



SECURITIES COMMISSION OF THE BAHAMAS SIA, 2011 INDUSTRY BRIEFING

Wednesday, November 14, 2012
Nassau Sheraton



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WELCOME REMARKS

Mr. Dave S. Smith, Executive Director



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SECURITIES COMMISSION OF THE BAHAMAS

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REGISTRATION OF FIRMS UNDER THE SECURITIES INDUSTRY ACT, 2011

- Application and Licensing Process
 - Re-categorization Process



Presenter: Sherinn Munnings – Senior Officer, Authorizations

THE APPLICATION PROCESS

REQUIREMENTS FOR REGISTRATION

Firms seeking to conduct one or more securities related activities must meet all of the requirements for registration by submitting the following:

- Application Form (Form 8)
- Application fee
- Statement of Fitness and Propriety
- Business Plan and Organizational Chart
- AML and Internal Control Procedures
- Register of Shareholders, Directors and Officers
- Balance Sheet verified by an approved auditor, Statement of Managed Accounts or confirmation from attorney that an amount is being held in escrow (New Companies)
- Audited Financial Statements for the past two years (Established Companies)

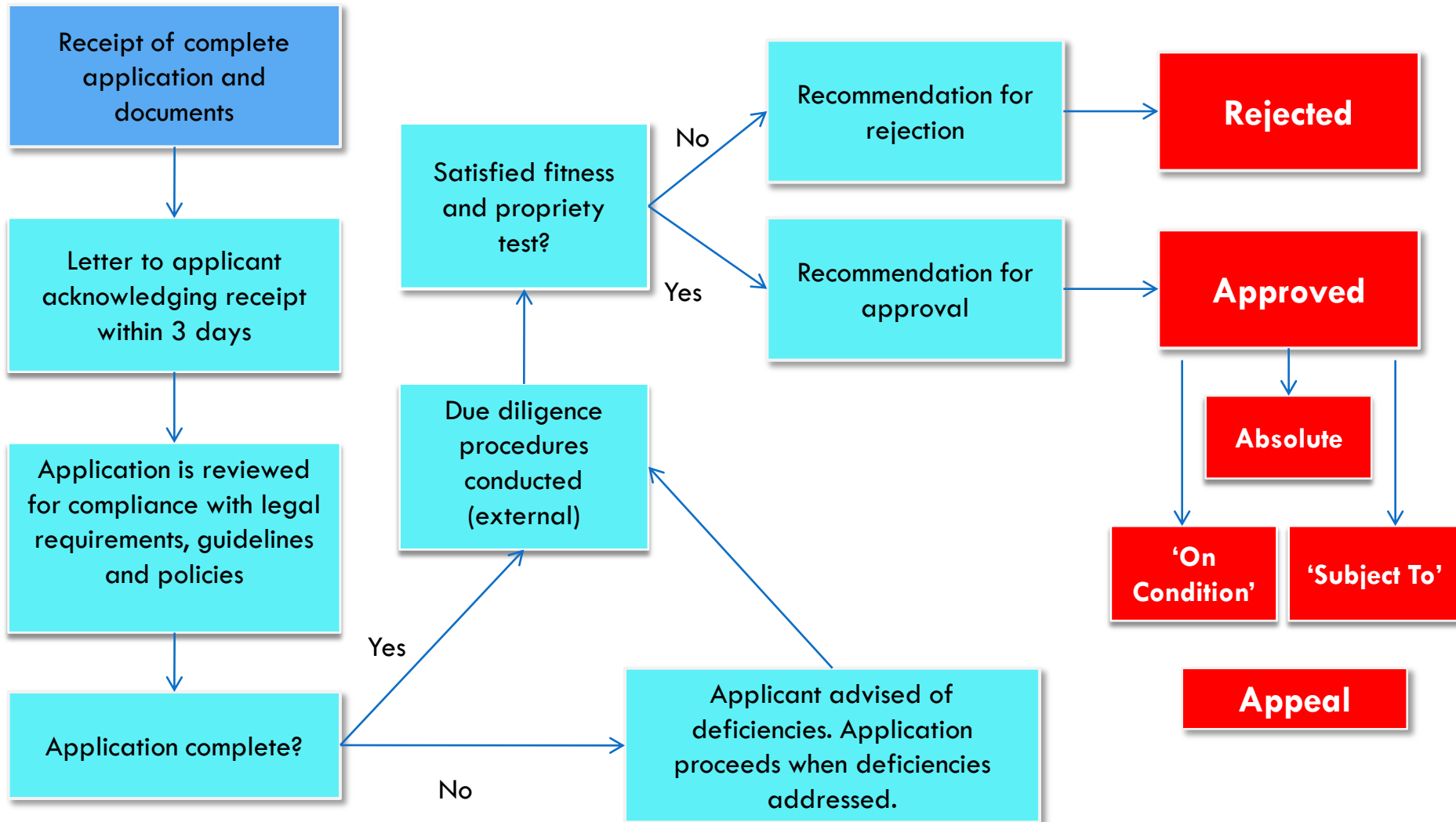


THE APPLICATION PROCESS: KYC REQUIREMENTS

- Certified copy of a Passport or other document that verifies the applicant's identity
- Work Permit or Certificate of Permanent Residency with the right to work (for non-Bahamian citizens)
- Statement of Fitness and Propriety, accompanied by:
 - CV
 - Police Certificate
 - Character reference letters
 - Financial reference letter
- CEO, Compliance Officer, and Registered Representative
 - Job Description
 - Evidence of academic and professional qualifications
 - Evidence of good standing with professional/licensing bodies



THE APPLICATION PROCESS CONT'D



RE-CATEGORIZATION PROCESS: FIRM REGISTRATION CATEGORIES

Part 2 of the First Schedule of the SIA, 2011 details the securities activities or firm registration categories.

- **Dealing in Securities** - Buying, selling, subscribing for or underwriting securities as an agent or principal.
- **Arranging Deals in Securities** – Making arrangements with a view to another person (whether as agent or principal) buying, selling subscribing for or underwriting securities, or a person who participates in the above.
- **Managing Securities** – Managing securities belonging to another person in circumstances involving the exercise of discretion.
- **Advising on Securities** – Persons offering advisory services to a portfolio/person where no discretion is exercised will require registration in this activity.



