



I assent,

EUSTACE JOHN, C.M.G

*Deputy Governor-General*

26<sup>th</sup> November, 2007.

## ISLAND OF NEVIS

### No. 11 of 2007

**AN ORDINANCE** for the promotion, development and furtherance of the financial services industry, businesses and trades in and from Nevis and the general economic development of Nevis and any matter incidental or supplementary thereto by the making of various miscellaneous amendments to the Nevis International Mutual Funds Ordinance, No. 3 of 2004.

*[Published 13<sup>th</sup> December, Official Gazette No.66 of 2007.]*

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same as follows:-

#### **PART I**

##### **Preliminary**

1. This Ordinance may be cited as the **NEVIS INTERNATIONAL MUTUAL FUNDS (MISCELLANEOUS AMENDMENTS) ORDINANCE, 2007** and shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

Short title commencement.

2. In this Ordinance, the “**Principal Ordinance**” means the Nevis International Mutual Funds Ordinance, No.3 of 2004 and, in addition to the further definitions provided for in this Ordinance by way of addition and amendment to the Principal Ordinance, words and expressions used in the Principal Ordinance shall have the same respective meanings when used in this Ordinance.

Interpretation.

#### **PART II**

##### **Miscellaneous Amendments**

3. (1) Section 2(1) of the Principal Ordinance, is amended by inserting the following new definitions as follows:

Further and existing definitions.

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- (a) after the definition of “administrator” and before the definition of “approved professional” there shall be inserted:

“**“affiliate”** shall mean, with respect to a body corporate, a body corporate which is a subsidiary or holding company of that body corporate, or a subsidiary or holding company of a subsidiary or holding company of that body corporate; and, for which purpose, a body corporate is a **“subsidiary”** of another body corporate if that other body corporate, being a **“holding company”**:-

- (a) holds a majority of the voting rights in it;
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors or other management or supervisory members; or
- (c) is a member of it and controls alone, or pursuant to an agreement with other members, a majority of the voting rights with respect to the business and affairs of the body corporate;”

- (b) after the definition of “auditor” and before the definition of “company” there shall be inserted:

“**“body corporate”** means any incorporated entity, including a multiform foundation established under the Multiform Foundations Ordinance, 2004, other than a corporation sole or unincorporated partnership;” and

- (c) after the definition of “regulations” and before the definition of “security” there shall be inserted:

“**“Securities Act”** means the Securities Act, 2001 and any regulations, rules or orders made thereunder; “.

- (2) In section 2(1) of the Principal Ordinance, the following existing definitions shall be amended as follows:

- (a) in the definition of “auditor”, the words “and perform as public accountant” appearing after the word “accountant” shall be deleted and the word “of” appearing before the words “a recognized” deleted and the words “the equivalent in” inserted in substitution therefor;
- (b) in the definition of “manager”, after the word “person” appearing in the first line, the words “not being an

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officer or an employee of a person licensed under this Ordinance or a person licensed under this Ordinance who has been delegated management functions by a mutual fund and” shall be deleted and before the word “management services” shall be inserted the word “investment”;

- (c) in the definition of “prospectus”, the words “private or professional” shall be deleted after the word “public”; and
- (d) in the definition of “recognized country or jurisdiction”, after the words “subsection (3)” the words in parenthesis “(including, where the context permits, the jurisdiction of the Eastern Caribbean Securities and Regulatory Commission as recognized and established under the Securities Act)” shall be inserted.

4. The following amendments shall be made to the Principal Ordinance to provide for disapplications in respect of the provisions of the Securities Act as follows:

Securities Act  
disapplications.

- (a) in section 8 of the Principal Ordinance, the existing section 8 shall be renumbered subsection “(1)” and a new subsection (2) shall be immediately inserted thereafter as follows:
  - “ (2) Subsection (1) does not apply to a public fund to which the provisions of section 45(4) apply in consequence of the application of the Securities Act to that fund.” ;
- (b) in section 18 (1) of the Principal Ordinance after the words “subsection (2)” shall be inserted the words “and subsection (3)” and a new subsection (3) shall be immediately inserted after the existing subsection (2) as follows:
  - “ (3) Subsection (1) does not apply to a private or professional fund to which the provisions of section 45(4) apply in consequence of the application of the Securities Act to that fund.” ;
- (c) in section 23 of the Principal Ordinance, and a new subsection (3) shall be immediately inserted after the existing subsection (2) as follows:
  - “ (3) Subsection (1) does not apply to a person who is licensed under the Securities Act to carry on or hold himself out as carrying on in or from

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within Nevis business as manager or administrator of a mutual fund and to whom the provisions of section 45(4) apply in consequence of the application of the Securities Act to that person.”; and

- (d) in section 45 of the Principal Ordinance immediately after the existing subsection (2) there shall be inserted two new subsections (3) and (4) as follows:

“ (3) The provisions of the Securities Act shall not apply to any public fund that is registered, or private fund or professional fund that is recognized, or to any person who is a licensed manager or administrator, under this Ordinance with respect to any activity or matter that is the subject-matter of the registration, recognition or, as the case may be, licence of that fund or person.

(4) The provisions of this Ordinance, and any regulations, rules or orders made thereunder, shall not apply to any fund or person who is licensed under the Securities Act with respect to any activity or matter which requires the registration, recognition or, as the case may be, licensing of that fund or person under this Ordinance, provided that the fund or person has provided to the Registrar an undertaking in such form as regulations may prescribe, together with the prescribed fee and such other documents and information as the Registrar may request, with respect to the fund or person’s licensing under, and compliance with, the provisions of the Securities Act; and the Registrar has provided to the person a certificate of recognition of the exemption, which shall be renewable annually subject to the payment of the prescribed fee.”.

Extension of requirements to maintain accounting records and financial statements.

5. Section 13(1) of the Principal Ordinance is amended by inserting the words “or recognized private or professional fund,” immediately following the words “registered public fund” occurring in line one thereof.

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6. Section 31(1) of the Principal Ordinance is amended by deleting the comma after the word “public” and inserting the words “or (only if required by the Minister of granting recognition of the private or professional fund) a”.

Limitation on the requirement for directors.

7. Immediately after section 37(6) of the Principal Ordinance, there shall be added a new subsection (7) as follows:

Appellate powers of the Financial Services Commission.

“ (7) The power of the Financial Services Commission to hear an appeal under this section shall be exercised in accordance with, and subject to, the general provisions of sections 6, 7 and 8 of the Financial Services Commission Act, 2000.”

MARJORIE MORTON  
*President*

Passed in the Nevis Island Assembly this 14<sup>th</sup> day of November, 2007.

DWIGHT MORTON  
*Clerk of the Nevis Island Assembly*