



## **INDUSTRY MEETING – IMPLEMENTATION OF THE INVESTMENT FUNDS ACT, 2003 (“IFA, 2003”)**

### **1. WHAT IS REQUIRED OF FUNDS AND ADMINISTRATORS EXISTING AT THE TIME OF THE COMMENCEMENT OF THE IFA TO BRING THEM IN COMPLIANCE WITH THE NEW LEGISLATION?**

**On December 15, 2003 the Investment Funds Act, 2003 (“IFA”) was brought into force repealing the Mutual Funds Act, 1995 (“MFA”). Sections 65-72 of the IFA prescribe the transitional provisions for existing regulated funds and administrators in existence and operating immediately before the commencement of the IFA.**

**The following provides general guidance on several issues which have arisen, in relation to the transitional provisions of the IFA.**

#### **A. FUNDS LICENSED OR REGISTERED PURSUANT TO SECTIONS 3(1) AND 3(3) OF THE MUTUAL FUNDS ACT, 1995**

**Section 65(1) of the IFA provides that all funds licensed or registered pursuant to Section 3(1) and 3(3) of the Mutual Funds Act, 1995 (“regulated funds”) are deemed to have complied with the requirements for licensing under the IFA. In the circumstances, all funds existing immediately before the commencement of the IFA, continue to operate as licensed funds as of December 15, 2003 and thus DO NOT require re-licensing under the IFA.**

**Pursuant to section 65(2) of the IFA, these funds are required to submit the details of their classification under the IFA, to the Commission, within nine months of the commencement of that Act. In this regard the Commission notes the following:**

- By letter dated December 19, 2003 the Commission required all administrators to provide the Commission with detailed information regarding the present classification and the intended classification of existing regulated funds.**
- New certificates reflecting the classification of the funds under the IFA are to be issued either by the Commission or the administrator, in its capacity as licensor of the fund.**
- When classifying funds under the IFA the Licensor must ensure that the fund satisfies the requirements of the relevant category of fund under the IFA.**
- Any discrepancies in the classification of existing funds under the IFA will be notified to the administrator who will be required to address the discrepancies identified.**



## **FREQUENTLY ASKED QUESTIONS**

- a. *Is the information required for the licensing of funds under the IFA, by the Commission's letter dated December 19, 2003, sufficient to enable the Commission to confirm the classification of existing regulated funds?***

*Yes, the information requested is sufficient to enable the Commission to confirm classification of funds under the IFA, 2003. The Commission asks that administrators ensure that they indicate in the last column of the form attached to the December 19, 2003 letter, whether the certificate under the IFA is to be issued by the administrator or the Commission. The Commission further reserves the right to request additional information in particular cases where issues may arise.*

- b. *Is the issue of a new certificate required?***

*Yes, the Commission is requiring that new certificates be issued as it is of the view that it is in the best interest of the industry that the evidence of licensing of Bahamas-Based funds be consistent with the provisions of the IFA as this will lessen any room for doubt as to the legitimacy of a fund's regulatory status.*

- c. *What classification of licence do funds fall under during the transitional period?***

*It is the view of the Commission that as of December 15, 2004 all funds are to be classified as standard funds. As industry is aware, only the Commission can licence 'standard funds', and thus all funds licenced under the IFA as 'standard fund' are to be directly regulated by the Commission. In this regard, however, the Commission advises that the status quo of the fund's regulatory regime is maintained in respect of an Unrestricted Investment Fund Administrator's regulatory authority over the continuous reporting requirements of the fund.*

- d. *What is the status of a fund, which fails to submit the required information regarding the details of its classification?***

*The transitional provisions provide a penalty of three thousand dollars (\$3000.00) per month if a fund fails to comply with Section 65 of the IFA. This penalty may be applied for each month up to three (3) months, after which the fund's licence is subject to revocation by the Commission. Moreover, the IFA provides that such funds would be required to cease operating. See: Section 71 of the IFA*

- e. *Can a fund default to being classified as a standard fund if it fails to provide the details required by Section 65(2) of the IFA?***

*Pursuant to Section 71 of the IFA, compliance with Section 65 (2) is mandatory as is the penalty applied in the case of non-compliance. It is noted further, that the requirement to cease its operation is mandatory. The revocation of the fund's licence however is discretionary. In the circumstances, the Commission could in the interest of the investors of a fund, determine that the fund licence should be classified as a standard licence and as a result be considered licensed and regulated directly by the Commission.*



- f. What is the status of a fund that opts to be classified or defaults to being a standard fund?**

*A fund, which opts to be classified or is otherwise determined by the Commission to be a standard fund must be issued a certificate as a standard fund by the Commission. As regards the continuing regulatory authority over the fund, the Commission is of the view that investment funds licensed by its administrator will continue to be so regulated. See: para 1(c) above.*

