



**WHITE PAPER DETAILING THE PROPOSED RULE FOR THE IMPOSITION OF
PHYSICAL PRESENCE REQUIREMENTS FOR LICENSEES PURSUANT TO THE
SECURITIES INDUSTRY ACT [2011]**

SEPTEMBER 2011

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WHITE PAPER DETAILING THE PROPOSED RULE FOR THE IMPOSITION OF PHYSICAL PRESENCE REQUIREMENTS FOR LICENSEES PURSUANT TO THE SECURITIES INDUSTRY ACT [2011]

I. INTRODUCTION

The Securities Commission of The Bahamas (the Commission) is responsible for the administration of the Securities Industry Act, 1999 (the “SIA, 1999”), the Investment Funds Act, 2003 (the “IFA, 2003”) and the Financial and Corporate Service Providers Act, 2000 (the “FCSPA, 2000”) pursuant to which it supervises and regulates the activities of the securities and capital markets, investment funds, investment fund administrators, and corporate and financial service providers.

The key components of the Commission’s mandate includes the formulation of principles to regulate and govern investment funds, securities and capital markets; the maintenance of surveillance over the sector, ensuring orderly, fair and equitable dealings; creating and promoting conditions to ensure orderly growth and development; and advising the Minister of Finance. In executing its mandate the Commission issues regulatory tools to facilitate the authorization of registrants and licensees, and their compliance with ongoing supervisory requirements.

This paper represents the policy perspective of the Commission with respect to the need for and definition of physical presence and encapsulates the components of the rule that will be developed to govern this aspect of the market’s operations.

II. EXECUTIVE SUMMARY

The public would be aware that the Securities Industry Act, 2011 (the “SIA, 2011” or the “Act”) was passed in the House of Assembly on April 18, 2011, and subsequently passed in the Senate. The new legislation requires a number of standards and rules to be formally developed in accordance with the requirements of the Act. One such area requiring greater clarification and rule development is that of physical presence for the new constituent categories. While the Act outlines some aspects of physical presence requirements for certain categories of licensees it is silent in other areas and does not define the manner, or provide alternative means, by which these requirements could be achieved.

By way of background, the SIA, 1999 also did not expressly provide the full physical presence requirements for registrants although elements for some categories of registrants were outlined. In this regard, the Commission developed a Statement of Practice for Broker-Dealers and Securities Investment Advisors licensed under the SIA, 1999. In this policy paper, physical presence requirements for Broker-Dealers and Securities Investment Advisors was defined as

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appointing a Chief Executive Officer or Managing Officer domiciled in The Bahamas along with maintaining specific physical facilities and record-keeping arrangements. In addition, Securities Investment Advisors were given the alternative of achieving physical presence through the appointment of a Managing Representative who met these and other specific criteria, including being registrants or licensees of the Commission, the Inspector of Financial and Corporate Service Providers, or the Central Bank of The Bahamas, to administer the affairs of the registered firm. It is the position of the Commission that the option of achieving physical presence through the appointment of a Managing Representative should be maintained, which is provided for registered firms licensed for Advising on Securities.

The standard components that will form the physical presence rule for all licensees or registrants are set out below.

The proposed rule provides three elements for achieving physical presence:

1. Governance and Management Arrangements
2. Records and Record-Keeping Arrangements
3. Premises and Facilities Arrangements

III. PURPOSE

The purpose of this Rule is to establish physical presence requirements in order to facilitate effective oversight of licensees/registrants under the SIA, 2011. This oversight includes ensuring compliance with governing legislation among registered firms, market places, clearing facilities and other market participants, through investigation, inspection and ongoing monitoring and facilitating enforcement action.

IV. APPLICABLE LAW

Although there is no one specific provision in the SIA, 2011 that establishes general physical presence requirements for all categories of market participants; the legislation¹ details elements of physical presence standards, mainly related to records and record keeping for various categories of licensees/ registrants. By way of specific legislative responsibilities imposed on the Commission such as inspection, investigation, overall monitoring, and oversight of the jurisdiction (see: PART II Section 12 (b) and (f), Part II Section 13 (a), Part IV Sections 42, 43, 45, 46 and 47), there is a need for physical presence standards to be established for relevant market participants governed by the Act.

