

MAY 2012

Staying Connected

For the Alumni of the ECCB's Savings and Investments Course

YOUR FINANCES ...YOUR FUTURE

YOUR FINANCIAL NEWS



Out of the
Frying Pan
...Into the
Fire

talkING

INVESTMENTS

with the Eastern Caribbean Securities Regulatory Commission (ECSRC)

Oh, Money!

GoodFinancialCents



Questions are the enemies of bad investments and the friends of sound investments.



Kiss your way to sound investments - **Keep Investments Simple and Safe.**



Having **clear investment guidelines** and a **sound risk management strategy** will greatly influence how you surmount financial challenges and navigate to achieve your goals.

OUT OF THE FRYING PAN ...

INTO THE FIRE!



We are familiar with and have even echoed the phrase at some point in our lives - ‘**Once bitten, twice shy!**’ This is probably the reason why some persons, weary of the harsh sting of traditional investments that have suffered significant losses, have done a complete 180° turn in the opposite direction running straight into the arms of private investment schemes organised by friends and associates.

The trouble is that many of these private investment schemes are not licensed nor regulated; they either have no contracts or loose contracts which may not be enforceable. Hence the risk and uncertainty from which some investors flee might be heightened in their new investment ‘havens’. This leads one to ponder the maxim, **‘Out of the frying pan, into the fire.’**

While you may have reason to be weary of some traditional investment options, it is critical not to make financial decisions on emotions. Take time to adequately research all prospective investment deals, even the ones promoted by friends and associates. Do not be seduced by the friendship trap.

Be wise and make well informed investment choices.

You have a much better chance of protecting yourself from financial loss and

personal grief, if you ask some simple yet fundamental questions:

- How much do I know about the prospective investment?
- What are the risks associated with the investment?
- Is the prospective investment legitimate and licensed?
- Who is responsible for managing the prospective investment and is the agreement that governs the investment binding and enforceable?
- In whose name are the invested funds registered - a company or the person managing the funds?
- What recourse do I have if I am unable to recoup my principal?

- What is the return on this investment compared to that which can be earned on a savings account or fixed deposit which may have less risk than the investment under consideration?
- Do I understand how the return on the investment is being made and will I receive reports to substantiate what I am told?

A few red flags should immediately go up if you hear the following:

- **This is a very exclusive investment.**
- **Keep this information between us.**
- **We don’t want too many people knowing about this investment.**
- **We don’t have to be registered or licensed.**
- **This is just an investment among close friends and associates.**

Remember no amount of puffing and ranting, crying and moaning will bring your money back once lost; so be wise and make well informed investment choices. [SLW](#)



INVESTMENTS

The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the institution responsible for regulating securities, issuers and intermediaries in the Eastern Caribbean Currency Union.

Your Financial News (YFN) sat down with Sharon Welcome, Secretary to the Eastern Caribbean Securities Commission to discuss the considerations one should take on board in assessing whether or not an offer or sale of investment is legal.

YFN Are all investments required to be registered with the ECSRC?

Sharon Welcome: All investments need not be registered with the ECSRC. The law, as it stands, right now requires that if it is an issue of a security to the general public, or if that security is being offered by a public company, whatever that security is, then that security must be registered and the

disclosure approved by the ECSRC. The definition of a 'public offering' means that the issuer does not classify or qualify an individual for participation.

Notwithstanding what the Securities Act provides for in terms of a private vs. a public offering of a security, one also has to consider the Companies Act of the country in which jurisdiction the investment is being offered. In St. Kitts and Nevis, the Companies Act stipulates that unless the formation documents of the company says that it is a private company, if it has more than fifty members, it can be considered a public company in accordance with the Companies Act of St. Kitts and Nevis.

A person can do whatever he/she wants to do in private. I can collect funds from my family and invest on the ECSE. However, based on the ECSE access rights I would not be able to invest directly because I would not be able to become a member of the ECSE unless I am licensed so I would have to

employ the services of a broker-dealer. However, if I seem to be engaged in investment activity as a business, whether it is a collective investment scheme or not, the fact that I am approaching people to have them invest in products that are designated securities, means that under the definition of holding myself out as providing that service, I would be subject to the broker dealer license requirements.

YFN What if the investment offered is not a security?

Sharon Welcome: Now we have to get an appreciation of what the business is.

If the investor is issued a contract, that contract can be considered to be a security based on how it is formulated. A security is just an agreement of some sort whether it is a standard off the shelf agreement or something that you and I figure that we are willing to

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abide by. But basically what it says is that I am putting up my asset in exchange for a piece of paper that gives me a claim to some future gain. As long as the wording conveys this type of sentiment, then it can be deemed to be a security, even it is not necessarily a share certificate.