- g. What evidence is required from an existing fund to establish that it qualifies for classification as a professional fund or an SFM002, in light of the definition of the 'category of investor' that qualifies to invest in a professional fund?**

*As indicated in the preamble to question A above, all existing funds are required to satisfy the requirements of the relevant category of fund in the IFA, under which it intends to be classified. As such the investors of an existing fund must qualify under the definition of the 'category of investor' that qualifies to invest in a professional fund.*

- h. What evidence is required from an existing fund to establish that it qualifies for classification as an SFM001 in light of the requirement that these funds are based on the existence of a discretionary management agreement between the promoter and the investor in the fund?**

*The existing fund structure will be required to comply with the SFM001 rule in total.*

- i. Are new application forms required for the classification of existing regulated funds under the IFA, 2003?**

*No application form is required for existing regulated funds.*

- j. Can the application forms on the Commission's website be formatted in word, so that applications can be submitted electronically?**

*The Commission has added applications formatted in Word on its website.*

*The Commission advises however that an application is not considered complete until the Commission is in receipt of all the supporting documents required for the processing of the application.*

- k. Do the existing documents of funds have to be amended to comply with the provisions of the IFA, 2003?**

*Section 65 of the IFA, 2003 provides that all funds licensed under Section 3(1) and (3) of the Mutual Funds Act, 1995 at the time of the enactment of the IFA, 2003 are considered licensed under the IFA, 2003.*

*The Commission is of the view that the commencement of the IFA, 2003 does not of itself amount to a material change, and thus the fund is not required to amend its existing documents.*



*The Commission advises however, that immediately upon the occurrence of a material change the fund is obliged to make any necessary amendments to its documents, as are required as a result of that change. This obligation arises as a result of any material change to the operation of the fund or the contents of the funds documents, whether that change occurs at the commencement of the IFA or at some later date.*

***1. What is the process for the issue of certificates under the IFA, 2003 for existing regulated funds?***

*(i) Funds licensed by the Commission -*

*Certificates for these funds must be issued by the Commission under the IFA.*

*Once the Commission has finalized the classification, the Commission will issue a licence for the fund under the IFA, which will then be sent to the administrator. The administrator will then be required to submit the original licence of the fund issued under the Mutual Funds Act, 1995 to the Commission, within seven (7) days of the end of the month in which the certificate under the IFA, was issued.*

*(ii) Funds licensed by administrators –*

*These funds may be issued new certificates either by the Commission or its unrestricted investment fund administrator:*

▪ *Issuing of certificates by administrator*

*Regulated funds to be classified as standard funds which are ‘licensed’ by its administrator are required to notify the Commission of their intent to be classified as standard funds. Upon the finalization of the classification of the fund the Commission will issue a licence for the fund under the IFA, which will then be sent to the administrator. The administrator will then be required to submit the original licence of the fund issued under the Mutual Funds Act, 1995 to the Commission, within seven (7) days of the end of the month in which the certificate under the IFA, was issued.*

*With regard to Professional and SMART Funds, an unrestricted investment fund administrator will be issued blank licences in these categories of funds, as requested. The administrator will then execute these licences according to the classification of the funds under the IFA. Once a licence under the IFA, 2003 has been issued the administrator will be required to submit the original licence issued to the fund under the Mutual Funds Act, 1995 to the Commission within seven (7) days of the end of the month in which the certificate under the IFA, was issued.*

**NOTE: The Commission advises that any licence issued for existing regulated funds in an inappropriate category is liable to revocation. Industry is therefore encouraged to seek guidance from the Commission in cases where the administrator is unsure of the proper category under which a fund should be licensed pursuant to the IFA.**



## **B. EXEMPT FUNDS**

All exempt funds existing immediately prior to the commencement of the IFA are required to apply to be licensed either by the Commission or an unrestricted investment fund administrator. Sections 66 and 67 of the IFA set out the processes by which these funds are to be regularized. In the case of funds exempt under either Sections 3(4) or 3(6) of the Mutual Funds Act, 1995 the fund is required to apply to be regularized under the IFA, within ninety days of the promulgation of the Regulations. Exempt funds can be regularized either by being licensed in one of the categories of licensed funds or by being registered as a Recognized Foreign Fund where applicable.

All exempt funds will be treated as new applications made pursuant to the IFA for the purposes of licensing. In the circumstances, the fund must comply with ALL provisions relevant to the category of fund licence for which it is applying.