RE-CATEGORIZATION PROCESS: FIRMS

Regulation 146 of the SIR, 2012 prescribed how Firms previously registered under the SIA, 1999 were mapped under the SIA, 2011.

SECURITIES INDUSTRY ACT, 1999	SECURITIES INDUSTRY ACT, 2011
BROKER DEALER CLASS I	Dealing in Securities as Principal and/or Agent ; Managing Securities; Arranging Deals in Securities; and Advising on Securities.
BROKER DEALER CLASS II	Dealing in Securities as Agent Only ; Managing Securities; Arranging Deals in Securities; and Advising on Securities.
SECURITIES INVESTMENT ADVISOR	Managing Securities, and Advising on Securities.

INDIVIDUAL REGISTRATION CATEGORIES

- **Trading Representative** – A person involved in buying and selling shares, bonds and assets for investors. They make prices and execute trades, seeking to maximize assets or minimize financial risk.
- **Discretionary Management Representative** – A person managing securities belonging to others involving the exercise of discretion. (e.g. Portfolio Managers)
- **Advising Representative** – A person who makes any recommendations or otherwise gives investment advice regarding securities; manages accounts or portfolios of clients; determines which recommendation or advice regarding securities should be given; and/or provides investment advice.



RE-CATEGORIZATION PROCESS: INDIVIDUALS

Regulation 151 of the SIR, 2012 prescribed how individuals previously registered under the SIA, 1999 were mapped under the SIA, 2011.

SECURITIES INDUSTRY ACT, 1999	SECURITIES INDUSTRY ACT, 2011
PRINCIPAL, BROKER, STOCKBROKER	Representative, Trading
SECURITIES INVESTMENT ADVISOR	Representative, Discretionary Management
ASSOCIATED PERSON	Representative, Advising

Registration of CEO and Compliance Officer were new requirements under the SIA, 2011 prescribed in Regulation 40 of the SIR, 2012.



TIMETABLE OF ACTIVITY

Timeline	Action
February – March, 2012	Formal letters sent to registrants advising how they were mapped and re-categorized pursuant to the transitional provisions.
July 30, 2012	Deadline for submission of Annex I or formal request for change of categories and required supporting documents.
September – October, 2012	Information submitted reviewed by the Commission and determination with respect to requested changes communicated.
November – December, 2012	Registrants advised of determinations with respect to requested changes and new licenses issued identifying appropriate categories of registration.
December 30, 2012	Deadline for registration of Compliance Officers.



