

VIRGIN ISLANDS

FINANCIAL SERVICES APPEAL BOARD ACT, 2016

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No. 9 of 2016

**Financial Services Appeal
Board Act, 2016**

**Virgin
Islands**

I Assent

Governor
, 2016

VIRGIN ISLANDS

No. 9 of 2016

An Act to establish a financial services appeal board and to make provision for the filing and processing of appeals arising from or in relation to the Financial Services Commission Act and financial services legislation and for other matters connected therewith.

[Gazetted , 2016]

ENACTED by the Legislature of the Virgin Islands as follows:

Preliminary

1. (1) This Act may be cited as the Financial Services Appeal Board Act, 2016. Short title and commencement.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

2. (1) In this Act, unless the context otherwise requires Interpretation.

“appeal” means, subject to section 13 (4) and (5), an appeal against a decision or in relation to an act or omission of the Commission;

“appellant” means a person who files a notice of appeal under section 13;

“Board” means the Financial Services Appeal Board established under section 3;

“Chairman” means the person appointed as Chairman of the Board under section 4 (1) (a) and includes any person acting in the position of chairman in the absence of the Chairman;

“Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act and, for the purpose of an appeal, includes the board and any committee of the Commission;

“financial services legislation” means any principal legislation listed in Schedule 2 of the Financial Services Commission Act, and includes any subsidiary legislation made under such principal legislation;

“member” means the Chairman and any other member of the Board;

“Minister” means the Minister responsible for the administration of this Act;

“rules” means rules made and issued by the Board pursuant to section 24 and includes the rules of procedure outlined in Schedule 2; and

“Secretary” means the person appointed under section 12 (1) to serve as Secretary to the Board.

(2) Where reference is made to the publication of any matter in the *Gazette*, that matter may, in addition to being published in the *Gazette*, be published in such other manner as the Board considers fit.

Establishment and Operations of the Board

Establishment of
Financial
Services Appeal
Board.

3. (1) There is hereby established an appeal board to be known as the Financial Services Appeal Board which shall perform the functions and powers imposed or conferred on it by or under this Act.

(2) In the performance of its functions under this Act, the Board shall not be subject to the direction or control of any other person or authority.

Composition and
appointment of
Board.

4. (1) Without prejudice to section 14, the members of the Board shall comprise

(a) a Chairman who shall be a legal practitioner of not less than 10 years experience;

(b) one other legal practitioner of not less than 10 years experience who shall act as Chairman in the absence of the Chairman; and

- (c) five other persons as the Minister may nominate.
- (2) The members of the Board shall
 - (a) be appointed by the Cabinet acting on the advice of the Minister;
 - (b) be appointed on such terms and conditions as the Cabinet may, subject to subsection (3) and section 10, determine;
 - (c) be persons who are not
 - (i) members of the Commission, including its board of commissioners; or
 - (ii) engaged in or connected with a person engaged in financial services business in the Virgin Islands; and
 - (d) be persons who would not otherwise be disqualified by virtue of any of the disqualifications outlined in section 5.
- (3) In appointing members of the Board under subsection (2), the Cabinet shall
 - (a) ensure that the persons to be appointed are fit and proper and have relevant knowledge, experience and expertise which could aid the Board in the performance of its functions; and
 - (b) specify the periods of appointment in such a way that the periods of appointment of not more than one-third of the members shall expire every 2 years.
- (4) A member whose appointment is about to expire or has expired may be re-appointed by Cabinet in accordance with the provisions of this section.

- 5. (1)** A person is disqualified from appointment as a member if he or she
- (a) is a member of the House of Assembly;
 - (b) is an undischarged bankrupt or has compromised with his or her creditors;
 - (c) has been convicted of an offence other than a road traffic offence;
 - (d) has, after being previously appointed as a member, been removed in accordance with section 9; or

Disqualifications for appointment.

(e) has been certified by a medical practitioner to be of unsound mind.

(2) Where a person who, subsequent to his or her appointment as a member, becomes disqualified by virtue of subsection (1), he or she shall immediately notify the Minister in writing specifying the disqualification and the date he or she became aware of that disqualification.

(3) If a member, being aware that he or she is disqualified under subsection (2), fails to notify the Minister as required under that subsection or continues to form part of a panel established to hear an appeal without disclosing the disqualification to the Chairman, he or she commits an offence.

(4) A member who commits an offence under subsection (3) is liable on conviction to a fine not exceeding \$25,000, but the conviction in itself shall not render an appeal he or she was a part of void, unless the Chairman is satisfied that the interest of justice is best served by ordering a fresh appeal.

(5) A member does not commit an offence under subsection (3) and therefore not liable to be proceeded against under subsection (4) if his or her disqualification relates to subsection (1) (e).

Functions of the Board.

6. (1) The Board shall be responsible for

(a) receiving and hearing appeals arising from decisions of the Commission in the exercise of any of the Commission's powers under the Financial Services Commission Act or any financial services legislation;

(b) receiving and hearing appeals from decisions of any other body as may be mandated under any other enactment; and

(c) receiving written complaints relative to the affairs of the Board and dealing with the complaints in such manner as the Board considers appropriate.

(2) When the Board receives a notice of appeal, it may issue such directions as it considers reasonable for the purpose of facilitating the hearing and disposal of the appeal.

(3) The Board shall advise the Minister of every written complaint it has received, stating how it has dealt with the complaint.

(4) The members shall, in the performance of their duties under this Act and the rules, conduct themselves in a manner that conforms to the integrity of their office.

7. (1) When a vacancy occurs in the membership of the Board, the Cabinet shall, acting on the advice of the Minister, appoint another person to the Board who shall serve for the unexpired term of the person he or she is replacing.