In recognition of the inherent assumptions relating to physical presence and to facilitate effective oversight of the capital markets, in addition to conducting its inspection and investigative

¹ Securities Industry Regulations 16, 17, 18, 20 and 40

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functions, and ensuring compliance with applicable legislation, the Commission has decided to clarify the standards related to physical presence for all categories of licensees/registrants. In this regard the Commission will seek to develop a rule to establish physical presence guidance, pursuant to its authority in Section 13 (i) of the SIA, 2011 which states, respectively:

“For the purpose of the discharge of its functions the Commission has power, subject to this Act, to- (i) recommend regulations to the Minister and formulate rules.”

The terms, conditions, and requirements set out in the Rule will provide the physical presence standard for licensees, and facilitate effective supervision of activities conducted.

V. DEFINITION OF PHYSICAL PRESENCE

It is intended that in the proposed rule, physical presence will be defined as having, 1) Governance and Management; 2) Premises and Facilities; and 3) Records and Record-Keeping Arrangements located in The Bahamas. These three elements are derived from international and domestic standards, and are based on results of benchmarking best practices.

VI. PHYSICAL PRESENCE REQUIREMENTS FOR EACH CATEGORY OF REGISTRANT UNDER THE SIA, 2011

The general and specific requirements for all categories of registrants are captured below:

A. MARKET PLACES

Governance and Management

- A. A Marketplace must have a Chief Executive Officer residing in The Bahamas who shall be:
 - i. Registered with the Commission;
 - ii. Responsible for managing the day to day operations of the marketplace in the jurisdiction, which responsibility shall not be delegated; and

- B. A marketplace must also appoint at least two Directors who shall be a resident of The Bahamas.

Records and Record-Keeping Arrangements

Records must be maintained as set out in Regulations 16, 18 (1) and (2), 19 and 20 of the draft Securities Industry Regulations (the “SIR”). (SEE ANNEX I)

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- a. These records must be physically located at the premises of the marketplace and the Commission must have direct access to the records on an immediate, real time basis.

Premises and Facilities

A marketplace must maintain an established place of business in and be operating from The Bahamas. Marketplaces shall maintain and manage premises and equipment necessary for the administration of its affairs, including but not limited to:

- a. Appropriate, dedicated, and secure physical office space², including adequate desk and other necessary workspace;
- b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;
- c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and
- d. The premises must bear appropriate exterior identification of the licensee's presence, unless a waiver has been provided by the Commission, and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.

An over-the counter or similar market is exempt from the Governance and Management Arrangements and Premises and Facilities Arrangements for marketplaces. However, a Registered Firm operating within the over-the-counter market must comply with the Records and Record-Keeping requirements for marketplaces. Such records must be located at the physical premises of the firm and must be readily available to the Commission upon request.

B. PERSONS REGISTERED UNDER PART VI OF THE SIA, 2011

Under the SIA, 2011, Registered Persons are registered according to their specific function(s) (See *ANNEX II*). These functions are the following:

- a. Dealing in Securities;
- b. Arranging deals in securities;
- c. Managing securities; and/or
- d. Advising on securities.

All firms registered under Part VI of the Act must meet the minimum Physical Presence Requirements outlined below. Firms that are registered only as 'Advising on Securities', however, can achieve physical presence by complying with one of two options: (i) Meeting the physical presence requirements established for registered persons; or (2) Appointing a Managing Representative. (See *Section VII: ALTERNATIVE APPROACH TO ACHIEVING PHYSICAL PRESENCE*).

² Office Space refers to a commercial office.

