



# 2005 Annual Report

Securities Commission of The Bahamas



**10<sup>th</sup> Anniversary**



## 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, 2005**

**CALVIN KNOWLES**  
Chairman

**ALEXANDER RECKLEY**  
Deputy Chairman

**TONYA BASTIAN - GALANIS**  
Member

**BERNARD BONAMY**  
Member

**ROGER BROWN**  
Ex-Officio Member  
Registrar of Insurance Companies

**WENDY CRAIGG**  
Ex- Officio Member  
Governor of the Central Bank

**JAMES GOMEZ**  
Member

**EVE POITIER**  
Member

**HILLARY DEVEAUX**  
Ex-Officio Member  
Executive Director

**MECHELLE MARTINBOROUGH**  
Secretary to the Board

## Chairman's Message

Attainment of a decade of existence is an important milestone in the history of any organisation. For a regulatory organisation, it is even more important because it is a known fact that mortality risk for a financial services regulator is highest during its first ten years. For an institution established with high expectations, such a milestone becomes even more important as it provides an opportunity for all stakeholders in the initiative to take stock of events, especially as it concerns the extent to which their aspirations may have been met.

In June 1995, on the occasion of this regulator, it was noted that in many instances, great events and organisations were marked by humble beginnings as was the Commission's in the Ministry of Finance. We were aware of the challenges before the regulator and the high expectations of the jurisdiction, given the place of the financial sector in the economy.

I am highly honored to have the opportunity, more than a decade later, to present the Report which documents the extent to which those expectations and ideals alluded to earlier have been realised. A careful reading of this Report reveals the progress of an undertaking that has immense value to the jurisdiction. The success of this organisation will not reside only in the fulfillment of the regulator's mandate, which itself is important, but also in the immense "demonstration effect" derivable from the evidence of what is achievable with the will and collaborative effort, thanks to the visionary leadership that conceptualised this entity, the persistence that made it a reality, and the hard work and focus that ensured its continued growth and development through ten years of operations.

The contents of this Report are not altogether original. This is not unexpected as it is a rendition of history and therefore draws from different source materials. The value the Report brings, however, is that it sifts through all the documents, which constitute an important trove of this financial sector regulator's institutional memory, and organises useful information in a proper order such that the different aspects of the evolution of the Commission became accessible.

I would like to take this opportunity to thank all those who have contributed to bringing us to this point. It is our hope that over the next ten years, the Commission's role in the economic development of this jurisdiction will be undeniable.

*Calvin Knowles*  
**Chairman**

## SECURITIES COMMISSION OF THE BAHAMAS AT A GLANCE

### 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 generally regarding investment funds, securities and capital markets.

### Purpose

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

### Structure

- A body corporate established in 1995 to regulate the securities and capital markets.

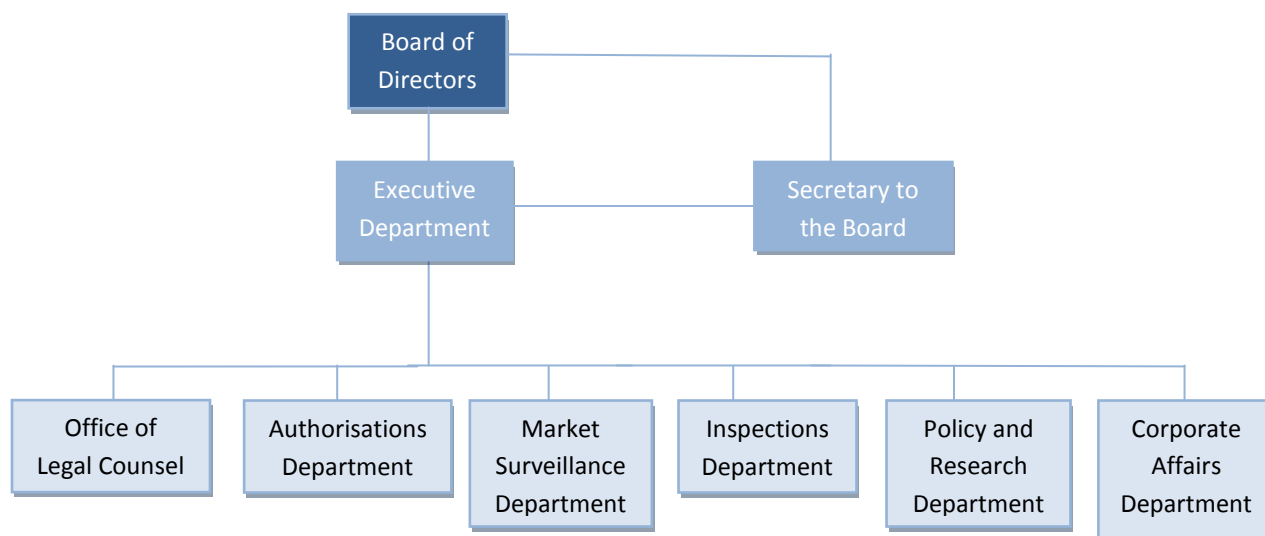
### Governance

- Six non-executive Commissioners, appointed by the Minister of Finance
- Three Ex-Officio Members: The Governor of the Central Bank of The Bahamas, Registrar of Insurance Companies and the Executive Director of the Commission.

### Staffing

- 38 full-time staff members.

### 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 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.

## **Development of the Securities Commission**

In the late 1960's, the government initiated efforts to draft legislation to regulate the securities and capital markets. These efforts resulted in the passing of the Securities Act, 1971. This Act was never brought into force, perhaps as it was felt that there was too little securities activity in the country at that time. The promulgation of the Securities Board Act, 1995 brought about more effective regulation of the securities industry in The Bahamas.

The Securities Board Act, 1995 created The Securities Board and provided the Board with general powers to regulate the securities industry in The Bahamas. At that time it was envisioned that specific powers would be provided to the Board to administer and regulate activities in the securities industry through the promulgation of a number of legislative measures. The Mutual Funds Act, 1995 came into force in November 1995, providing specific powers in relation to mutual funds, and vested the Board with responsibility for its administration.

In 1999, the Securities Industry Act repealed the Securities Board Act, 1995. This Act changed the name of the Securities Board to the Securities Commission of The Bahamas and expanded the authority over the industry. The Commission's authority was further enhanced on December 15, 2003 with the promulgation of the Investment Funds Act, 2003, which repealed the Mutual Funds Act, 1995.

Additionally, Section 4(2) of the Securities Industry Act, 1999 provides the Commission with the power to do anything which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under Section 4(1).

### **Responsibilities**

The Commission has responsibility for administering the Securities Industry Act, 1999 (SIA, 1999) and the Investment Funds Act, 2003 (IFA, 2003).

The SIA provides the Commission with specific powers to regulate the securities market. All industry participants, including Broker-Dealers, Securities Investment Advisors and Stock Exchanges are required to register with or be licensed by the Commission. Companies wishing to offer any securities to the public are required to file a prospectus with the Commission, which shall include all relevant information pertaining to the investment being offered. Only after being registered with the Commission can prospectuses be circulated to the public. Failure to adhere to these rules is a criminal offence.

Persons applying for registration with the Commission must be fit and proper persons who have maintained good reputations. Applicants are also required to establish the viability of their business and operational capabilities. After successfully completing the authorisations process, market participants are granted a licence or registration, which allows them to carry on business in and from within this jurisdiction and which is renewed annually. All entities registered by the Commission must operate only under the conditions stated in their registration and have specific continuous obligations with the Commission. These include, but are not limited to, the requirement to file periodic financial statements with the Commission, to report all material changes and to inform the Commission, to report all material changes and to inform the Commission of the death, retirement, bankruptcy or resignation of any substantial shareholders, officers or directors.



Under the IFA, 2003, the Commission is granted specific powers to regulate the investment funds industry in The Bahamas. Investment Fund Administrators that operate from or within The Bahamas are required to be licensed by the Commission. All investment funds with some nexus to The Bahamas are regulated by the Commission under the Act, in the form of licensing or registration.