Vacancy in the Board.

(2) The provisions of sections 4 and 5 apply to a person appointed pursuant to subsection (1).

(3) A decision of the Board shall not be void by reason only that there is a vacancy in the membership of the Board.

(4) The resignation of a member under section 9 (1) creates a vacancy for the purposes of this section notwithstanding the application of section 9 (3).

8. (1) The Board may, apart from the occasions when it meets to hear an appeal, meet at such other times and places as the Chairman may determine.

Meetings of the Board.

(2) Four or more members may, subject to subsections (3) and (4), submit a petition in writing to the Chairman requesting a meeting of the Board and the Chairman shall, upon receipt of the petition, convene a meeting of the Board.

(3) A petition under subsection (2) shall specify the matters relative to the functions, or the efficient and effective functioning, of the Board which the petitioners consider should be discussed by the Board.

(4) The Chairman may not convene a meeting of the Board on the basis of a petition that fails to comply with subsection (3).

9. (1) A member may at any time resign from the Board by giving a written notice to the Minister and such resignation becomes effective upon receipt by the Minister.

Resignation and removal of member.

(2) The Minister shall, upon receipt of a member's resignation pursuant to subsection (1), advise the Cabinet of the resignation.

(3) The Cabinet may, by written notice, remove a member from office if it is satisfied that

(a) the member has, after being appointed to sit on a panel to hear an appeal, refused to participate in the panel without good reason acceptable to the Chairman;

- (b) the member has become bankrupt, has had his or her estate sequestrated, or has made an arrangement with, or granted a trust deed in favour of, his or her creditors;
- (c) the member has been convicted of an offence other than a road traffic offence;
- (d) the member is or has become disqualified from being appointed as a member under section 5;
- (e) the member has an interest that is likely to prejudicially affect the exercise and performance by him or her of his or her functions as a member, or is liable to be removed from office under section 11 (3);
- (f) the member is unable or unfit to discharge his or her functions as a member;
- (g) the member is in breach of any condition imposed in relation to his or her appointment; or
- (h) it is in the public interest to remove the member.

(4) Where the Cabinet removes a member from office pursuant to subsection (3), it shall

- (a) provide in writing its reason for the removal; and
- (b) cause to be published in the *Gazette* the fact of, and the reason for, the removal.

Remuneration of members.

10. (1) The members shall be paid such remuneration as may be determined by the Cabinet.

(2) A member who incurs any cost in relation to the work of the Board shall be entitled to be reimbursed for the cost, provided that he or she had, prior to incurring the cost, obtained the consent of the Chairman or, in the case of the Chairman, obtained the consent of the Minister.

(3) A payment to be made pursuant to this section shall be paid out of the Consolidated Fund.

Duty to disclose interest.

11. (1) A member who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of an appeal shall, as soon as reasonably practicable before the appeal is heard

- (a) declare his or her interest to the Secretary in accordance with Schedule 1 stating the nature of the interest; and
- (b) recuse himself or herself from participating in the hearing of, or discussing anything relating to, the appeal concerned.

(2) Where the Secretary receives a declaration under subsection (1), he or she shall immediately notify the Chairman and other members of that fact, outlining to them the nature of the interest declared.

(3) A member who fails to declare an interest as required under subsection (1) or, in making a declaration, provides a false or misleading statement in the declaration, shall be liable to be removed from office.

(4) The failure of a member to declare his or her interest as provided in subsection (1) shall render void the decision in an appeal in which he or she sat.

(5) The Board may provide written guidelines on matters concerning conflicts of interest to govern the conduct of its members.

(6) Any guidelines prepared pursuant to subsection (5) shall be binding on every member.

(7) For the purposes of this section, the term “member” includes the Secretary.

12. (1) The Minister shall identify and appoint a suitable public officer to act as Secretary to the Board on such terms and conditions as the Minister may determine, including the period of tenure of the public officer.

Appointment of Secretary to the Board.

- (2) The Secretary shall
 - (a) be responsible for receiving notices of appeal, written complaints and any other documentation which the Board has authority to receive and deal with;
 - (b) be responsible for ensuring that notices of appeal received by the Board are in compliance with the provisions of this Act and the rules;
 - (c) be responsible for sending out notices and other correspondences to parties to an appeal;
 - (d) be responsible for transmitting responses to written complaints received by the Board; and

(e) perform such other duties as the Board may direct from time to time.

(3) The Secretary shall at all times devote adequate time to the work of the Board in order to ensure the efficient and effective transaction of the business of the Board.

Appeals

Appeal.

13. (1) Subject to subsections (3), (4) and (5), any person who is aggrieved by a decision of the Commission taken pursuant to the Financial Services Commission Act or any financial services legislation in relation to him or her may, within 30 days from the date of the decision, file a notice of appeal to the Board.

(2) A notice of appeal shall be filed in accordance with the rules stating the grounds of appeal, and a notice of appeal shall not be considered to be properly filed unless it fully complies with the requirements of this Act and the rules.

(3) An appeal shall not operate to stay a decision of the Commission.

(4) A person against whom a decision is taken by the Commission for or in relation to carrying out unauthorised financial services business is not entitled to file a notice of appeal under this Act or the rules, unless the person alleges that he or she was not carrying out unauthorised financial services business.

