



# AN OVERVIEW OF SMART FUNDS, THE ICON AND THE ROLE OF THE ACCOUNTANT

PRESENTER: CHRISTINA R. ROLLE  
EXECUTIVE DIRECTOR  
SECURITIES COMMISSION OF THE BAHAMAS



Property of the Securities Commission of The Bahamas



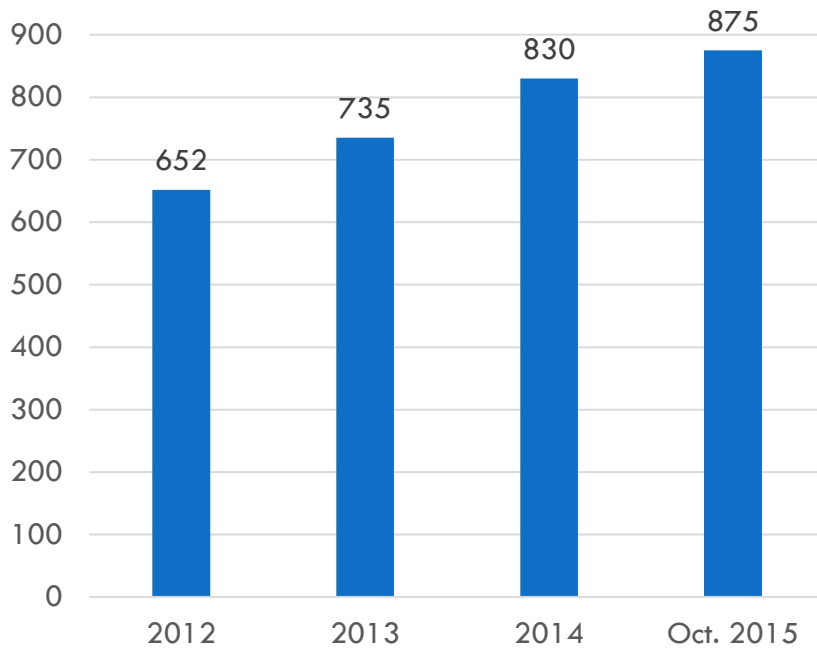
# DISCLAIMER

This document is the property of the Securities Commission of The Bahamas and is intended for information purposes only. Note that the material contained herein or any personal views expressed during this presentation do not supersede or override any obligations or conditions outlined in the legislation specific to securities, investment funds and financial and corporate service providers. You may obtain the legislation from Government Publications and copies of these laws may also be viewed on the SCB's website ([www.scb.gov.bs](http://www.scb.gov.bs)).

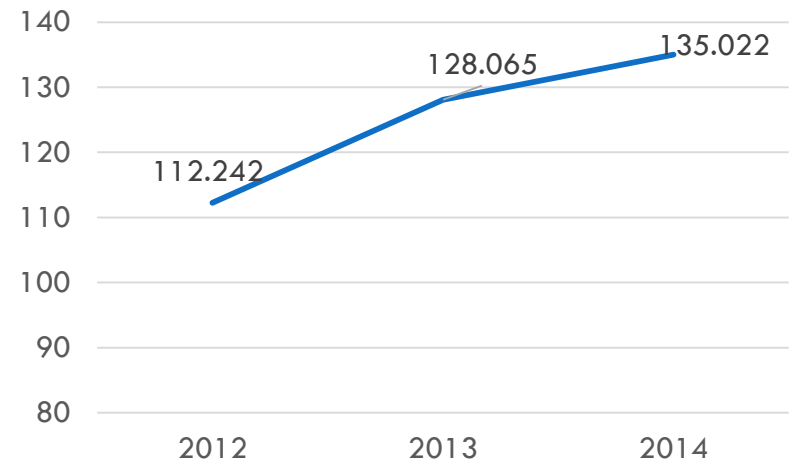


# SIZE OF THE INVESTMENT FUNDS INDUSTRY

Total Number of Investment Funds



Net Asset Value (NAV) – Billions\$





## TO BE DISCUSSED

- ❑ What an investment fund is
- ❑ Types of investment funds
- ❑ Legal structures of investment funds
- ❑ The Investment Condominium
- ❑ Parties related to investment funds
- ❑ Financial reporting



# INTRODUCTION

- ❑ An investment fund in The Bahamas is defined by the Investment Funds Act.
- ❑ Formal oversight and regulation of investment funds in The Bahamas came in 1995 with the passage of the Mutual Funds Act.
- ❑ In 2003, this Act was repealed and replaced with the Investment Funds Act. The Investment Funds Regulations, 2003 and the SMART Fund Rules, 2003 were also promulgated.
- ❑ This Act has undergone a number of amendments and is the Act that provides the set of rules and principles to regulate investment funds in the Bahamas currently.