### **Commission's Profile**

The SIA, 1999, provides for the appointment of a Board of Directors to the Commission consisting of a Chairman, a Deputy Chairman and not more than seven other members, all of whose appointments are at the discretion of the Minister of Finance. The Minister also appoints the Executive Director and the Corporate Secretary to the Commission.

The Chairman holds office for a period of 5 years, at the end of which, he is eligible for re-appointment. The Deputy Chairman and other Commission members hold their offices for such period, not exceeding four years, at the end of which, they are also eligible for reappointment.

The positions of Executive Director of the Commission, Governor of the Central Bank of The Bahamas and the Registrar of Insurance Companies are ex-Officio Members of the Board of the Securities Commission. Other Members are chosen to serve on the Board based on their knowledge, experience and expertise in the disciplines of industry, commerce, law, finance, economics and administration.

The Board of the Securities Commission of The Bahamas is responsible for the approval of licensees/registrants to operate in the capital, securities and investment funds markets of The Bahamas, as well as the establishment of rules and guidelines to govern these markets. The initial Board of the Commission was appointed on June 20, 1995.

The Board meets on a regular basis, at the Offices of the Commission, to consider applications, and other issues facing the securities markets. Corporate documents are maintained by the Secretary to the Board.

### **Cooperation with other Regulatory Bodies**

In September 1996, the Commission was granted membership in the International Organization of Securities Commissions (IOSCO). IOSCO's membership comprises securities regulators and other similar regulatory agencies from 181 countries throughout the world. In particular, the purpose of IOSCO is to enable members to exchange information with a view to developing securities markets and improving their efficiency, to coordinate the enforcement of securities regulation internationally, and to implement common standards. The head office of IOSCO is located in Madrid, Spain.

In addition to its membership in IOSCO, the Commission was confirmed as a member of the Council of Securities Regulators of the Americas (COSRA), at their annual meeting in Santiago, Chile in June 1997. This body comprises 26 securities regulatory authorities located throughout North, South and Central America, and the Caribbean. Its objectives are similar to those of IOSCO and aim to provide a forum for mutual cooperation and communication to enhance the efforts of each country in the region to develop and foster the growth of sound securities markets that are fair to all investors.

Apart from the Commission's efforts as it relates to international regulatory bodies, it also co-operates with local regulators. The Commission is a member of the Group of Financial Services Regulators. The membership includes regulators in the financial services sector of The Bahamas. This Group was established to focus on the harmonisation of the regulatory regime in the country, and meets on a monthly basis.

In October 2002, a Memorandum of Understanding (MOU) was executed between the members of the group, which provides for the minimisation of supervisory and regulatory overlap between the regulators, greater harmonisation of regulatory practices and aims to foster greater efficiency in the regulation and supervision of financial institutions in The Bahamas.

Membership in these associations is a demonstration by the Commission of its efforts to enhance its effectiveness as a regulatory body, and of its determination to ensure a Bahamian contribution toward improving the efficiency of local and international capital markets and coordinating standards of market conduct worldwide.

The Commission's regulatory activities are not only designed to ensure compliance with the laws governing the industry, but ultimately to contribute to the development and maintenance of a financial environment that is vibrant and competitive, and one in which the public can have confidence.

The development of the securities industry depends heavily on a regulatory entity that has the legislative, institutional and material means necessary for the effective discharge of its mandate. The power, provided in the legislation, to issue rules and to apply penalties to any person failing to comply with the requirements of the Commission, including those who engage in fraudulent practices, has done much to arm the Commission. It should be noted in this regard that the rules issued by the Commission are based on market fundamentals and principles, in consultation with market participants.

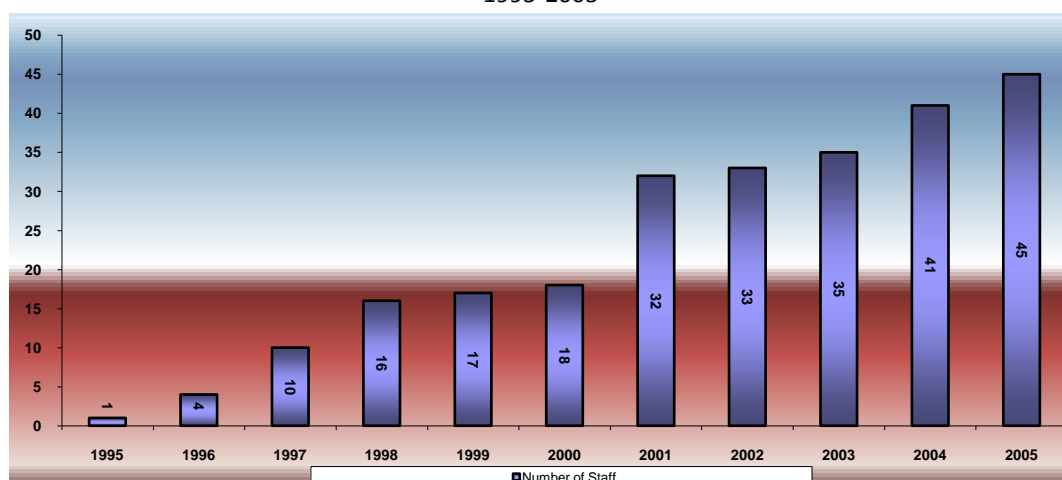
The continuous upgrading of its legislation enables the Commission to continue to enforce its disclosure requirement in the interest of the investing public. This notwithstanding, the onus continues to be on the investor to determine the merits of a particular investment.

Although established by law in 1995, the Commission did not open its present doors until February 1996 with two employees, with two others being added by the end of 1996. In 1995, the Commission operated from an office in the Ministry of Finance and had as its sole employee, Mr. John Forsythe (Jack) Smith, the Inspector.

In the first quarter of 1997, a significant effort was made to increase the staff in order to more adequately discharge its mandate as well as to keep pace with the growth and development of the securities industry. This effort has continued over time as indicated in the following chart:

#### **Staff Complement**

1995-2005



## Industry Developments

### THE BANKER AWARD

The Bahamas was awarded The Banker Award as Best International Financial Centre in the Western Hemisphere.

### THE CENTRAL BANK OF THE BAHAMAS APPOINTS NEW GOVERNOR

Mrs. Wendy Craigg was appointed Governor of the Central Bank of The Bahamas, effective June 1, 2005.

### THE GROUP OF FINANCIAL SERVICES REGULATORS (GFSR) PUBLISHES HANDBOOK ON INFORMATION SHARING ARRANGEMENTS IN THE BAHAMAS

This handbook was developed by the Group of Financial Services Regulators (GFSR) to provide an overview of the regulatory information sharing framework in The Bahamas under its financial legislation. The Bahamas is committed to full and timely exchange of information, between Bahamian and foreign financial services regulators.

The GFSR consists of the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Inspector of Financial and Corporate Services Providers, the Office of the Registrar of Insurance Companies and the Compliance Commission.

This handbook:

- Sets out legislative provisions and principles that govern the exchange of information between Bahamian and overseas regulators;
- Outlines the procedures to be followed by overseas regulators for making requests for information or assistance from each regulator;
- Identifies the appropriate Bahamian agencies to which regulatory information requests should be made;
- Defines the specific purposes for which agencies may share information; and
- Contains information about The Bahamas' participation and membership in international standards-setting bodies concerned with financial sector regulation.

## Policy Developments

### APPLICATIONS FOR WAIVER FROM REGISTRATION AS A RECOGNISED FOREIGN FUND PURSUANT TO SECTION 64 OF THE INVESTMENT FUNDS ACT, 2003

The Commission reviewed its policy regarding the granting of waivers to funds from the requirement for registration as Recognised Foreign Funds (RFF), where such funds are 'Bahamas based' solely because of the appointment of investment advisors or investment managers in The Bahamas.

The Commission has determined that such waivers will only be granted to applicants where exceptional circumstances exist. Applications will be considered on a case by case basis and will include consideration of business, structural or regulatory oversight issues.