### **FREQUENTLY ASKED QUESTIONS**

- a. What documents are required to be submitted by an exempt fund applying for licensing as a SFM003?*

*The fund must comply with the provisions of the IFA, and thus is required to submit all documentation required thereunder, and the documents submitted must comply with the provisions of the IFA.*

**NOTE: Administrators may issue SFM003 licence certificates. Please note caution at 1(I)(ii) above.**

- b. Will annual fees payable by exempt funds be prorated from the date that the license is issued?*

*All exempt funds by virtue of Section 70 of the IFA are liable for fees under the Act immediately upon the commencement of the Act. In the circumstances, exempt funds were subject to the annual fees provided in the IFA as of January 31, 2004.*

- c. Will the deadline of March 15, 2004 for the submission of applications for licensing or registration of exempt funds under the IFA be extended?*

*The Commission resolved at its Board meeting held March 10, 2004 that the deadlines imposed in Sections 66(1), (2) and 67(1) are all extended by ninety days. For further details please see Commission notice issued March 12, 2004 which can be found on the Commission's website at [www.scb.gov.bs](http://www.scb.gov.bs).*



## **2. WHEN ARE FEES REQUIRED TO BE PAID IN ACCORDANCE WITH THE INVESTMENT FUNDS ACT, 2003?**

**Section 70 of the IFA provides that all funds and administrators in existence immediately before the commencement of the IFA shall be subject to the fees prescribed in the IFA.**

### **FREQUENTLY ASKED QUESTIONS**

#### ***a. When do existing regulated funds have to submit their fees to the Commission?***

*All funds and administrators immediately become liable for the new level of fees prescribed in Schedule 12 of the Investment Funds Regulations, 2003.*

*Fees for 2003 were billed for all funds and administrators in November 2003 and thus were billed pursuant to the provisions of the Mutual Funds Act, 1995 and the requisite remittances have been made accordingly.*

*Administrators were required to settle their fees at the new level as of January 31, 2004, and failure to do so resulted in the application of the penalty provided in the IFA, 2003.*

*In light of the exemption to closed end funds and the Commission's inability to determine the number of exempt funds requiring licensing under the IFA, it was not possible to assess the amount of fees payable for fund licences prior to the end of transitional period. In the circumstances, the Commission will issue statements for fees payable in accordance with the IFA, 2003, once the Commission has received the final number of funds requiring licensing or filing from administrators. These bills will reflect the difference between the fees paid and owed due to the information received during the transitional period in the Act.*

#### ***b. When are new applicants required to submit the fees for funds to the Commission?***

*New applicants are required to pay fees in accordance with the IFA, 2003 and thus must submit the application fee upon application.*

**NOTE: Please be advised that the Commission no longer requires that the licence and annual licence fees be paid upon making application to the Commission for licensing. An applicant need only submit the application fee with its application and the Commission will bill the applicant for relevant licence and annual fees upon the granting of the licence.**



### **3. WHAT IS THE STATUS OF CLOSED END FUNDS UNDER THE INVESTMENT ACT, 2003?**

The definition of investment fund in Section 2 of the IFA excludes any company, unit trust or partnership, where the holder of equity interests in the fund does not have the option to redeem his interests or to require that the company repurchase the equity interests. This provision excludes 'closed end funds' which by their nature fall within this exception from the definition of an investment fund and thus are not subject to the provisions of the IFA.

By virtue of Section 7 of the IFA, companies, unit trusts or partnerships, which fall within the exception, may opt to be licensed by the Commission and thus fall within its regulatory purview.

#### **FREQUENTLY ASKED QUESTIONS**

**a. *Are Closed End Funds required to be licensed under the Investment Funds Act, 2003?***

*No. As noted above the present provisions of the IFA, 2003 exempts closed end funds from the definition of an investment fund and thus they are not required to be licensed under the IFA.*

**b. *Are Closed End Funds required to pay fees for 2004?***

*No. As Closed End Funds do not fall within the jurisdiction of the IFA fees are not payable.*

### **4. WILL THE COMMISSION BE PRESENTING ANY ADDITIONAL JURISDICTIONS TO THE LIST OF RECOGNIZED JURISDICTIONS AS PRESENTLY PRESCRIBED?**

By virtue of the definition of "investment fund" in Section 2 of the IFA an investment fund is Bahamas-Based if;

- (i) it is incorporated or registered in The Bahamas;**
- (ii) the administrator, investment manager or investment advisor is a company incorporated or registered in The Bahamas or is a company or individual who has place of business in The Bahamas or operates from an address in The Bahamas; or**
- (iii) the administration or management of the fund is carried out from The Bahamas.**



**Pursuant to Section 6 of the IFA “Bahamas-Based” funds as defined above, which are licensed in a recognized jurisdiction may register with the Commission as a Recognized Foreign Fund and are therefore not required to be licensed.**

**Where a fund is licensed in a jurisdiction not recognized by the Commission, that fund as a “Bahamas-based” fund is required to be licensed in The Bahamas. The Commission is advised that there are certain jurisdictions which are not presently recognized by the Commission, which the industry believes it would be beneficial to The Bahamas to recognize.**

**FREQUENTLY ASKED QUESTIONS**

- a. Is the Commission considering adding any jurisdictions to the prescribed list of recognized jurisdictions?*

*The Commission advises that it is presently considering adding certain jurisdictions to this list, and additions to the list of recognized jurisdictions will be considered on an ongoing basis.*

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