

# 2004

## Annual Report





## **MISSION STATEMENT**

TO EFFECTIVELY OVERSEE AND REGULATE THE ACTIVITIES OF THE SECURITIES AND CAPITAL MARKETS, TO PROTECT INVESTORS,  
WHILE STRENGTHENING PUBLIC AND INSTITUTIONAL CONFIDENCE IN THE INTEGRITY OF THOSE MARKETS.

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## **BOARD MEMBERS**

**As at December 31, 2004**

**Calvin Knowles**  
Chairman

**Alexander Reckley**  
Deputy Chairman

**Tonya Bastian – Galanis**  
Member

**Bernard Bonamy**  
Member

**Roger Brown**  
Ex-Officio Member  
Registrar of Insurance Companies

**Jerry Butler**  
Member

**Julian Francis**  
Ex-Officio Member  
Governor of the Central Bank

**Eve Poitier**  
Member

**Hillary Deveau**  
Ex-Officio Member  
Acting Executive Director

**Mechelle Albury**  
Acting Secretary to the Board

## CHAIRMAN'S MESSAGE

It gives me great pleasure to present the 2004 Annual Report of the Securities Commission of The Bahamas (the Commission), which includes the financial statements for the year ended December 31, 2004. Much of the Commission's work for the year under review was outward facing with the objective of maintaining the momentum of revamping and strengthening our existing regulatory regime initiated in 2003.

In achieving these identified goals the Commission placed great emphasis on trying to re-brand its regulatory structure as one that adheres closely to international standards. This can be evidenced by the applaudable measures undertaken by the Commission to bring its system and operations to an order that would facilitate the adoption and the maintenance of acceptable standards in all of its activities. Those measures include the major restructuring to shift the Commission's processes from a product approach to a function approach and ensuring the promulgation of the Investments Funds Act and Regulations, 2003.

In 2004, the Commission worked to crystalise the consolidation of the new structure. In doing so, the Commission focused heavily on revamping its internal and administrative procedures and processes. Amendments to the Commission procedures and processes included:

- A new supervisory approach, which is now incorporated into the Commission's core technical functions: the authorisations process; off-site market surveillance and on-site inspections of registered and licensed entities and
- Designing and implementing transitional period and long term procedures to accommodate the provisions within the Investment Funds Act and Regulations, 2003.

Other measures the Commission took to strengthen the reputation of the jurisdiction and to increase investor confidence was fortifying the minimum educational requirements for security industry participants.

To improve the attractiveness of the jurisdiction, the Commission adopted and implemented Fast Track Guidelines. These Guidelines allow investment funds available to accredited investors to be licensed within a 72 hour period. The passing of these Guidelines are a result of the Commission's collaborative efforts with industry participants and demonstrates the Commission's commitment to an open dialogue that promotes the investment funds, capital and securities markets.

The Commission will continue its commitment to maintaining the integrity of the markets via innovative and responsive legislative and policy developments, the streamlining of internal procedures and processes and the continued dialogue with industry stakeholders.

I would like to personally thank the Members, management and staff of the Commission for a job well done, and the industry for their continued dedication to enhancing the security and attractiveness of The Bahamas' financial services sector.

Calvin Knowles  
**Chairman**

## SECURITIES COMMISSION OF THE BAHAMAS AT A GLANCE

### VISION STATEMENT

- A vibrant, competitive financial services sector that has sound regulatory practices and policies that promotes confidence.

### MANDATE

- Formulate principles to regulate and govern the 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 the orderly growth and development of the securities and capital markets; and
- Advise the Minister of developments regarding the investment funds, securities and capital markets.

### PURPOSE

- To contribute to the growth and development of a financial services sector that is vibrant and competitive.

### STRUCTURE

- A body corporate established in 1995 by the Securities Industry Act to regulate the securities and capital markets.

### GOVERNANCE

- The membership of the Commission consists of a Chairman, a Deputy Chairman and other members not to exceed seven. There are three Ex-Officio Members: The Governor of the Central Bank, Registrar of Insurance Companies and the Executive Director of the Commission.

### STAFFING

- 40 full-time staff members as at December 31, 2004.
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## **MANAGEMENT TEAM**

**As at December 31, 2004**

**Hillary Deveau**

Acting Executive Director

**Peter Carey**

Deputy Executive Director

**Mechelle Albury**

Legal Counsel

**L. Alexander Roberts and Peggy Knowles**

Authorisations Department

**Keith Seymour**

Market Surveillance Department

**Christopher Hanna**

Inspections Department

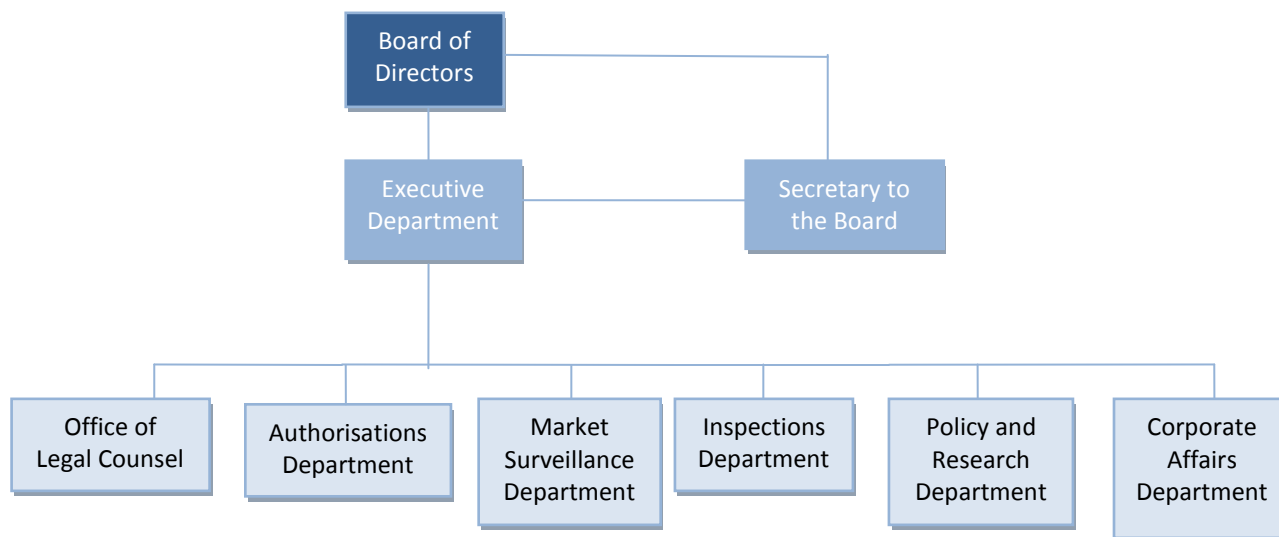
**Sally Moss**

Policy and Research Department

**Carolyn Ferguson**

Corporate Affairs Department

## STRUCTURE OF THE COMMISSION



- **Executive Department** – This department is responsible for the day-to-day management of operations, technical and financial matters.
- **Secretary to the Board** – The Secretary is responsible for managing Board matters and providing technical and administrative support to the Board.
- **Office of Legal Counsel** – This department is responsible for providing legal advice to the various departments of the Commission, assisting in the review of financial sector legislation, managing matters of international cooperation and overseeing enforcement and disciplinary matters.
- **Authorisations Department** – This department is responsible for the licensing and registration of market participants, as well as the review and registration of prospectuses for public offerings.
- **Market Surveillance Department** – This department is responsible for the on-going monitoring and supervision of market participants and the local securities exchange, and reviewing proposals from the local securities exchange.
- **Inspections Department** – This department is responsible for the supervision and on-site monitoring of market participants adherence to the rules and regulations.
- **Policy and Research Department** – This department is responsible for assisting in the development of legislation, rules, policies and guidelines. It is also responsible for statistical reporting, investor education, the content of the Commission’s website, public relations and the oversight of the Commission’s registry.
- **Corporate Affairs Department** – This department is responsible for the daily management of the human and physical resources of the Commission, which includes, ensuring adequate manpower to facilitate the Commission’s mandate, as well as implementing and enforcing staff regulations.