This decision has been taken on the basis that throughout the period during which this policy has been applied by the Commission various regulatory issues have arisen. These issues are generally related to the above policy being applied simultaneously with the Commission's policy not to require investment managers or investment advisors that only provide service to investment funds to be licensed under the Securities Industry Act, 1999. These two elements when taken together created an unregulated sector within the market. The blanket waiver is therefore removed and requests for a waiver will be granted on the merits of the particular case. Further, funds registered as RFFs are subject only to a de minimus level of regulatory supervision thus the Commission is of the view that the issue of over regulation of such funds is unlikely to exist except in exceptional circumstances.

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### STALEDATING

The Commission released the guidelines for staledating of applications for authorisation to operate in the securities and capital markets in or from The Bahamas. The guideline details the provisions of the **Staledating Policy** formalised by the Commission at its meeting on February 23, 2005.

It has been the experience of the Commission that significant numbers of applicants fail to complete their applications in a reasonable time frame often requiring the expenditure of inordinate amounts of time in pursuit of applicants or in processing applications which are never completed. This action on the part of applicants has also resulted in undeserved accusations being levied against the Commission for an unacceptably long approval process. The Commission's **Staledating Policy** has been established to address this situation as it clearly delineates the parameters for the consideration of applications.

The Commission requires that applications be staledated where the applicant fails to complete its application after a period of **90 days** and there has been no grant of an extension. Throughout this application period, the Commission engages in an intense series of communications with the applicant, with a view to assisting in having the application process completed in the shortest possible period and certainly within 90 days. Special consideration may be given on a case-by-case basis to granting an extension of the period. Applicants wishing to re-activate a staledated application must reapply to the Commission. A non-refundable application fee will be required.

The Commission will take the necessary steps to ensure that an applicant who has failed to complete an application in the set time does not engage in business without the proper authorisation.

The intent of the guideline is to communicate the Commission's established timeframe and procedure for the completion of the application process and to alert applicants to the fact that failure to act within the set period will lead to staledating.

It is expected that the guideline will bring additional structure to the authorisation process and at the same time address the industry's fears regarding a lengthy approval process when, for the most part, the Commission's action would have been delayed by inadequate and incomplete applications.

Production of the guideline not only reflects current relevant international practice, but is also indicative of the ongoing co-operative efforts between the Commission and the industry. It acknowledges the role of the Commission in enforcing legislation in relation to the capital markets. This is a role which the Commission is seeking to discharge with increasing effectiveness.

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#### **COMMISSION APPROVED INCREASE IN BISX FEE FOR DOMESTIC EQUITY LISTINGS**

The Commission at its February 9, 2005 meeting approved an increase in the fee for Domestic Primary Equity Listings on BISX from \$2,500.00 to \$5,000.00.

The approval by the Commission was in response to a request by BISX, subsequent to a resolution by the Board of Directors of BISX which approved the increase, and in accordance with Regulation 7 of the Securities Industry Regulations, 2000 which requires that a Securities Exchange apply to the Commission for permission to make any amendments to its fees.

In considering the fee increase, the Commission took into account results of consultations with companies listed on BISX, who indicated their overwhelming support for such an increase. Specifically, of the 19 listed companies, only 2 objected to the increase.

The Commission also took into consideration listed fees applied by regional exchanges, notably Barbados, Jamaica and Trinidad and Tobago, and was satisfied that the increase requested was reasonable and would not impact adversely on the competitive position of the jurisdiction.

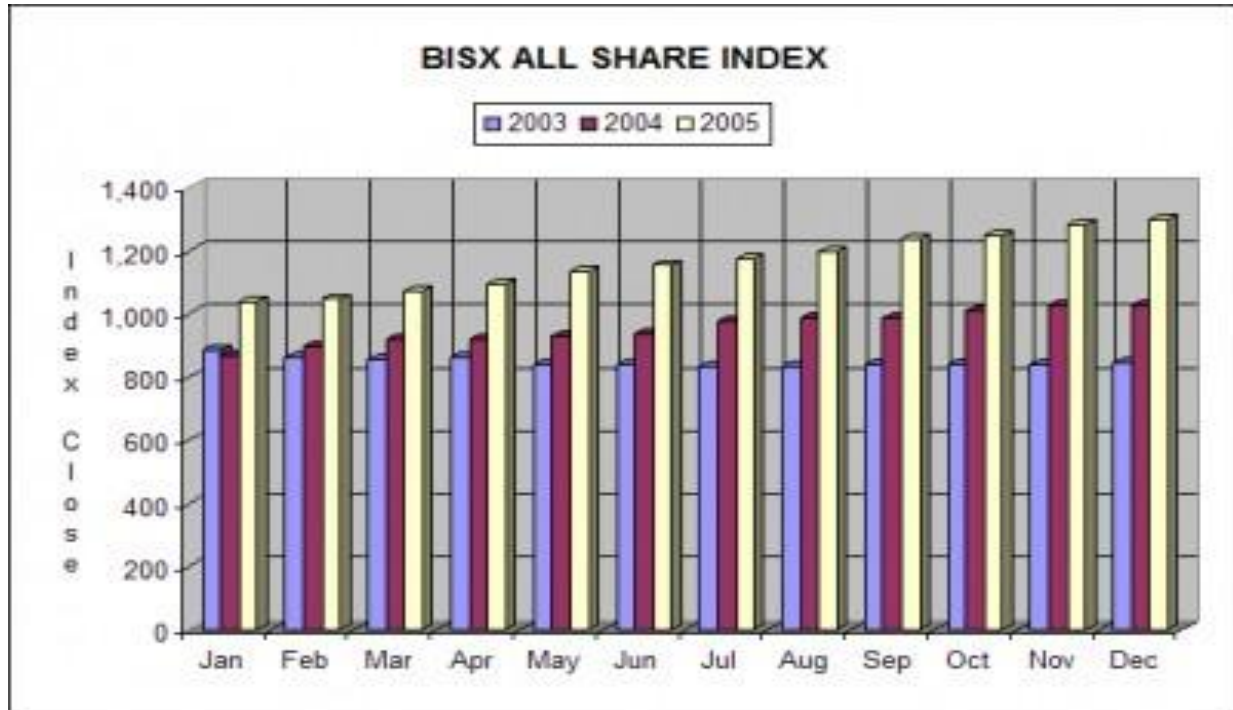
Prior to the present increase, BISX listing fee had remained at the level fixed at the time of its establishment in May 2000.

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#### **ESTABLISHMENT OF DISCIPLINARY COMMITTEE AND HEARING PANEL**

The Commission established its Disciplinary Committee and Hearing Panel pursuant to Section 34(3) of the Securities Industry Act, 1999 and Regulation 120 of the Securities Industry Regulations, 2000. The Terms of Reference for the Disciplinary Committee are at Annex 1.

## Market Data



For the year ending December 30, 2005 the BISX All Share Index closed up 311.33 points or 29.95% for the year closing at 1,350.71. By comparison for the year ending December 31, 2004 the BISX All Share Index posted an increase of 171.08 or 19.70%, to close at 1,039.38.

The BISX All Share Index is a market capitalisation weighted index comprised of all primary listings actively traded on the Exchange. As at December 30, 2005 the market was comprised of 19 listings with a market capitalisation of \$2.6 billion.

### **Trading Volumes & Values**

For the year trading volumes decreased from the previous years' total, however, the value of shares traded increased when compared to 2004. Trading volume for the year for all issuers listed on BISX was 6.72 million shares at a value of \$36.35 million. This represents a decrease in traded volume by 1.27 million shares or 15.91%, however, the value of shares traded on BISX increased by \$12.08 million or 49.75% when compared with 2004.

## Supervisory Approach

The Commission has adopted a two prong supervisory approach, which includes a rigorous and effective licensing process and a broad-based surveillance program, which includes off-site and on-site monitoring. This approach is in line with the achievement of the Commission's supervisory goals, which is the maintenance of effective oversight, strengthening of market confidence, protection of investors, and facilitation of orderly growth and development of the jurisdiction.