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Registered persons that are licensed in an activity other than 'Advising on Securities' are able to execute trades on a client's behalf and are also empowered to make investment decisions on a client's behalf which may include: (i) buying and selling of financial instruments; (ii) pledging of a client's assets for the purposes of managing a portfolio; and (iii) selling client's assets. Due to the nature of the business and the inherent risks associated with these activities, inclusive of but not limited to protection of client assets, mishandling and loss of assets, and failing to give priority to client's interest, these firms are not eligible to appoint a Managing Representative.

Registered firms that are licensed to 'Advise on Securities' and are also licensed to carry out any of the following activities are not eligible to appoint a Managing Representative:

- a. Dealing in Securities;
- b. Arranging deals in securities; and
- c. Managing securities;

These firms must meet the physical presence requirements established below.

Governance and Management

- A. A Registered Firm must establish the Governance and Management Arrangements stipulated in Regulation 40 of the SIR.
- B. A Registered Firm must also appoint at least two Directors who shall be resident in The Bahamas.

Records and Record-Keeping

Records must be maintained as set out in Regulation 16, 17, 19 and 20 (See Annex I). Further to these requirements, records that must be kept are inclusive of but not limited to the following:

- a. Minutes from a firm's Annual General Meeting or any Director's/ Members meetings

These records must be physically located at the premises of the registered firm and the Commission must have direct access to the records on an immediate, real time basis.

Premises and Facilities

A Registered Firm must maintain an established place of business in and be operating from The Bahamas. Registered Firms shall maintain and manage premises and equipment necessary for the administration of its affairs, including but not limited to:

- a. Appropriate, dedicated, and secure physical office space³, including adequate desk and other necessary workspace;

³ Office Space refers to a commercial office. However, in special circumstances the Commission may at its discretion and upon request, approve the use of a residential office. In these circumstances the office space must be a segregated space and/ or dedicated office used solely for the purpose of administering the affairs of the registrant.

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- b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;
- c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and
- d. The premises must bear appropriate exterior identification of the licensee's presence and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.

C. CLEARING FACILITIES

Governance and Management Arrangements

- A. A Clearing Facility must have a Chief Executive Officer residing in The Bahamas who shall be-
 - i. Registered with the Commission; and
 - ii. Responsible for managing the day to day operations of the clearing facility in the jurisdiction, which responsibility shall not be delegated.

- B. A Clearing Facility must appoint at least two Directors who shall be resident in The Bahamas.

Records and Record-Keeping Arrangements

Records must be maintained pursuant to Regulation 16, 18(1) and (3), 19 and 20 of the SIR. (SEE ANNEX I)

- a. These records must be physically located at the premises of the clearing facility and the Commission must have direct access to the records on an immediate, real time basis.

Premises and Facilities

Clearing Facilities must maintain an established place of business in and be operating from The Bahamas. Clearing Facilities shall maintain and manage premises and equipment necessary for the administration of its affairs, including but not limited to:

- a. Appropriate, dedicated, and secure physical office space, including adequate desk and other necessary workspace;
- b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;
- c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and
- d. The premises must bear appropriate exterior identification of the licensee's presence and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.

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D. MARKET PARTICIPANTS

The following physical presence requirements are established for the following additional market participants outlined in the Act:

- i. Self-Regulatory Organisations;
- ii. Custodians of assets of a registrant or a client of a registrant; and
- iii. Transfer Agents.

Market participants are as defined in Part I Section 4 of the SIA however, the following categories⁴ are exempted from many of the elements of physical presence other than where specified in law or where physical presence requirements were previously established in this Rule:

- i. a compensation, contingency or similar fund formed to compensate clients of registrants;
- ii. an investment fund;
- iii. a party related to an investment fund;
- iv. a general partner or a partner, director, officer or significant security holder of a person referred to in the definition of a market participant found in Section 4 of the SIA; and
- v. a person that the Commission has ordered is exempt from a provision of securities laws
- vi. a rating organization.

Additionally, market participants are still subject to licensing and approval at the discretion of the Commission and are subject to the record keeping requirements as stipulated in Regulation 16, 18(1), 19, and 20. The Commission also reserves the right to impose physical presence requirements on any market participant under Section 13 (i) of the Act.