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## DOMESTIC CAPITAL MARKETS OVERVIEW FOR 2004

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Domestic capital markets activity was more upbeat during 2004, marked by an increase in both trading volumes and values. The volume of the securities traded on the Bahamas International Securities Exchange (BISX) nearly doubled to 8 million shares, with the value significantly higher at \$24.3 million from \$7.5 million in 2003. The BISX All Share Price Index appreciated by 19.7% to 1,039.4 points, a marked rebound from the narrowed decline of 2.0% in 2003. Similarly, valuation represented in the broader Fidelity Capital Market Limited's Index (Findex), which captures the over-the-counter trading, recovered by 14.9% to 423.0 points, from a tapered loss of 0.6% in the previous year. Total market capitalisation on BISX rose by 17.2% to \$1.9 billion.

During the year, the Commission considered a \$4.3 million offering in July by Kerzner International Limited (KZL), the owner and the operator of the Atlantis Resort property, through Bahamian Depositary Receipts (BDRs) against shares of KZL listed on the New York Stock Exchange (NYSE). Approximately 10 BDRs were issued for each KZL share, trading locally at one tenth of the value of the previous day's close of the KZL shares on the NYSE. The Kerzner BDRs were subsequently listed on the BISX and, along with the shares of the Bank of The Bahamas Ltd., which previously traded over the counter, increased the number of publicly traded companies on the Exchange to 19. Inclusive of over-the-counter instruments, the total number of securities trading locally increased to 31, comprising 24 Public Companies, 5 Investment Funds and 2 Private Debt Instruments.

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## SUPERVISORY APPROACH

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The restructuring of the Commission and the review of processes were major events for the Commission during the previous year. In 2004, the Commission also focused on consolidating the changes to its structure and operations resulting from the 2003 restructuring, in particular the adoption of a new **supervisory approach**. All regulated entities are assessed with a view toward the achievement of the Commission's core supervisory and statutory objectives. These are:-

- Maintaining effective oversight;
- Strengthening market confidence;
- Protecting investors; and
- Facilitating orderly growth and development of the markets.

Areas that pose a risk to the Commission's core objectives of supervision are as follows:-

- Risk arising out of insolvency of licensees and registrants;
- Misconduct and inappropriate business practices;
- Fraud or dishonesty; and
- Money Laundering.

The Authorisations Department, along with the Market Surveillance Department, gives due regard to these issues when assessing a market participant, both at the authorisations stage and during the ongoing monitoring process.

The Commission's supervisory approach for registrants and licensees is proportionate to the size and complexity of the operation. The Commission performs both on-site and off-site supervision, the results of which feed into the on-going risk assessment of the registrant/licensee for regulatory compliance. The

above objectives also influence the type of on-site inspections carried out by the Commission, the areas to be examined and the frequency of these inspections. On-site supervision takes the form of a business meeting or a compliance inspection.

Compliance inspections may consist of a review of the entire business or may focus on a certain area, depending on the circumstances of the registrant/licensee as determined by the ongoing off-site monitoring process. The frequency of meetings and inspections also depends on this determination. As a result, a schedule of site inspections is established. However, the Commission may arrange an ad hoc inspection outside of the established timetable, where necessary.

The Commission will define the scope of the inspection to the registrant/licensee and may request information to be provided in advance. As part of the post inspection work, an Inspection Report will be produced which outlines the areas covered and any action required by the registrant/licensee. The objective of the report is as follows:-

- To re-confirm to the registrant/licensee the scope of the inspection;
- To ensure that actions/recommendations are documented and that the responsibility for implementation is clearly assigned; and
- To ensure that timelines are clearly stated (for follow-up action).

There may be occasions where a letter confirming any actions is deemed more appropriate than a full report. This could be due both to the limited nature of the activity reviewed and/or the absence of material actions arising out of the inspection.

#### **Off-site Supervision**

Off-site Supervision includes some or all of the following:-

- Desk based reviews and analysis of information;
- Requests for information;
- Themed questionnaires;
- Meetings with Management;
- Letters to Management;
- Review of prudential returns;
- Review of external and internal audit reports;
- Review of specific reports required from registrants/licensees;
- Setting conditions for licensing and/or directions; and
- Report/review carried out by an “expert” third party.

Where a registrant/licensee is part of a group, it is supervised in relation to each regulated activity the group carries out. For example, a group may comprise a number of entities which carry on securities, funds, or issuer activities. Where one registrant/licensee carries on a number of different regulated activities, this entity would also have distinct supervision for each activity, unless one is incidental to another. In addition to the individual assessments, group supervision is carried out, depending on the level of integration within the particular group.

Registrants/licensees are assigned an account officer for each area of regulated business conducted. In addition, where registrants/licensees are part of a group carrying on a number of activities, an Officer is assigned to monitor the group.

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## LEGISLATIVE UPDATES

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### **Investment Funds Act 2003**

The Bahamas made significant strides in the Investment Funds area, particularly in the past few years with the passage of the Investment Funds Act in 2003. The modern Act, which established three primary categories of funds – Professional, SMART and Standard Funds, allows for better marketing of The Bahamas.

Since the implementation of the Investment Funds Act, 2003 in December 2003, the new Act has significantly increased the work load of the staff of the Commission in that it requires all open ended funds operating in or from this jurisdiction to come under some level of regulation. The significance of this is that the entire category of Investment Funds operating previously as Exempt Funds under the 1995 Mutual Funds Act, come under regulation as Recognised Foreign Funds or SMART Funds.

### **Transitional Period in the Investments Funds Act**

There was a delay in the transition of funds under the new legislation requiring an extension to the period allocated for this process. Accordingly, pursuant to Section 69 of the Investment Funds Act, 2003, the Commission extended the following periods specified in Part XI of the Investment Funds Act, 2003:

#### **Section 66(1) Investment Funds Act, 2003**

The 90 day period specified as the time within which funds exempt pursuant to Section 3(4) of the Mutual Funds Act, 1995 must apply to a licensor for licensing under the Investment Funds Act, 2003 was extended by 90 days.

#### **Section 66(2) Investment Funds Act, 2003**

The 120 day period specified as the time within which Unrestricted Investment Fund Administrators must provide the Commission with details of applications for licensing submitted by funds exempt pursuant to Section 3(4) of the Mutual Funds Act, 1995 was extended by 90 days.

#### **Section 67(1) Investment Funds Act, 2003**

The 90 day period specified as the time within which funds exempt pursuant to Section 3(6) of the Mutual Funds Act, 1995 must apply to the Commission to be registered as a Recognised Foreign Fund under the Investment Funds Act, 2003 was extended by 90 days.

### **Segregated Accounts Companies Bill**

The Commission was given an opportunity to review the Draft Segregated Accounts Companies Bill and made the following recommendations:

- Section 3 (1) (a) – This section grants Investment Fund Administrators with authority to provide consent before a company can be registered to operate Segregated Accounts. The Commission felt that it alone should be vested with this authority;
- That a definition of company be included ; and
- That the issue of Audits be addressed in the Bill.

The Segregated Accounts Companies (SAC) Act expands the legislative framework that strengthens The Bahamas' comparative advantage in the securities and capital markets.

A SAC may segregate each of its assets into separate accounts which are thereby shielded from exposure to losses or claims of creditors of the SAC itself, or on other accounts within the SAC. Also known as a Protected Cell Company, a SAC allows the compartmentalisation of risks within a single corporate structure. As a result, the financial performance of an individual account does not affect any other accounts of the SAC itself.

In effect, the separate accounts of the SAC act like separate limited companies -- but all under common management -- reducing senior management time, capital requirements, administration and costs.