CONTINUING OBLIGATIONS & INITIATIVES RELATED TO REGISTERED FIRMS



Presenter – Narissa Gator, Acting Manager, MSD

CONTINUING OBLIGATIONS FOR REGISTERED FIRMS AND INDIVIDUALS

RENEWAL OF LICENCE

• Fees	Payment Annually – by January 31	Regulation 45
• Annual Information Update Form	File Annually	Regulation 45 Form 10, Schedule 2

FINANCIAL REPORTING

• Audited Financial Statements	Within 120 days of fiscal year end	Section 77 (a) Regulation 49 Form 13, Schedule 2
• Annual Report of the Auditor	Upon request	Section 77 (b) Regulation 49 Form 13, Schedule 2 [Section 76 (2) (b)] Regulation 51
• Interim Financial Statements (Financial Operational Reports)	Within 30 days of the end of each quarter of its fiscal year	Section 77 (c) Regulation 50 Form 13, Schedule 2
• Capital Requirements	Ongoing	Regulation 42
• Indemnity Insurance	Ongoing	Regulation 43
• Outsourcing	Immediate prior written notice	Regulation 44



CONTINUING OBLIGATIONS FOR REGISTERED FIRMS AND INDIVIDUALS

MATERIAL CHANGE REPORTING

• Notice of Change in Auditor	Within 10 days to the Commission	Regulation 15 Form 2, Schedule 2
• Issue or transfer of securities (approval required)	Written notification no less than 30 days before the proposed transfer	Regulations 46 (2) Form 6, Schedule 2
• Employment of representative	Immediate written notice	Regulation 47 Form 11, Schedule 2
• Resignation, Termination or Retirement of a registered Individual	Immediate written notice	Regulation 48 Form 12, Schedule 2
• Firm - Notice of change in information – application form	Immediate written notice	Regulations 52/54 Form 5, Schedule 2
• Firm - Notice of change in information after registration	Within 5 days of the change	Regulations 53(1)/54 Form 5, Schedule 2
• Transactions affecting financial resources	Written consent prior to change	Regulation 55
• Individual - Notice of change in information after registration	Immediate written notice	Regulations 62
• Notification of Liquidation	Prior approval of Commission required	Section 73 Regulation 64
• Surrender of Registration	Application must be made to the Commission	Regulation 64



TRANSITIONAL PROVISIONS – EFFECTIVE 2013

Annual Renewal Fees

Financial Reporting Requirements

- Interim Reports (quarterly)

Regulatory Capital Requirements

- Form 13, Schedule 2 (Form H)



REQUIREMENTS FOR AUDITORS

Sections 76 and 77 provide for the duties of an auditor: -

Auditors required to be registered

Only an approved auditor can act for a registered firm

Commission has ability to impose additional duties on auditors

- Additional information reported;
- Expanding scope of the audit; and
- Requiring special examinations.





SECURITIES INDUSTRY ACT AND REGULATIONS - KEY CHANGES



Presenter: Mechelle Martinborough – Legal Counsel

SECURITIES INDUSTRY ACT AND REGULATIONS

- Changes sought in the SIA 2011 were to –
 - Enhance Commission compliance with IOSCO 38
 - Achieve Signatory 'A' Status
 - Enhance Enforcement authority of the Commission
 - Re-organize the licensing regime for industry participants
 - Update the regulatory regime relating to public issuers



SECURITIES INDUSTRY ACT AND REGULATIONS

Parts	Topic covered in the Relevant Part	Key Changes
Part II	Securities Commission	Members appointments and Commission's powers and duties
Part III	Information Sharing	Meets standards for IOSCO MMOU Compliance
Part IV	Investigations and Inspections	Enhancements of the Commission's enforcement authority



SECURITIES INDUSTRY ACT AND REGULATIONS

Parts	Topic covered in the Relevant Part	Key Changes
Part V	Market Places etc.	Ongoing supervisory framework; i.e. financial reporting, capital requirements and record keeping.
Part VI	Persons Carrying on Securities Business	Change from a 'title' to 'function' base