### **Authorisations**

The Authorisations Department is the first point of entry for the Commission's registrants/licensees. This department performs the critical function of protecting the reputation of the jurisdiction by assessing the bone fides of applicants. The unit administers the entry criteria set out in the SIA, 1999 and IFA, 2003 and ensures that participants and products fit the appropriate profile for the province. This includes an appraisal against Fit and Proper criteria, and evaluation of financial strength and performance and an overall judgment on the suitability of the product.

### **Off-site Supervision**

Off-site supervision is the primary function of the Market Surveillance Department. In performing this function, the Department reviews reports/returns, liaise with registrants/licensees and acts expeditiously on areas of regulatory concerns to ensure proactive and effective oversight of the industry.

### **On-site Supervision**

On-site supervision is undertaken by the Inspections Department. On-site supervision takes the form of Routine Examinations or Inspections for Cause. A Routine Examination is scheduled based on the Commission's assessment of risk. An Inspection for Cause is conducted based upon some underlying reason such as a customer complaint or some credible information.

Inspections or examinations may involve a full scope review of the business or may focus on a specific area of concern, depending on the circumstances of the registrant/licensee and queries raised by the ongoing off-site monitoring process. Currently constituents are scheduled for Routine Examinations; however, the Commission may arrange an ad hoc – an Inspection for Cause – outside of the established timetable, where necessary.

## Historical View of the Securities Industry

The significant changes in the local landscape of the securities and capital markets in the early 1990s, brought about a number of public offerings and the development of the mutual funds industry. In the circumstances, the Government moved to revisit the securities legislation in order to effectively manage these changes. These efforts would lead ultimately to enacting new laws, which would provide powers to supervise and regulate, as well as facilitate the growth and development of the securities and capital markets.

To this end, a Securities Market Task Force was appointed by the Minister of Finance in 1994 to assist in drafting legislation, which would create a regulatory body to oversee and regulate the entire securities industry.

Mutual funds represented the majority of activities of the securities and capital markets in The Bahamas, having been operating here since the 1960s, although without formal regulation until 1995 when the Commission was established and the Mutual Funds Act, 1995 passed. The need for regulation was recognised as mutual funds were encountering difficulty in investing in their targeted markets because the laws in those countries only permitted investments by investment fund companies that were regulated by the relevant authority in their country of origin.

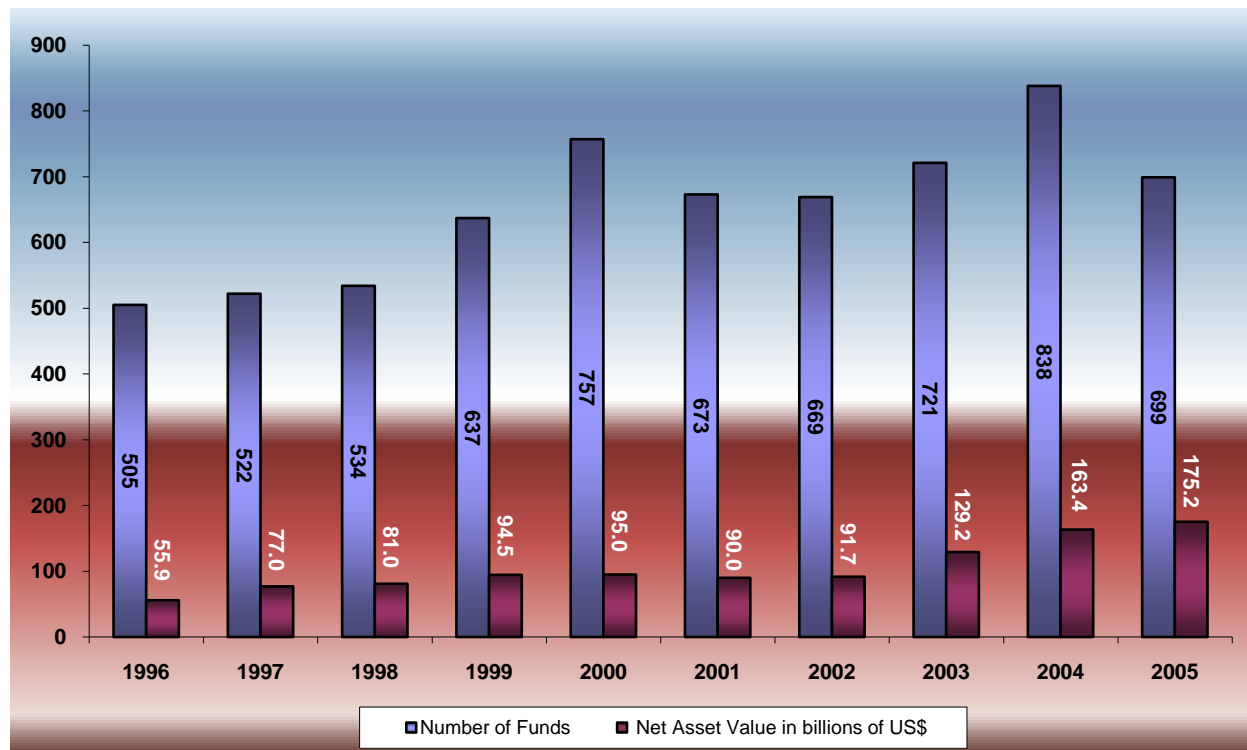
An historical overview of the investment fund industry's growth since November 1995 when the Mutual Funds Act, 1995 came into effect, reveals that, with one notable exception, the industry has seen steady growth over the past almost 11 years.

The referenced decrease in activity experienced between 2000 and 2001 resulted, in large part, from a recession in Latin America. The downturn in the economies of these significant countries of investment was further compounded by a panicked reaction of the local industry to measures adopted by the government in response to initiatives of the Organisation for Economic Cooperation and Development (OECD), the Financial Action Task Force (FATF) and the Financial Stability Forum (FSF). While beginning to regain some ground by the third quarter of 2001, the activities of this sector also fell victim to the events of September 11, 2001 which severely impacted the global financial environment.



**Investment Funds**

1996-2005



The efforts of The Bahamas to address this series of eventualities led, inter alia, to the enactment of the following compendium of legislation:

- The Banks and Trust Companies Regulation Act, 2000
- The Central Bank of The Bahamas Act, 2000
- The Financial Intelligence Unit Act, 2000
- The Proceeds of Crime Act, 2000
- The Financial and Corporate Service Providers Act, 2000
- The Financial Transactions Reporting Act, 2000
- The International Business Companies Act, 2000
- The Evidence (Proceedings in other Jurisdictions) Act, 2000 and
- Criminal Justice (International Cooperation) Act, 2000

The decrease in the number of funds observed in 2005 was as a result of the closure of one of the larger administrators and the concomitant closure and transfer out of the jurisdiction of a number of funds administered by it. This notwithstanding, the value of the funds continued to grow reaching the \$175 billion mark in December 2005.

A particular impetus to the Securities industry was the introduction of the IFA, 2003, an innovative legislation which gives more regulatory authority to the Commission while providing for the inclusion of an expanded concept of mutual funds giving rise to the term 'investment fund'. The Mutual Funds Act, 1995 had been drafted by market participants and, while it provided some regulatory structure for the industry, it was deficient in many areas particularly regarding the regulatory authority of the Commission. One of the major lacunae of this Act was the wide category of funds that were considered 'exempt' and therefore permitted to operate outside the regulatory scope of the Commission. Equally debilitating was the lack of authority over unregulated mutual funds.

One objective of the IFA, 2003 is to ensure any product falling within the definition of an investment fund under that Act is required to be regulated. Additionally, the IFA, 2003 aims to provide a level playing field for all investment fund companies. Originally, most investment fund administration was carried out by banks and trust companies. The 1995 legislation was therefore drafted advantaging these financial institutions, by exempting them from the payment of fees and compliance with certain administrative procedures. The IFA, 2003 seeks to remove this preferential treatment and provide all investment companies with equal opportunity for profitable business. This balanced approach also extends to the specific authority for the Commission to take actions against unlicensed rogue operators. The Commission's authority over unregulated funds and administrators is in fact considered to be equal to that exercised over regulated funds and administrators. The absence of such authority in the 1995 Mutual Funds Act embodied significant risk for investors.