Designed originally for the international captive insurance market, assets held for clients could be segregated from the assets and liabilities of the insurance company. In the event of the liquidation of the insurance company, the clients' assets would not be available to the creditors of the insurance company.

SACs are now being used by some to structure wealth management solutions for clients with highly diversified portfolios including investment funds and structured products.

It was expected that the enactment of the Segregated Accounts Companies Act would improve the usefulness of the new Investment Funds Act, 2003 that was passed the previous year. The Investment Funds Act with its regulations and SMART Funds templates, and the new Segregated Accounts Companies Act, place The Bahamas in a strong position to strengthen its capital markets industry.

Bahamian SAC legislation has set the standard of providing the platform for segregation of assets and liabilities for its use in other areas of business such as a holding company for property or luxury items. The use of a SAC for these and all other purposes does require approval and the oversight of the relevant regulator.

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## **POLICY DEVELOPMENTS**

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### **Minimum Education Requirements**

The Commission approved minimum education requirements for individuals seeking to operate as Stockbrokers and Securities Investment Advisors in or from The Bahamas. The requirements (Appendix 1) have binding effect, and replace existing policies on educational requirements for securities industry participants.

### **Fast Track Process**

The Commission also adopted a fast track process which enables investment funds available to accredited investors to be licensed within a 72-hour period. The process was approved at a Commission meeting on November 24, 2004. The Guidelines for this process are in Appendix 2.

The new fast track process is much quicker than the current licensing process because it utilises a declaration, signed by either the lawyer or the administrator to the fund, certifying that the application and all supporting documentation are in compliance with the Investment Funds Act and Regulations, 2003. The practice of the Commission prior to adopting this process was to use a broad brush approach in licensing all funds without taking into consideration the type of investors being targeted.

This process is a result of a collaborative effort between the Commission and market participants who had for some time expressed their concerns with the inconsistent turnaround time for the approval of investment funds licensed by the Commission compared with competing jurisdictions.

The fast track process is facilitated by the elimination of delays caused by the extensive due diligence exercise undertaken in regular applications. While due diligence will still be undertaken, this will now take place following the granting of the license -- similarly to practices already in place in several competing jurisdictions.

The Commission rationalises that the investment funds in question target investors who are expected to be knowledgeable of the industry and capable of conducting their own due diligence; hence, they require a reduced level of scrutiny by the regulator.

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## INDUSTRY STATISTICS

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A snapshot of the regulated entities is provided in the tables and charts that follow:

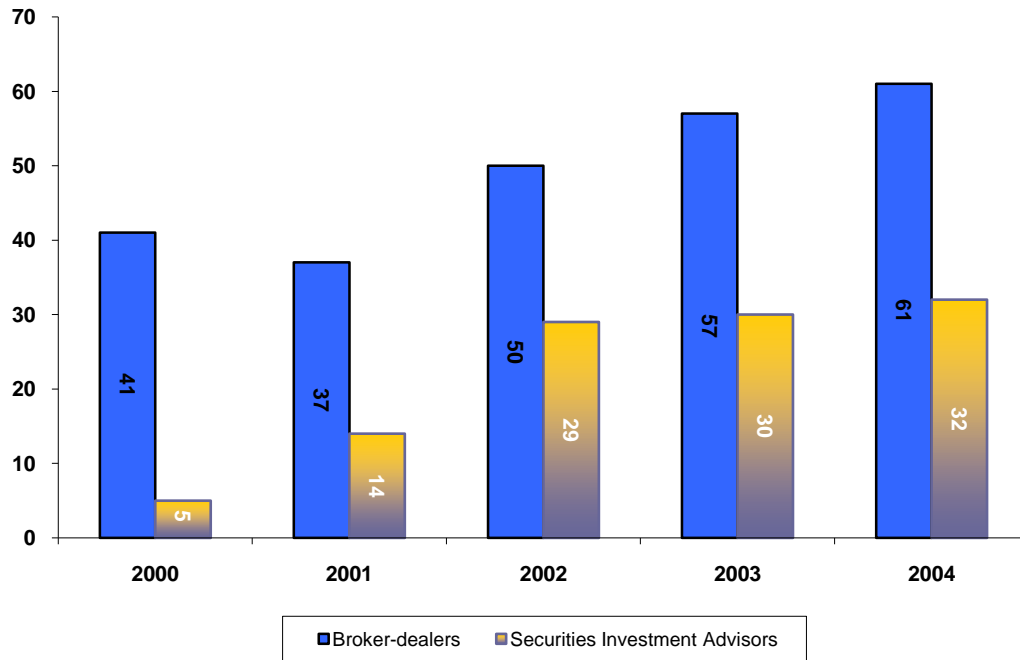
**Table 1: Registrants Under the SIA –  
As at December 31, 2004**

Category	Quantity
Broker-Dealers: Class I	11
Broker-Dealers: Class II	54
Securities Investment Advisors	34

**Table 2: Registrants Under the SIA - Comparative Figures 2000-2004**

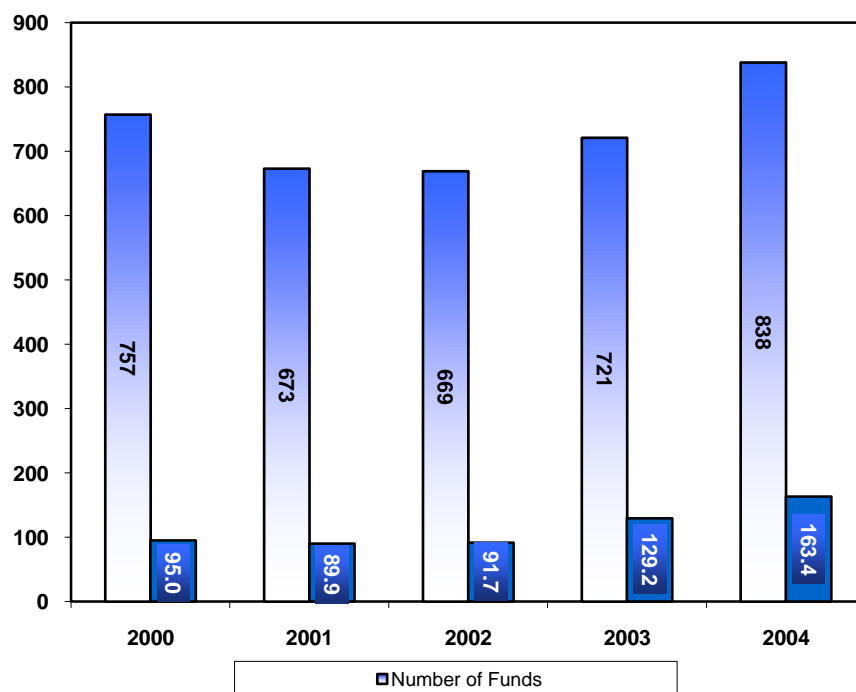
	Dec. 31, 2000	Dec. 31, 2001	Dec. 31, 2002	Dec. 31, 2003	Dec. 31, 2004
Broker-Dealers Class I	5	6	7	11	12
Broker-Dealers Class II	36	31	43	46	49
Securities Investment Advisors	5	14	27	30	34
Securities Exchange	1	1	1	1	1

**Chart 1: Registrants Under the SIA – Comparative Figures 2000-2004**



The number of investment funds increased from 721 with a net asset value (NAV) of \$129.15 billion at December 31, 2003, to 838 funds with a NAV of \$163.4 at December 31, 2004.

**Chart 2: Growth of the Investment Funds Industry 2000-2004**



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## OVERVIEW OF ACTIVITIES

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The Commission exempted the Offering Memorandum for the issue of 10 million Bahamian Depositary Receipts (BDRs) in Kerzner International Limited, from registration with the Commission pursuant to Section 54(7)(c) of the Securities Industry Act, 1999.