(5) No appeal shall lie or be properly brought under this Act on

(a) a refusal by the Commission to grant a licence, registration, recognition or approval or to provide a document or any material under the Financial Services Commission Act or any financial services legislation;

(b) a decision of the Commission to resolve a licensee pursuant to the Commission's exercise of any resolution powers under the Financial Services Commission Act (or any regulations made thereunder) or the Regulatory Code;

(c) account of a penalty imposed by the Commission in the exercise of its powers under the Financial Services Commission Act or any financial services legislation by alleging that the penalty is high or disproportionate; and

(d) any other matter which is designated under the Financial Services Commission Act or any financial services legislation as not appealable.

(6) For the purposes of subsection (4), “unauthorised financial services business” has the meaning specified in section 2 (1) of the Financial Services Commission Act.

14. (1) For the purpose of conducting a hearing pursuant to section 15, the Chairman shall empanel a Board comprising not less than 3 members, one of whom shall be a legal practitioner.

Empanelling a Board to hear an appeal.

(2) A panel of the Board shall be chaired by the Chairman or another member who is a legal practitioner.

(3) A decision of the members empanelled to hear an appeal shall be considered to be a decision of the whole Board.

15. (1) Upon receipt of a notice of appeal under section 13, the Board shall proceed to hear the appeal in accordance with this Act and the rules.

Procedure of the Board.

(2) In hearing an appeal under subsection (1), the Board shall

(a) have regard to the record of any oral, documentary or other evidence which the Commission had or relied upon in arriving at its decision;

(b) have regard to the written decision of the Commission and the reasons for the decision;

(c) have regard to any documentary or other evidence provided by the appellant;

(d) have regard to any submissions provided by the appellant and the Commission; and

(e) allow the appellant and the Commission, if any of them wishes to do so, to be represented by a legal practitioner or other representative of his or her choice.

(3) In hearing an appeal under subsection (1), the Board may

(a) permit oral or written submissions, or both;

(b) permit the introduction of evidence (oral or otherwise) if it is satisfied that new evidence has become available or has been discovered that

(i) is substantial and material to the Commission’s decision; and

(ii) did not exist at the time the Commission made its decision, or was not discovered or could not reasonably have been discovered at the time of the decision;

(c) consider evidence related to the appeal, whether or not that evidence would be permissible in court; and

(d) proceed with the hearing of an appeal in the absence of the appellant if the appellant has been given at least 10 days notice of the hearing.

Decision of the Board.

16. (1) The Board may, after hearing an appeal

(a) affirm the Commission's decision appealed against;

(b) vary the Commission's decision appealed against in such manner and to such extent as the Board considers fit; or

(c) set aside the Commission's decision appealed against and remit the decision concerned for reconsideration by the Commission in accordance with such direction as the Board may specify.

(2) A decision of the Board shall

(a) be in writing;

(b) state the reasons for the decision; and

(c) be binding on the parties.

(3) The Secretary shall provide copies of the Board's decision to all the parties to the appeal at no cost.

(4) The Board shall not award costs to any party in respect of an appeal heard by the Board.

(5) A decision of the Board may be appealed against to the High Court only on a question of jurisdiction or law.

Rules of evidence.

17. The Board is not bound by the rules of evidence in the hearing of any appeal, and it may inform itself of any matter that is before the Board in any way it reasonably believes to be appropriate and in accordance with the provisions of this Act and the rules.

Service of notice and other documents.

18. (1) A notice or other document that is required to be served on a person under this Act or the rules shall be considered to be properly served if

- (a) it is delivered personally to the person to whom it relates at his or her last known address;
- (b) it is sent by registered mail to the person to whom it relates at his or her last known address;
- (c) it is delivered, in the case of a corporate body, to a director, manager or other senior officer, or to the registered agent, of the corporate body; or
- (d) it is, in the case of a corporate body, sent by registered mail or delivered directly to the registered office of the corporate body at its last known address.

(2) Where a notice or other document is sent by registered mail, the notice or other document shall be deemed to have been received by the person at the time when the notice or other document would be delivered in the ordinary course of post.

19. (1) An appeal that is properly filed under section 13 must commence, and be determined by the Board, no more than 180 days after the date of filing of a notice of appeal.

Commencement and determination of appeal.

(2) The Board may, upon such conditions as it considers fit, issue an order extending the period referred to in subsection (1) for one or more periods not exceeding 90 days in aggregate if

- (a) it is satisfied that special circumstances exist to justify the extension; and
- (b) the order extending the period is made before the expiry of that period or, if a previous order had been made under this subsection, that period as extended.

(3) Where the Board is unable to hear and determine an appeal on the basis that the notice of appeal has not been properly filed, the Board may treat the appeal as abandoned and notify the parties accordingly.

(4) Where the Board treats an appeal as abandoned under subsection (3), the appeal shall not be revived unless the Board, on written application made within 7 days of the date of the notification, is satisfied that there were special circumstances why the appeal could not have been diligently pursued and grants an order in that regard.

(5) Where the Board grants an order permitting an appeal to be revived under subsection (4), the appeal shall be treated as a new appeal and –

(a) the period stipulated in section 13 (1) shall begin to run from the date of the order; and

(b) all other provisions of this Act and the rules shall apply accordingly.

(6) An appeal that has been treated as abandoned under subsection (3) and has not been revived under subsection (4) shall not be the subject of any appeal or reference to, or consideration by, a court.

Miscellaneous

Fees and Board's expenses.

20. (1) The fees outlined in Schedule 3 shall be payable in respect of the matters relating to an appeal and no appeal shall be processed or heard by the Board unless the applicable fees are paid.

(2) Any fees collected by the Board shall

(a) be non-refundable; and

(b) be paid by the Secretary into the Consolidated Fund.

(3) Any cost or expense related to the work or functioning of the Board shall be paid out of the Consolidated Fund.

Register of appeals.

21. (1) The Secretary shall keep and maintain a register of appeals in which shall be entered such information as may be provided in the rules.