The IFA, 2003 also introduces the SMART Fund concept: a flexible structure which may be tailored to particular investment objectives and designed to facilitate a more timely authorisation process. The new category of SMART (Specific Mandate Alternative Regulatory Test) Funds does not have pre-determined parameters or characteristics. It is intended to allow the industry participants flexibility in the development of structuring vehicles to be used as investment funds.

The SIA, 1999 also provided for the establishment of securities exchanges. It was envisaged that the exchange would deepen the securities market in The Bahamas while creating employment opportunities. The Exchange would provide additional investment options and increase the potential for small businesses and entrepreneurs to access capital, thereby removing barriers to investment. Generally, the existence of the exchange was expected to create an environment for further economic growth.

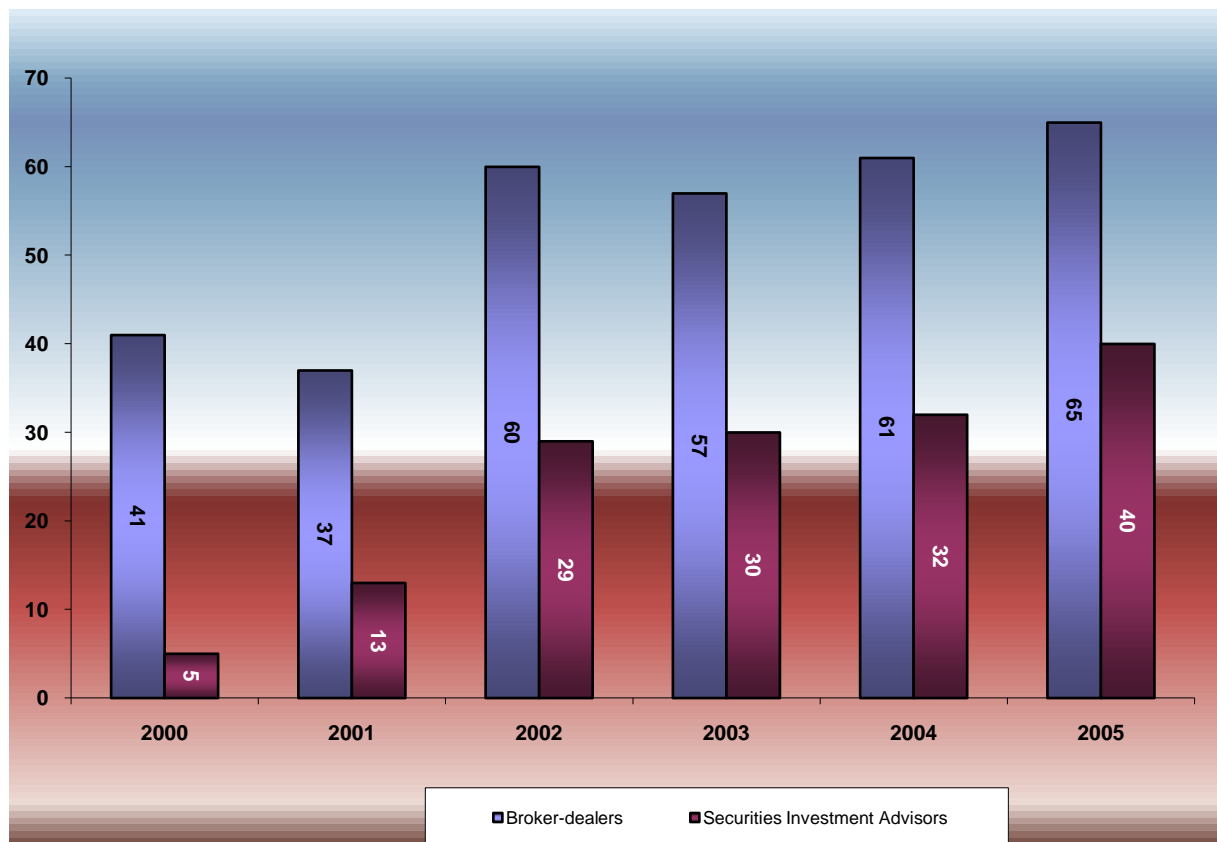
The Bahamas International Securities Exchange (BISX) began trading on May 12, 2000 with nine companies listing initially. By year end, the number had risen to 15, representing a variety of sectors: banking, environmental, healthcare, industrial, insurance, investment, multimedia, property management and retail/distribution. For its first six months of operation, BISX experienced only modest daily trading activity.

BISX saw its listed companies grow from 15 to 17 in 2001 with the addition of Freeport Concrete Limited and RND Holdings Ltd. The unveiling of the mutual fund listing facility coupled with SG Hambros Bank & Trust (Bahamas) Ltd.'s membership in BISX also in 2001 created an atmosphere of positive expectancy for the future of BISX, and its impact on the securities industry. However, in its five years of operation, the real quality of the contribution of BISX to the industry remains to be determined. Market capitalisation has hovered around the \$2 billion figure although the number of publicly traded companies has more than doubled since inception, now totaling 19.

Market intermediaries have also experienced some growth over the past five years since the Commission began to document the activities of this aspect of the industry. These activities are carried out by companies registered with the Commission as Broker-Dealers and Securities Investment Advisors who, inter alia, engage in underwriting of securities, trading and dealing in securities and offering to provide securities investment advice to the public for a fee.

### Securities Firms

2000 - 2005



The Commission maintains a very close consultative role with the government, which it considers essential to ensuring that the development of the capital markets advances in tandem with the wider financial services sector.

In late 2002, the International Monetary Fund (IMF) undertook a Financial Sector Assessment Programme (FSAP) in The Bahamas. It involved a comprehensive review of the country's financial system including the supervision of banks and trust companies, company services and the regulation of securities markets. The FSAP's objective is to shed light on risks of financial system instability and of erosion in market integrity. The IMF team concluded that overall The Bahamas was in a strong position.

As new legislation provides the confidence and flexibility and as the investing public becomes more conversant with the benefits of investing, it is to be expected that the securities industry will continue to grow. In anticipation of this growth, the Commission continues to equip itself with the necessary resources: human, financial and regulatory in order to facilitate this growth while properly managing it.

### **Financial Summary**

For the year ended December 31, 2005, the Commission recorded an operating deficit of \$856,197 representing a 27% increase of \$180,277, when compared to a deficit of \$675,920 for the year ended December 31, 2004. While operating income increased by 4% to \$2,198,670 from \$2,123,293 in 2004, operating expenses increased by 9% to \$3,054,867 from \$2,799,114 in 2004. The increase in operating expenses was due mainly to a 9% increase of \$142,211 in salaries and benefits combined with a 105% in professional fees of \$90,142, when compared to 2004 as the Commission increased its resources to more effectively carry out its mandate.

Despite the increase in the operating deficit, the deficit cash position improved, moving from an overdraft of \$95,222 in 2004 to an overdraft of \$14,728 in 2005, an 85% change. This was mainly attributed to a reduction the cash used for operating activities 2005 when compared to 2004.

The auditor's report again emphasized that 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.

SECURITIES COMMISSION  
OF THE BAHAMAS

**FINANCIAL STATEMENTS**

**Year ended December 31, 2005**



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## **INDEPENDENT AUDITORS' REPORT**

To The Members of Securities Commission of The Bahamas

We have audited the accompanying financial statements of the Securities Commission of The Bahamas ("the Commission") which comprise the balance sheet as at December 31, 2005, 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 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 the 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, 2005, and of 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 \$856,197 (2004 – \$675,920) before Government funding of \$900,000 (2004 – \$1,500,000) and current liabilities exceeded current assets. As at December 31, 2005, the accumulated operating deficit and reserve funds had a net reserve of \$77,786 (2004 – net reserve of \$33,983). 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 of 'KPMG' in black ink, written in a stylized, cursive-like font.