Governance and Management Arrangements

A market participant identified above must have a Chief Executive Officer residing in The Bahamas who shall be:

- a. Registered with the Commission; and
- b. Responsible for managing the day to day operations of the marketplace in the jurisdiction, which responsibility shall not be delegated.

Records and Record-Keeping Arrangements

Records must be maintained as set out in Regulation 16 of the SIR. (*SEE ANNEX II*)

- a. These records must be physically located at the premises of the registrant and the Commission must have direct access to the records on an immediate, real time basis.

⁴ Part 4 Definition of Marketplaces (a) (c) (e) (i) (j) (k) (l) (m)

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Premises and Facilities

Market participants must maintain an established place of business in and be operating from The Bahamas. Market participants shall maintain and manage premises and equipment necessary for the administration of its affairs, including but not necessarily limited to:

- a. Appropriate, dedicated, and secure physical office space⁵, including adequate desk space and other necessary workspace;
- b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;
- c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and
- d. The premises must bear appropriate exterior identification of the licensee's presence and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.

VII. ALTERNATIVE APPROACH TO ACHIEVING PHYSICAL PRESENCE

All registrants/ licensees outlined above must meet the physical presence standards; however, as noted earlier, persons registered under Part VI of the Act⁶ to 'Advise on Securities' only, can meet this standard through the use of the Managing Representative. The appointment of a Managing Representative provides benefits for both the jurisdiction and the registrant. Some of these benefits include:

- i. allowing companies that provide only advice to clients, that are located outside The Bahamas to conduct business within the jurisdiction while maintaining the necessary physical presence requirements;
- ii. the creation of additional jobs; and
- iii. establishing The Bahamas as a choice offshore jurisdiction for conducting securities business thereby further stimulating the economy.

ACHIEVING PHYSICAL PRESENCE THROUGH THE APPOINTMENT OF A MANAGING REPRESENTATIVE

A Managing Representative is a company that is engaged by a registered firm to achieve physical presence within the jurisdiction. The Managing Representative must be incorporated in The Bahamas, meet the minimum physical presence requirements, possess knowledge of the types of business activities of the registered firm and have the capacity, as well as managerial and technical resources and expertise, to act as Managing Representative. Although a

⁵ Office Space refers to a commercial office. However, in special circumstances the Commission may at its discretion upon request, approve the use of a residential office. In these circumstances the office space must be a segregated space and/ or dedicated office used solely for the purpose of administering the affairs of the registrant.

⁶ Also called registered persons or registered firms. In the context of this paper, registered persons relate to firms only.

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Managing Representative can be appointed to administer the affairs, (of the registered firm,) the responsibility of meeting regulatory requirements rests solely with the registered firm.⁷

Managing Representatives are required to fully comply with the physical presence standards established for firms under Section VI B “PERSONS REGISTERED UNDER PART VI OF THE SIA, 2011.”

A. QUALIFICATIONS FOR A MANAGING REPRESENTATIVE

The Managing Representative of a registered firm must be licensed or registered under the Companies Act, 1992 and are licensed or registered with the Securities Commission of The Bahamas, the Inspector of Financial and Corporate Service Providers or the Central Bank of The Bahamas, within the following categories of authorisation.

Investment Funds Act, 2003
<ul style="list-style-type: none">• Unrestricted Investment Fund Administrator• Restricted Investment Fund Administrator (unless not operating in The Bahamas)
Securities Industry Act, 2010
<ul style="list-style-type: none">• Advising on Securities (Firm) (unless not operating in The Bahamas)• Dealing in Securities• Arranging Deals in Securities• Managing Securities
Financial and Corporate Service Providers, 2000
<ul style="list-style-type: none">• Licensed firms
Banks & Trust Companies Act, 2000
<ul style="list-style-type: none">• Unrestricted licensees

The Managing Representative must have the capacity, as well as managerial and technical resources and expertise, to act as Managing Representative. The Commission, reserves the right to restrict any company from acting as a Management Representative unless it can demonstrate clearly that it has the technical and operational capacity to meet the regulatory obligations of the registered firm that it is advising and facilitate effective oversight by the Commission. A Management Agreement and a Service Level Agreement must be in place between the two parties. The information that must be contained in the Management Agreement and Service Level Agreement are detailed below.

