The Securities Act 2001

SECURITIES (CROWDFUNDING) RULES

NO. [X] OF 2023

IN EXERCISE of the powers conferred by section 161 of the Securities Act 2001, the Commission makes the following procedural Rules to govern equity crowdfunding in the Eastern Caribbean Securities Market.

CITATION AND COMMENCEMENT

1. These Rules may be cited as the Securities (Crowdfunding) Rules No. [X] of 2023 and shall come into force on the date prescribed by the Commission.

INTERPRETATION

2. In these Rules:

'Accredited Investor' means a person who comes within any of the following categories, at the time of the sale of securities to that person –

(a) The Eastern Caribbean Central Bank;

(b) a bank licensed under the Banking Act, or licensed and operating under a similar legislation in a jurisdiction outside of the Currency Union, whether acting for its own accounts or in a fiduciary capacity;

(c) a licensed intermediary or securities firm operating in a jurisdiction outside of the Currency Union, acting for its own account or in a fiduciary capacity;

(d) an insurance company registered under the Insurance Act, or licensed and operating under a similar legislation in a jurisdiction outside of the Currency Union, whether acting for its own account or in a fiduciary capacity;

(e) an investment fund licensed or registered under this Act or regulated and operating in a jurisdiction outside of the Currency Union;

(f) an employee benefit plan if the investment decision is made by a plan fiduciary, which is a licensed bank or trust company licensed, an insurance company registered under the Insurance Act of an ECCU member territory, or a licensed securities firm, or if the employee benefit plan has total assets in excess of the prescribed amount;

DRAFT

(g) a senior officer or general partner of the issuer of securities being offered or sold;

(h) an individual whose individual net worth at the time of the purchase exceeds EC$500,000 and/or individual annual income has been in excess of EC$200,000 in each of the two most recent years, and has reasonable expectation of reaching the same income level in the current year;

(i) an individual whose joint net worth with that individual's spouse, at the time of the purchase exceeds EC$1,000,000 or whose joint income with that individual's spouse has been in excess of $600,000 in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year;

(j) a person, other than an individual, with total assets in excess of EC$5,000,000, not formed for the specific purpose of acquiring the securities;

(k) an entity in which all of the equity owners are accredited investors;

(l) the government of a member territory or a public authority established in a member territory;

(m) the government of any foreign jurisdiction, or an agency of that government;

(n) a person purchasing on behalf of an account that is managed on a fully discretionary basis by that person, if that person is registered or authorised to carry on business as an adviser managing securities on a discretionary basis under the laws of a member territory, or foreign jurisdiction;

(o) a person residing outside of the Currency Union who qualifies as an accredited investor (however defined) under similar securities legislation of that person's country of residence, or an individual resident outside the Currency Union who meets the criteria specified in paragraph (h) or (i) and is otherwise lawfully entitled to purchase securities under similar securities laws applicable to such purchase;

'Commission' means the Eastern Caribbean Securities Regulatory Commission;

'Crowdfunding' means the offer or sale of securities of a limited scale usually for start-ups, micro, small and medium enterprises (MSME) which is conducted via an online electronic platform.

'Crowdfunding Intermediary' means an authorized crowdfunding portal that mediates offers and sales of securities via crowdfunding through an online electronic platform.

DRAFT

'Crowdfunding Issuer'	refers to the originator, maker, obligor, or creator of the security which shall be offered for sale through a crowdfunding intermediary;
'Crowdfunding Portal'	means a program or application which is accessible via the Internet or other similar electronic communication medium through which an authorized crowdfunding intermediary permits transactions involving the offer or sale of securities;
Financial Institution	an entity that is engaged in the conduct of banking business or business of a financial nature as defined in the Banking Act 2015
Financial Service Provider	means a person engaged in the business of providing financial services under the authorization, registration or licensing by a financial sector regulator;
'Material information'	means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer;
'Retail Investor'	means an investor who is not an accredited investor;
'Securities'	means securities as defined in the Securities Act 2001;
'***Securities Act'***	refers to the Securities Act, Chap. S13 of Anguilla, No. 14 of 2001 of Antigua and Barbuda, No. 21 of 2001 of the Commonwealth of Dominica, Chap. 299A of Grenada, Chap. 11.01 of Montserrat, Chap. 21.16 of St Christopher and Nevis, Chap. 12.18 of Saint Lucia, Chap 261 of Saint Vincent and the Grenadines and any amendments thereto.
'***User***'	means issuers, investors, potential investors who have the authority to use or access a crowdfunding intermediary's platform.

PART I
ELIGIBILITY REQUIREMENTS FOR CROWDFUNDING ISSUERS

3. Eligibility

(1) A crowdfunding issuer must:

(a) be a business licence holder in an ECCU member country or a natural person resident in an ECCU member country; and

(b) be accredited and/or accepted by a crowdfunding intermediary authorised under these Rules, to utilise its platform; and

DRAFT

(c) have a clear business operation and a plan to operate such business with the proceeds raised through the crowdfunding intermediary portal.

4. Prohibited Crowdfunding Issuers

(1) The following entities are prohibited from raising funds via crowdfunding:
   (a) financial institutions and financial service providers
   (b) listed companies and their affiliates and subsidiaries; and
   (c) any other entity specified by the Commission.

5. Disqualification of Crowdfunding Issuers

(1) A crowdfunding issuer may be disqualified from raising funds through the crowdfunding intermediary if, within the last 5 years, the crowdfunding issuer has:
   (a) been declared insolvent;
   (b) violated any of the provisions of these Rules and/or any provisions of any other laws;
   (c) been engaged in fraudulent transactions; or
   (d) made or makes any false or misleading representation of material facts in any disclosure concerning itself or its securities.