Nassau, Bahamas  
February 4, 2009

## SECURITIES COMMISSION OF THE BAHAMAS

### Balance Sheet

December 31, 2005, with corresponding figures for 2004  
(Expressed in Bahamian dollars)

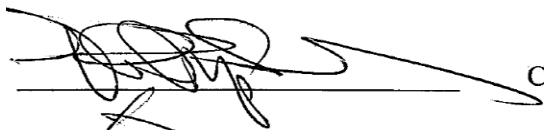
	2005	2004
<b>Assets</b>		
Current assets:		
Cash at bank and on hand	\$ 24,145	45,171
Accounts receivable (note 4)	140,845	132,301
Deposits and prepaid expenses	37,572	104,169
	202,562	281,641
Equipment (note 6)	184,881	169,720
	\$ 387,443	451,361

### Liabilities and Accumulated Operating Deficit and Reserve Funds

Current liabilities:		
Bank overdraft (note 5)	\$ 38,873	140,393
Deferred revenue (note 7)	100,411	86,834
Accounts payable and accrued expenses (note 11)	170,373	190,151
	309,657	417,378
Accumulated Operating Deficit and Reserve Funds (note 8)	77,786	33,983
Commitments and contingencies (note 9)		
	\$ 387,443	451,361

See accompanying notes to financial statements.

These financial statements were approved for issue on behalf of the Members of the Board on February 4, 2009 by:

  
Chairman

  
Executive Director



**SECURITIES COMMISSION OF THE BAHAMAS**

## Statement of Operations

Year ended December 31, 2005, with corresponding figures for 2004  
(Expressed in Bahamian dollars)

	2005	2004
<b>Operating income:</b>		
Mutual fund registration and licence fees	\$ 564,730	566,363
Mutual fund principal office fees	293,478	304,544
Mutual fund application fees	96,275	189,499
Mutual fund administrator licence fees	469,222	489,661
Mutual fund administrator application fees	11,000	28,300
Mutual fund miscellaneous fees	10,532	1,572
Broker - dealer registration and licence fees	389,342	389,965
Broker - dealer application fees	21,800	23,700
Securities investment advisor registration and licence fees	45,311	55,537
Securities investment advisor application fees	4,000	6,700
Associated person registration and licence fees	3,575	3,400
Associated person application fees	350	650
Securities firms miscellaneous fees	12,450	400
Securities exchange registration and licence fees	25,000	25,000
Fees from public offerings	59,700	22,554
Penalty fees	7,551	—
Miscellaneous income (note 10)	166,894	6,718
Examination fees	11,290	5,430
Bad debt recovery	—	3,000
Gain on sale of equipment	6,170	200
	<b>2,198,670</b>	<b>2,123,193</b>
<b>Operating expenses:</b>		
Salaries, wages and benefits (notes 10 & 12)	1,744,479	1,602,268
Rent for office and parking	343,542	340,937
Travel and entertainment (note 12)	246,489	141,068
Professional fees	175,756	85,614
Utility and property charges	134,321	136,446
Depreciation (note 6)	84,616	82,977
Office expenses	82,415	60,910
Members' honoraria (note 12)	57,875	57,875
Training and seminars	56,133	35,366
Telephone	48,363	44,833
Advertising	19,398	34,792
Printing	16,807	21,395
Membership and publications fees	12,847	12,645
Computer expenses	10,665	37,346
Examination expenses	7,425	3,462
Sundry	6,884	18,378
Finance charges (note 5)	6,843	22,565
Bad debts write-off and provision	9	60,236
	<b>3,054,867</b>	<b>2,799,113</b>
<b>Operating deficit for the year</b>	<b>\$ (856,197)</b>	<b>(675,920)</b>

See accompanying notes to financial statements.

## SECURITIES COMMISSION OF THE BAHAMAS

### Statement of Accumulated Operating Deficit and Reserve Funds

Year ended December 31, 2005, with corresponding figures for 2004  
(Expressed in Bahamian dollars)

	Government Funding	Accumulated Operating Deficit	Total
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
Government funding	900,000	—	900,000
Operating deficit for the year	—	(856,196)	(856,197)
Balance at December 31, 2005	\$ 5,909,443	(5,831,656)	77,786

See accompanying notes to financial statements.

**SECURITIES COMMISSION OF THE BAHAMAS**

## Statement of Cash Flows

Year ended December 31, 2005, with corresponding figures for 2004  
(Expressed in Bahamian dollars)

	2005	2004
Cash flows from operating activities:		
Operating deficit for the year	\$ (856,197)	(675,920)
Adjustments for:		
Depreciation	84,616	82,977
Bad debt allowance	9	60,236
Gain on disposal of equipment	(6,170)	(200)
Cash used in operations before changes in operating assets and liabilities	(777,742)	(532,907)
Increase in accounts receivable	(8,553)	(102,371)
Decrease/(increase) in deposits and prepaid expenses	66,597	(90,206)
Increase/(decrease) in deferred revenue	13,577	(134,536)
Decrease in accounts payable and accrued expenses	(19,778)	(70,258)
Net cash used in operating activities	(725,899)	(930,278)
Cash flows from investing activities:		
Purchases of equipment (note 5)	(99,777)	(63,678)
Proceeds from disposal of equipment	6,170	200
Net cash used in investing activities	(93,607)	(63,478)
Cash flows from financing activities:		
Government funding	900,000	1,500,000
Net cash provided by financing activities	900,000	1,500,000
Net increase in cash and cash equivalents	80,494	506,244
Cash and cash equivalents, beginning of year	(95,222)	(601,466)
Cash and cash equivalents, end of year	\$ (14,728)	(95,222)

Cash and cash equivalents are comprised:

Cash at bank and on hand	\$ 24,145	45,171
Bank overdraft	(38,873)	(140,393)
Cash and cash equivalents, end of year	\$ (14,728)	(95,222)

See accompanying notes to financial statements.

# SECURITIES COMMISSION OF THE BAHAMAS

## Notes to Financial Statements

Year ended December 31, 2005  
(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, which was repealed by Section 98 of the Securities Industry Act, 1999, on the renaming of the Commission. 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*

These financial statements are prepared in accordance with International Financial Reporting Standards ("IFRS").

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

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

#### *(c) Basis of measurement*

The financial statements are prepared on a historical cost basis.

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

The preparation of the financial statements in conformity with IFRS requires management to make judgments, 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.

The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, and the results of which form the basis of making the judgments about carrying values of assets and liabilities that are not readily apparent from other sources.

**SECURITIES COMMISSION OF THE BAHAMAS**

## Notes to Financial Statements

Year ended December 31, 2005  
(Expressed in Bahamian dollars)

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**2. Basis of preparation (continued)***(d) Use of estimates and judgments (continued)*

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

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

**3. Significant accounting policies**

The accounting policies have been applied by the Commission consistently 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 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 such indication exists, the asset's recoverable amount is estimated. An impairment loss is recognized whenever 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.

## SECURITIES COMMISSION OF THE BAHAMAS

### Notes to Financial Statements

Year ended December 31, 2005  
(Expressed in Bahamian dollars)

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#### 3. Significant accounting policies (continued)

*(b) Impairment (continued)*

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.

*(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 recognized 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* requires 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.