⁷ This obligation includes the requirement to cover the costs of any inspection of a licensee by the Commission, as provided for in Section 48 (3) of the Securities Industry Act, 2011.

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B. MANAGEMENT AGREEMENT

A Management Agreement detailing the responsibilities and obligations of the Managing Representative and the registered firm must be executed between the two parties, a copy of which must be submitted to the Commission. The agreement must contain confidentiality provisions and may contain, but would not necessarily be limited to arrangements covering:

- a. The general scope of the agreement;
- b. The services to be provided;
- c. The responsibilities of the Managing Representative and the officers of the registered firm;
- d. The responsibilities of the registered firm and its Board and management;
- e. The status of the Managing Representative, i.e. Managing Representative is an independent contractor of the registered firm;
- f. The responsibilities for the relationships with all appropriate supervisory, regulatory, and other governmental authorities, including provision of information by the Managing Representative on behalf of the registered firm, representation, and regulatory reporting;
- g. Record keeping, files maintenance, and other operational and administrative activities, as necessary;
- h. Legal jurisdiction and interpretation;
- i. Terms of service, including remuneration and other consideration, severability, conditions of amendment and severability, and indemnification; and
- j. Provisions to ensure that records are easily accessible by the Securities Commission of The Bahamas or the Inspector (in the case of an FCSP) to ensure effective oversight and conduct of its investigative and inspection functions as deemed necessary.

C. SERVICE LEVEL AGREEMENT

A Service Level Agreement (SLA) detailing the responsibilities and obligations of the Managing Representative and the registered firm must be executed between the two parties. The SLA, in this context, is an agreement between a Management Representative and a registered firm to administer the affairs of the company and to act as its agent in The Bahamas to perform a particular service e.g. trust services, custodial services etc. The agreement must be submitted to the Commission. The agreement must contain, but would not necessarily be limited to arrangements covering:

- a. The general scope of the agreement;
- b. The services to be provided;
- c. The responsibilities and indemnification of the Management Representative;
- d. The responsibilities of the Managing Representative and the officers of the licensee. Such responsibilities include:
 - i. Maintenance of principal corporate records and other records;
 - ii. Assistance in the performance of any annual audits employed by the registrant; and
 - iii. Ensuring operations are in compliance with the laws of The Bahamas.

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- e. Books and record-keeping requirements, ensuring that all reports, communications and other documents are received by the Management Representative to properly discharge its record-keeping requirements;
- f. Terms of service regarding the inspection of records by the registered firm or by any person or persons authorized by the registered firm;
- g. Legal jurisdiction and interpretation;
- h. Terms of service, including remuneration and other consideration, conditions of amendment and termination and indemnification; and
- i. Provisions to ensure that records are easily accessible by the Securities Commission of The Bahamas or the Inspector (in the case of an FCSP) to ensure effective oversight and conduct its investigative and inspection functions as deemed necessary.

An agreement should also provide for the terms of the agreement to be governed by and construed in accordance with the laws of The Bahamas.

While the provisions are broad enough to imply that the Managing Representative must ensure that the operations of the registrant are in compliance with the applicable laws, it is still imperative that the agreement explicitly provides for the Commission and/or any agent of the Commission to perform all oversight functions inclusive of but not limited to investigative, on-going monitoring, enforcement and inspection functions. Such functions include the right to inspect, take copies, assess the quality and maintenance of records and where necessary, request further details or make queries of personnel with respect to the contents the records and any other duties and or activities as required.