PART II
AUTHORISATION AND ELIGIBILITY REQUIREMENTS FOR CROWDFUNDING INTERMEDIARIES

6. Authorisation of Crowdfunding Intermediaries

(1) A person engaging in a crowdfunding transaction must be a crowdfunding portal authorized by the Commission, in accordance with these Rules.

(2) Prior to engaging in crowdfunding activities, a crowdfunding portal must seek authorization from the Commission as a crowdfunding intermediary, by completing and submitting an application on **Form CF-1** along with the prescribed fee.

(3) The Commission shall refuse to grant authorisation as a crowdfunding intermediary unless the applicant:
   (a) demonstrates the capacity to operate an orderly, fair and transparent market in relation to the offer and sale of securities through its electronic facilities;

   (b) has appointed a board, senior management, and any other person who is primarily responsible for its operations, who are fit and proper to be engaged in the operations of a crowdfunding intermediary;

   (c) can comply with all the requirements under these Rules, including any directive or conditions imposed by the Commission;

   (d) possesses the capability to manage risks associated with its business and operations including demonstrating the processes and contingency arrangements established in the event that it is unable to carry out its operations;

DRAFT

(e) establishes and maintains policies and procedures to monitor all crowdfunding activities on its platform and ensure compliance with *these Rules*;

(f) appoints at least one lead person as required under *Rule 9, Part III of these Rules*;

(g) has the necessary systems to identify and report a person in breach of these Rules or any other applicable laws;

(h) has in place, procedures for the conduct of appropriate due diligence and to facilitate oversight of any material outsourcing arrangements;

(i) implements an operational framework, policies and procedures that provide for-
(i) the protection of investors in crowdfunding;
(ii) ensuring the proper functioning of its crowdfunding operations;
(iii) promoting fairness and transparency;
(iv) managing any conflict of interest that may arise;
(v) promoting fair treatment of its users or any person who subscribes for its services;
(vi) promoting fair treatment of any issuer, or potential issuer, on its portal;

(4) The applicant shall at all times, have sufficient financial, human, and other resources to conduct its crowdfunding activities.

(5) The Commission may require an applicant to, *inter alia*:
(a) provide assurance regarding its information technology system readiness; and

(b) a written declaration by the intermediary's internal auditor or lead person confirming that the intermediary has, in relation to its crowdfunding activities:

(i) sufficient human, financial and other resources to operate;

(ii) implemented adequate security measures, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record-keeping and audit trail, for daily operations and to meet emergencies; and

(iii) implemented the appropriate information technology systems and has available necessary technical support arrangements.

7. Authorisation of Crowdfunding Intermediary which is a Crowdfunding Portal

(1) An entity for authorisation as a crowdfunding portal shall:
(a) be incorporated or registered under the Companies Act in an ECCU member country;
(b) at all times have paid-up capital of a minimum of XCD67,500;
(c) have the capacity to meet any additional financial requirements as may be determined by the Commission;
(d) have account opening and disclosure rules;
(e) submit documented evidence to the Commission that the entity's operations are compliant with AML/CFT legislative requirements in the jurisdiction in which it operates;

DRAFT

(f) submit a report to the Commission in the prescribed form that the entity has in place business continuity plan and has implemented appropriate cyber security measures.

(g) have business conduct rules.

8. Policies and Procedures

(1) A crowdfunding intermediary shall implement written policies and procedures reasonably designed to achieve compliance with the requirements of these Rules relating to its business as a crowdfunding portal.

(2) A crowdfunding intermediary shall continue to comply with the requirements of anti-money laundering legislation, corporate governance rules and data confidentiality requirements.

(3) **Prohibitions**

(a) A crowdfunding intermediary shall not offer investment advice or recommendations, on the securities offered or displayed on its portal, compensate employees, agents or other persons for such solicitation or based on the sale of securities displayed or referenced on its portal.

(b) A crowdfunding intermediary that is carrying out any other regulated activity shall clearly inform its crowdfunding clients of the other regulated activities that it is engaged in.

(c) A funding portal shall not hold, manage, possess or otherwise handle investor securities.

(4) **Inspections and Examinations**

(a) A crowdfunding intermediary shall permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, information technology platforms and records by the Commission.

(b) The Commission may assign a third party to conduct an inspection or examination under Rule 4(a).

PART III
APPOINTMENT OF LEAD PERSON

9. Appointment of Lead Person

(1) A crowdfunding intermediary shall appoint at least one Lead Person who shall be the chief executive of the intermediary or any person who is primarily responsible for the operations and financial management of the crowdfunding intermediary.

(2) At all times, the Lead Person shall undertake the role of the main contact person for the purpose of liaising with the Commission and performing any duty as may be directed by the Commission.

(3) Any vacancy in relation to the position of a Lead Person shall be filled within one month from the date of resignation or the effective date of resignation of the Lead Person.

DRAFT

(4) A crowdfunding intermediary shall ensure that the Lead Person and other staff associated with the crowdfunding intermediary undergo relevant training with regard to crowdfunding and its related activities.

