



# OVERVIEW OF THE INVESTMENT FUNDS REGULATIONS, 2018

Friday, 18<sup>th</sup> May 2018

British Colonial Hilton

Nassau, The Bahamas

Presenter: Christina R. Rolle, Executive Director



Property of The Securities Commission of The Bahamas



# PRESENTATION OUTLINE

- Recap of the Development and Consultation Process
- Update on Status of Legislation
- Review of Key Changes in the Bill
- Overview of the Regulations Relating to Key Changes in Bill
- Overview of Additional Changes of Note



# DEVELOPMENT PROCESS

- Drafting & Technical Consultants engaged
  - Gonsalves-Sabola Chambers
  - Graham Thompson
- Project Team assembled
  - Linda Beidler-D'Aguilar
  - Christel Sands-Feaste
  - Pamela Klonaris
  - Ian Fair
  - Anthony Inder Rieden
  - Michael Paton
- International Law Firm Charles Russell Speechlys contracted
  - Competitive benchmarking
  - Compliance with AIFMD requirements



# CONSULTATION PROCESS

## ➤ Draft Investment Funds Bill

- Public Consultation 27 Nov. 2017 – 28 Feb. 2018
- Comments from Public Consultation Reviewed
- Amendments to Bill Arising from Consultation
- Proposed Parliamentary Submission – Early July
- Promulgation before September 2018

## ➤ Draft Investment Funds Regulations

- Released for consultation 13 April 2018
- Consultation period 13 April 2018 – 15 June 2018



# SUMMARY OF KEY CHANGES IN BILL

- Definitions
- Bahamas vs. non-Bahamas Based Funds
- Licensing of Funds and Administrators
- Licensing Requirements for Investment Fund Managers
- Regulatory Oversight of Custodians
- Audit Sign-Off
- AIFMD Licensing Regime



# KEY DEFINITIONS

- Summary of Updates in IF Bill -
  - “Carry on business in or from The Bahamas”
  - “Investment fund or fund”
  - Two definitions form basis for application of regime throughout the legislation
  
- Draft Regulations -
  - Nothing in Regulations on “Carrying on Business” or “definition of investment fund”
  - Definition of Fit and Proper
    - Usual Fit and Proper Standards
    - Education, Experience, Capacity, Character and Reputation
    - Commission authorized to consider certain specific matters
    - Same as Regulation 3 in Securities Industry Regulations, 2012



# BAHAMAS BASED FUNDS RECAP

## Bahamas Based IFA, 2003

- Incorporated in The Bahamas, Administrator, Manager or advisor incorporated or have a place of business in The Bahamas

## Bahamas Based IF Bill, 2017

- Incorporation in The Bahamas
- Registered or Established in The Bahamas
- Sold in The Bahamas to non-accredited investors



# BAHAMAS BASED FUNDS REGULATIONS

- Application for Licensing
  - Form in Schedule 3
  - List of accompanying documents prescribed in schedule
  - Forms provided for key documentation
- No substantive changes in forms, content or procedure for applying for license
- No substantive change in documents required to be submitted in support
- Requirements and forms related to various reporting requirements also included in Schedules
  - No substantive changes





# NON-BAHAMAS BASED FUNDS

- Definition narrowed and regulatory regime rationalized
- Non Bahamas Based Fund in Bill -
  - Foreign Fund sold or being administered or managed in or from The Bahamas
    - Sold – Representative Required
    - Administered or Managed – Notice to Commission
- Commission Proposed Amendment to Standard –
  - Definition to include only Foreign Funds being administered or managed in or from The Bahamas
    - Administered or Managed – Notice to Commission



# INVESTMENT FUND ADMINISTRATOR

- Elimination of the nexus of the administrator from definition of Bahamas-based fund
- Elimination of requirement for Bahamas-based fund to appoint administrator licensed in The Bahamas to provide principal office
- Administrator to be licensed under the Act or established and operating in a prescribed jurisdiction to act on behalf of an investment fund



# INVESTMENT FUND ADMINISTRATOR REGIME – IFR 2018

## Obligations Under IFA Bill, 2017

- Provide Principal Office (now defined as the primary address of the fund)
- Ensure payment of fees
- Ensure that parties related to the fund are fit and proper
- Make reports as are required to the Commission
- Obligations are administrative
- Fiduciary obligations now aligned between investment manager and operator of fund

## Obligations Under IFR Bill, 2017

- Applications process is largely unchanged
- Requires two Directors
- Appointment of Fit and Proper Chief Executive Officer and Compliance Officer
- Duties to include –
  - Making Constitutive Documents available to investors free of charge
  - Making required reports to the Commission



# INVESTMENT FUND MANAGER

## ➤ IFA, 2003:

- No licensing requirements for Managers of funds

## ➤ Investment Funds Bill, 2017:

- Manager required for all Bahamas based funds except where:
  - investors are the investment fund manager or parent or subsidiary of the fund manager
  - Feeder fund invests 100% of assets in a master fund
- Dual level regime
  - Registration for managers of funds for accredited investors
  - Licensing required to manage retail funds
- Trigger for licensing is provision of investment management services