# UPCOMING CHANGES TO INVESTMENT FUNDS REGULATION

- Development of new Investment Funds Act is ongoing
  - Investment Funds Act Technical Team (IFATT)
  - Consultant to be appointed
  - Targeted to be issued for public consultation in 2016



# WHAT IS AN INVESTMENT FUND

- An investment fund under the Act is:
  - A unit trust, company, partnership or investment condominium that issues or has equity interests, of which the purpose or effect is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains arising from the acquisition, holding, management or disposal of investments.
  
- References in the Act are to Bahamas based funds.
  
- Does not include:
  - A person enrolled under the Friendly Societies Act, or
  - A company, unit trust, or partnership where the holder of an equity interest does not have the option to redeem his equity interest or require the issuer to repurchase his equity interest.



# WHAT IS AN INVESTMENT FUND (CONT'D)

## □ Unit Trust

- Trustee or Administrator either a company incorporated or registered in The Bahamas; or
- A person who has a place of business in or uses an address in The Bahamas; or
- Trust instrument is governed by the laws of The Bahamas.

## □ Company

- Incorporated or registered in the Bahamas; or
- Has an administrator that is:
  - A company(ies) incorporated or registered in The Bahamas; or
  - One or more companies or individuals any of whom has a place of business in or uses an address in The Bahamas.

## □ Partnership

- One or more general partners is:
  - Incorporated or registered in The Bahamas; or
  - A person residing in or using an address in The Bahamas; or
- Partnership articles are governed by the laws of The Bahamas.



# WHAT IS AN INVESTMENT FUND (CONT'D)

Structure:	Unit Trust	Company	Partnership	Investment Condominium
Must be incorporated or registered/established and registered in The Bahamas (for individuals, a person residing in The Bahamas or using a Bahamian address)		Entity	One or more of the general partners	Entity
	Or			
Must be a company(ies) incorporated or registered in The Bahamas or an individual or company(ies) who has a place of business in The Bahamas or uses a Bahamian address	Trustee Administrator	Administrator		
	Or			
Must be governed by the laws of The Bahamas/must be conducted in The Bahamas	Trust Instrument		Partnership articles	