This exemption from registration was granted based on various considerations by the Commission including the following:

- The offer was being made by an internationally listed company with a significant nexus to The Bahamas through its substantial physical presence;
- The shares of Kerzner International Limited are listed and regulated by The US Securities and Exchange Commission and The New York Stock Exchange and thus there is a significant level of regulation being conducted internationally; and
- The BDRs would be listed on and regulated by the Bahamas International Securities Exchange (BISX).

Consideration of the appropriateness of the exemption was made subject to, inter alia, the Commission being satisfied that the offering memorandum complied with the approved BISX BDR rules. Thus, the Commission was substantially involved from a regulatory perspective in ensuring that the Offering Memorandum was compliant. Further, under the approved BISX rules the depository for BDRs is subject to various ongoing regulatory requirements, which although administered by BISX are over sighted by the Commission.

The exemption was not intended to be a precedent setting initiative and any future applications would be considered on their own merits. This exemption was therefore granted for this offer only, and future issues of BDRs may be required to register their offering Memorandum with the Commission pursuant to Section 54(1) of The Securities Industry Act, 1999 unless the Commission deems it appropriate to exempt such issues in the future.

The offer was available to the following categories of persons:

- Citizens of The Bahamas;
- Permanent Residents of The Bahamas with the unrestricted right to work endorsed on their Certificates of Permanent Residence; and
- Companies or other investment vehicles (e.g. Trusts or Settlements) wholly-owned by, or whose beneficiaries are wholly comprised of, individuals included in categories (i) and (ii) above.

The offer was not available to the following categories of persons:

- Persons treated as Temporary Residents of The Bahamas for Exchange Control purposes (i.e., holders of a work permit) and Permanent Residents with a restricted right to work; and
- Companies designated "Resident" for Exchange Control purposes in The Bahamas with some degree of non-Bahamian ownership and that in the normal course of their business activities invest in securities, i.e., insurance companies and other financial services providers.

In this regard, the Commission directed the issuer to publish notices of these changes in the eligibility of investors as stipulated in the Offering Memorandum in both the print and electronic media throughout the period of the offer.

### **Enforcement**

The Commission in 2004 issued a series of Public Notices warning against being drawn in by enticements to significant profits from companies not authorised to engage in the capital markets. Specifically, the Commission advised of its knowledge that certain entities passing themselves off as doing securities business in the jurisdiction were not registered with the Commission therefore, any such activity by those entities was a violation of the Securities Industry Act, 1999 and punishable under the terms of the Act.

During 2004, the Commission added to its enforcement arsenal with the establishment of a Disciplinary Committee and provided for the Committee in Section 34 of the Securities Industry Act, 1999.

The Commission maintains a policy of cooperating to the fullest extent possible with overseas regulatory authorities in investigating cases of suspected market abuse and unauthorised securities business that may have a connection to The Bahamas.

### **Corporate Affairs**

The Corporate Affairs Department is primarily responsible for the development, coordination and review of the Commission's programmes for personnel and operations management. Further, the Department assists the Executive Director in formulating budget and authorisation requests, maintains the Commission's payment systems, oversees the computer network administration and executes programmes for office services, such as telecommunications, property management and contract administration. This department is responsible for all human resources matters as well as the general administration of the Commission, including staff training, vacation scheduling and the handling of grievances. This department is also responsible for the finances of the Commission.

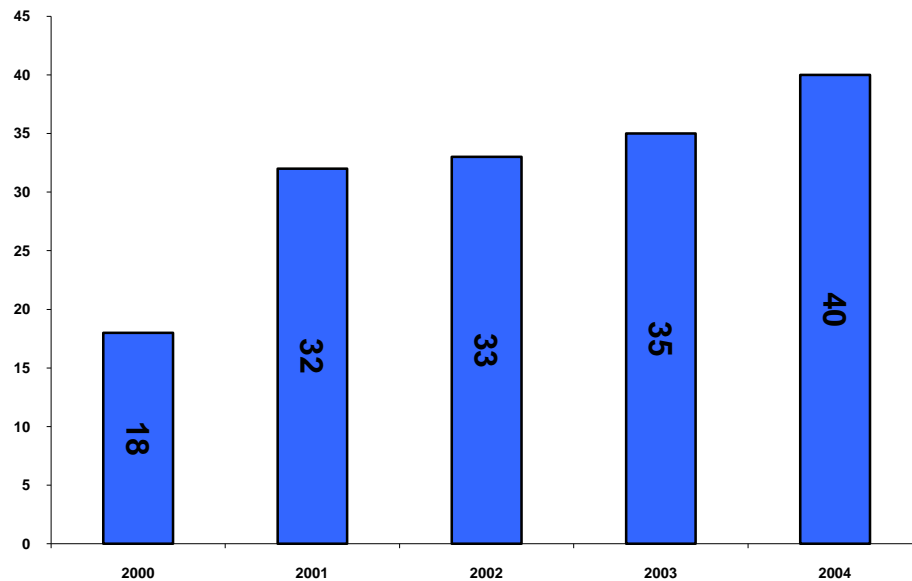
The Corporate Affairs Department is responsible for ensuring that the Commission has in place the necessary information technology, human and physical resources to ensure that this aim is met. The Department oversaw the complex migration of the Commission's pension scheme to a trust format, and continued work to complete the Commission's database, and Registry. A combination of existing vacancies and increased staff turnover resulted in correspondingly high recruitment activity. As a result of the efforts made, the Commission was closer to the headcount projected in the new structure by the end of the year, with a high calibre of staff being successfully recruited and inducted. Recruitment is set to continue throughout 2005.

The Commission reserves and spends a large portion of its resources in the quest for continued knowledge and active participation in discussing and propelling The Bahamas in its financial goals as an aspect of fulfilling its mandate. This involves not only training, but also participation in seminars and workshops, both nationally and internationally.

The department also manages all matters relating to the Commission's physical premises and general Commission supplies. The growth of the Commission's staff from inception to the present is presented in the chart which follows.

The Commission saw some staff turnover during the year end, in effecting the necessary replacements, job roles have been changed. The shortage of staff experienced in the Market Surveillance Department in 2003 has been largely rectified. As a consequence, the Commission expects to be in a position to fully administer its off-site examination role. The Commission was fortunate to recruit several senior trust practitioners directly from the industry. The team now comprises an excellent balance of experienced regulators. This proved to be a powerful combination in supervising markets both from an on-site and off-site perspective.





*Chart 3: Staff Complement*

*Source: Corporate Affairs Department, Securities Commission of The Bahamas*

As part of the restructuring, a Registry was established bringing centralisation of all files of industry participants in one location. This process continues to operate smoothly and is constantly being refined to facilitate the use of a document imaging system in due course and to eventually allow on-line filing and searches of documents. It is anticipated that on-line filing of selected Registry documents will be made available as part of a broader e-commerce initiative that will eventually be extended to the Commission as a whole, which includes the setting up of a database.

#### **Activities of the Board**

During the period under review, the following meetings of the Board and its various committees were held:

- **Regular Meetings** – The Board met six times and approved various matters presented by Management for its consideration.
- **Extraordinary Meetings** –The Board held three extraordinary meetings and approved matters relating to The Bahamas' first depositary receipts (Kerzner BDRs).
- **Committee Meetings** – The two sub-committees of the Board, namely, the Administrative and Audit Committee and the Legislative Committee met a total of four times.
- **The Round-Robin process** –Management utilised the round robin process three times during the period under review to expedite approval of those matters requiring urgent action.

#### **International Cooperation**

In 2004, the Commission continued to improve its programme of cross-border coordination, cooperation and exchange of knowledge, experience and information with other overseas capital market supervisory agencies.

This need will continue and increase as globalisation continues to accelerate in the markets.

In carrying out its statutory duties the Commission is conscious that it cannot act in isolation from either international or domestic influences. The Commission recognises the loss to reputation that a jurisdiction can suffer as a result of a perception that its standards are inferior to those of its competitors. Aware of this situation, the Commission took steps in 2003 to bring its structure and operations in order, to facilitate the adoption and maintenance of acceptable standards in all of its activities. The consolidation of the new structure, to a large extent, took place in 2004.