(2) The register of appeals may be divided in such manner as the Secretary considers appropriate for purposes of keeping and maintaining the information referred to in subsection (1).

Power to issue practice directions.

22. (1) The Board may, from time to time, prepare and issue such practice directions as it considers fit for the purposes of ensuring the efficient and effective processing of appeals.

(2) Any practice directions prepared and issued pursuant to subsection (1) shall be published in the *Gazette*.

Annual report.

23. (1) The Board shall, within 6 months of the end of each year, prepare a report outlining the activities and work it had undertaken for that year.

(2) A report prepared pursuant to subsection (1) shall

- (a) be made available to the Minister by the Chairman; and
- (b) be laid in the House of Assembly by the Minister.

(3) Where a report made available to the Minister under subsection (2) (a) is not laid in the House of Assembly within 3 months from the date it was made available, the Board shall publish the report on the Virgin Islands Government website and such other internet site as it may approve.

24. (1) The Board may, in addition to the rules of procedure specified in Schedule 2, make and issue such other rules relative to its functions as it may consider fit for the purpose of facilitating the receipt and processing of appeals and complaints.

Rules of procedure.

(2) The Board may take such steps as it considers fit to prevent and stop any abuse of the process and procedures of the Board provided under this Act, the rules and any other rule made under sub-rule (1), including any practice direction or guideline issued by the Board.

(3) Rules made under subsection (1) shall not be inconsistent with the provisions of this Act or the rules and shall be published in the *Gazette*.

25. (1) The Cabinet may, acting on the advice of the Minister and by an Order published in the *Gazette*, amend Schedule 1 and Schedule 3.

Amendment of Schedules.

(2) The Board may amend Schedule 2 in such manner as is consistent with the provisions of this Act as it may consider fit.

26. (1) Where in an enactment reference is made to the Financial Services Appeal Board that reference shall, upon the commencement of this Act, be construed as a reference to the Board established under this Act.

(2) Notwithstanding subsection (1), where prior to the commencement of this Act an appeal had been commenced under Part VI of the Financial Services Commission Act, 2001, that appeal shall continue to be dealt with under that Act as if this Act had not been passed.

No. 12 of 2001
Transitional provisions.

SCHEDULE 1

[Section 11]

DECLARATION OF INTEREST BY BOARD MEMBERS

I, (name) of (address) being a member of the Financial Services Appeal Board established under the Financial Services Appeal Board Act and in pursuance of the requirements of section 11 of the Act, hereby declare that I have a direct/indirect* personal/professional/business/pecuniary* interest in the matter of (state the name of the appeal), a notice of appeal of which has been filed or may be filed with the Board and is due for hearing by a panel of the Board in which I have been empanelled to sit on or about the day of, 2....

The nature of my interest is as follows: *(describe nature of interest)*

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I FURTHER declare that the declaration made herein is correct and true and within my knowledge and I shall recues myself from the panel that has been empanelled to hear the appeal in the said matter of (state the name of the appeal).

Declared this day of, 2....

Name of declarant:

Signature of declarant:

Date:

**Strike out as necessary*

SCHEDULE 2

[Section 24]

RULES OF PROCEDURE OF THE FINANCIAL SERVICES APPEAL BOARD

Definitions

Definitions

1. (1) In these Rules, unless the context otherwise requires, the following definitions apply –

“Act” means the Financial Services Appeal Board Act;

“direction” includes any direction or order given or made by the Board;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production includes references to producing a copy of the information in legible form;

“file” means send to the Board, and a document is not, save as otherwise provided, considered to be properly filed unless it complies with the requirements of the Act and these Rules and is received by the Board; in this regard, receipt by the Secretary shall suffice as receipt by the Board;

“notice of appeal” means a notice issued by or on behalf of an appellant appealing a decision of the Commission;

“party” means the appellant or the Commission; and

“representative” means the person, other than a legal practitioner, nominated by an appellant to represent the appellant in an appeal; and

(2) Where in these Rules anything filed is required to be served on a party immediately after the filing, that thing shall be served on the party as soon as reasonably practicable after its filing.

(3) For the purposes of computing time under these Rules, no account shall be taken of weekends and public holidays.

(4) Any word defined in the Act which is used in these Rules shall, unless the context otherwise requires, bear the meaning ascribed to it in the Act.

Filing and Service

Filing an appeal: Form 1

Commission,

2. (1) A person who is entitled to appeal against a decision of the

may file a notice of appeal in accordance with **Form 1** and has 30 days after the date of the decision within which to do so.

(2) A notice of appeal under sub-rule (1) shall, before being filed, be signed by or on behalf of the applicant and an appeal shall not be considered to be properly filed unless it is so signed.

(3) A notice of appeal shall state the following:

(a) the name and address of the appellant;

(b) the name and address of the appellant's legal practitioner or representative (if any);

(c) where a legal practitioner or representative is not named under paragraph (b), the appellant's address for service in the Virgin Islands if different from the address provided under paragraph (a);

(d) the decision of the Commission that is being appealed against;

(e) the date the appeal is filed; and

(f) the grounds of appeal.

(4) In addition to the matters outlined in sub-rule (3), the notice of appeal

(a) shall be filed along with all relevant documents which the appellant intends to rely upon in support of the appellant's grounds of appeal; and

(b) may be accompanied by an affidavit duly sworn by any individual on behalf of the appellant in support of any matter considered relevant to the appeal.

(5) Every document filed or affidavit sworn pursuant to sub-rule (4) shall be properly marked (for example, “JTX1”, “JTX2”, “JTX3”, etc.) for ease of reference.