YFN If the contract is an IOU, would that allow for an exemption from licensing and registration requirements.

Sharon Welcome If it is an IOU, it can be considered to be a loan. There can be verbal and non-verbal IOUs between parties. But if one makes it a business to issue IOUs to people, the IOU may be considered to be a debt instrument, which is a security.

Now if it is a sou-sou (partner hand) then those are not considered collective investments per say because they are not managed by any one individual. The persons who participate in the sou-sou are individually responsible for it. There is no one person in a sou-sou who is holding himself out as providing a service of lending and properly allocating monies to

any enterprise. A sou-sou does not have a contract.

YFN Can one qualify for exemption from the ECSRC registration requirements if one creates a private investment constituted with less than fifty investors where one is only soliciting persons who are in one's inner circles?

Sharon Welcome Is the investment activity considered a business to that individual?

YFN What constitutes whether it is considered a business or not?

Sharon Welcome Does the person receive a financial benefit from managing the investment?

YFN If the answer is yes, what is the implication?

Sharon Welcome If the activity transfers some sort of financial gain to the person managing the investment that would trigger the requirements of a broker dealer.

YFN So once there is a profit coming to the person coordinating or managing the investment fund then it has to be licensed and registered?

Sharon Welcome The legal term is "by way of business". i.e If the person expects to get some financial gain from the activity (however big or small) and it is a going concern, then the business would have to be registered as a company and licensed as a broker dealer.

There are two things one has to consider. Someone holding himself out as providing investment services which is a licensed activity and the offering of securities to the public which then triggers a disclosure requirement.

YFN What if the company is licensed and registered overseas? Will that company be exempt from licensing and registration requirements?

Sharon Welcome As long as the company is providing services to persons in the local jurisdiction it should be licensed and registered in the jurisdiction in which services are being offered.

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Eastern Caribbean Securities Regulatory Commission

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History ▶

The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the regulatory body for the Eastern Caribbean Securities Market (ECSM), which came into being on 19 October 2001 with the appointment of a Chairman, a Deputy Chairman and three other Commissioners. The ECSM facilitates the dealing in securities in eight English speaking territories in the Eastern Caribbean, namely, Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and The Grenadines. The Eastern Caribbean Securities Regulatory Commission Agreement, was signed by seven member territories on 24 November 2000, and acceded to by Anguilla on 26 October 2001.

The Agreement gained the force of law with the passage of the Eastern Caribbean Securities Act, 2001. The effective date of the Act was 8 October 2001, with the exception of Anguilla.

What We Do ▶

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YFN So in order to assess whether one can legally sell or offer securities without being licensed and registered one has to first assess the laws of the particular country and second the laws of the ECSRC?

Sharon Welcome Correct.

YFN How can investors protect themselves?

Sharon Welcome It is important for investors to be responsible for their monies in the same way they are responsible for everything that they own – *their house, their car, etc.* Investors should therefore seek all the information that they need to satisfy themselves that they are taking decisions that are in their best interest. In the same way that they would deliberate and conduct

research before buying a car or building a house. If investors do this, they have a much better chance of not making ill-informed investment decisions that may cost them dearly.

YFN But isn't there a trust among friends and associates that creates an unwillingness to ask too many questions?

Sharon Welcome Generally, affinity provides the perfect environment for the increase in investment activity. When there is affinity, it means that one is accustomed to the issuer and or the product and so feels comfortable and don't think that anything can go wrong. In these instances one tends not to look at what is below the line. That could be the downfall as persons would be less inclined to ask questions to determine whether the

investment is best for them at the particular stage in their lives or whether the investment is legitimate.

YFN If someone is in a unregistered investment scheme as the one discussed, what would be the best advice for that individual?

Sharon Welcome Ask a bunch of questions and if he or she is not comfortable with the answers, get out.

YFN What if the individual not wanting to break up a friendship decides to remain with the investment, at least until the investment matures.

Sharon Welcome: The law is there to protect you from everything but yourself.



Oh, Money!

Oh Money

**Me wish when you come, you wouldn't leave me
So quickly
that to me wallet and savings you would cleave
And make me happy.**

Oh Money

**Me wish when you come a me yard
You would stay a little longer
Long enough for you and I to prosper.**

Oh Money

**Why me mek you tek way you' self
and go mix up in them ray ray;
now me looking all over for you
but you no longer deh deh.**

Oh Money

**Just yesterday, you and I were together
...REMEMBER?
But bling'y; want'y and waste'y
mek we no longer.**

Oh Money

**Me long to hold you, squeeze you and save you.
Me just can't continue to live like this without you.
Me have to figure out a way how to keep you.**

Oh Money, Oh Money, Oh Money

By SLW