# INVESTMENT FUND MANAGER REGIME – IFR 2018

- Applications process is largely unchanged
- Registration restrictions apply –
  - Funds where AUMS do not exceed \$100,000,000
  - Funds where AUMS do not exceed \$500,000,000 but the investment funds do not use leverage and restrict redemption by investors within a 5 year period
- Obligations include -
  - Act honestly, fairly and with due skill, care and diligence
  - Act in best interests of each investment fund, investors and integrity of the market
  - Be appropriately resourced for proper performance of business activities
  - Take reasonable steps to avoid conflicts of interest
  - Comply with regulatory requirements
  - Treat all investors fairly
  - Where custodian not appointed ensure custodial obligations carried out as appropriate



# OVERSIGHT OF CUSTODIANS

- No requirement to license or register separately from investment fund
- Custodian required unless exempted by Commission
- Custodian to be independent of administrator, investment fund manager and operator of fund
- Custodian to segregate cash and other assets
- Custodian provisions checked against IOSCO Principles and International Standards



# OVERSIGHT OF CUSTODIANS REGIME – IFR 2018

- Regime for custodians substantially provided for in the Act
- Provisions in the Regulations establish qualifications of custodian
- Custodian Must Be –
  - A bank and trust company licensed under the Bank and Trust Companies Regulations Act; or
  - A bank, trust or other financial institution Licensed in a prescribed jurisdiction that meets certain net worth requirements; or
  - Such other person as approve by the Commission.



# OVERSIGHT OF OPERATORS REGIME – IFR 2018

- Funds required by IF Bill to appoint Operators
- According to Structure:
  - Company – Directors
  - Partnership – General Partner
  - Unit Trust – Trustee
  - ICON - Administrator





# OVERSIGHT OF OPERATORS REGIME – IFR 2018

- Duties of fund realigned
- Duties/Obligations:
  - Compliance with the Act and funds constitutive documents;
  - Calculation of the NAV is properly calculated in accordance with standards in fund documents;
  - Adherence to borrowing limits;
  - Audits are conducted as required by law; and
  - Books and records of the fund are properly maintained.



# AIFMD LICENSING REGIME

- Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD)
- Creates comprehensive & effective regulatory & supervisory framework for alternative investment fund managers (AIFMs) within the EU
- Establishes certain regulatory requirements for non-EU AIFMs providing services to EU funds (managing and/or marketing)
- Bahamian managers to EU funds subject to impact and requirements of AIFMD
- Commission has entered MoUs with 27 of 31 EU jurisdictions
- Working to conclude remaining MoUs (Germany/Italy)



# AIFMD LICENSING REGIME

- Key Goal of AIFMD Regime in Legislation:
  - Qualify for European Union (EU) Passporting
  - Allow Bahamian funds and managers access to the EU
- Passport enables non-EU AIFMs to enjoy the same rights, and subject to the same obligations, as EU based AIFMs
- Benchmarking conducted against jurisdictions granted EU Passport
- Commission seeking to be included in next round of assessments for passporting



# AIFMD LICENSING REGIME

- Legislation establishes entire regime for persons wanting to be AIFMD compliant
- Framework provides for distinct license to managers operating in or managing funds from the EU
- Provisions operate wholly independently of those relating to managers operating in or from The Bahamas and not in the EU or with EU funds
- AIFM license required when a person intends to:
  - Market an investment fund or an EU AIF in the EU with an EU passport
  - Manage an EU AIF with an EU passport irrespective of where the EU AIF is marketed



# AIFMD LICENSING REGIME

- Commission to ensure licensing criteria:
  - Fitness & Propriety Standards
  - Principal & Registered Office in The Bahamas
- Commission to report to ESMA on licenses granted and revoked
- Licensee to meet obligations:
  - Financial requirements (Capital and Indemnity Insurance)
  - General organizational requirements and operating conditions of an AIFM
  - Requirements related to the valuation of assets
  - Appointment of custodian for each EU fund it manages
  - Submission of annual report



# AIFMD REGIME

## IFR 2018

- Details of Licensing Requirements largely standard
  - Identification of parties, location, organizational structure, remuneration policies, and details of delegations etc.
- AIFM required to notify the Commission of certain obligations
- Commission obliged to have regard to AIFMD in overseeing AIFM
- Reporting requirements include –
  - Details on where AIFM is managing or marketing funds;
  - Details on management relationship with funds being Managed by the AIFM
  - ‘Program of Activity’ setting out organizational structure of AIFM
  - Evidence that the AIFM has sufficient capital in accordance with the Act



# AIFMD REGIME

## IFR 2018

- Pursuant to IF Bill AIFM obliged to appoint custodian
- Standards specific to AIF Custodians separate and different to domestic custodian
- Specific provisions related to the Custodians functions including -
  - Contractual particulars
  - Segregate Funds Assets
  - Conduct appropriate Reconciliations,
  - Record Keeping Requirements
  - Conducting Risk Assessments for Assets in Custody
  - Implementing Ex Post Controls and Verifications of Processes and Procedures
  - Escalation Policies in Relation to Irregularities



# NEXT STEPS

- Release of Draft Regulations
- Review Regulations in context of the Bill
- Submit Comments:  
[IFAconsultation@scb.gov.bs](mailto:IFAconsultation@scb.gov.bs)





# THANK YOU





# CONTACT INFORMATION

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