The Bahamas moved quickly to provide disaster relief services to financial institutions in the Cayman Islands affected by Hurricane Ivan. Cayman-licensed institutions were allowed to establish operations on a temporary basis in The Bahamas.

In allowing Cayman institutions to establish operations in The Bahamas until normalcy returned to the former, all necessary Bahamian government approvals, including immigration, were facilitated. Firms licensed to operate in the Cayman Islands did not have to go through licensing procedures in The Bahamas.

Bahamas-based financial services institutions with affiliate offices in the Cayman Islands also stepped forward with assistance. Back office administration and processing work for many of these firms were done in The Bahamas. Cayman-based employees from a number of institutions were also brought to The Bahamas to facilitate smooth business operations.

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## **FINANCIAL SUMMARY**

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The Commission recorded an operating deficit of \$675,920 for 2004, representing a decrease of \$627,759 from \$1.3 million. Operating income increased 63.5% (\$825,702), while operating expenses increased by 7.57% (\$196,943) over the prior year. The increase in income is due to changes in the Commission's fee structure, resulting from the change in legislation from the Mutual Funds Act, 1995 to the Investment Funds Act, 2003.

The Commission's cash position improved from a deficit of \$602,466 as at December 31, 2003 to a deficit of \$95,222 as at December 31, 2004. This was largely financed by an increase in government funding of \$500,000 from \$1 million during 2003 to \$1.5 million during 2004. The net reserve as at December 31, 2004 was \$33,983, an increase from the prior year's accumulated operating deficit of \$790,097.

The Auditor's Report again emphasised that the Commission's ability to continue to operate as a going concern is contingent on either attaining profitable operations and/or continued government subvention.

**SECURITIES COMMISSION OF THE BAHAMAS**

**FINANCIAL STATEMENTS**

**YEAR ENDED DECEMBER 31, 2004**



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## **INDEPENDENT AUDITORS' REPORT**

To the Members of Securities Commission of The Bahamas

We have audited the accompanying financial statements of Securities Commission of The Bahamas (the "Commission") which comprise the balance sheet as at December 31, 2004, and the related statements of operations, accumulated operating deficit and reserve funds and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory notes.

### *Management's responsibility for the financial statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### *Auditors' responsibility*

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those Standards require that we comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



*Opinion*

In our opinion, the financial statements present fairly, in all material respects, the financial position of Securities Commission of The Bahamas as of December 31, 2004, and its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards.

*Emphasis of matter*

Without qualifying our opinion, we draw attention to note 10 to the financial statements. The Commission incurred an operating deficit for the year of \$675,920 (2003 - \$1,303,679) before Government funding of \$1,500,000 (2003 - \$1,000,000) and current liabilities exceeded current assets. As at December 31, 2004, the accumulated operating deficit and reserve funds had a net reserve of \$33,983 (2003 - net deficit of \$790,097). The Commission will only be able to continue as a going concern by attaining profitable operations and/or with continued financial support from the Government.

A handwritten signature in black ink, appearing to read 'KPMG' with a stylized flourish at the end.

Nassau, Bahamas  
September 16, 2008

# SECURITIES COMMISSION OF THE BAHAMAS

## Balance Sheet

December 31, 2004, with corresponding figures for 2003  
(Expressed in Bahamian dollars)

	2004	2003
<b>Assets</b>		
Current assets:		
Cash at bank and on hand	\$ 45,171	38,571
Accounts receivable (notes 4, 11 & 13)	132,301	90,166
Deposits and prepaid expenses (note 13)	104,169	13,963
	281,641	142,700
Equipment (note 6)	169,720	189,019
	\$ 451,361	331,719

## Liabilities and Accumulated Operating Deficit and Reserve Funds

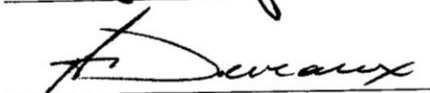
Current liabilities:		
Bank overdraft (note 5)	\$ 140,393	640,037
Deferred revenue	86,834	221,370
Accounts payable and accrued expenses (note 11)	190,151	260,409
	417,378	1,121,816
Accumulated Operating Deficit and Reserve Funds (note 7)	33,983	(790,097)
Commitments and contingencies (note 8)		
	\$ 451,361	331,719

See accompanying notes to financial statements.

These financial statements were approved for issue on behalf of the Members of the Board on September 16, 2008 by:



Chairman



Executive Director

# SECURITIES COMMISSION OF THE BAHAMAS

## Statement of Operations

Year ended December 31, 2004, with corresponding figures for 2003

(Expressed in Bahamian dollars)

	2004	2003
Operating income:		
Mutual fund registration and licence fees	\$ 566,363	312,000
Mutual fund principal office fees	304,544	312,000
Mutual fund application fees	189,499	60,200
Mutual fund administrator licence fees	489,661	92,400
Mutual fund administrator application fees	28,300	4,000
Broker - dealer registration and licence fees	389,965	340,167
Broker - dealer application fees	23,700	9,800
Securities investment advisor registration and licence fees	55,537	33,833
Securities investment advisor application fees	6,700	4,500
Associated person registration and licence fees	3,400	3,492
Associated person application fees	650	800
Securities exchange registration and licence fees	25,000	25,000
Fees from public offerings	22,554	11,000
Penalty fees	—	61,000
Miscellaneous income	8,690	8,504
Examination fees	5,430	9,795
Bad Debt Recovery	3,000	—
Gain on sale of equipment	200	10,000
	2,123,193	1,298,491
Operating expenses:		
Salaries, wages and benefits (notes 9, 11 & 13)	1,602,268	1,291,660
Rent for office and parking (note 8)	340,937	328,569
Travel and entertainment (note 11)	141,068	140,723
Utility and property charges	136,446	145,512
Professional fees	85,614	185,970
Depreciation (note 6)	82,977	80,430
Office expenses	60,910	62,030
Bad debts write-off and provision	60,236	114,079
Members' honoraria (note 11)	57,875	58,650
Telephone	44,833	43,239
Computer expenses	37,346	43,108
Training and seminars	35,366	19,307
Advertising	34,792	10,359
Finance charges (note 5)	22,565	34,322
Printing	21,395	13,079
Sundry	18,378	8,125
Membership and publications fees	12,645	7,465
Examination expenses	3,462	7,343
Investor education costs	—	8,200
	2,799,113	2,602,170
Operating deficit for the year	\$ (675,920)	(1,303,679)

See accompanying notes to financial statements.

## SECURITIES COMMISSION OF THE BAHAMAS

### Statement of Accumulated Operating Deficit and Reserve Funds

Year ended December 31, 2004, with corresponding figures for 2003  
(Expressed in Bahamian dollars)

	Government Funding	Accumulated Operating Deficit	Total
Balance at December 31, 2002	\$ 2,509,443	(2,995,861)	(486,418)
Government funding	1,000,000	—	1,000,000
Operating deficit for the year	—	(1,303,679)	(1,303,679)
Balance at December 31, 2003	3,509,443	(4,299,540)	(790,097)
Government funding	1,500,000	—	1,500,000
Operating deficit for the year	—	(675,920)	(675,920)
Balance at December 31, 2004	\$ 5,009,443	(4,975,460)	33,983

See accompanying notes to financial statements.