**SECURITIES COMMISSION OF THE BAHAMAS**

## Notes to Financial Statements

Year ended December 31, 2005  
(Expressed in Bahamian dollars)

**4. Accounts receivable**

	2005	2004
Mutual funds and administrators	\$ 22,259	22,915
Broker-dealers, securities advisors and associated persons	103,056	98,567
Other receivables	15,530	10,819
	140,845	132,301
Less: allowance for doubtful accounts	—	—
	\$ 140,845	132,301

**5. Bank overdraft**

The Commission has a bank overdraft facility amounting to \$750,000 (2004 - \$750,000) and it bears interest at Bahamian Dollar Prime plus 1% per annum, which is 7% (2004 - 7%). The Government of The Bahamas 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, 2004	\$ 393,401	294,836	55,495	743,732
Additions	54,022	24,810	20,945	99,777
Disposals	(59,381)	—	(16,500)	(75,881)
Cost, December 31, 2005	\$ 388,042	319,646	59,940	767,628
Accumulated depreciation, December 31, 2004	\$ 287,762	254,152	32,098	574,012
Charge for the year	51,786	20,843	11,987	84,616
Disposals	(59,381)	—	(16,500)	(75,881)
Accumulated depreciation, December 31, 2005	\$ 280,167	274,995	27,585	582,747
Net book value, December 31, 2005	\$ 107,875	44,651	32,355	184,881
Net book value, December 31, 2004	\$ 105,639	40,684	23,397	169,720

## SECURITIES COMMISSION OF THE BAHAMAS

### Notes to Financial Statements

Year ended December 31, 2005  
(Expressed in Bahamian dollars)

#### 7. Deferred revenue

	2005	2004
Mutual funds	\$ 54,731	30,502
Securities firms	45,680	56,332
	<u>\$ 100,411</u>	<u>86,834</u>

#### 8. 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 in the current and prior year there were no surplus funds available from operations.

#### 9. Commitments and contingencies

- (i) For the year ended December 31, 2005, the Commission leased office space under two lease agreements. These agreements expired on January 31, 2006 and were renewed on February 1, 2006 for a period of 3 years, with the option to renew the leases for a further 3 years. The annual lease payments will be determined at the time of renewal using a price index. The future minimum lease payments are as follows:

- Within one year \$ 309,572
- More than one year and less than five years 593,017

- (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.



**SECURITIES COMMISSION OF THE BAHAMAS**

## Notes to Financial Statements

Year ended December 31, 2005  
(Expressed in Bahamian dollars)

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**10. 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 \$101,061 (2004 - \$105,291) and are included in salaries, wages and benefits in the statement of operations.

During 2005 Colina Financial Advisors reimbursed the Commission for the unvested pension contributions made of behalf of individuals that were no longer employed by the Commission. The unvested contributions made by the Commission totaled \$130,834 and is included in miscellaneous income in the statement of operations.

**11. Going concern**

The Commission incurred an operating deficit for the year of \$856,197 (2004 - \$675,920) before Government funding of \$900,000 (2004 - \$1,500,000) and current liabilities exceeded current assets. As at December 31, 2005, the accumulated operating deficit and reserve funds had a net reserve of \$77,786 (2004 - net reserve of \$33,983). 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 \$1,000,000, \$1,500,000 and \$1,400,000 was received by the Commission in respect of the financial years 2006, 2007 and 2008.

**12. Related party transactions and balances***Honoraria to members*

Included in the statement of operations is \$57,875 (2004 - \$57,875) as honoraria to the members of the Board.

*Travel and entertainment*

Included in the statement of operations is \$52,606 (2004 - \$58,199) 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 \$588,306 (2004 - \$552,146) and pension contributions of \$52,570 (2004 - \$ 34,634) relating to key management personnel and executive members of the board. Included in accounts payable and accrued expenses in the balance sheet is \$11,250 (2004 - \$10,440) accrued for key management personnel remunerations.

# **SECURITIES COMMISSION OF THE BAHAMAS**

## **Notes to Financial Statements**

Year ended December 31, 2005

(Expressed in Bahamian dollars)

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### **13. 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.

**ANNEX I:****Disciplinary Committee**

Terms of Reference for the Disciplinary Committee established pursuant to Section 34(3) of the Securities Industry Act, 1999 and Regulation 120 of the Securities Industry Regulations, 2000.

**1. INTRODUCTION**

The Disciplinary Committee (the Committee) is hereby established pursuant to Section 34(3) of the SIA, 1999 and Regulation 120 of the Securities Industry Regulations (SIR, 2000) to assist the Commission and the Executive Director in carrying out the disciplinary functions of the Commission as provided in the SIA, 1999, the SIR, 2000, the IFA, 2003 and the Investment Funds Regulations 2003 (IFR, 2003). The Committee shall administer the provisions of and supervise the operations of these terms of reference.

**2. MEMBERSHIP OF THE COMMITTEE**

- 2.1 The Committee shall be a standing body comprised of a Chairman, a Deputy Chairman and three (3) other members each to be appointed by the Members of the Commission.
- 2.2 The Deputy Chairman of the Commission shall serve as the Chairman of the Disciplinary Committee.
- 2.3 Members of the Commission shall appoint one Member of the Commission other than the Deputy Chairman to serve as members of the Committee.
- 2.4 Non-Commission members of the Committee shall be appointed to serve for terms of no longer than three years and shall be eligible for re-appointment.
- 2.5 Members of the Commission appointed to serve on the Committee shall be appointed to serve for terms that coincide with their appointments as Members to the Commission.
- 2.6 Every non-Commission Member of the Committee shall be a Bahamian citizen of the highest reputation and character who has a background in law, banking, government accounting or economics and shall not be directly connected with the securities industry in The Bahamas.
- 2.7 For the purposes of these terms of reference an individual shall be considered directly connected to the securities industry in The Bahamas if that individual is a substantial shareholder, holds a controlling interest, or is a Director or officer of a public company or any licensee or registrant of the Commission.
- 2.8 The Commission may appoint some suitable person to act temporarily in the place of any member of the Committee in the case of the absence or inability of such member to act.
- 2.9 The Secretary of the Board of the Commission or a nominee of the Secretary shall act as the Secretary of the Committee. The Secretary shall not be a member of the committee and shall not be included in the quorum.

### **3. FUNCTIONS OF THE COMMITTEE**

The functions of the Committee are to –

- 3.1 Assist the Commission and the Executive Director in the conduct of investigations and regulatory hearings to determine whether a licensee or registrant of the Commission has failed or is likely to fail to comply with the provisions of the Securities Industry Act, 1999, the Investment Funds Act, 2003 or any regulations or rules made there under.
- 3.2 Assist the Commission and the Executive Director in the conduct of investigations and regulatory hearings to determine whether a licensee or registrant of the Commission has failed or is likely to fail to comply with the rules and regulations of a Securities Exchange or any body registered under the Securities Industry Act, 1999 or Investment Funds Act, 2003 and regulated by the Commission.
- 3.3 Receive and review investigative reports prepared by the Executive Director in respect of paragraphs 3.1 or 3.2 above.
- 3.4 Recommend to the Commission the appropriate action to be taken in respect of the matter.

### **4. AUTHORITY OF THE COMMITTEE**

The Committee shall be authorised to –

- 4.1 Recommend that the Commission take any action provided in Section 34(4)(a)-(d) of the SIA, 1999 as follows:
  - Discuss the matter;
  - Issue a letter of caution or some other informal remedial action;
  - File a formal complaint and conduct a regulatory hearing in respect of the matter; or
  - Refer the matter to the Office of the Attorney General for criminal prosecution.

All recommendations of the Committee shall be approved by Members of the Commission before the recommended action is executed. Where the recommendation of the Committee is not approved by the Commission the Committee shall follow the directions of the Commission issued pursuant to paragraph 6.11.

- 4.2 Investigate any activity within these terms of reference.
- 4.3 Seek any information it requires to assist in its deliberation of matters submitted to the Committee by the Executive Director and all managers of the Commission are obliged to cooperate with any request made by the Committee.
- 4.4 Call any manager of the Commission to be questioned at a meeting of the Committee as and when required.

- 4.5 Subject to the prior approval of the Chairman of the Commission, obtain outside legal or other independent professional advice on behalf of the Committee and take any steps available to it to secure the attendance of outsiders with relevant experience and expertise at committee meetings as it considers necessary and appropriate.

## **5. MEETINGS OF THE COMMITTEE**

- 5.1 The business of the Committee shall be conducted at duly convened meetings of the Committee.
- 5.2 The quorum necessary for the transaction of business shall be three. A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.
- 5.3 The Committee shall meet at such times as the Chairman of the Committee shall deem necessary.
- 5.4 Unless otherwise agreed, notice of each meeting of the Committee confirming the venue, date and time with an agenda of the items to be discussed, shall be issued by the Secretary of the Committee to each member and any other person(s) required to attend, not less than seven days prior to the date of the meeting.
- 5.5 The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
- 5.6 The Secretary should ascertain, at the beginning of the meeting, whether there are any conflicts of interest and minute them accordingly. Where a member declares a conflict of interest in respect to any matter on the agenda, that member shall recuse himself and leave the meeting room while the relevant matter is discussed. A record of the recusal of the member shall be made by Secretary of the Committee.
- 5.7 Minutes of Committee meetings shall be circulated to all members of the Committee and to all Members of the Board of the Commission.