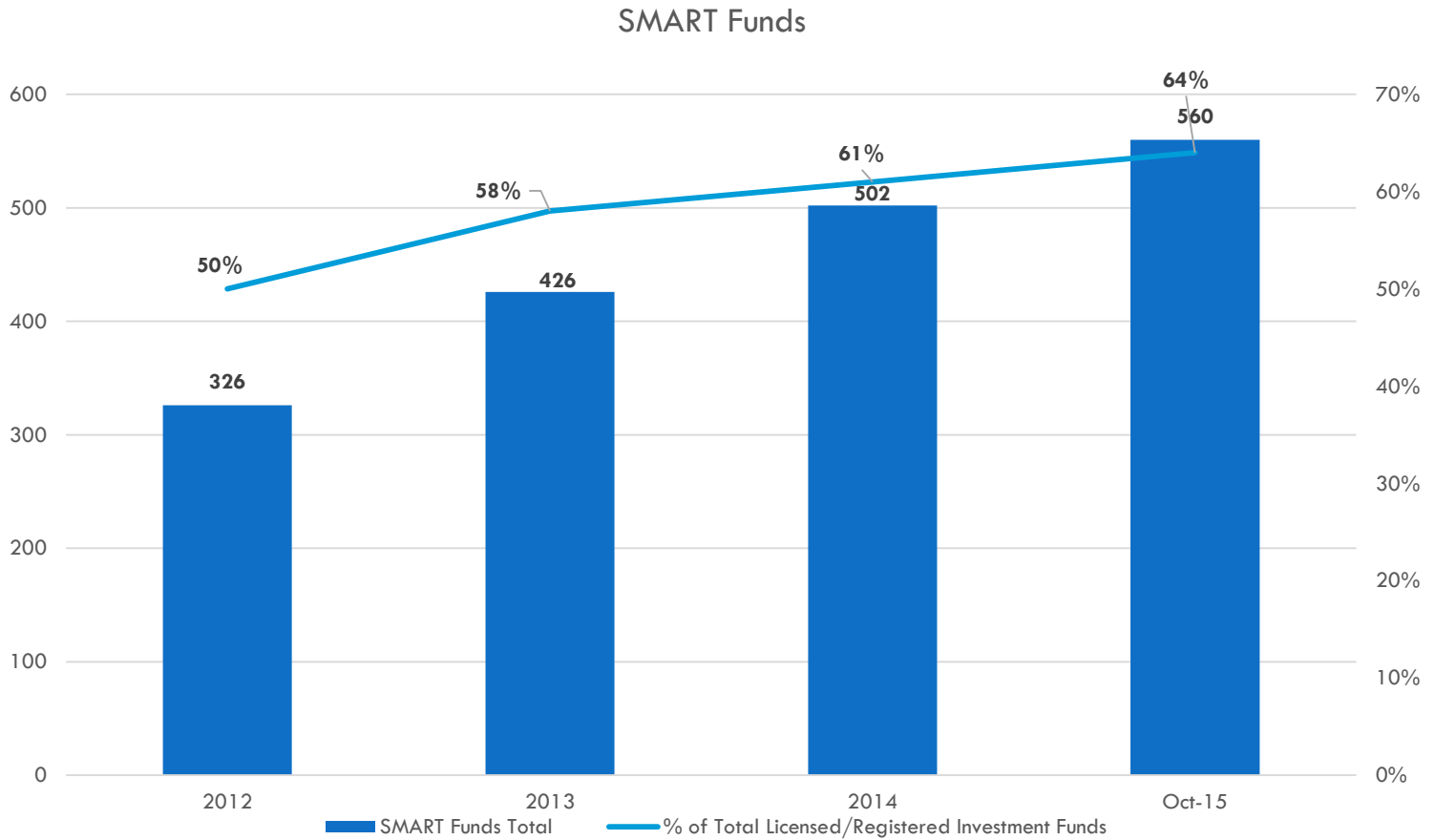
# TYPES OF INVESTMENT FUNDS

- Three licensing categories for investment funds:
  - Professional Fund;
  - Standard Fund; and
  - Specific Mandate Alternative Regulatory Test (SMART) Fund.
  
- One registration category:
  - Recognized Foreign Fund



# SMART FUND TYPES

## Number of Licensed SMART Funds





# RELATED PARTIES TO INVESTMENT FUNDS

- ❑ Except for some SMART fund models, licensed investment funds are required to have an investment fund administrator.
- ❑ Investment Fund administrators:
  - Unrestricted Investment Fund Administrator (UIFA)
  - Restricted Investment Fund Administrator (RIFA)
  - Exempt from obtaining an Investment Fund Administrator's Licence
- ❑ Parties to an investment fund also include the operator, the promoter, the custodian, the investment manager or investment advisor.



# FINANCIAL REPORTING FOR INVESTMENT FUNDS

- ❑ Standard and professional funds are required to be audited annually and to file a copy of the audited financial statements within six months of its financial year end.
- ❑ Some SMART funds, namely models 002, 004, 005 and 007, are not required to be audited annually if all the holders of equity interests unanimously waive the requirement for an annual audit. If the annual audit requirement is waived, the fund is required to file semi-annual performance reports.
- ❑ Model 001 is required to produce annual unaudited financial statements and semi-annual performance reports and Model 006 is required to file a performance report or management account every six months.



# HIGHLIGHTS OF THE ICON

- ❑ A new legal structure introduced in 2014.
- ❑ An ICON is a contractual relationship.
- ❑ It may be formed to operate as an open-ended fund or a closed-ended fund.
- ❑ An ICON, as an entity without legal personality, is represented by its administrator.



# CREATING AN ICON

- ❑ Name must be reserved with the Registrar General.
- ❑ Initial Participants agree and sign the Governing Regulations effectively establishing the ICON.
- ❑ Initial Participants appoint the governing administrator and general administrator.
- ❑ Certificate of Establishment issued by the Administrator and submitted to Registrar along with fee within 7 days of date of establishment for stamping by the Registrar.
- ❑ A Certificate of Establishment stamped by the Registrar is evidence of compliance with registration requirements. Governing Regulations may but need not be filed.
- ❑ ICON must be licensed as an investment fund within 90 days of date of establishment.



# GOVERNING REGULATIONS

- ❑ Name
- ❑ Statement that it is formed exclusively to operate as an investment fund (statement of purposes)
- ❑ Name and address of Administrator (governing and general)
- ❑ Address in The Bahamas for service of process
- ❑ Provisions relating to audit
- ❑ Duration of the ICON
- ❑ Provisions for the dissolution of the ICON
- ❑ Number and currency of participation interests to be issued
- ❑ Rights, powers (voting/non-voting) of the participation interests
- ❑ The manner in which material agreements and Governing Regulations are to be amended
- ❑ Liability of participants
- ❑ Valuation procedures
- ❑ Duties of governing administrator and general administrator
- ❑ Such other items as are required by the Investment Funds Act and Regulations, 2003





# HOW THE ICON OPERATES

- ❑ An ICON may have an unlimited number of participants, but the minimum number is one.
- ❑ Participation interests may but need not carry voting rights, and such rights are specified in governing regulations. Participation interests are personal property, and enforceable by the participants as a chosen action.