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ANNEX I

The standard of physical presence is generally met through three broad elements – requirements for governance and management, records and record keeping, and premises and facilities. Physical presence standards must be established for each of these categories.

REQUIREMENTS	GOVERNANCE & MANAGEMENT	RECORDS & RECORD KEEPING ⁸	PREMISES & FACILITIES
FIRMS	<p>Regulation 40(1) A registered firm shall have a Chief Executive Officer or managing officer in The Bahamas who shall be –</p> <p>(a) registered as such with the Commission; and</p> <p>(b) responsible for managing the day to day operations of the firm in the jurisdiction.</p>	<p>Regulation 16 Every market participant shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.</p> <p>Regulation 17 A registered firm must maintain records that –</p> <p>(a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the Commission;</p> <p>(b) permit determination of the registered firm’s capital position;</p> <p>(c) demonstrate compliance with the registered firm’s capital and insurance requirements;</p> <p>(d) demonstrate compliance with internal control procedures;</p> <p>(e) demonstrate compliance with the firm’s policies and procedures;</p>	<p>A registered firm must maintain an established place of business in and be operating from The Bahamas. Marketplaces shall maintain and manage premises and equipment necessary for the administration of the registrant’s affairs, including but not necessarily limited to:</p> <p>a. Appropriate, dedicated, and secure physical office space, including adequate desk and other necessary workspace;</p> <p>b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;</p> <p>c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and</p>

⁸ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

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REQUIREMENTS	GOVERNANCE & MANAGEMENT	RECORDS & RECORD KEEPING ⁹	PREMISES & FACILITIES
FIRMS		<p>(f) permit the identification and segregation of client cash, securities and other property;</p> <p>(g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale;</p> <p>(h) provide an audit trail for –</p> <p>(i) client instructions and orders; and</p> <p>(ii) each trade transmitted or executed for the account of a client or the registered firm;</p> <p>(i) permit creation of account activity reports for clients;</p> <p>(j) provide securities pricing;</p> <p>(k) demonstrate compliance with client account opening requirements;</p> <p>(l) document correspondence with clients;</p> <p>(m) document complaints and disciplinary matters; and</p> <p>(n) document compliance and supervision actions taken by the firm.</p> <p>Regulation 19 All records and documents required to be maintained by a market participant may be kept by means of mechanical, electrical, electronic or other devices provided –</p> <p>(a) such method of record keeping is not prohibited under any applicable legislation;</p>	

⁹ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹⁰	PREMISES & FACILITIES
FIRMS		<p>(b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;</p> <p>(c) such method provides a means to furnish promptly to the Commission upon request legible, true and complete copies of those records of the market participant which are required to be preserved; and</p> <p>(d) the market participant has suitable back-up and disaster recovery programs.</p> <p>Regulation 20 (1) The books and records required by the Regulations shall be kept</p> <p>(a) in The Bahamas; and</p> <p>(b) in the English language.</p> <p>(2) For a period of two years after the creation of a record, a market participant must keep the record in a manner that permits it to be provided promptly to the Commission, and thereafter the record may be kept in a manner that permits it to be provided to the Commission within a reasonable period of time.</p> <p>(3) A record provided under subsection (2) must be in a form that is capable of being read by the Commission.</p> <p>(4) A market participant must keep a record for the longer of –</p> <p>(a) seven years from the date the entry was made; and</p> <p>(b) any period set by any other relevant law.</p>	

¹⁰ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹¹	PREMISES & FACILITIES
MARKETPLACES		<p>Regulation 16 Every market participant shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.</p> <p>Regulation 18 (1) A person registered under Part V of the Act must maintain records that –</p> <ul style="list-style-type: none"> (a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the Commission; (b) permit determination of the person's capital and solvency position; (c) demonstrate compliance with capital and insurance requirements; (d) demonstrate compliance with internal control procedures; (e) demonstrate compliance with the person's policies and procedures; (f) document complaints and disciplinary matters; and (g) document compliance and supervision actions taken by the person. <p>Regulation 18 (2) In addition to the requirements set out in subsection (1), a registered marketplace must maintain –</p> <ul style="list-style-type: none"> (a) records that provide an audit trail of – 	