## **6. CONDUCT OF BUSINESS OF THE COMMITTEE**

- 6.1 An investigative report of the Executive Director of the Commission shall be in writing, signed by the Executive Director and sent to the Secretary of the Committee together with any supporting documentation supporting the findings made in the report of the Executive Director.
- 6.2 The Secretary shall send a copy of the investigative report and all documents attached to each Member of the Committee.
- 6.3 Before determining the appropriate recommendation to be made to the Commission, pursuant to Section 34(4) of the SIA, 1999 the Committee may require the Executive Director to provide such further information and documents relating to the report as the Committee considers necessary.

- 6.4 Where in the opinion of the Committee a prima facie case has not been made or the facts of the matter do not in the opinion of the Committee warrant that any sanction be levied against the defendant, the Committee shall recommend the dismissal of the matter.
- 6.5 Where in the opinion of the Committee the facts in the investigative report if proved, would not call for the exercise by the Commission of the disciplinary powers conferred by Section 33(b) of the SIA, 1999 or Section 55(1) of the IFA, 2003 the Committee shall recommend the issue of a letter of caution or some other informal remedial action be taken by the Commission.
- 6.6 Where in the opinion of the Committee a prima facie case has been made in the investigative report and that the facts if proved, would call for the exercise by the Commission of the disciplinary powers conferred by Section 33(b) of the SIA, 1999 or Section 55(1) of the IFA, 2003, the Committee shall recommend that the Executive Director file a formal complaint pursuant to Regulation 116 of the SIR, 2000 and that the Commission proceed with a regulatory hearing before the Hearing Panel of the Commission as prescribed by regulation 121 of the SIR, 2000.
- 6.7 In any case where the investigative report of the Executive Director establishes a prima facie case of a breach of the legislation has occurred and the SIA, 1999 or the IFA, 2003 provides for the imposition of a criminal penalty in respect of the breach of the relevant provision and the Committee is of the opinion that the evidence submitted by the Executive Director establishes that the breach of the provisions of the legislation was willful, the Committee shall recommend that the Commission refer the matter to the Office of the Attorney General for criminal prosecution.
- 6.8 In any case where the Committee makes a recommendation that a matter be referred to the Attorney General for prosecution the Committee may also recommend that the Executive Director file a formal complaint pursuant to regulation 116 of the SIR, 2000, and that the Commission proceed with a regulatory hearing before the Hearing Panel of the Commission as prescribed by regulation 121 of the SIR, 2000.
- 6.9 The recommendation of the Committee shall be made to the Commission in writing and shall attach all documents received by the Committee pursuant to Paragraphs 6.1 and 6.3 above and the relevant excerpts of the minutes of the meeting of the Committee at which the report was discussed.
- 6.10 The written recommendation of the Committee along with the required attachments shall be provided to the Secretary of the Commission within seven days of the meeting of the Committee at which the recommendation had been determined.
- 6.11 The Secretary of the Commission shall include the recommendation of the Committee on the agenda of the next meeting of the Members of the Commission following the date of the receipt of the recommendation of the committee.
- 6.12 Where the Members of the Commission, after review of a recommendation made by the Committee, decide not to approve the recommendation of the Committee, Members of the Commission shall advise the Committee of its decision and give appropriate directions to the Committee or the Executive Director on what further action should be taken in respect of the matter.

**7. REMUNERATION**

Members of the Committee shall be paid such remuneration, if any, as the Commission may from time to time determine by way of honorarium, salary, fees or allowances.

**8. TERMINATION OF MEMBERS OF THE COMMITTEE**

A Member's appointment to the Committee may be terminated at any stage during the term of the Members' appointment upon the Commission giving the relevant Member written notice 30 days prior to the effective date of the termination of the appointment.

**9. RESIGNATION BY MEMBERS FROM THE COMMITTEE**

A member may resign from the Committee upon giving the Commission written notice of their resignation not less than 30 days prior to the effective date of the resignation.

**10. RENEWAL OF MEMBERS APPOINTMENT**

10.1 Where, upon the expiration of a members' appointment to the Committee, the Commission intends to renew the appointment of the member, the Commission shall notify the member at least 60 days prior to the effective date of the expiration of the members appointment to the Committee.

10.2 The member is to advise the Commission of their acceptance or refusal of the renewal of their appointment to the Committee by letter, no later than 30 days before the effective date of the expiration of the member's appointment to the Committee.

**11. CONFIDENTIALITY**

Any information acquired by a member or professional advisor to the Committee in the performance of his functions shall be confidential and Section 91 of the SIA, 1999 and Section 56 of the IFA, 2003 shall apply to all members of the Committee and any such professional advisor.

**I. INTRODUCTION**

The Securities Commission of The Bahamas (the Commission), in accordance with Parts III and IV of the SIR, 2000, and Section 3 of the IFA, 2003, authorises persons to operate in the investment funds and securities markets.

Any person attempting to carry on investment fund or securities business within The Bahamas without the relevant authorisation is subject to penalties. Therefore, any person wishing to carry on investment fund or securities business is required to make application to the Commission for the appropriate authorisation.

Applicants must apply in writing to the Authorisations Department of the Commission in the manner established in the referenced legislation, supplying all information required. In addition to the prescribed information, the Commission may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application. This may include the provision of other documents.

**II. PURPOSE**

It has been the experience of the Commission that a number of applicants fail to complete their applications in a reasonable time frame often requiring the Commission to expend inordinate amounts of time in pursuit of applicants or in processing applications which are never completed. The intent of these guidelines is to communicate the Commission's established timeframe and procedure for the completion of the application process and to alert applicants to the fact that failure to act within the set period will lead to forfeiting of application fees and require the submission of a new application when the applicant is ready to proceed. It is expected that these guidelines will bring additional structure to the authorisation process and at the same time address the industry's fears regarding a lengthy approval process when for the most part, the Commission's action would have been delayed by inadequate and incomplete applications.

**III. ENFORCEMENT**

The Commission will take the necessary steps to ensure that an applicant who has failed to complete an application in the set time does not engage in business without the proper authorisation.

**IV. APPLICABILITY**

These guidelines apply to all applicants of the Commission with the exception of those being considered under the Fast Tracking Procedure.



**V. STALE DATING**

The Commission requires that applications be staledated where the applicant fails to complete its application after a period of 90 days and there has been no grant of an extension. Applications may be re-activated after stale-dating. Applicants wishing to re-activate a staledated application must reapply to the Commission. A non-refundable application fee will be required.

**VI. RECEIPT OF APPLICATIONS**

Upon receipt of an application, the same is acknowledged by the relevant department of the Commission. If the application is received complete, the necessary processing takes place and the application is presented to the Members of the Commission for a determination. For the purpose of these guidelines, a complete application is one where all required documents are submitted along with the application form. If the application is received incomplete, a process of communication is initiated with the applicant aimed at securing the outstanding documents and information.

**VII. NOTIFICATION OF DEFICIENCIES**

Where deficiencies in documents are identified during the processing of the application, applicants are given 60 days from the time of notification of the deficiency by the Commission to take the necessary corrective action.

**VIII. WARNING**

After 60 days, applicants are advised of the possibility of the application being staledated if they fail to complete the process within the next 30 days. A final warning is issued seven days before the expiration of the 90-day period.

**IX. APPLICATION PERIOD**

The entire application period is not intended to exceed 90 days. Failure to meet the Commission's requirements within the stated period may result in staledating.

**X. EXTENSIONS TO THE PERIOD**

Special consideration may be given on a case-by-case basis to granting an extension of the period.







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