# SECURITIES COMMISSION OF THE BAHAMAS

## Statement of Cash Flows

Year ended December 31, 2004, with corresponding figures for 2003  
(Expressed in Bahamian dollars)

	2004	2003
Cash flows from operating activities:		
Operating deficit for the year	\$ (675,920)	(1,303,679)
Adjustments for:		
Depreciation	82,977	80,430
Bad debts write-off and provision	60,236	114,079
Gain on sale of equipment	(200)	(10,000)
Cash used in operations before changes in operating assets and liabilities	(532,907)	(1,119,170)
Increase in accounts receivable	(102,371)	(81,209)
(Increase)/decrease in deposits and prepaid expenses	(90,206)	15,819
(Decrease)/increase in deferred revenue	(134,536)	47,876
(Decrease)/increase in accounts payable and accrued expenses	(70,258)	185,010
Net cash used in operating activities	(930,278)	(951,674)
Cash flows from investing activities:		
Purchase of equipment (note 5)	(63,678)	(124,802)
Proceeds from sale of equipment	200	—
Net cash used in investing activities	(63,478)	(124,802)
Cash flows from financing activities:		
Government funding	1,500,000	1,000,000
Net cash provided by financing activities	1,500,000	1,000,000
Net increase/(decrease) in cash and cash equivalents	506,244	(76,476)
Cash and cash equivalents, beginning of year	(601,466)	(524,990)
Cash and cash equivalents, end of year	\$ (95,222)	(601,466)

Cash and cash equivalents are comprised:

Cash at bank and on hand	\$ 45,171	38,571
Bank overdraft	(140,393)	(640,037)
Cash and cash equivalents, end of year	\$ (95,222)	(601,466)

See accompanying notes to financial statements.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004

(Expressed in Bahamian dollars)

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### 1. General information

The Securities Commission of The Bahamas ("the Commission") was established on June 20, 1995 under The Securities Board Act, 1995 of The Commonwealth of The Bahamas. The principal place of business is located on the Third Floor, Charlotte House, Shirley and Charlotte Streets, P.O. Box N-8347, Nassau, Bahamas.

The primary function of the Commission is to monitor and regulate the securities market and the mutual funds industry in The Bahamas.

Effective November 2000, licensed banks, trust companies and individuals that are engaged in various aspects of the securities business and that are in good standing with The Central Bank of The Bahamas, must also register with the Commission. As a result, the Commission also earns fee income from broker-dealers, securities investment advisors and associated persons.

The Commission is a body corporate having perpetual succession and a common seal, with the power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatever kind. The Commission may also sue or be sued in its corporate name.

### 2. Basis of preparation

#### *(a) Statement of compliance*

The financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRSs").

#### *(b) Basis of measurement*

The financial statements have been prepared on a historical cost basis.

#### *(c) Functional and presentation currency*

The financial statements are presented in Bahamian dollars, the Commission's functional currency.

#### *(d) Use of estimates and judgements*

The preparation of financial statements in accordance with IFRS requires management to make judgements, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised and in any future periods affected.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004

(Expressed in Bahamian dollars)

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### 2. Basis of preparation *(continued)*

#### *(d) Use of estimates and judgements (continued)*

In particular, information about significant areas of estimation uncertainty and critical judgements in applying accounting policies that have the most significant effect on the amounts recognized in the financial statements are described in notes 3 (b) and 3 (d).

### 3. Significant accounting policies

The accounting policies have been applied consistently by the Commission and are consistent with those used in the previous year.

#### *(a) Equipment*

Equipment is stated at cost less accumulated depreciation and impairment losses.

Expenditure incurred in the acquisition or replacement of equipment is capitalized. Other subsequent expenditure is capitalized only when it increases the future economic benefits embodied in the equipment. All other expenditure is recognized in the statement of operations as an expense as incurred.

Depreciation is charged to the statement of operations on a straight-line basis over the estimated useful lives of the equipment as follows:

Computer equipment	5 years
Furniture and fittings	5 years
Vehicles	5 years

A full year's depreciation charge is made in the year of purchase.

#### *(b) Impairment*

The carrying amounts of the Commission's assets are reviewed at each balance sheet date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated. An impairment loss is recognized if the carrying amount of an asset exceeds its recoverable amount. Impairment losses are recognized in the statement of operations.

An impairment loss in respect of a receivable is reversed if the subsequent increase in the recoverable amount can be related objectively to an event occurring after the impairment loss was recognized.

An impairment loss in respect of equipment is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation, if no impairment loss had been recognized.

#### *(c) Operating leases*

Lease rentals relating to office spaces are recognised as an expense in the statement of operations on a straight-line basis over the lease term.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004

(Expressed in Bahamian dollars)

### 3. Significant accounting policies (continued)

#### (d) Accounts receivable and accounts payable

Accounts receivable are stated at cost less provision for doubtful accounts and impairment.

Accounts payable is stated at cost.

#### (e) Cash and cash equivalents

Cash and cash equivalents represent petty cash, demand cash at bank less bank overdraft.

#### (f) Government grants

Government funding is accounted for when received and credited directly to the statement of accumulated operating deficit and reserve funds.

#### (g) Income

Fees receivable from mutual funds, mutual fund administrators, broker-dealers, security investment advisors and associated persons are accounted for when they become due.

#### (h) Defined contribution pension plan

Contributions to the Commission's defined contribution pension plan are recognised as an expense in the statement of operations as incurred.

#### (i) IFRSs not yet effective

The Commission has not applied the following IFRS that has been issued but is not yet effective. Other IFRSs that have been issued but are not yet effective have no significant impact on the Commission's operations or financial reporting.

*IFRS 7 Financial Instruments: Disclosures* require disclosures about the significance of financial instruments for an entity's financial position and performance, and qualitative and quantitative disclosures on the nature and extent of risks. IFRS 7, which became mandatory for financial reporting periods commencing January 1, 2007, will require additional disclosures with respect to the Commission's financial instruments.

### 4. Accounts receivable

	2004	2003
Mutual funds and administrators	\$ 22,915	17,000
Broker-dealers, securities advisors and associated persons	98,567	75,541
Other receivables	10,819	4,625
	132,301	97,166
Less: allowance for doubtful accounts	—	(7,000)
	\$ 132,301	90,166

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004  
(Expressed in Bahamian dollars)

### 5. Bank overdraft

The Commission has a bank overdraft facility amounting to \$750,000 (2003 - \$750,000), which bears interest at Bahamian Dollar Prime plus 1% per annum, (2004 – 6.5%; 2003 – 7%). The Commission has issued a letter of comfort dated June 21, 2004 as security for the bank overdraft facility.

### 6. Equipment

	Computer equipment	Furniture & fittings	Vehicles	Total
Cost:				
December 31, 2003	\$ 337,263	287,496	55,495	680,254
Additions	56,338	7,340	–	63,678
Disposals	(200)	–	–	(200)
December 31, 2004	\$ 393,401	294,836	55,495	743,732
Accumulated depreciation:				
December 31, 2003	\$ 233,827	233,109	24,299	491,235
Charge for the year	54,135	21,043	7,799	82,977
Disposals	(200)	–	–	(200)
December 31, 2004	\$ 287,762	254,152	32,098	574,012
Net book value, December 31, 2004	\$ 105,639	40,684	23,397	169,720
Net book value, December 31, 2003	\$ 103,436	54,387	31,196	189,019

### 7. Reserve Funds

The Commission may from time to time carry surplus funds to a reserve fund, or invest these funds in securities approved by the Minister of Finance ("the Minister"). Any such treatment must be with the prior consent of the Minister.

The reserve fund shall be established by the Commission, and the funds applied only for purposes of the Commission. The Minister, however, may direct the Commission on any matters concerning the establishment and management of the fund and movements to and from the fund. The Minister may also direct surplus or reserve funds to be paid into the Consolidated Fund of The Bahamas Public Treasury.

As the Commission incurred an operating deficit for the year, there were no surplus funds available from operations.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004

(Expressed in Bahamian dollars)

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### 8. Commitments and contingencies

- (i) The Commission leases office space under two existing lease agreements. The future minimum lease payments are as follows:

	\$
• Within one year	322,137
• More than one year and less than five years	26,845

Under a lease agreement which commenced February 1, 1999 for a period of 7 years, the Commission has the option to renew the lease for a further 7 years. The annual lease payments will be determined at the time of renewal.