## RIGHTS OF PARTICIPANTS:

- ❑ Entitled to participation interest and to redemption
- ❑ Participation interest can be issued as voting or non-voting
- ❑ Voting participation interests may remove and replace the Administrator
- ❑ Disclosure and other rights as investors as required by the Investment Funds Act, 2003 (“IFA”)



# ADMINISTRATION

- ❑ Initial Participants appoint an Administrator
- ❑ Single institution performing governance and general administrative roles possible
- ❑ Separate institutions splitting those roles – the governing administrator and general administrator
  1. General Administrator must be a financial institution licensed by the Securities Commission of The Bahamas (“SCB”) as a restricted or unrestricted fund administrator
  2. Governing administrator is the “operator” of the fund
  3. Governing Administrator must be:
    - Restricted or Unrestricted Investment Fund Administrator;
    - A Financial and Corporate Service Provider;
    - Licensed Dealer in Securities;
    - Bank or Trust Company licensed by the Central Bank of The Bahamas (“CBB”); or
    - Entity in foreign jurisdiction licensed by a regulator having authority equivalent to the CBB or SCB.
- ❑ General administrator acts in the same way as administrator of other funds with the same roles and responsibilities
- ❑ Delegation permitted



# CONVERSION

- ❑ Existing Bahamian International Business Companies (IBC), Exempted Limited Partnerships (ELP) or Unit Trusts may become ICON Funds.
- ❑ There is no need for a terminating event triggering a capital gain or other adverse tax consequence.
- ❑ Entities established under the laws of another jurisdiction may also convert to an ICON though they must first be redomiciled and continued under Bahamian law, in the case of an IBC or ELP, or effect a change in the governing law in the case of a trust.



# QUICK REFERENCE

- ❑ ICON is not a legal entity but a contractual relationship
- ❑ Cannot declare dividends or make distributions
- ❑ Separate administrators or same entity can perform both functions
- ❑ Can only be used as a Fund
- ❑ Not required to file Governing Regulations (except in case of conversion)
- ❑ Closed-end ICON must be licensed
- ❑ One annual general meeting of participants with voting rights required at any location
- ❑ Participant Interests enforceable as a chosen action (similar to a share)
- ❑ Conversion



# IMPORTANCE

- ❑ Events like Lehman Brothers, MF Global and Madoff left auditors and regulators with questions about the regulatory regime of the accounting profession.
- ❑ Of critical importance to investors is the responsibility of auditors to detect fraud and to remain unbiased and independent of their clients.



# DEVELOPMENTS

- The International Organization of Securities Commissions' (IOSCO), revised Objectives and Principles of Securities Regulation (Principles)
  - Five of the principles relate to accountants, auditors and financial reporting, which are:
    - Principle 16 – There should be full, accurate and timely disclosure of financial results, risk and other information which is material to investors' decisions;
    - Principle 18 – Accounting standards used by issuers to prepare financial statements should be of a high and internationally accepted quality;
    - Principle 19 – Auditors should be subject to adequate levels of oversight
    - Principle 20 – Auditors should be independent of the issuing entity that they audit.
    - Principle 21 – Audit standards should be of a high and internationally accepted quality.



## DEVELOPMENTS (CONT'D)

- ❑ IOSCO Report on Custody of Collective Investment Schemes (CIS) Assets (10 November 2015)
- ❑ IOSCO Transparency of Firms that Audit Public Companies (6 November 2015)
- ❑ New BICA Bill



# CONCLUSION

- ❑ Accountants play an important role in the securities and financial markets.





# QUESTIONS & ANSWERS



# CONTACT INFORMATION

Securities Commission of The Bahamas  
3rd Floor, Charlotte House  
Shirley and Charlotte Streets  
P.O. Box N-8347  
Nassau, The Bahamas

Telephone     1-(242) 397-4100 (Nassau)  
                  1-(242)-225-8171 (Family Island toll free)  
                  1-(360)-450-0981 (International)

Fax             1-(242) 356-7530

Email           [info@scb.gov.bs](mailto:info@scb.gov.bs)

website        [www.scb.gov.bs](http://www.scb.gov.bs)





# THANK YOU