Service on the Commission

3. The appellant shall, immediately after filing a notice of appeal pursuant to [rule 2](#), serve on the Commission a copy of the notice of appeal.

Commission’s reply

4. (1) Upon being served a copy of a notice of appeal pursuant to rule 3, the Commission has 30 days from the date of receipt of the notice within which to reply to the appellant’s grounds of appeal.

(2) The Commission’s reply to the applicant’s grounds of appeal shall be made in accordance with **Form 2**.

(3) A reply under sub-rule (2) shall, before being filed, be signed by or on behalf of the Commission and the reply shall not be considered to be properly filed unless it is so signed.

(4) A reply shall state the following:

- (a) the matters contained in the appellant’s grounds of appeal which the Commission does not dispute;
- (b) the matters contained in the appellant’s grounds of appeal which the Commission disputes;
- (c) the Commission’s reasons for disputing the matters; and
- (d) the date on which the response is filed.

(5) In addition to the matters outlined in sub-rule (4), the reply

- (a) shall be filed along with all relevant documents which the Commission intends to rely upon in support of the Commission’s response; and
- (c) may be accompanied by an affidavit duly sworn by any individual on behalf of the Commission in support of any matter considered relevant to the appeal.

(6) Every relevant document filed or affidavit sworn pursuant to sub-rule (5) shall be properly marked (for example, “FSC1”, “FSC2”, “FSC3”, etc.) for ease of reference.

Service on the appellant

5. The Commission shall, immediately after filing a reply pursuant to rule 4, serve on the applicant a copy of the reply.

Amendment of notice of appeal and reply

6. (1) Any party may, with the approval of the Board, amend its notice of appeal or reply, as the case may be.

(2) A party who wishes to amend his or her notice of appeal or reply shall submit a written application to the Board at least 14 days before the date set for the hearing of the appeal and shall send a copy of the application to the other party.

(3) The Board may, upon receipt of an application under sub-rule (2), grant or refuse the application, but shall provide its reasons in writing for a refusal of the application.

(4) Where a party is granted approval to amend his or her notice of appeal or reply, as the case may be, he or she shall proceed with the amendment and file the amendment with the Board within such time as the Board directs.

(5) Every amendment filed under this rule shall

(a) specify the matters in the notice of appeal or reply, as the case may be, that are being amended;

(b) indicate the amendment being effected; and

(c) be served on the other party immediately after the amendment is filed.

(6) A party upon whom an amendment is served may respond to the amendment by filing his or her response in writing within 7 days after the date of receipt of the service of amendment or such shorter period as the Board may direct.

(7) There shall be no extension to any date or period specified under or given pursuant to this rule.

(8) Any one or two members nominated by the Chairman may determine an application under this rule and one of those members may be the Chairman.

Service of further material

7. (1) Where, after the filing of a notice of appeal and reply, the appellant or the Commission, as the case may be, considers that there is further material which might be reasonably expected to assist the Board in its hearing of the appeal and which was not provided in accordance with rule 2 (4) or 4 (5), the appellant or Commission may, subject to sub-rule (2), file such further material.

(2) Any further material to be filed pursuant to sub-rule (1) shall be filed so that it is received by the Secretary no later than 14 days before the date on which the appeal is set to be heard by the Board.

(3) The party filing any further material shall, immediately after filing, serve the other party with a copy of the further material.

(4) For the purposes of sub-rule (2), an appeal that is to be dealt with in accordance with rule 18 is considered to be set to be heard a day after the expiry of the fourteenth day referred to in sub-rule (2).

Restriction on disclosure

8. (1) Subject to sub-rules (2) and (3), the parties shall make full disclosure of all documents and material essential to the determination of an appeal.

(2) A party need not disclose or file any document or material whose filing or disclosure is prohibited by any enactment or generally under any law, but shall disclose the enactment or any law which prohibits the disclosure.

(3) A party (first party) may, without giving notice to the other party (second party), apply to the Board in **Form 3** requesting authority for the first party not to file or disclose any document or material on the ground that such filing or disclosure would not

(a) be in the public interest; or

(b) be fair, having regard to

(i) the likely significance of the document or material to the appeal before the Board; and

(ii) the potential prejudice to the commercial interests of a person not connected to the appeal which the filing or disclosure would cause.

(4) Board may To assist in making a determination under sub-rule (3), the

(a) require that the document or material be produced to the Board, together with a statement of the reasons for the application that the filing or disclosure would not be in the public interest or fair; and

(b) invite the first party to make representations to the Board.

(5) Where the Board refuses an application under sub-rule (3), it shall direct the first party to file the document or material that was the subject of the application and provide the second party with a copy of the document or material within such period as the Appeal Board may determine.

(6) Where the Board accedes to a request and grants authority for any document or material not to be disclosed by the first party, it shall

(a) so notify the second party providing its reasons for the authorisation; and

(b) consider the relevance of the restricted document or material to the appeal so that non-disclosure of the document or material does not prejudice the second party.

Directions

9. (1) The Board may at any time give directions to enable the parties to

(a) prepare for the hearing of an appeal;

(b) assist the Board to determine the issues in the appeal; and

(c) generally ensure the just, expeditious and economical determination of an appeal.

(2) The Board may give directions on the application of any party or of all the parties or on its own motion and, where it gives a direction

on its own motion, it may (but need not) give prior notice to the parties of its own intention to do so.

(3) An application for directions shall include the reasons for the application.

(4) An application for directions shall be filed and, unless the application is accompanied by the written consent of all the parties or an application without notice is permitted by these Rules, the party making the application shall at the same time send a copy to the other party.

