

SCB 2012 Review

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Developments and Outlook for Registrants under the Securities Industry Act (SIA) or the Investment Funds Act (IFA)

2013 is well underway and promises to be another year of adaptation, growth and development for the securities industry, capital markets and investment funds industry. This communication summarizes some of 2012's significant events and initiatives that impact those industries and aims to share the Securities Commission of The Bahamas' (SCB/the Commission) forecast for key developments on the regulatory horizon.

Engagement, Communication and Collaboration

Improved communication with registrants is one of the Commission's ongoing initiatives. In this regards, the Commission's first Industry Briefing for 2012, held on May 24th, focused on registrants under the Investment Fund Act, 2003 (IFA). The

Commission addressed the monitoring of Unlicensed Investment Funds Administrators (UIFAs). The Commission is of the view that UIFA's have statutory authority to license funds, and that such authority and the separate and independent exposure to liability that accompany it, would mean that increased oversight of UIFAs is likely.

Registrants were also reminded of their standing reporting obligations, such as the net asset values (NAVs) for the funds they administer, and material change reporting obligations, which are critical to the Commission's market surveillance programme. They were advised that non-compliance with reporting requirements could result in increased scrutiny or the application of other remedies by the Commission.

Registrant compliance with reporting obligations not only provides the fundamental information necessary to properly oversee the various industries the Commission regulates, but in many aspects is critical to the reputation of the regulator and jurisdiction as it undergoes reviews from international bodies, such as the Organization for Economic Cooperation and Development (OECD) and, International Monetary Fund (IMF).

The Commission also held an Industry Briefing focused on securities industry participants on 14 November 2012. The SCB used the opportunity to share some of the more significant feedback it received on the SIA related position papers it had issued for consultation during the year. All

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SCB Attains IOSCO MMoU 'A' Signatory Status

For the Securities Commission of The Bahamas (SCB), the highlight of 2012 was gaining the prestigious status of signatory to Appendix A of the International Organization of Securities Commissions' (IOSCO's) Multilateral Memorandum of Understanding (MMoU), effective 27 December 2012.

The MMoU is the international benchmark document on cooperation and information exchange to fight cross border fraud and securities violations. The culmination of a journey that commenced in 2002, the achievement required ensuring aspects of the securities indus-

try's regulatory regime were at the appropriate international standard.



Present at the press conference announcing that the SCB achieved IOSCO MMoU 'A' Signatory Status were (L-R): SCB Senior Legal Officer Omara Bingham, BFSB Chairman Paul Winder, SCB Chairman Tonya Bastian Galanis, Minister of State for Finance the Hon. Michael Halkitis, Minister of Financial Services the Hon. Ryan Pinder, SCB Executive Director Dave S. Smith, and SCB Legal Counsel Mechelle Martinborough.

2012 Developments for FCSPs

"Risk ratings will inform the appropriate degree of surveillance for each registrant."

The Financial and Corporate Service Provider (FCSP) industry featured prominently on the SCB's calendar of initiatives for 2012.

Appointed the Inspector of FCSPs at the outset of 2008, last year the Commission focused on achieving a more meaningful understanding of the operations and risks inherent in the FCSP industry, more effective oversight programs, rationalized fees, full compliance with the Financial and Corporate Service Providers Act, 2000 (FCSPA) by all persons licensed or who ought to be licensed under it,

and improved communication and collaboration with industry participants.

In August, the Inspector issued a Public Notice regarding the definition of financial services. The term was not defined in the FCSPA, and the Inspector reiterated that it interprets financial services according to the World Trade Organization's definition. Activities falling under financial or corporate services regulation by the Inspector were provided in the Notice, which is available on the SCB's website (www.scb.gov.bs/alerts_notices.html).

The Inspector held Industry Briefings targeted at FCSPs in New Providence and Grand Bahama during September. The Nassau Briefing particularly was well received with over 200 industry representatives and related persons in attendance. At those Briefings the Commission told participants that it was moving to a Risk Based Approach (RBA) to monitoring the industry. As a part of this initiative, during the months of September and October, the Inspector surveyed its FCSP registrants to begin assessing Risk ratings for each registrant. Risk ratings will inform the appropriate degree of surveillance for each registrant.

The Risk Rating process is anticipated to be completed by the end of the first quarter of 2013. Firms that did not participate in the survey will be determined as having heightened risk levels until the Inspector obtains information to demonstrate a lower rating is in order. The Inspector is also considering a 2014 move away from the use of accountants as Inspector's Agents to assess the appropriateness of registrants' Know Your Customer (KYC) policies and practices. An examination program will be implemented to ensure the Inspector fulfills all of its obligations under the FCSPA, 2000. The programme is envisaged to broaden the scope of examinations beyond their current Anti-Money Laundering/KYC focus.