PART IV
DISCLOSURE REQUIREMENTS AND PERMITTED ACTIVITIES OF CROWDFUNDING PORTALS

10. Information

(1) A crowdfunding intermediary shall disclose and display prominently on its portal, the following information relating to its crowdfunding business including –

(a) information on the procedures and processes to facilitate investments;

(b) general risk warning on participating in crowdfunding;

(c) rights of investors participating in crowdfunding;

(d) complaints handling or dispute resolution procedures;

(e) commissions, approved fees, charges and other expenses imposed on crowdfunding issuers and investors;

(f) processes and contingency arrangements in the event of cessation of business or the crowdfunding intermediary is unable to carry out its operations.

(2) The above information must be available to all persons accessing the funding portal.

(3) A crowdfunding intermediary shall disclose prominently on its platform relevant information about each issuer, including as a minimum –

(a) the name of the issuer, the full name and position of each of its directors and officers;

(b) the place of incorporation of the issuer and the place of domicile of each director and officers;

(c) a description of the issuer's business;

(d) the most recent financial statements, if any, of the issuer;

(e) the valuation of the issuer's business, its current borrowing levels and the source of its borrowing and its liquidity;

(f) a detailed description of the proposal for which it is seeking funding including –

(i) the total funding sought;
(ii) how the funds will be used; and
(iii) the target level of funding sought and what will happen if that level is not met or is exceeded;

DRAFT

(g) the results of the due diligence carried out by the crowdfunding intermediary on the issuer and any limits on the due diligence that could be carried out;

(h) any grading or rating by the crowdfunding intermediary of the issuer's creditworthiness, including –

(i) how the grading or rating has been assessed;
(ii) an explanation of what the different grading or rating levels mean; and
(iii) a clear statement that this should not be taken as advice about whether money should be invested with the issuer;

(i) any rights attached to the issue of the share or debenture, such as dividend or interest, voting or preemption rights, where applicable;

(j) whether any security is being provided and, if so, the circumstances in which it might be exercised and any limitations on its use;

(k) if applicable, any other reward or benefit attaching to the investment and the terms on which it is available;

(l) whether investors have any protection from their shareholding being diluted by the issue of further shares;

(m) that the issuer, and information provided about the issuer, are not approved by the Commission; and

(n) such other disclosures as the Commission may deem necessary.

11. Investor Communications

(1) A crowdfunding intermediary shall ensure that its crowdfunding portal provides channels by which investors and potential investors can communicate with each other and with representatives of the crowdfunding issuer about offerings made available on the crowdfunding portal.

(2) A crowdfunding intermediary shall not participate in the communications referred to in Rule 11(1), other than to establish guidelines for these communications and to handle abusive or potentially fraudulent communications.

(3) A crowdfunding intermediary shall permit public access to view the discussions made via the crowdfunding portal but shall restrict the posting of comments to only those persons who have opened an account with the crowdfunding intermediary.

(4) A crowdfunding intermediary shall require that any person posting a comment in the communication section of the crowdfunding portal shall clearly and explicitly disclose whether he or she is a founder or an employee of a crowdfunding issuer, is engaging in promotional activities on behalf of the crowdfunding issuer, or is otherwise compensated, whether in the past or prospectively, to promote the crowdfunding issuer's offering.

12. Due Diligence of Crowdfunding Issuers

(1) A crowdfunding intermediary shall disclose the extent of its review, due diligence exercise and/or risk assessment activities carried out on prospective crowdfunding issuers.

DRAFT

(2) The scope of the review and due diligence exercise by a crowdfunding intermediary shall include taking reasonable steps to:
   (a) conduct background checks and satisfy anti-money laundering requirements on the crowdfunding issuer to ensure that the board is fit and proper;
   (b) verify the business proposition of the crowdfunding issuer;
   (c) conduct an assessment of the creditworthiness of the crowdfunding issuer and verification of the disclosure documents filed with the crowdfunding intermediary.

(3) A crowdfunding intermediary shall ensure a shareholder register is maintained at all times by all crowdfunding issuers that offer securities through its crowdfunding portal.

13. A crowdfunding intermediary shall monitor and ensure compliance by itself, its officers and staff and the issuers and users with the requirements of these Rules and other laws, rules and regulations that may be applicable to its operations.

14. Other Permitted Activities

(1) A crowdfunding intermediary shall determine whether and under what terms to allow an issuer to offer and sell securities through its crowdfunding portal.

(2) A crowdfunding intermediary shall:
   (a) Apply objective criteria to highlight offerings on its crowdfunding portal where:
      (i) the criteria are reasonably designed to highlight a broad selection of crowdfunding issuers offering securities through its crowdfunding portal, such criteria are applied consistently to all crowdfunding issuers and offerings and are clearly displayed on the crowdfunding portal;

      (ii) the criteria may include, *inter alia*, the type of securities being offered, the geographic location of the issuer, the industry or business segment of the issuer, the number or amount of investment commitments made, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount and the minimum or maximum investment amount, but the crowdfunding portal may not highlight a crowdfunding issuer or offering based on the advisability of investing in the crowdfunding issuer or its offering; and

      (iii) the crowdfunding portal does not receive special or additional compensation for highlighting one or more crowdfunding issuers or offerings on its portal.

   (b) provide search functions or other tools that investors can use to search, sort, or categorize the offerings available through the crowdfunding portal according to objective criteria, where

   (c) advise a crowdfunding issuer about the structure or content of its offering, including assisting the crowdfunding issuer in preparing the offering documentation.

   (d) compensate third parties for referring a person to the crowdfunding portal, provided that such third parties do not provide the crowdfunding portal with personal

DRAFT

information of any potential investor, and the compensation, other than that paid to a licensed broker-dealer, is not based, directly or indirectly, on the purchase or sale of a security that is offered on or through the crowdfunding portal.