(5) If a party objects to the directions applied for, the Board shall consider the objection and shall, if it considers it necessary for the determination of the application, give the parties an opportunity to make representations.

(6) Directions containing a requirement may specify a time limit for complying with the requirement and may include a statement of the possible consequences of a party's failure to comply with the requirement within the specified time.

(7) Any party may, during the subsistence of a direction and with good cause, apply to the Board to vary the direction and shall notify the other party of such application.

(8) The Board may accede or decline to vary a direction.

Decision on directions

10. (1) Unless the Board otherwise determines, a decision on an application for directions shall be taken by any one or two members nominated by the Chairman and one of those members may be the Chairman.

(2) The two members referred to in sub-rule (1) need not be the same members that are or may be empanelled to hear the appeal to which the directions relate.

Hearing and Decision

Fixing a hearing date

11. (1) Following the filing of the reply by the Commission, or failing any such filing within the stipulated period, and the determination of any directions, the Secretary shall, acting on the instructions of the Chairman (and after consulting with the parties where the Chairman so directs), fix a date on which, and place where, the appeal is to be heard.

(2) The date for the hearing of an appeal shall not, unless the Board directs otherwise, be heard earlier than three weeks after the due date for the filing of the Commission's reply or after the determination of any action required under a direction issued by the Board, whichever is later.

(3) The Board may at any time change the date, time and place of hearing of an appeal and, where such a change occurs, the Secretary shall notify the parties concerned, including the new date, time and place of hearing of the appeal.

Public and private hearing

12. (1) Subject to sub-rule (2), every hearing of an appeal shall be open to the public.

(2) The Board may direct that all or part of a hearing shall be in private upon the application of

(a) all the parties, or

(b) any party, if the Board is satisfied that a hearing in private is necessary, having regard to the interests of security of the parties or any of them or of the proceedings or any unfairness to either of the parties or prejudice to the interests of third parties that might result from holding a public hearing,

if in either case the Board is satisfied that a hearing in private would not prejudice the interests of justice.

Attendance at hearing

13. (1) The following persons are entitled to attend any hearing of an appeal before the Board, whether or not the hearing is in private

(a) the parties and their representatives;

(b) the legal practitioners, if any, representing the parties;

(c) witnesses, as and when they are called by the Board; and

(d) the Secretary and any member of the Board's staff.

(2) The Board may

- (a) permit any other person to attend a hearing of an appeal which is held in private; and
- (b) exclude from the whole or part of a hearing of an appeal any person whose conduct, in the opinion of the Board, has disrupted or is likely to disrupt the hearing of the appeal.

Representation at hearing

14. Every party to a hearing of an appeal is entitled to be represented by a legal practitioner or other representative of his or her choice.

Procedure at hearing

15. (1) Subject to the Act and these Rules, the Board shall conduct hearings of appeals in such manner as it considers most suitable to the clarification of the issues before it and generally to the just, expeditious and economical determination of the proceedings.

(2) At every hearing of an appeal, the parties shall be entitled to

- (a) give evidence;
- (b) call witnesses;
- (c) bring, with the prior consent of the Board, an expert to give expert evidence;
- (d) question any witnesses; and
- (e) address the Board on the evidence, and generally on the subject matter of the appeal.

(3) At every hearing of an appeal, the appellant shall, unless the Board determines otherwise, present his or her appeal first, followed by the responding party.

(4) Where there is more than one appellant, the appellants shall present their appeals in the order in which they are listed on the notice of appeal filed with the Board or in such other order as the Board may permit.

(5) The Board may admit evidence irrespective of whether such evidence would be admissible in a court of law and the Board is, in this regard, not bound by the rules of evidence contained in any enactment or at common law.

(6) Where a party fails to attend or be represented at a hearing of an appeal of which he or she has been duly notified, the Board may, if it is satisfied that there is no good and sufficient reason for the absence –

- (a) proceed with the hearing of the appeal in the absence of the party; or
- (b) give any direction, determine any issue or adjourn the hearing to a specified date.

(7) Where there is more than one appeal before the Board and, in the opinion of the Board, the subject matters of the appeal are the same or essentially the same and concern the same parties or related parties, the Board may, unless the justice of the cases dictate otherwise, consolidate the hearings of the appeals and hear them together as if they were one appeal.

(8) For the purposes of sub-rule (7), the Board may issue such directions as it considers appropriate in all the circumstances.

Procedure not provided under rule 15

16. Where before or during the hearing of an appeal a matter or issue arises for which a specific procedure is not provided under rule 15, the Board shall determine and adopt such procedure as it considers fit in all the circumstances of the appeal and the parties shall be bound by the Board's decision in that regard.

Withdrawing an appeal

17. (1) An appellant may, at any time after filing an appeal but before hearing on the appeal is concluded, withdraw the appeal by filing a notice of withdrawal in **Form 4**.

(2) The appellant shall immediately after filing a notice of withdrawal in accordance with sub-rule (1) serve a copy of the notice on the Commission.

(3) For the purposes of sub-rule (1), a hearing on an appeal is concluded if

- (a) in the case of an oral hearing before the Board, all the parties have made their presentations and no further action is required from any of them before the Board takes its decision on the appeal; and

- (b) in the case of an appeal to be decided under rule 18, no further document or material is received from any of the parties within the period specified under rule 7.

Determination without oral hearing

18. (1) The Board may consider and determine an appeal without any oral hearing if the parties agree in writing.

(2) Either party may propose to the other to agree for an appeal to be heard and determined on the basis of the filings and any written representations made, and documentation provided, to the Board and, if the parties so agree, they shall send a written letter duly signed by the parties addressed to the Secretary.