At the Briefings, registrants were reminded of the requirement under the Financial Intelligence (Transactions Reporting) Regulations, 2001 to identify and appoint a Money Laundering Reporting Officer (MLRO). Proposed changes to the fees regime for the industry were also discussed, and subsequently a number of suggestions for further rationalization have been considered by the Commission. The fee structure is currently under review by the SCB's Board, and the finalized rule is

anticipated to be finalized during 2013, with a 2014 implementation target.

A notable legislative development of direct impact to FCSPs occurred in 2012, with amendments to the record keeping requirements of the International Business Companies Act, Exempted Limited Partnerships Act, Partnership (Limited Liability) Act and the Foundations Act taking effect on April 1st. Those Acts now require the maintenance of records that are reliable, reasonably accurate, and enable the generation of financial statements. The amendments bridge a deficiency in legislation regarding accounting record keeping as identified during the first phase of the Organization for Economic Cooperation and Development's peer review of the jurisdiction in 2002. A related guideline will be issued for consultation during the first Quarter of 2013.

During 2012 there was no substantive movement on the constitutional challenge to the FCSPA, initiated the year of the promulgation of the Act in 2000. The challenge involves the Inspector's authority to obtain information about registrants' clients who may be protected by legal privilege. In the absence of a decision to the contrary, the Inspector aims to fulfill its obligations, which require all licencees to submit themselves to examinations, and encourages registrants to separate their services where they are concerned that matters of legal privilege may arise.

Registrants should understand and comply with all laws and rules which they are subject to. In this regard, the Inspector reminds registrants that many key requirements and expectations are summarised in the *Anti-Money Laundering & Anti-Terrorism Financing Handbook & Code of Practice for Financial and Corporate Service Providers*, available on the SCB's website (www.scb.gov.bs/FCSP.html). The Inspector intends to conduct Anti-Money Laundering (AML) and Combating the Financing of Terror (CFT) training in conjunction with the Financial Intelligence Unit (FIU) and Compliance Commission during the first half of 2013.



Attendees at the Financial and Corporate Service Providers industry Briefing held in Nassau, 19 September 2012.

Financial Services Regulated by the Inspector

- Money Lending
- Financial Leasing
- Money Broking
- Payday and Cash Advances
- Credit Extension
- Mortgage Broking
- Escrow Services (excluding attorneys, accountants and real estate agents who are already subject to legislation or oversight by a professional body)
- Financial Advisory/Consultancy Services
- Financial Intermediation

Corporate Services Regulated by the Inspector

- Registration or management and administration of international business companies (IBCs) incorporated or existing under the International Business Companies Act
- Registered agent and registered office services for IBCs
- Provision of directors, officers and nominee shareholders for IBCs
- Provision of partners for partnerships registered and existing under the Exempted Limited Partnership Act
- Provision of registered agent and registered office services for partnerships registered and existing under the Exempted Limited Partnership Act.

Structural Changes

The SCB welcomed its new Executive Director, Dave Shannon. Smith, on 1 March, 2012. In June, the SCB welcomed a new Board, led by Chairman Tonya Bastian Galanis.

2012 Developments for SIA/IFA Registrants

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position papers issued for consultation are available on the Commission's website at: www.scb.gov.bs/consultation.html.

The SCB also participated in courtesy calls and made presentations to industry groups including The Bahamas Institute of Chartered Accountants (BICA) and The Bahamas Association of Compliance Officers (BACO). During 2013, the SCB plans to continue and deepen its meetings with industry groups, with particular focus on the disciplinary process, enforcement and international requests.

Evolving Regulatory Landscape

SIA

Much of the transition to the SIA, 2011 took place across 2012, with various provisions taking effect at stages, such as 90 days, six months or one year after the promulgation of the Act. The year opened with the promulgation of the Securities Industry Regulations, 2012 (SIR, 2012), effective 9 January 2012. The SIA, 2011 and SIR, 2012 are structured to allow for a sound, internationally respected regulatory foundation with sufficient flexibility to allow regulation tailored to the Bahamian marketplace through the introduction of Rules and Guidelines.

The change in how registrants are categorized was itself a considerable aspect of the implementation of the SIA. The Act moved the regime from registration by 'title' to registration by 'function'. The SIR, 2012 prescribed which functions licensees under the former Act (the Securities Industry Act, 1999) would be automatically registered to perform under the new Act. Provisions were made for registrants to apply to be registered for other functions up to 31 July 2012. Only a small number of registrants sought registration for different function.

After having undergone a development process that involved benchmarking

against select jurisdictions and collaboration with the industry and stakeholders through the consultation process, the Securities Industry (Fee) Rules, 2012 were introduced on 20 January 2012. As the SIA, 2011 moved to function-based categorization, the Fees Rule correspondingly moved to assessing fees based on the activities a person may be registered to perform under the Act. The rationalization of fees in general is of ongoing interest to the Commission, due to its objective of complying with the International Organization of Securities Commissions' (IOSCO) Principle Two, regarding the operational independence and accountability of securities Regulators. The SCB currently relies on government subvention to help meet its funding needs.

The Securities Industry (Physical Presence) Rules, 2012, came into effect the same day as the Fees Rule.