(e) pay or offer to pay any compensation to, or receive compensation from, a licensed broker-dealer for services, including referrals in connection with the offer or sale of securities by the crowdfunding portal, provided that such services-

(i) provided pursuant to a written agreement between the crowdfunding portal and the licensed broker-dealer; and

(ii) compensation is permitted under these Rules.

(f) Advertise its crowdfunding portal and identify one or more crowdfunding issuers or offerings available on its crowdfunding portal on the basis of objective criteria, provided that-

(i) the criteria are reasonably designed to highlight a broad selection of crowdfunding issuers offering securities through its crowdfunding portal, such criteria are applied consistently to all potential crowdfunding issuers;

(ii) the criteria may include, *inter alia*, the type of securities being offered, the geographic location of the crowdfunding issuer, the industry or business segment of the crowdfunding issuer, the expressed interest by investors, as measured by number or amount of investment commitments made, progress in meeting the crowdfunding issuer's target offering amount or, if applicable, the maximum offering amount and the minimum or maximum investment amount; and

(iii) the crowdfunding portal does not receive special or additional compensation for identifying the crowdfunding issuer or offering in this manner.

(g) deny access to its crowdfunding portal to, or cancel an offering of a crowdfunding issuer for fraud or other criminal activity if the crowdfunding portal has a reasonable basis for believing that the crowdfunding issuer or the offering presents the potential for fraud or other criminal activity or otherwise raises concerns about investor protection.

(h) accept, on behalf of a crowdfunding issuer, an investment commitment for securities offered by that crowdfunding issuer on the crowdfunding portal;

(i) direct investors where to transmit funds or remit payment in connection with the purchase of securities offered and sold via crowdfunding, as authorised by these Rules; and

(j) direct the assigned bank to release proceeds to a crowdfunding issuer upon completion of a crowdfunding offering or to return proceeds to investors in the event an investment commitment or an offering is cancelled.

DRAFT

15. Prohibited Activities

(1) A crowdfunding intermediary shall not-

(a) Subject to *Rule 8(3)(b),* offer investment advice or recommendations or engage in any activities that could be construed as investment advice and/or automatically allocate investor funds to crowdfunding projects;

(b) solicit purchases, sales or offers to buy the securities offered or displayed on its crowdfunding portal;

(c) compensate employees, agents, or other person for such solicitation or based on the sale of securities displayed or referenced on its crowdfunding portal;

16. Immediate Notifications to the Commission

(1) A crowdfunding intermediary shall immediately notify the Commission of-

(a) any irregularity or breach of any provision of these Rules, including any alleged or suspected violations of any law or guidelines in relation to money laundering and terrorism financing by its participants;

(b) any material change in the information submitted to the Commission; and

(c) any matter which adversely affects or is likely to adversely affect its ability to meet its obligations or to carry out its functions under these Rules.

PART V
CONFLICTS OF INTEREST AND FRAUD RISK

17. Managing Conflicts of Interest

(1) A crowdfunding intermediary shall:

(a) disclose on its website the source of any conflicts of interest and the steps taken to mitigate these areas of conflict;

(b) establish a framework and policies and procedures to effectively and efficiently manage conflicts of interest.

(2) A crowdfunding intermediary and its officers are prohibited from providing any financial assistance to investors to invest in the securities offered on or through its crowdfunding portal.

(3) A crowdfunding intermediary is prohibited from providing any funding to issuers or investing in any of the securities offered on or through its crowdfunding portal.

DRAFT

(4) Notwithstanding Rule 17(3), officers of the crowdfunding intermediary are permitted to invest subject to the implementation of the appropriate processes and procedures that are satisfactory to the Commission, to manage conflicts of interest by the crowdfunding intermediary.

18. Managing Fraud Risk

(1) A crowdfunding intermediary shall take all reasonable steps to ensure that all crowdfunding issuers utilizing its portal -

(a) do not engage in fraudulent activity through the crowdfunding intermediary portal. In satisfying this requirement, a crowdfunding intermediary may rely on the representations of the crowdfunding issuer regarding compliance with these Rules unless the crowdfunding intermediary has reason to doubt the reliability of those representations;

(b) maintain accurate business records in accordance with these Rules including records of the holders of its securities.

(2) A crowdfunding intermediary shall deny access to a crowdfunding issuer if the crowdfunding intermediary reasonably believes that-

(a) The crowdfunding issuer or any of its officers, directors or beneficial owners are not fit and proper persons. In satisfying this requirement, a crowdfunding intermediary shall, at a minimum, conduct a background and securities enforcement regulatory history check on each crowdfunding issuer whose securities are offered by the crowdfunding intermediary and on each officer, director or beneficial owner of 20 per cent or more of the crowdfunding issuer's outstanding securities.

(b) The crowdfunding issuer presents the potential for fraud or otherwise raises concerns about investor protection. In satisfying this requirement, a crowdfunding intermediary shall deny access if it reasonably believes that it is unable to adequately or effectively assess the risk of fraud of the crowdfunding issuer or its potential offering.

(3) Where a crowdfunding intermediary becomes aware of information after it has granted access, that causes it to reasonably believe that the crowdfunding issuer or the offering presents the potential for fraud or otherwise raises concerns about investor protection, the crowdfunding intermediary shall promptly remove the offering from its crowdfunding portal, cancel the offering and return or direct the return of any funds that have been committed by investors in the offering.