Under a lease agreement which commenced July 1, 2000 for a period of 5 years and 7 months, the annual lease payments, after the first 3 years, were increased by multiplying the base amount by a factor determined during the current period. This factor increase has been reflected in the above minimum lease payments. The Commission has the option to renew the lease for a further 7 years.

- (ii) In the normal course of its business, the Commission is involved in various legal proceedings arising out of and incidental to its operations. Management of the Commission does not anticipate that the losses, if any, incurred as a result of these legal proceedings will materially affect the financial position of the Commission.

The Commission is the defendant in a legal action brought against it by a former employee. The Commission's attorneys have not quantified the amount of the claim and have advised that the plaintiff is not expected to succeed.

### 9. Defined contribution pension plan

The Commission implemented a defined contribution pension plan on January 1, 1999 for all members of staff. Participation in the plan is mandatory and contributions by the Commission and the employees are 10% and 5% of employee salaries, respectively. The pension plan is administered by Colina Financial Advisors. Contributions to the plan by the Commission during the year amounted to \$105,291 (2003 - \$89,156) and are included in salaries, wages and benefits in the statement of operations.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2004  
(Expressed in Bahamian dollars)

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### 10. Going concern

The Commission incurred an operating deficit for the year of \$675,920 (2003 - \$1,303,679) before Government funding of \$1,500,000 (2003 - \$1,000,000) and current liabilities exceeded current assets. As at December 31, 2004, the accumulated operating deficit and reserve funds had a net reserve of \$33,983 (2003 - net deficit of \$790,097). The Commission will only be able to continue as a going concern by attaining profitable operations and/or with continued financial support from the Government of the Commonwealth of The Bahamas. These financial statements are prepared on the assumption that the Commission will continue as a going concern.

Subsequent to the year end government funding of \$900,000, \$1,000,000, \$1,500,000 and \$800,000 was received by the Commission in respect of each of the 2005, 2006, 2007 and 2008 financial years.

### 11. Related party transactions and balances

#### *Honoraria to members*

Included in the statement of operations is \$57,875 (2003 - \$58,650) as honoraria to the members of the board, of which \$nil (2003 - \$5,958) was included in accounts payable and accrued expenses in the balance sheet.

#### *Travel and entertainment*

Included in the statement of operations is \$58,199 (2003 - \$79,535) relating to travel and entertainment incurred by the members of the board during the year.

#### *Executive remuneration and pension contributions*

Included in salaries, wages and benefits in the statement of operations is remuneration of \$552,146 (2003 - \$377,124) and pension contributions of \$34,634 (2003 - \$28,096) relating to key management personnel and executive members of the board. Included in accounts payable and accrued expenses in the balance sheet is \$10,440 (2003 - \$17,098) accrued for executive remunerations.

### 12. Financial instruments and associated risks

Management estimates that the fair values of financial assets and liabilities do not differ materially from their carrying values due to their short-term or liquid nature.

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. The Commission is exposed to credit risk on accounts receivable and provides for amounts not considered to be collectible.

### 13. Corresponding information

Corresponding amounts for accounts receivable, deposits and prepaid expenses, executive remuneration, pension contributions and various income and expense accounts have been adjusted to conform with the current year's presentation.



## APPENDIX 1: MINIMUM EDUCATION REQUIREMENTS

The Commission has approved the following minimum education requirements for individuals to qualify as Stockbrokers and Securities Investment Advisors in The Bahamas which, once gazetted, shall have binding effect, and replace existing policies on educational requirements for securities industry participants.

Applicants for registration as a Stockbroker, Trader or Dealer shall have obtained one of the examinations listed below in addition to six months of securities-related experience:

- Chartered Financial Analyst (Level I) – administered by the Association for Investment Management and Research.
- Canadian Securities course plus Conduct and Practices Handbook – administered by the Canadian Securities Institute.
- Certified European Financial Analyst administered by EFFAS Societies with accredited examinations.
- Irish Registered Representatives Examination – administered by the Irish Stock Exchange/Dublin City University.
- Series 7 - General Securities Representatives Examination – administered by the National Association of Securities Dealers.
- Certificate in Investment Management – administered by the UK Securities Institute.
- Certificate in Securities - administered by the UK Securities Institute.
- Certificate in Securities and Financial Derivatives - administered by the UK Securities Institute.
- Examination - administered by The French Society of Investment Analysts.
- Investment Management Certificate - administered by the United Kingdom Society of Investment Professionals/Institute of Investment Management and Research.

Applicants for registration as a Securities Investment Advisor shall have had at least ten years of securities-related experience or be qualified as a Stockbroker.

The Commission shall, from time to time, consider and publish the name of any other examination which, in the opinion of the Commission, in addition to the securities-related experience, provide an applicant with sufficient expertise to qualify him/her for registration or licensing under the Securities Industry Act, 1999.

In considering an application, the Commission will make a determination as to what constitutes acceptable securities-related experience.

At present, there are no specific educational requirements for applicants seeking registration as Associated Persons.



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## **APPENDIX 2: FAST TRACK GUIDELINES**

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### **GUIDELINES FOR THE FAST TRACK APPLICATION PROCESS FOR LICENSING UNDER THE INVESTMENT FUNDS ACT, 2003**

#### **1. INTRODUCTION**

- 1.1. Pursuant to Section 3 of the Investment Funds Act, 2003 (the Act) an investment fund shall not carry on or attempt to carry on business unless it has been duly licensed pursuant to the provisions of the Act.
- 1.2. The Securities Commission of The Bahamas (the Commission) is required by its mandate to formulate principles to regulate and govern the investment funds, the securities and capital markets and to create and establish conditions to ensure the orderly growth and development of these markets.
- 1.3. The Commission therefore seeks to enhance the efficiency and timeliness of processing applications submitted for its consideration, and to ensure that the procedure adopted is fair, transparent and complies with the provisions of the Act. Various jurisdictions afford different treatment in their licensing process for different types of funds. This distinction in the licensing process within a jurisdiction is generally based on the characteristics of the investors being targeted by the fund. In the circumstances, the Commission has approved a 'fast track' licensing process for Professional Funds and SMART Funds which are restricted to investors that qualify to subscribe to a Professional Fund. The rationale is that the funds are targeting "accredited" investors who are expected to be knowledgeable of the industry and capable of conducting their own due diligence, therefore the level of scrutiny required by the regulator is reduced. The present guidelines are issued in support of this process pursuant to the Commission's authority in Section 47(1) of the Act.
- 1.4. Applicants are advised that these guidelines are prepared for general guidance and do not have force of law. Further, these guidelines should not be relied upon in respect of points of law. It should be noted, however, that these guidelines may be considered by a Court of Law in determining any matter to which they may have relevance.

**INVESTMENT FUNDS APPLYING FOR LICENSING PURSUANT TO THE FAST TRACK PROCESS ARE REQUIRED TO COMPLY WITH ALL PROVISIONS OF THE ACT AND REGULATIONS AND ANY RULES AND GUIDELINES ISSUED BY THE COMMISSION.**

#### **2. PURPOSE**

- 2.1 These guidelines are intended to provide applicants for licensing under the Act to which the fast track process applies, with direction as to the requirements for such applications and the procedures applicable to the processing thereof.
- 2.1 In particular, the following matters are addressed hereunder:
  - (i) Requirements for application;
  - (ii) Form and content of applications and supporting documents to be submitted in respect of such an application;
  - (iii) Due diligence requirements for applicants; and
  - (iv) Procedure followed by the Commission in processing such applications;

### 3. APPLICABILITY

The fast track procedure applies to investment fund applications for licensing as:

- (i) Professional Funds
- (ii) SMART Funds which are restricted to persons to whom a Professional Fund may be offered (presently SMART Fund Model SFM002).

NOTE: THIS PROCEDURE DOES NOT APPLY TO SELF-ADMINISTERED FUNDS.