Transition dates in 2012 of broad interest to the securities industry include the 31 December 2012 requirement for firms registered under the Act to appoint a Compliance Officer; the requirement of firms registered under the Act to submit annual audited financial statements to the Commission 120 days after the end of its first fiscal year post the implementation of the SIA, 2011; and the requirement that registered firms have approved levels of professional indemnity insurance by 31 December 2012. Registrants who have not met these requirements should contact the Commission as soon as practicable.

The Act will also bring new regulatory capital requirements, though the capital requirements of Section 55 of the former

Act governing the industry (the SIA, 1999) remains in place until the new Regulatory Capital Framework comes into effect. The proposed Regulatory Capital Framework has completed the consultation phase of its development and it is anticipated to come into effect this year. The Commission is planning to conduct training sessions on the Framework, once implemented, near the end of the first quarter of the year.

A number of other papers completed the consultation phase of their development at the end of 2012, as indicated previously. They are anticipated to be implemented as either Rules or Guidelines in short order. Among them are The Bahamas Takeover Codes, Fitness and Propriety Guidelines, the Licensing of Compliance Officers, Liquidity Risk Guidelines, Management of Large Exposures and Related Party Exposures, the Fees Rule (for registrants under the Investment

Funds Act, 2003), the Outsourcing of Material Functions, and Corporate Governance Guidelines. The Commission is pursuing assistance from the Caribbean Regional Technical Assistance Centre (CARTAC) to conduct its planned training sessions on the Corporate Governance Guidelines this year.

IFA

The Investment Funds industry saw a new product added to the list of approved Specific Mandate Alternative Regulatory Test (SMART) Funds with the implementation of the Investment Funds (SMART Fund) Rules, 2012 [SMF 007], or the 'Super Qualified Investment Fund', in August 2012.

A new Fees Rule for registrants under the IFA is anticipated to come into effect this year. The proposed Rule is also available on the Commissions website at www.scb.gov.bs.consultation/html.

Perhaps most significant to investment funds practitioners, however, is the Commission's commitment to review and propose new legislation to govern the industry. Following an assessment under the International Monetary Fund's (IMF's) Financial Sector Assessment Programme (FSAP) in 2012, the Commission has prioritized moving to a more prudential reporting regime as opposed to a more disclosure based one. It is envisaged that

modernized legislation would accomplish the same. The effort is being led by the recently appointed Legislative Committee—a Committee of the Board of the SCB—and will be supported by the IFA Technical Team (IFATT) that the Commission assembled in September 2012, comprised of legal and financial experts and visionaries from the Investment Funds and broader financial services industry.

The Bill is anticipated to be properly benchmarked and provided to the industry and the public for extensive consultation once developed.

Internal Initiatives

The Commission continues to advance its strategic plan and during 2012 implemented or commenced a number of initiatives aimed at improving its supervisory and regulatory effectiveness, responsiveness to registrants, and the efficiency of day-to-day operations.

The Market Surveillance and Inspections Departments are being amalgamated to centralize and better manage the Commission's oversight of the industries it regulates. Other initiatives include the introduction of modern software to allow for improved information management—from primary research tools to internal management of information flows and processing capacity.

The applications process has been streamlined and delivery timelines for processing applications are now available to registrants. The work continues, with an emphasis being placed on rationalizing the forms registrants must complete with the goal of improving their overall experience interacting with the Commission.



State Minister of Finance the Hon. Michael Halkitis opening the IFA industry Briefing, May 2012.



The management team of the SCB wishes all of its registrants a successful 2013. Pictured are: (Back Row, L-R) Acting Manager of Market Surveillance Narissa Gaitor, Chief Financial Officer Monique Sands, Legal Counsel and Board Secretary Mechelle Martinborough, Manager of Human Relations Deborah Burrows, Manager of Authorisations Laverne Thompson, Manager of Administration Alysia Archer-Colebrooke, (Front Row L-R) Manager of Information Technology Charles McKenzie, Executive Director Dave Shannon Smith, and Manager of Enforcement Gawaine Ward. Not pictured is Inspections Manager Denise O'Brien.

The functions of the Commission are to -

- (a) advise the Minister on all matters relating to the capital markets and its participants;
- (b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;
- (c) foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;
- (d) protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices;
- (e) promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;
- (f) create and promote conditions that facilitate the orderly development of the capital markets; and
- (g) perform any other function conferred or imposed on it by securities laws or Parliament.

— Section 12, Securities Industry Act, 2011

Find us online at:
www.scb.gov.bs

Quarter One Events

- BICA 'Auditing the Auditor Workshop' Speaking Engagement, 11 February 2013
- Bahamas Bar Association Presentation Re FCSPs, 12 February 2013
- CFA Society Speaking Engagement, 27 February 2013
- Management of Accounting Records Survey to FCSP Registrants, February
- Inspector's Agents Training , Q1
- FATCA Preparedness Regulatory Survey, Q1



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