(3) For the purposes of sub-rule (2), the parties may choose to write and submit separate letters, with each signing his or her own letter indicating his or her agreement for an appeal to be heard by the Board in accordance with sub-rule (2).

(4) Rule 17 does not apply to the determination of an appeal under this rule, save that the Appeal Board shall take into account all relevant issues to the just, expeditious and economical determination of the appeal.

Decisions of Board

19. (1) The Board may make its decisions on an appeal orally or in writing, but where a party requests a written decision the Board shall oblige and copies thereof shall be provided to all the parties .

(2) Following a hearing under rule 15 or an agreement for no oral hearing under rule 18, the Board shall take its decision in accordance with section 15 of the Act.

(3) Every decision of the Board shall be presented to the parties orally before the Board or communicated to them in writing.

Miscellaneous

Register of appeals

20. (1) The Secretary shall keep and maintain a register of appeals in which he or she shall make the following entries

- (a) the notice of appeal filed, by simply noting the title of the appeal;
- (b) the parties to the appeal;
- (c) the dates of the appeal and the reply from the Commission;
- (d) the directions, if any, given in respect of an appeal;
- (e) whether the appeal was dealt with under rule 15 or rule 18;
- (f) the decision of the Board;
- (g) the date of withdrawal of an appeal, where such a withdrawal has been filed; and
- (h) such other information as the Board requires generally or in any particular appeal.

(2) The register of appeals shall be open to inspection by any member of the public, unless in any particular case the Board considers it appropriate to prohibit or restrict access to the register.

Ensuring attendance of witnesses

21. (1) The Board has no power to compel the attendance of witnesses.

(2) Every party that wishes to call a witness for any hearing under these Rules shall take such steps as may be necessary to ensure the attendance of the witness before the Board.

Resolving issues of interpretation

22. (1) Where any issue arises in relation to the meaning or interpretation of a provision of these Rules, the Board shall, for the purpose of dealing with an appeal, resolve the meaning or interpretation as it considers fit.

(2) Where the Board resolves the meaning or interpretation of any provision of these Rules pursuant to sub-rule (1), the parties shall be bound by that resolution.

FORM 1

NOTICE OF APPEAL

[Filed pursuant to rule 2 (I)].

**TO THE SECRETARY
FINANCIAL SERVICES APPEAL BOARD**

In the Matter of the Financial Services Commission Act *(add or substitute any financial services legislation that is relevant to the appeal)*

And

In the Matter of an Appeal by *(state the name of the appellant)*

NOTICE IS HEREBY GIVEN that *(name of appellant) of*
(address of appellant) files this notice of appeal to appeal the decision of the Financial Services Commission as provided hereunder.

The appellant’s legal practitioner(s) (if any) in this appeal and address are as follows:

1. Name of Legal Practitioner(s)
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2. Address of Legal Practitioner(s)
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The appellant’s representative(s) (if any) in this appeal and address are as follows:

1. Name of Appellant’s Representative(s)
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2. Address of Appellant's Representative(s)

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The decision(s) of the Financial Services Commission taken on or about the day of , 2... that is/are* being appealed against is/are* as follows:

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The applicant's grounds of appeal are as follows:

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This notice of appeal is filed along with the following documents which the appellant intends to rely upon in support of the grounds of appeal –
 List of documents –

In addition, the appellant submits herewith an affidavit/affidavits* duly sworn _____ to _____ by _____ –

The appellant’s address for service is as stated above/as follows* –

I confirm that a copy of this notice of appeal has been/will be* served on the Financial Services Commission on the _____ day of _____, 2....

This notice of appeal is filed this _____ day of _____, 200...

Signed:

.....
By appellant/On behalf of appellant*

**Strike out as necessary*

FORM 2

REPLY TO THE APPELLANT’S GROUNDS OF APPEAL

[Filed pursuant to rule 4 (2)]

**TO THE SECRETARY
FINANCIAL SERVICES APPEAL BOARD**

In the Matter of the Financial Services Commission Act *(add or substitute the financial services legislation mentioned in the appellant’s notice of appeal in Form 1)*

And

In the Matter of an Appeal by *(state the name of the appellant)*

The Financial Services Commission (“the Commission”) provides this Reply in response to the notice of appeal filed by
(name of appellant) of
(address of appellant) on the _____ day of _____, 200...

The Commission refers to the following matters contained in the appellant’s grounds of appeal which the Commission admits:

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The Commission refers to the following matters contained in the appellant's grounds of appeal which the Commission disputes:

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In addition to the above, the Commission avers the following which it considers essential to the Board's consideration and determination of the appeal:

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This Reply is filed along with the following relevant documents which the Commission intends to rely upon in support of the Reply:

List of documents

In addition, the Commission submits herewith an affidavit/affidavits* duly sworn to by
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I confirm that a copy of this reply to the appeal has been/will be* served on (state name of the appellant) on the
day of 2....

This Reply is filed this day of , 2....

Signed:
.....
For and on behalf of the Financial Services Commission

**Strike out as necessary*

FORM 3

APPLICATION REQUESTING AUTHORITY TO RESTRICT THE FILING OR DISCLOSURE OF DOCUMENT OR MATERIAL

[Filed pursuant to rule 8 (3)]

**TO THE SECRETARY
FINANCIAL SERVICES APPEAL BOARD**

In the Matter of the Financial Services Commission Act (add or substitute the financial services legislation mentioned in the appellant's notice of appeal in Form 1)

And

In the Matter of an Appeal by (state the name of the appellant)

This application is submitted by (appellant/Financial Services Commission)* requesting authority from the Board to authorise the appellant/Financial Services Commission* not to file or disclose the following documents or material on the ground that such filing or disclosure would not:

- (a) be in the public interest; or
- (b) be fair, having regard to,
 - (i) the likely significance of the document or material to the appeal before the Board; and
 - (ii) the potential prejudice to the commercial interests of a person not connected to the appeal which the filing or disclosure would cause.