### 4. APPLICABLE LAW

- (i) The Investment Funds Act, 2003;
- (ii) The Investment Funds Regulations, 2003 ("the Regulations"); and
- (iii) The Investment Funds (SMART Fund) Rules, 2003 ("the SMART Fund Rules")

### 5. REQUIREMENTS FOR APPLICATION

- 5.1. The applicant must be either a Professional Fund or a SMART Fund which is restricted to investors that qualify to subscribe to a Professional Fund.
- 5.2. The applicant must submit a complete application which includes the following:
  - (i) Application Form – a copy of the required form can be found on the Commission's website ([www.scb.gov.bs](http://www.scb.gov.bs) ).
    - a) An applicant shall submit an application form which sets out the information provided in Form A of Schedule 3.
    - b) Every section on the application form must be completed. Where information is requested in the application that is not relevant to a particular, the same should be indicated by placing an 'NA' in the appropriate place.
    - c) With respect to the requirement for information to be provided on the distribution of the fund and the place of distribution, please note that this requirement may be fulfilled in general terms by indicating in which jurisdictions it is intended to be distributed if the fund will be distributed by more than one distributor.
    - d) Information on the fee structure ought to indicate the type and level of fees payable by the investor and the investment fund.
    - e) The application form must be signed by persons authorised to act on behalf of the fund. Generally accepted signatures include –
      - i. an operator of the fund,
      - ii. an authorised signatory of the fund's administrator; or
      - iii. the fund's attorney.

- (ii) Offering document –
  - a) An application for licensing of a Professional Fund must be accompanied by a copy of the offering document of the fund containing information as required by Schedule 1 of the Investment Funds Regulations, 2003. An application for licensing of a SMART Fund to which the fast track procedure applies must be accompanied by a copy of the offering document of the fund containing information as set out in Rule 4 of the SMART Fund Rules.
  - b) The Commission will accept a draft of the proposed offering document of the fund. The fund is expected to submit the final version of the offering document as soon as possible and in any event, prior to the issue of the offering document to investors.
  - c) Any statements or warnings required to be disclosed in the offering document are not required to be made verbatim provided that the statements made express substantively the required information.
  - d) Where an offering document does not contain any of the information required by Schedule 1 of the Regulations or Rule 4 of the SMART Fund Rules as applicable, the fund will be required to amend its offering document accordingly.
- (iii) Constitutive Documents-
  - a) An application for licensing of a fund must be accompanied by a copy of the constitutive documents of the fund containing information as required by Schedule 2 of the Investment Funds Regulations, 2003.
  - b) The Commission will accept a draft of the constitutive documents of the fund. The fund is expected to submit a certified copy of the constitutive documents of the fund as soon as possible and in any event, prior to the launch of the fund.
  - c) The Offering Document of the Fund is not considered a constitutive document and thus, items required by Schedule 2 of the Regulations which are addressed in the offering document only will not satisfy the Schedule 2 requirement.
- (iv) Due diligence information - due diligence information is to be provided for the operators of the fund, investment fund manager, investment fund advisor, promoter, custodian, banker, attorney and auditor.
- (v) Financial Statements - the most recent audited financial statements of the fund, if applicable.
- (vi) Certification - a written certification by the fund's attorney or administrator that the documents submitted are complete and comply with the Act, the Regulations and/or the SMART Fund Rules, and that the information submitted is true and correct.
- (vii) Application Fee - the non-refundable application fee as per Schedule 12 of the Regulations.

## **6. APPLICATION PROCESS**

- 6.1. Once a complete application for an investment fund license to which the fast track procedure applies, accompanied by the certification signed by the attorney or administrator of the fund has been submitted, the application will be determined within 72 hours of receipt.
- 6.2. For the purposes of this process, “Complete Application” means an application form which has been fully and properly filled out and for which the Commission has in its possession all information, documents and due diligence required for the proper consideration of the application.
- 6.3. After the fund has been licensed, the Commission shall review the documents submitted in support of the application.
- 6.4. A review of the offering and constitutive documents of the fund will be conducted to verify compliance with applicable law. Should any deficiencies be identified therein, the administrator of the fund will be notified and required to make the necessary amendments. Failure to comply with the Commission’s directives may result in disciplinary action being taken against the administrator and/or the fund.
- 6.5. Where the Commission thinks it is necessary to do so it shall seek to verify the due diligence information submitted on the related parties to the fund in order to ensure that it is complete and satisfies the Commission to the standard required by Section 15 of the Act. In this regard, the Commission shall consider that due diligence information is complete if it complies with the provisions of the Financial Transactions Reporting Act, 2000, and any guidelines for the investment funds industry published by the Commission. Disciplinary action may be taken against the fund and/or the administrator in the event that the Commission is made aware of any information bringing into question the fitness of a party related to the fund.

## **7. COMMISSION NOTES**

- 7.1. In cases where an attorney or administrator continuously submits certifications in support of applications which do not comply with the Act, the Commission may refuse to accept further certifications submitted by the relevant party.
- 7.2. In any case, where the Commission is of the opinion that an application is not appropriate for the fast track application process the Commission may refuse to ‘fast track’ the application and require the applicant to submit to the regular licensing process applicable to other categories of funds.
- 7.3. Incomplete applications will not be processed. Upon receipt of such applications, the Commission shall notify the applicant that the application is considered incomplete and that, should the application not be made whole within 21 days, it will be stale-dated. A new application and application fee will be required in the event that an application has been stale-dated.

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## APPENDIX 3: REGISTRANTS & LICENSEES OF THE COMMISSION AS AT DECEMBER 31, 2004

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**BROKER-DEALERS (Class I)** – Companies that recommend, solicit or effect transactions in securities for the account of others, buy and sell securities either on their own behalf or in a fiduciary capacity, manage securities portfolios for others, advise others as to the purchasing, selling or exchanging of securities and underwriting or distributing issues of securities, or purchasing and offering such securities for sale as a dealer, are required to register with the Commission as a Broker-Dealer (Class I).

**BROKER-DEALERS (Class II)** – Companies that recommend, solicit or effect transactions in securities for the account of others, buy and sell securities either on their own behalf or in a fiduciary capacity, manage securities portfolios for others and advise others as to the purchasing, selling or exchanging of securities are required to register with the Commission as a Broker-Dealer (class II).

**SECURITIES INVESTMENT ADVISORS** – Any firm providing investment management services to clients for a fee is required to register with the Commission as a Securities Investment Advisor.

**UNRESTRICTED INVESTMENT FUND ADMINISTRATORS** – Firms carrying on the business of investment fund administration in respect of an unlimited number of funds that they are also able to license, are required to be licensed as an unrestricted investment fund administrator.

**RESTRICTED INVESTMENT FUND ADMINISTRATORS** - Firms carrying on the business of investment fund administration in respect of a limited number of funds identified in the license of the administrator are required to be licensed as a restricted investment fund administrator.

**INVESTMENT FUND ADMINISTRATORS EXEMPTED FROM OBTAINING A LICENSE** – Firms carrying on the business of investment fund administration in respect of one investment fund only may be exempted from obtaining an investment fund administrator's license.

### LICENSING & REGISTRATION OF INDIVIDUALS

**Securities Investment Advisor** – An individual that advises others regarding the investing or selling of securities or who is primarily engaged in giving advice regarding the investment of funds and/or manages securities portfolios for clients on a discretionary or non-discretionary basis is required to register as a Securities Investment Advisor.

**Principal** – The Chief Executive Officer/Managing Director and Compliance Director of a registered Broker-Dealer are required to be licensed as principals. Other senior officials can also be so registered.

**Broker/Stockbroker** – Any individual who deals and trades in securities and/or supervises the activities of a Broker-Dealer firm must register as a Broker/Stockbroker.

**Associated Persons** – Any person who is an employee of a Broker-Dealer who performs securities related functions except those specifically reserved for Brokers/Stockbrokers as well as purely clerical staff must be registered as an associated person.

\* A current list of individuals registered with the Commission in the above categories can be found on the Commission's website at [www.scb.gov.bs](http://www.scb.gov.bs).







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