

- (a) Certain exposures which are supported by a guarantee or letter of comfort from a bank, acceptable to the Central Bank;
- (b) Underwriting exposures which do not exceed 90 days duration. Any residual holdings of securities, which are held for more than 90 days, are no longer eligible for exemption under this subsection and are subject to the limits outlined in sections 4, 5, 6 and 8.
- (c) Short-term (i.e. up to 6 months maturity) interbank placements. Unapproved exposures or longer term exposures or holding of securities issued by banks are not eligible for exemption under this subsection and are subject to the limits outlined in sections 4, 5, 6 and 8.
- (d) Off-balance sheet exposures to banks acceptable to the Central Bank.

Compliance and Internal Policies

11. Licensees shall at all times comply with the limits outlined in sections 4, 5, 6 and 8.

12. Licensees are required to implement and maintain internal policies and internal limits which will ensure compliance with sections 4, 5, 6, and 8.

13. Licensees must review their internal policies regularly (at least annually) to take account of changing operating circumstances.

Reporting Requirements

14. Licensees must report to the Inspector all large exposures, exempt or otherwise, on a quarterly basis in the manner prescribed by the Central Bank.

15. On becoming aware of a contravention to sections 4, 5, 6 or 8 the licensee shall immediately notify the Inspector of that contravention and provide him with such particulars of that contravention in the manner prescribed by the Inspector.

Remedial Action by the Central Bank

16. Where a licensee contravenes sections 4, 5, 6, or 8, the licensee and the Inspector shall enter into discussions for the purpose of determining what remedial action is required.

17. The Inspector may, by notice in writing served on the licensee, require the licensee to take such remedial action as he thinks fit to ensure compliance with sections 4, 5, 6, or 8.

Penalty for Non-Compliance

18. Any licensee may be assessed a monetary penalty not to exceed \$1000 for every day that the licensee is in contravention of section 4, 5, 6, or 8.

19. Licensees may, by notice in writing to the Governor of the Central Bank, make appeal for waiver of or relief from section 18.

Variation of Limits

20. The Inspector may, by notice in writing served on a licensee, vary the limits specified in section 4,5,6,or 8 in relation to that licensee.

Definitions

21. In these Regulations –

“exposure” means –

- (a) Claims on a counterparty including actual claims and potential claims which would arise from the drawing down in full of undrawn advised facilities (whether revocable, irrevocable, conditional or unconditional), which the licensee has committed itself to purchase or underwrite;
- (b) Contingent liabilities arising in the normal course of business and liabilities that would arise from the drawing of undrawn advised facilities;
- (c) Holdings of equity capital, bonds, bills or other financial instruments;
- (d) Any other assets that constitute a claim on a counterparty for the licensee and which are not included in (a), (b), or (c) above.

“counterparty” means the borrower (customer), the person guaranteed, the issuer of a security in the case of an investment in a security or the party with whom the contract is made in the case of a contract.

“large exposure” means an exposure which exceeds ten percent of capital base.

“capital base” means the total of shareholders funds plus other capital items permitted by the Central Bank and subject to any deduction required by the Central Bank and reported in the most recent form BSD1.

“concessive terms” means conditions and requirements that are less demanding than or inconsistent with the conditions and requirements imposed upon the general range of non-related-party clients in similar circumstances.

“connected party” means:

- (a) any other person that, either directly or indirectly, controls the person and any other person that is controlled, either directly or indirectly, by the other person that controls, either directly or indirectly, the person;
- (b) a subsidiary or associate company of the person;
- (c) directors, executive officers, senior staff, and controlling shareholders of the person and any person identified in (a) and/or (b), above; or,
- (d) any other person:
 - (i) that is controlled, either directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, either directly or indirectly, by trust or otherwise, the person; or,
 - (ii) in which a majority of its directors or trustees constitute a majority of the persons holding any such positions in the other person or any person that controls, either directly or indirectly, the person.

“fully collateralised” means secured by cash deposits, including certificates of deposit and equivalent instruments, held with the specific right of offset by and under the exclusive administration of the licensee, where repayment of the deposit is conditional on the repayment of the related extension(s) of credit, and having a market value equal to at least one hundred percent of the extension of credit.

“related party” includes:

- (a) any other person that controls (i.e. has twenty percent or more of the equity voting rights), either directly or indirectly, the licensee and any other person that is controlled, either directly or indirectly, by the person that controls, either directly or indirectly, the licensee;
- (b) a subsidiary or associate company of the licensee;
- (c) directors, executive officers, senior staff, and any shareholders holding more than ten percent of the licensee’s voting share capital and any person identified in (a) and/or (b) above; or
- (d) any other person:
 - i. that is controlled, either directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, either directly or indirectly, by trust or otherwise, the licensee; or,
 - ii. in which a majority of its directors or trustees constitute a majority of the persons holding any such positions in the other person or any other person that controls, either directly or indirectly, the other person.

Made this 1st day of August, 2002

Signed
JULIAN W. FRANCIS
Governor of The Central Bank of The Bahamas