PART VI
EXEMPTION FROM PROSPECTUS AND REGISTRATION REQUIREMENTS

19. Crowdfunding prospectus and registration exemption

(1) Pursuant to section 92(1)(c) of the Securities Act, an offer of securities by an eligible crowdfunding issuer of an eligible security of its own issue to a person or company shall be deemed to be a private placement and shall be exempt from the prospectus and registration requirements under the Securities Act.

(2) Rule 19(1) shall only apply to securities offered under these Rules and where these securities are-

(a) purchased by a person as principal;

DRAFT

(b) offered by an entity that is registered or incorporated under the laws of an ECCU member country;

(c) accepted for offer and sale on an authorised crowdfunding portal; and

(d) the crowdfunding issuer makes available to the investor, through the crowdfunding portal, a crowdfunding offering document (**Form CF-4**) that is in compliance with these Rules and contains the following, as may be applicable
  (i) Certificates made in accordance with Rule 20
  (ii) Right of withdrawal
  (iii) Liability for misrepresentation – reporting issuers in accordance with Rule 23
  (iv) Liability for untrue statement – non-reporting issuer in accordance with Rule 24.

(3) A crowdfunding issuer may offer securities up to EC$5,000,000 within a 12-month period;

(4) Notwithstanding the limits in Rule 19(3) above, the Commission may, at its discretion, set funding limits and also limit the number of investors for individual projects;

(5) The crowdfunding prospectus and registration exemption shall not be available if any of the following apply:

(a) The proceeds of the offer are used by the crowdfunding issuer to invest in, merge with or acquire a third-party business;

(b) The crowdfunding issuer previously offered securities in reliance on the crowdfunding prospectus exemption and is not in compliance with any of the following within the last 5 years:
  (i) Filing or delivery of crowdfunding offering document
  (ii) Annual disclosure of use of proceeds
  (iii) Period of time for providing ongoing disclosure
  (iv) Books and records;

c) The crowdfunding issuer is a reporting issuer and is not in compliance with its reporting obligations under securities legislation, including under these Rules, within the last 5 years;

(c) The crowdfunding issuer has previously contravened any aspect of these Rules or any other applicable laws or rules, within the last 5 years.

20. Certificates

(1) A crowdfunding offering document made under Rule 19(2)(d) must contain a certificate executed by the crowdfunding issuer, which

(a) if the issuer is a reporting issuer, states that "*This crowdfunding offering document does not contain a misrepresentation. Investors of securities have a right of action in the case of a misrepresentation."*; or

DRAFT

(b) if the issuer is not a reporting issuer, states that "*This crowdfunding offering document does not contain an untrue statement of a material fact. Investors in securities have a right of action in the case of an untrue statement of a material fact."*

(2) A certificate made under Rule 20(1) must be true as at the date the certificate is signed, the date the crowdfunding offering document is made available to investors and the time of the closing of the distribution.

(3) If a certificate made under Rule 20(1) ceases to be true after a crowdfunding offering document is made available to an investor, the issuer shall-

(a) amend the crowdfunding offering document and provide a newly dated certificate executed by the crowdfunding issuer, in accordance with the applicable Rule; and

(b) provide the amended crowdfunding offering document to the crowdfunding portal for the purpose of making it available to investors.

21. Right of Withdrawal

(1) The crowdfunding offering document made in accordance with *Rule 19(2)(d)* must provide investors with a contractual right to withdraw from any agreement to purchase the security by delivering a notice to the crowdfunding portal within 48 hours after the date of the agreement to purchase and any subsequent amendment to the crowdfunding offering document.

(2) *Rule 21(1)* does not apply if the agreement to purchase the security is made within 48 hours of the closing date of the offer.

22. Additional crowdfunding documents

(1) In addition to the crowdfunding offering document required to be made under *Rule 19(2)(d),* a crowdfunding issuer may make available to an investor only through the crowdfunding portal the following materials –

(a) a term sheet; and

(b) other materials summarising the information in the crowdfunding offering document.

(2) The documents referred to in *Rule 22(1)* must be consistent with the information in the crowdfunding offering document.

(3) If an amended crowdfunding offering document is made available to investors, all materials made available to investors under this Rule must be amended, if necessary, and made available to investors through the funding portal.

23. Filing of crowdfunding offering documents

(1) A crowdfunding issuer shall, no later than 10 days after the closing of the distribution, file with the Commission –

(a) **Form CF-2** - Report of Exempt Securities

(b) Crowdfunding offering document and the additional distribution documents in Rule 22(1)

DRAFT

(2) Upon request, the crowdfunding issuer must deliver to the Commission any additional documents or information, that may be requested.

24. Liability for misrepresentation – reporting issuers

(1) The crowdfunding offering document of a reporting issuer, made in accordance with Rule 19(2)(d), must provide a contractual right of action against the issuer for rescission and damages that -

(a) is available to the investor if the crowdfunding offering document or other materials made available to the investor contain a misrepresentation, without regard to whether the purchaser relied on the misrepresentation;

(b) is enforceable by the investor delivering a notice to the issuer
(i) in the case of an action for rescission, within 180 days after the date of purchase by the investor; or

(ii) in the case of an action for damages, before the earlier of
a. 180 days after the investor first has knowledge of the facts giving rise to the cause of action; or
b. 3 years after the date of purchase,

(c) is subject to the defence that the investor had knowledge of the misrepresentation

(d) in the case of an action for damages, provides that the amount recoverable
(i) does not exceed the price at which the security was distributed; and

(ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the misrepresentation; and

(e) is in addition to and does not detract from, any other right of the investor.