The documents/material concerned are

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These documents/material are/are not submitted with this application but, where they are not submitted with this application, they will be made available to the Board, together with a statement of the reasons for the application.

This application is filed this _____ day of _____, 2....

Signed:

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By or for and on behalf of the appellant herein/Financial Services Commission*

**Strike out as necessary*

FORM 4

NOTICE OF WITHDRAWAL OF APPEAL

[Filed pursuant to rule 17 (1)]

**TO THE SECRETARY
FINANCIAL SERVICES APPEAL BOARD**

In the Matter of the Financial Services Commission Act (add or substitute the financial services legislation mentioned in the appellant's notice of appeal in Form 1)

And

In the Matter of an Appeal by (state the name of the appellant)

NOTICE IS HEREBY GIVEN that _____ (name of appellant) of _____ (address of appellant) files this notice to withdraw the notice of appeal filed on the _____ day of _____, 2 . Accordingly, the appellant no longer wishes to pursue the appeal that is the subject of the said notice of appeal.

SCHEDULE 3

[Section 21 (1)]

FEES APPLICABLE TO APPEALS

The following fees apply in respect of the matters specified below:

No.	Description of Action	Fee Payable (USD)
1.	Filing notice of appeal under rule 2 (1)	200
2.	Filing reply under rule 4 (2)	100
3.	Filing additional documents under rule 6 (for each separate filing)	100
4.	Request to amend notice of appeal	150
5.	Request to amend reply	150
6.	Application requesting authority to restrict filing or disclosure of document or material under rule 7 (3)	120
7.	Notice of withdrawal of appeal under rule 16 (1)	50
8.	Any other service provided by the Board	50

Passed by the House of Assembly this 20th day of April, 2016.

Ingrid Moses-Scatliffe,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

This Act establishes an independent Financial Services Appeal Board (“the Board”) which will have the statutory responsibility of receiving and hearing appeals emanating from decisions made by the Financial Services Commission (“the Commission”) in the exercise of its powers and the performance of its functions under the Financial Services Commission Act, 2001 (FSCA) and related financial services legislation. The current Financial Services Appeal Board is established under Part VI of the FSCA and the members of its board are paid allowances by the Commission. This arrangement was necessary when that regime was first established in 2001. However, with the change in the circumstances and growth of the financial services industry, coupled with the need to demonstrate greater transparency, it has become necessary to remove the financial services appeal board from within the structure of the FSCA. This reform is considered to be more in sync with the rules of good governance and provides both transparency and confidence in the appeal process in relation to financial services matters.

It is the expectation that, upon the enactment and bringing into force of this Act, matters relating to the administration of the Board will be taken over and facilitated by the Government. The Board will function and operate independently and will not take instructions from any person or authority. This level of independence is considered critical in a mature financial services environment and would at the same time engender greater confidence in the industry.

The Act has 25 Sections dealing with preliminary matters relating to the short title of the Act and interpretation of specific terms (Sections 1 and 2) and the establishment and operations of the Board (Sections 3 to 12); it also deals with the procedures for commencing and processing appeals, and miscellaneous matters considered relevant to the efficient and effective functioning of the Board. It makes provisions relative to the composition, functions and meetings of the Board. In addition, it outlines the matters that would disqualify a person from becoming a member of the Board and how vacancies are to be dealt with whenever they occur. The Act further provides mechanisms for the resignation and removal of members of the Board, their remuneration as well as their duty to disclose their interest in any matter before the Board in order to prevent conflicts of interest situations compromising the hearing of an appeal.

Matters relating to the conduct of appeals, the power to empanel an appeals board to hear an appeal and how decisions on appeals are to be dealt with are covered under Sections 13 to 16 of the Act. In particular, it should be noted that in order to ensure the efficacy of the decisions of the Commission, Section 13 specifically rules out the possibility of an appeal on decisions which relate to the Commission’s

refusal to grant a licence, registration, recognition or approval or provision of document, or a decision relative to the resolution of a regulated person, or the Commission's decisions in imposing administrative penalties, or any other matter that may be specified under another enactment as not appealable. Thus an appeal would essentially relate to matters of process and whether or not established laws and procedures have been followed. Sections 17 to 19 deal with the exclusion of the rules of evidence in hearings before the Board, the service of documents and the commencement and conclusion of appeals.

The Miscellaneous section of the Act (Sections 20 to 25) deals with such matters as fees and expenses of the Board, the establishment of the register of appeals, and the Board's power to issue practice directions. Furthermore, the Act requires the Board to prepare and submit annual reports on its work and also empowers the Board to make and issue rules relative to its functions for the purpose of facilitating the receipt and processing of appeals and complaints. Such rules, whenever issued, would be in addition to the rules of procedure outlined in Schedule 2 of the Act. The Cabinet is empowered to amend Schedule 1 (relating to the form regarding a Board member's declaration of interest) and Schedule 3 (relating to the fees chargeable with respect to appeals). The Board is being empowered to amend Schedule 2 (relating to the Board's rules of procedure) in such manner as the Board considers fit.

The enactment of this Act will further strengthen the Territory's financial services sector and bring about the desired level of transparency in dealing with complaints emanating from the financial services industry.

This Act was introduced in the House of Assembly on the 25th day of January, 2016, taken through its remaining stages and passed on the 20th day of April, 2016.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Baba Aziz
Attorney General
29th April, 2016