SECURITIES INDUSTRY ACT AND REGULATIONS

Parts	Topic covered in the Relevant Part	Key Changes
Part VII	Conduct of Securities Business	i. Provisions in Legislation; and ii. Direct access to auditor
Part VIII	Compensation Fund	N/A
Part IX	Distributions and Prospectuses	Process clarified and modernized
Part X	Ongoing obligations of public companies	Ongoing supervisory framework legislated with some tweaks.
Parts XI and XII	Corporate Governance and Takeover Bids	N/A



SECURITIES INDUSTRY ACT AND REGULATIONS

Parts	Topic covered in the Relevant Part	Key Changes
Part XIII	Market Misconduct	Existing offences maintained with the addition of Front Running and various defenses
Part XIV	Securities Holders in Public Issuers	N/A
Part XV	Enforcement	Draft legislation addresses lack of authority, process to be addressed in rules Part XVI
Part XVI	Civil Liability for Misrepresentation	N/A

SECURITIES INDUSTRY ACT AND REGULATIONS

MISCELLANEOUS PROVISIONS

Regulations , Rules, Guidelines , Reviews and Appeals,
Status of Documents, Power to Exempt, Designation
Orders, Recognition of Jurisdictions and Exchanges,
Commission Register.





SIA, 2011 INDUSTRY CONSULTATION



Presenter: Denise Hinds-Jordan Consultant
Executive Department

CONSULTATIVE PAPERS

CONSULTATION PAPER	CONSULTATIVE PERIOD
Regulatory Capital Framework	15 May 12 – 31 Jul. 12
Outsourcing of Material Functions	15 May 12 – 31 Jul. 12
Licensing of Compliance Officers	15 May 12 – 31 Jul. 12
Proposed IFA & FCSPA Fees Regime	25 May 12 – 31 Jul. 12
Fitness & Propriety Criteria of Applicants for Regulated Entities	19 Jul. 12 – 1 Sept. 12
Liquidity Risk Management	19 Jul. 12 – 1 Sept. 12
Corporate Governance for Regulated Entities	3 Aug. 12 – 1 Oct. 12
Management of Related Party and Large Exposures	3 Aug. 12 – 1 Oct. 12
Bahamas Takeover Codes	3 Aug. 12 – 1 Oct. 12

CONSULTATION: CORPORATE GOVERNANCE

Key concerns raised included:

1. Application to Joint Licensees and applicability of Audit requirements for groups;
2. Difficulty with respect to the INED requirement;
3. The definition of independence;
4. Applicability for small companies;
5. The role of the Board in the day-to-day functions of the company
6. General applicability for CISs and the use of Corporate entities as directors, and
7. The level of disclosure required, particularly for non public issuers.



CONSULTATION:

LICENSING OF COMPLIANCE OFFICERS

Key concerns raised included:

1. Applicability for small companies and the challenge for implementation of the independence criteria;
2. Outsourcing of CO function;
3. Do the guidelines apply to firms grandfathered under the new SIA with registered COs or does it only apply to new applicants or former firms who would not have had CO registered with SCB?
4. Educational requirements and transition periods, and
5. Annual renewal requirement.



CONSULTATION: OUTSOURCING

Key concerns raised included:

1. Applicability for joint licensees;
2. Necessity of the guidance and the related costs of implementation;
3. Due diligence requirement for known providers

CONSULTATION: REGULATORY CAPITAL

Key concerns raised included:

1. Training required;
2. Initial capital requirement for Managing and Advising only seen as too high;
3. Applicability to joint licensees;
4. How can one satisfy the capital test;
5. Why should Advising and Managing be required to have capital



CONSULTATION: LIQUIDITY

Key concerns raised included:

1. Alternate measures required as issues related to call options not captured;
2. How to treat assets with encumbrances; and
3. It was suggested that it be included in the annual audit requirements and higher frequency of liquidity reporting;

CONSULTATION:

LARGE AND RELATED PARTY EXPOSURES

Key concerns raised included:

1. Additional clarity required particularly for the requirement for public companies; and
2. Public disclosures of breaches of exposure limits may not be in the best interest of the market; consider wording that allows for a waiver.