25. Liability for untrue statement – non-reporting issuers

(1) The crowdfunding offering document of a non-reporting issuer, made in accordance with Rule 19(2)(d), must provide a contractual right of action against the issuer for rescission and damages that -

(a) is available to the investor if the crowdfunding offering document or other materials made available to the investor contain an untrue statement of a material fact, without regard to whether the investor relied on the statement;

(b) is enforceable by the investor delivering a notice to the issuer
(i) in the case of an action for rescission, within 180 days after the date of purchase by the investor, or
(ii) in the case of an action for damages, before the earlier of
a. 180 days after the investor first has knowledge of the facts giving rise to the cause of action, or

DRAFT

b. 3 years after the date of purchase;

(c) is subject to the defence that the purchaser had knowledge of the untrue statement of a material fact,

(d) in the case of an action for damages, provides that the amount recoverable
(i) does not exceed the price at which the security was distributed, and
(ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the untrue statement of a material fact, and

(e) is in addition to, and does not detract from, any other right of the investor.

26. Changes to Material Information in Offering document

(1) If there are changes to material information contained in a crowdfunding offering document, the crowdfunding intermediary shall immediately notify any investors who have made investment commitments in the offering, along with notification of the cancellation of the investors' investment commitment

(2) If the investor, following receipt of the material change notification, intends to proceed with the investment, the investor must reconfirm his or her investment commitment within 5 business days following receipt of the notice.

(3) If the investor fails to reconfirm his or her investment commitment within 5 business days, the crowdfunding intermediary, within five days thereafter shall:

(a) send notification to the investor of the cancellation of the investment commitment, the reason for the cancellation and the refund of any amounts that have been received from the investor; and

(b) direct the immediate refund of the investor's funds.

(4) If material changes to the offering document or to the information provided by the issuer regarding the offering occurs within five business days of the maximum number of days that an offering is to remain open, the offering shall be extended to allow for a period of at least 5 business days for the investor to reconfirm his or her investment.

PART VII
REQUIREMENTS FOR CROWDFUNDING OFFERS

27. Offers

There shall only be one crowdfunding intermediary per offering of securities under these Rules.

28. Advertising and General Solicitation

(1) A crowdfunding issuer must not directly or indirectly solicit investors under the crowdfunding prospectus exemption.

DRAFT

(2) Notwithstanding Rule 28(1), the crowdfunding issuer may inform investors that it proposes to offer securities under the crowdfunding prospectus exemption and may refer investors to the crowdfunding portal facilitating the offering.

29. Commissions or fees

(1) No person or company in the crowdfunding issuer's group or director or executive officer of a crowdfunding issuer in the crowdfunding issuer group, may directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person or company in connection with an offer in reliance on the crowdfunding prospectus exemption, other than to a crowdfunding portal.

30. Restriction on lending

(1) No person or company in a crowdfunding issuer's group or director or executive officer of a crowdfunding issuer in the issuer group may, directly or indirectly, lend or finance, or arrange lending or financing, for an investor to purchase securities of the crowdfunding issuer under the crowdfunding prospectus exemption.

31. Conditions for closing of offer

(1) An offer of securities in reliance on the crowdfunding prospectus exemption shall not close unless-

(a) The right of withdrawal has expired;

(b) The aggregate minimum proceeds have been raised through the offering;

(c) The crowdfunding issuer has received-

(i) the purchase agreement entered into between the crowdfunding issuer and the investor;

(ii) a risk acknowledgement form for the investor where the investor positively confirms having read and understood the risk warnings and other information in the crowdfunding offering document;

(iii) where applicable, confirmation and validation that the investor is an accredited investor, if the investment amount is greater than $30,000; and

(iv) a confirmation of investment limits form for the investor.

(2) A crowdfunding intermediary must take reasonable steps to ensure that any transaction documentation is legal, valid and binding.

32. Early Closing of Offer

(1) If the crowdfunding offer achieves the target amount of the offering prior to the deadline identified in its offering document, the offering may close on a date earlier than the deadline identified in the offering document, provided that:

(a) the offer remains open for a minimum of 15 days

DRAFT

(b) the crowdfunding intermediary provides notice to any potential investors, and gives or sends notice to investors that have made investment commitments in the offering of:

(i) the new anticipated deadline of the offering;

(ii) the rights of investors to cancel investment commitments for any reason up to 48 hours after the investment commitment has been confirmed; and

(iii) whether the crowdfunding issuer will continue to accept investment commitments during the 48-hour period prior to the new offering deadline.

(c) the new offering deadline is scheduled for and occurs at least 5 business days after the notice required in Rule 32(b) is provided; and

(d) at the time of the new offering deadline, the issuer continues to meet or exceed the target offering amount.

PART VIII
REQUIREMENTS FOR INVESTING

33. Investor qualification

(1) Prior to accepting any investment commitment, including any additional commitment from the same investor, a crowdfunding investor shall:

(2)

(a) confirm to the crowdfunding intermediary:

that the investor satisfies the investment limits established in these Rules, including a declaration that the investor has not exceeded any applicable investment limits;

(b) confirm by completing and submitting the questionnaire in **Form CF-3** to confirm that the investor understands the key risks of crowdfunding investing;

(c) obtain the following from the investor:

(i) a representation that he understands that the entire amount of his investment may be lost and he is in a financial position to bear the loss of the investment; and

(ii) a questionnaire completed by the investor acknowledging his understanding that-

a. there are restrictions on the investor's ability to cancel an investment commitment and obtain a return of his investment;

b. it may be difficult for the investor to resell securities acquired in reliance on these Rules; and

c. investing in securities offered and sold in reliance on these Rules involves risk, and the investor should not invest any funds in an

DRAFT

offering made in reliance on these Rules unless he or she can afford to lose the entire investment.

