



STATEMENT OF PRACTICE ON PHYSICAL PRESENCE REQUIREMENTS FOR REGISTRANTS UNDER THE SECURITIES INDUSTRY ACT, 1999

November 4, 2009

I. Introduction

The Securities Commission of The Bahamas (the Commission) is responsible for the administration of the Securities Industry Act, 1999 (the SIA) and the Investment Funds Act, 2003 (the IFA), pursuant to which it supervises and regulates the activities of the investment funds, securities and capital markets. The Commission, having been appointed Inspector of Financial and Corporate Service Providers January 1, 2008, is also responsible for administering the Financial and Corporate Service Providers Act, 2000.

The Commission's mandate is to formulate principles to regulate and govern investment funds, securities and capital markets; maintain surveillance over investment funds, securities and capital markets ensuring orderly, fair and equitable dealings; create and promote conditions to ensure orderly growth and development of capital markets; and to advise the Minister of Finance regarding investment funds, securities and capital markets. In executing its mandate the Commission issues regulatory tools to facilitate the authorization of registrants and licensees, and compliance with their ongoing supervisory requirements.

II. Purpose

Provisions on physical presence standards for registrants under the Securities Industry Act, 1999 – broker-dealers and securities investment advisors – are not clearly established in the SIA. Physical presence standards for broker-dealers, in regulation 22 (a) and (b) of the Securities Industry Regulations, 2000 (SIR) speak to the requirement for a chief executive officer or managing officer to be present in The Bahamas but requirements for physical facilities are not outlined. The SIA is also silent on the requirements for securities investment advisors. In the circumstance, the practice of the Commission has been to apply the same standards for physical presence to securities investment advisors as those provided for broker-dealers.

The purpose of this regulatory tool is to address the regulatory gap and provide guidance on the minimum requirements to satisfy physical presence standards for all registered firms (broker-dealers or securities investment advisors) under the SIA.

III. Applicability

This Statement is relevant to all applicants to be, or those already registered as, broker-dealers or securities investment advisors under the SIA.

IV. Minimum Physical Presence Requirements for Registrants under the SIA, 1999

General Standards

Personnel

Registered firms (broker-dealers or securities investment advisors) are required to have a chief executive officer or managing officer who must reside in The Bahamas.

Physical Facilities

Registered firms must also maintain an established place of business in and be operating from The Bahamas. Registrants shall maintain and manage premises and equipment necessary for the administration of the registrant's affairs, including, but not necessarily 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 dedicated manual, mechanical, and/or electronic facilities necessary to record and process all of the registrant's business activities, including, if appropriate, dedicated, secure access terminals for bi-lateral on-line record keeping and data/information transmission.

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.

V. Broker-Dealers

Registration requirements for broker-dealers (BD), under regulation 14 of the Securities Industry Regulation, 2000 (SIR), call for a BD to be a company registered or incorporated under the Companies Act, 1992.

The **physical presence requirements for broker-dealers** are equivalent to the standards set out above. In addition, broker-dealers must also appoint a compliance officer pursuant to section 5 (e) of the Financial Transactions Reporting Regulations, 2000.

VI. Securities Investment Advisors

Any individual Bahamian company registered under the Companies Act, 1992 or the International Business Companies Act, 2000¹, acting as a securities investment advisor, may apply to the Commission for registration.

For securities investment advisors, the physical presence standards may be satisfied by the standards set out in part IV or by the appointment of a **‘Managing Representative’** that administers the affairs of the registered firm, subject to the following:

- a. At least one executive of the securities investment advisor firm must be registered² with the Commission, who may not necessarily reside in The Bahamas; and
- b. The fulfilment of the requirements set out below.

Notwithstanding those requirements, where a Managing Representative is used to satisfy the establishment of a place of business in The Bahamas standard, ***the registered securities investment advisor firm shall maintain the responsibility of ensuring that all requirements under relevant legislation, and regulatory and supervisory standards, have been met and are maintained.***

VII. Requirements for Managing Representatives

1. Managing Representatives are eligible to Act as such only if they are Bahamian registered or incorporated companies that operate in or from The Bahamas, and are licensed or registered with the Securities Commission of The Bahamas or the Central Bank of The Bahamas, within the following categories of authorization:

LEGISLATION & CATEGORY OF REGISTRANT/LICENSEE
INVESTMENT FUNDS ACT, 2003
Unrestricted Investment Fund Administrator
Restricted Investment Fund Administrator* (unless not operating in The Bahamas) ³
SECURITIES INDUSTRY ACT, 1999
Securities Investment Advisor (Firm) * (unless not operating in The Bahamas)
Broker –Dealer (Class I and II)
FINANCIAL AND CORPORATE SERVICE PROVIDERS, 2000
Corporate Service Providers (Firm)
BANKS & TRUST COMPANIES ACT, 2000
Unrestricted Licensees

¹ In practice, the Commission does not register sole-proprietorships or partnerships as securities investment advisers.

² Consideration for the registration of Securities Investment Advisor (Individuals) is based on due diligence standards, immigration status (if non-Bahamian a work permit is required), age (must be at least 18 years of age), and educational qualifications.

³ A securities investment advisor using a Managing Representative to satisfy its physical presence requirements cannot be considered as being eligible to qualify as having met the full physical presence obligation of another securities investment advisor operating outside of the jurisdiction. In such a case, the other securities investment advisor would be required to use a Managing Representative that meets the standard on its own merit.

Securities Commission of The Bahamas - Physical Presence Requirements

2. The Managing Representative must have the capacity, as well as managerial and technical resources and expertise, to act as a Managing Representative.
3. A Management Agreement detailing the responsibilities and obligations of the Managing Representative and the securities investment advisor (firm) must be executed between the two parties.

The Management Agreement

A comprehensive Management Agreement, detailing all of the Managing Representative's responsibilities must be executed between the Managing Representative and the registered firm. This agreement must be submitted to the Commission. Such agreements must contain confidentiality provisions and may contain, as applicable, 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 registrant;
- d. The responsibilities of the registrant and its Board and management;
- e. 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 registrant, representation, and regulatory reporting;
- f. Record keeping, files maintenance, and other operational and administrative activities, as necessary;
- g. Legal jurisdiction and interpretation;
- h. Prevention of conflicts of interest; and
- i. Terms of service, including remuneration and other consideration, conditions of termination, and indemnification.

Records and Record Keeping Arrangements

1. Records must be maintained as set out in Part VII (as applicable) of the SIA. The records must be maintained at the Managing Representative's premises in The Bahamas or, if maintained in another location, the Commission must have direct access on an immediate, real-time basis. Official records shall be maintained in the English language.
2. The official records may be maintained in manual, automated, and/or electronic format.
3. The registered firm may use the record keeping systems of the Managing Representative, but the official records of each registrant must be maintained completely separate from those of the Managing Representative and other registrants.

Securities Commission of The Bahamas - Physical Presence Requirements

This Statement of Practice provides general information on the minimum physical presence requirements for registration under the SIA, 1999. Applicants should consult relevant securities legislation to ensure full compliance with the law.

For additional information, please contact the Authorizations Department at the Securities Commission of The Bahamas.

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