¹¹ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹²	PREMISES & FACILITIES
MARKETPLACES		<p>(i) orders received by the marketplace, and</p> <p>(ii) transactions executed on the marketplace including details for each transaction of –</p> <p>(A) the time the transaction was executed;</p> <p>(B) the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;</p> <p>(C) the identities and, where appropriate, the roles of the parties to the transaction; and</p> <p>(D) the date and manner of clearance and settlement of the transaction;</p> <p>(b) records of each grant, denial or limitation of access, including the reasons for granting, denying or limiting access to each applicant, and</p> <p>(c) daily trading summaries, including a list of securities traded and transaction volumes.</p> <p>Regulation 19 All records and documents required to be maintained by a market participant may be kept by means of mechanical, electrical, electronic or other devices provided –</p> <p>(a) such method of record keeping is not prohibited under any applicable legislation;</p> <p>(b) there are appropriate internal</p>	

¹² SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

PROPERTY OF THE SECURITIES COMMISSION OF THE BAHAMAS

REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹³	PREMISES & FACILITIES
MARKETPLACES		<p>controls in place, to guard against the risk of falsification of the information recorded;</p> <p>(c) such method provides a means to furnish promptly to the Commission upon request legible, true and complete copies of those records of the market participant which are required to be preserved; and</p> <p>(d) the market participant has suitable back-up and disaster recovery programs.</p> <p>Regulation 20 (1) The books and records required by the Regulations shall be kept –</p> <p>(a) in The Bahamas; and</p> <p>(b) in the English language.</p> <p>(2) For a period of two years after the creation of a record, a market participant must keep the record in a manner that permits it to be provided promptly to the Commission, and thereafter the record may be kept in a manner that permits it to be provided to the Commission within a reasonable period of time.</p> <p>(3) A record provided under subsection (2) must be in a form that is capable of being read by the Commission.</p> <p>(4) A market participant must keep a record for the longer of –</p> <p>(a) seven years from the date the entry was made; and</p> <p>(b) any period set by any other relevant law.</p>	

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹⁴	PREMISES & FACILITIES
<p>CLEARING FACILITIES</p>	<p>A clearing facility shall have a Chief Executive Officer or Managing Officer in The Bahamas who shall be-</p> <p>(a) Registered as such with the Commission; and</p> <p>(b) Responsible for managing the day to day operations of the firm in the jurisdiction, which responsibility shall not be delegated.</p>	<p>Regulation 16 Every market participant shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.</p> <p>Regulation 18 (3) In addition to the requirements set out in subsection (1), a registered clearing facility must maintain –</p> <p>(a) records that provide an audit trail of transactions cleared and settled through the clearing facility including details for each transaction of –</p> <p>(i) the time(s) the transaction was cleared and settled;</p> <p>(ii) the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction; and</p> <p>(iii) the identities and, where appropriate, the roles of the parties to the transaction;</p> <p>(b) records of each grant, denial or limitation of access, including the reasons for granting, denying or limiting access to each applicant; and</p> <p>(c) daily summaries, including a list of securities cleared and settled and transaction volumes.</p>	<p>A clearing facility must maintain an established place of business in and be operating from The Bahamas. Marketplaces shall maintain and manage premises and equipment necessary for the administration of the registrant’s affairs, including but not necessarily limited to:</p> <p>a. Appropriate, dedicated, and secure physical office space, including adequate desk and other necessary workspace;</p> <p>b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;</p> <p>c. Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and</p> <p>d. The premises must bear appropriate exterior identification of the licensee’s presence and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.</p>