(iii) a signed declaration that the investor has not exceeded his investment limit pursuant to Rule 34 of these Rules. The crowdfunding intermediary may request additional information from the investor, including proof of income in support of the signed declaration.

34. Investment Limits

(1) Retail investors with annual income of up to EC$100,000 may purchase securities through a crowdfunding intermediary up to a maximum value of 5 per cent of total annual income in a 12-month period.

(2) Retail investors with annual income greater than EC$100,000 but less than EC$300,000 may purchase securities through a crowdfunding intermediary up to a maximum value of 10 per cent of total annual income in a 12-month period.

(3) Retail investors with net worth between EC$300,000 to EC$500,000 may purchase securities through a crowdfunding intermediary up to 5 per cent of their total net worth in a 12-month period.

(4) Retail investors who have such knowledge and experience in the areas of finance and investments and are capable of evaluating, alone or together with their representatives/agents/ advisors, the merits and risks of the prospective investment will not be subject to the investing limits in *Rule 34(1)*, *34(2) and 34(3).*

35. Notice of Investment Commitment

(1) Once an investment commitment is made, the crowdfunding intermediary will send information about that commitment to the prospective investor including, but not limited to:

(a) price of the securities; and
(b) date and time by which the investor may cancel the investment commitment

36. Accounts and Electronic Delivery of Information

(1) Prior accepting an investment commitment in a crowdfunding transaction under these Rules, the investor must open an account with the crowdfunding intermediary and the crowdfunding issuer must obtain the investor's consent to the electronic delivery of all information.

(2) The crowdfunding intermediary shall provide all the information required to be provided under these Rules.

(3) Unless otherwise indicated in these Rules, in satisfying this requirement, a crowdfunding intermediary shall provide the information through an electronic message that contains the information, through an electronic message that includes a specific link to the information posted on its portal or through an electronic message that provides notice of what the information is and that it can be obtained on the crowdfunding intermediary's portal or on the crowdfunding issuer's website.

DRAFT

(4) Electronic messages include, but are not limited to, email, social media messages, instant messages or other electronic media messages.

37. Investor Information

(1) A crowdfunding intermediary shall not approve an account on its portal relating to any crowdfunding business services, except under a written agreement signed by the participant and returned to the crowdfunding intermediary.

(2) The agreement in Rule 37(1) above shall set out in adequate detail the basis on which those services are provided, including but not limited to, the nature of the relationship, services offered, fees and costs.

(3) In addition to the agreement in Rule 37(1), the crowdfunding intermediary shall deliver to every investor who establishes an account on its portal, information that explains:

(a) the process for the offer, purchase and issuance of securities through the crowdfunding intermediary and the risks associated with purchasing securities in a crowdfunding offer under these Rules;

(b) the types of securities offered and sold under these Rules that are available for purchase on the crowdfunding intermediary's portal and the risks associated with each type of security, including the risk of having limited voting power as a result of dilution;

(c) any restriction on the resale of a security offered and sold under these Rules;

(d) the types of information that a crowdfunding issuer is required to disclose, the period and frequency of the delivery of that information;

(e) the investing limits per investor;

(f) the limitations on an investor's rights to cancel an investment commitment and the circumstances under which an investment may be cancelled by the crowdfunding issuer;

(g) the need for the investor to consider whether investing in a security offered under these Rules is appropriate for the investor;

(h) that following completion of an offering conducted through the crowdfunding intermediary, there may or may not be any ongoing relationship between the crowdfunding issuer and the crowdfunding intermediary.

(4) A crowdfunding intermediary shall ensure that the most current version of the information required under Rule 37(3) is available on its crowdfunding portal at all times and if at any time the crowdfunding intermediary makes a material revision to this information, it shall make the revised materials available to all investors before accepting any additional investment commitments or effecting any further transactions in securities offered under these Rules.

DRAFT

38. Promoters

In establishing an account for an investor, a crowdfunding intermediary shall inform the investor that any person who promotes a crowdfunding issuer's offering for compensation, whether past or prospective, or who is a founder or an employee or a crowdfunding issuer that engages in promotional activities on behalf of the crowdfunding issuer on the crowdfunding portal, shall clearly disclose in all communications on the crowdfunding intermediary's portal, the receipt of the compensation and that he or she is engaging in promotional activities on behalf of the issuer.

39. Compensation Disclosure

When establishing an account for an investor, a crowdfunding intermediary shall clearly disclose the manner in which the crowdfunding intermediary is compensated in connection with offers of securities under these Rules.

PART IX
REQUIREMENTS FOR CROWDFUNDING TRANSACTIONS

40. Maintenance and Transmission of Funds

(1) The proceeds of the offer and sale of crowdfunding securities, or an amount equal to these proceeds shall be credited into a sub-account, moved to a sub-portfolio, or otherwise tracked by the crowdfunding intermediary in an appropriate manner and attested to by a formal internal process.

(2) The crowdfunding intermediary shall direct investors to transmit money or other consideration in relation to crowdfunding offers, directly to a bank that has agreed in writing to hold the funds for the benefit of and to promptly transmit or return the funds to the persons entitled thereto.