CONSULTATION: TAKEOVER CODE

Key concerns raised included:

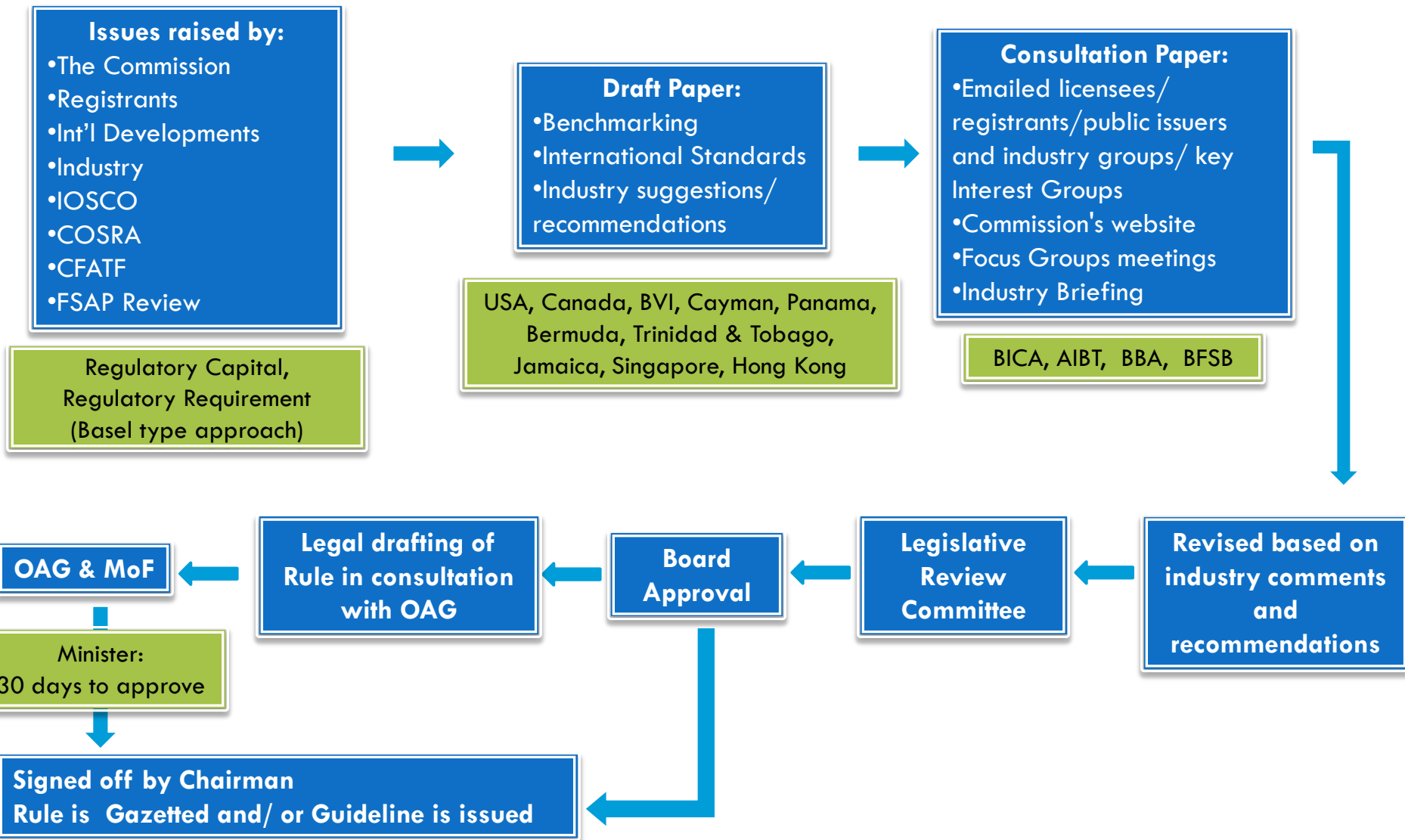
1. Additional training required; and
2. Concern that the effort to protect minority shareholders may disenfranchise majority shareholders;

TRANSITION PERIOD

The transition period for the proposed guidance and rules range can be up to twelve months and will be determined for each paper.

It is anticipated that many will be adopted as guidance before formal transition to rules.

CONSULTATIVE PROCESS





UPCOMING EVENTS

- **2013 Events Scheduled for Quarter 1**
 - Industry training on Regulatory Capital
 - Focus Group Meeting on The Bahamas' Takeover Codes
 - AML/CFT training for FCSPs
- **Other 2013 Events**
 - Training on Corporate Governance
 - Legislative Committee to review and sign off on papers
 - Implementation of new Rules and Guidelines
 - Risk Assessment and Control Survey

Website: www.scb.gov.bs

Email: info@scb.gov.bs



QUESTIONS & ANSWERS



THANK YOU!!!