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹⁵	PREMISES & FACILITIES
CLEARING FACILITIES		<p>Regulation 19 All records and documents required to be maintained by a market participant may be kept by means of mechanical, electrical, electronic or other devices provided –</p> <p>(a) such method of record keeping is not prohibited under any applicable legislation;</p> <p>(b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;</p> <p>(c) such method provides a means to furnish promptly to the Commission upon request legible, true and complete copies of those records of the market participant which are required to be preserved; and</p> <p>(d) the market participant has suitable back-up and disaster recovery programs.</p> <p>Regulation 20 (1) The books and records required by the Regulations shall be kept –</p> <p>(a) in The Bahamas; and</p> <p>(b) in the English language.</p> <p>(2) For a period of two years after the creation of a record, a market participant must keep the record in a manner that permits it to be provided promptly to the Commission, and thereafter the record may be kept in a manner that permits it to be provided to the Commission within a reasonable period of time.</p>	

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REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹⁶	PREMISES & FACILITIES
CLEARING FACILITIES		<p>(3) A record provided under subsection (2) must be in a form that is capable of being read by the Commission.</p> <p>(4) A market participant must keep a record for the longer of –</p> <p>(a) seven years from the date the entry was made; and</p> <p>(b) any period set by any other relevant law.</p>	
MARKET PARTICIPANTS	<p>A market participant identified above must have a Chief Executive Officer residing in The Bahamas who shall be-</p> <p>a. Registered with the Commission; and</p> <p>b. Responsible for managing the day to day operations of the marketplace in the jurisdiction, which responsibility shall not be delegated.</p>	<p>Regulation 16 Every market participant shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others, and shall keep such other books, records and documents as may be otherwise required by the Commission.</p>	<p>Market participants must maintain an established place of business in and be operating from The Bahamas. Market participants shall maintain and manage premises and equipment necessary for the administration of the registrant’s affairs, including but not necessarily limited to:</p> <p>a. Appropriate, dedicated, and secure physical office space, including adequate desk and other necessary workspace;</p> <p>b. Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;</p> <p>c. Appropriate communications facilities, including separate telephone line, fax machine,</p>

¹⁶ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

PROPERTY OF THE SECURITIES COMMISSION OF THE BAHAMAS

REQUIREMENTS	GOVERNANCE AND MANAGEMENT	RECORDS & RECORD KEEPING ¹⁷	PREMISES & FACILITIES
MARKET PARTICIPANTS			<ul style="list-style-type: none"> d. and internet/e-mail (as necessary); and e. The premises must bear appropriate exterior identification of the licensee's presence and the company must have public access telephone and other numbers, codes and mailing and street addresses must be listed.

¹⁷ SCB review with the financial services community the areas where a consistent record retention rule with other regulatory authorities that meets the minimum requirements in other Bahamian legislation, so long as it is at least five years. In response to this recommendation, the Commission noted that the issue is the same for other regulators as it is for the Commission as the 5 year period only relates to AML issues and that any other civil matters would still be linked to the General Law on statutory limitations. It was further noted that there is no record retention period provided in the legislation of the Central Bank, Insurance Commission or Inspector. As a result, the Commission decided that seven years is to be maintained until a position at GFSR is agreed upon.

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ANNEX II

In considering the functions to be carried out, the following is regarded as material:

A. Dealing in securities provides for a registered firm to perform the duties of buying, selling, subscribing for or underwriting securities. The nature of these activities would require them to act as a principal or agent in undertaking the duties. As a principal, the firm must (i) buy, sell, or subscribe for securities where prices are determined by the firm as opposed to each particular transaction, or (ii) engage in the business of underwriting securities, or (iii.) regularly invite the public to buy, sell, subscribe for, or underwrite securities and where a transaction occurs as a result of the firm's invitation.

B. Arranging deals in securities provides for a registered firm to make arrangements for another person to buy, sell, subscribe for, or underwrite activities or with another person who participates in such arrangements.

C. Managing securities provides for a registered firm to manage securities belonging to another person.

D. Advising on securities provides for a registered firm to offer advice to an investor, potential investor as an agent. The firm may also provide advice regarding the buying, selling, subscribing for or underwriting a security or exercising a right to buy, sell, subscribe for or underwrite a security