(3) A crowdfunding intermediary in a transaction involving the offer or sale of securities shall promptly direct the bank to:

(a) transmit the funds to the crowdfunding issuer when the aggregate amount of investment commitments from all investors is equal to or greater than the target amount of the offering and the cancellation period has lapsed, provided that in no event may the crowdfunding intermediary direct this transmission of funds earlier than 15 days after the date on which the crowdfunding intermediary makes publicly available on its crowdfunding platform, the information required to be provided by the issuer;

(b) return funds to an investor when an investment commitment has been cancelled (including for failure to obtain effective reconfirmation as required under Rule 26); and

(c) return funds to investors when a crowdfunding issuer does not complete the offering.

41. Confirmation of Transaction

DRAFT

(1) A crowdfunding intermediary shall, immediately on confirmation of a transaction in a security in reliance on these Rules, give or send to each investor a notification disclosing:

(a) the date of the transaction;

(b) type of security that the investor is purchasing;

(c) the identity, price and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold;

(d) if a debt security, the interest rate and the yield to maturity calculated from the price paid and the maturity date;

(e) if callable security, the first date that the security can be called by the issuer; and

(f) the source, form and amount of any remuneration received or to be received by the crowdfunding intermediary form persons other than the issuer.

42. Return of Funds

(1) If a crowdfunding issuer does not complete an offering, a crowdfunding intermediary shall within 5 business days:

(a) give or send each investor a notification of the cancellation, disclosing the reasons for the cancellation and the refund amount that the investor is expected to receive;

(b) direct the refund of investor funds; and

(c) prevent investors from making investment commitments with respect to that offering on its crowdfunding portal.

PART X
DISCLOSURES AND RECORD KEEPING

43. Disclosure Obligations of Crowdfunding Issuers

(1) A crowdfunding issuer shall register with a crowdfunding intermediary and provide all necessary information to enable the crowdfunding intermediary to comply with these Rules, which shall include, but is not limited to:

(a) Name, address and contact details of the crowdfunding issuer;
(b) Nature of its business, financial condition, historical reports of operation
(c) Business plan with respect to the crowdfunding offer;
(d) Risk factors of investing in its project;
(e) Procedures for the return of funds if its target offering is not met; and
(f) Procedures to complete or cancel an investment commitment.

44. Annual Reports

DRAFT

(1) A crowdfunding issuer that has offered securities for sale under these Rules shall file with its crowdfunding intermediary and the Commission and post on its website an annual report along with the financial statements of the crowdfunding issuer certified by the chief executive officer of the crowdfunding issuer to be true and complete in all material respects and a description of the financial condition of the crowdfunding issuer.

(2) In the event that a crowdfunding issuer has available financial statements that have either been reviewed or audited by an independent certified accountant, those financial statements shall be provided in accordance with Rule 44(1) and the certification by the chief executive officer will not be required.

(3) A crowdfunding issuer providing financial statements that are not audited or reviewed shall have its principal executive officer provide the following certification:

> *"I, [name of certifying officer], certify that the financial statements of [name of crowdfunding issuer] included in this Form are true and complete in all material respects. These financial statements were not audited or subject to a review by a certified accountant, as permitted by securities legislation"*

(4) If the financial statements referred to in *Rule 44(1*) are accompanied by an auditor's report, the auditor's report must be signed by an auditor.

(5) If the financial statements referred to in *Rule 44(2)* are accompanied by a review report, the financial statements must be reviewed in accordance with acceptable accounting principles and auditing standards and be approved by management of the crowdfunding issuer.

45. Annual disclosure of use of proceeds

(1) The financial statements of a crowdfunding issuer referred to in Rule 44 must be accompanied by a notice that details, as at the date of the issuer's most recently completed financial year, the use of the gross proceeds received by the crowdfunding issuer from an offering made under the crowdfunding prospectus exemption.

(2) A notice referred to in *Rule 45(1)* will not be required to be made, if the crowdfunding issuer -

(a) has disclosed in one or more prior notices the use of the entire gross proceeds from the offering, or

(b) is no longer required to deliver, and make available to purchasers, annual financial statements.

46. Reports, Recordkeeping and other Post Registration/Operations Requirements

(1) A crowdfunding intermediary and crowdfunding issuer shall make, keep and preserve records of all crowdfunding business, including matters pertaining to its governance, financial records, complaints and marketing and sales materials for such periods and furnish copies thereof or make such reports as the Commission by its rules and regulations may prescribe.

DRAFT

(2) Records required to be kept under *Rule 46(1),* shall be kept at the principal place of business of the crowdfunding intermediary and the crowdfunding issuer or such other principal office as shall be designated by the crowdfunding intermediary or issuer.

(3) A crowdfunding intermediary shall, at the end of each year, submit a report on Form CF-5 to the Commission on all crowdfunding transactions on its crowdfunding portal.

(4) A crowdfunding issuer that is not a reporting issuer that offers securities in reliance on the crowdfunding prospectus exemption must make reasonably available to each holder of a security acquired under the crowdfunding prospectus exemption, a Notice of Key Events on Form CF-6 of each of the following events within 10 days of their occurrence-

(a) Discontinuation of the crowdfunding issuer's business

(b) Change in the crowdfunding issuer's industry

(c) Change of control of the crowdfunding issuer.

47. Period of time for providing ongoing disclosure

(1) The obligations of a crowdfunding issuer that is not a reporting issuer, under this Part shall apply until the earliest of the following events:

(a) the issuer becomes a reporting issuer

(b) the issuer has completed a winding up or dissolution of its operations.

Made by the Eastern Caribbean Securities Regulatory Commission this _____ day of _____ 2023.

CHAIRMAN
EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION

DRAFT