



INDUSTRY BRIEFING

SECURITIES INDUSTRY ACT, 2011 (SIA, 2011) &
INVESTMENT FUNDS ACT, 2003 (IFA, 2003)

Tuesday 21st July 2015 - British Colonial Hilton, New Providence



Property of the Securities Commission of The Bahamas



WELCOME REMARKS

MR. JERRY BUTLER – DEPUTY CHAIRMAN
SECURITIES COMMISSION OF THE BAHAMAS

OPENING REMARKS

THE HONOURABLE MICHAEL B. HALKITIS
MINISTER OF STATE IN THE MINISTRY OF FINANCE



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OFFICE OF LEGAL COUNSEL

- Investment Funds Act, 2003 (IFA)
- Caribbean Financial Action Task Force (CFATF)
- Investment Funds Act Technical Team (IFATT)
- Financial and Corporate Service Providers Act, 2000 (FCSPA)
- AML/CFT Rules
- Other Rules & Guidelines



Presenter: Mechelle Martinborough – Legal Counsel , Office of Legal Counsel

LEGISLATIVE DEVELOPMENTS

- ❑ Background and status of amendments to the IFA
- ❑ Status of review of the FCSPA
- ❑ CFATF update
- ❑ AML/CFT Rules
- ❑ Miscellaneous Matters:
 - Registrar & Transfer Agent Rules;
 - Segregation of Assets; and
 - Disciplinary Rules.

LEGISLATIVE DEVELOPMENTS

IFATT



- ❑ Background
- ❑ FSAP requirements and deficiencies
- ❑ Report finalised and submitted to the Commission's Legislative Committee
- ❑ Commission also identified deficiencies in the legislation
- ❑ Instructions to be developed
- ❑ Consultant to be appointed
- ❑ Proposed deadline for first draft – December 2015

LEGISLATIVE DEVELOPMENTS

FCSPA



- ❑ FCSPA Group
- ❑ Reviewed outstanding issues that had been previously raised
- ❑ Industry to be engaged once these issues are defined and crystallised
- ❑ Proposed timing – Draft to begin August and conclude December 2015

LEGISLATIVE DEVELOPMENTS

FCSPA CONT'D

- Key issues to be addressed
 - Definition of financial services
 - Clarification of persons able to apply for the various categories for licensing
 - Rationalisation of the regulatory regime of various groups of services based on risk
 - Enforcement process
 - Sanctioning authority
 - Fees

LEGISLATIVE DEVELOPMENTS

CFATF UPDATE



- ❑ Background
- ❑ Bahamas review scheduled for November 30, 2015
- ❑ Summary of process - Two Weeks
- ❑ Current status
 - Technical Compliance Report concluded and submitted
 - Effectiveness being developed
 - GAP analysis to be concluded with view to identifying immediate outcomes that can be achieved before December 2015

LEGISLATIVE DEVELOPMENTS

AML/CFT RULES



- ❑ AML/CFT Rules developed - deficiency in SIA, 2011
- ❑ AML/CFT Guidelines next
- ❑ Currently industry to comply with the Central Bank's Guidelines
- ❑ Standard provisions related to –
 - Know Your Client
 - Record Retention
 - Suspicious Transaction Reports

LEGISLATIVE DEVELOPMENTS

MISCELLANEOUS

- ❑ Registrar & Transfer Agents
 - Out For Consultation
- ❑ Segregation of Assets
 - Finalised Draft for Exemption
- ❑ Disciplinary Rules
 - Before Cabinet
 - Hearing Panel Members



AUTHORISATIONS DEPARTMENT

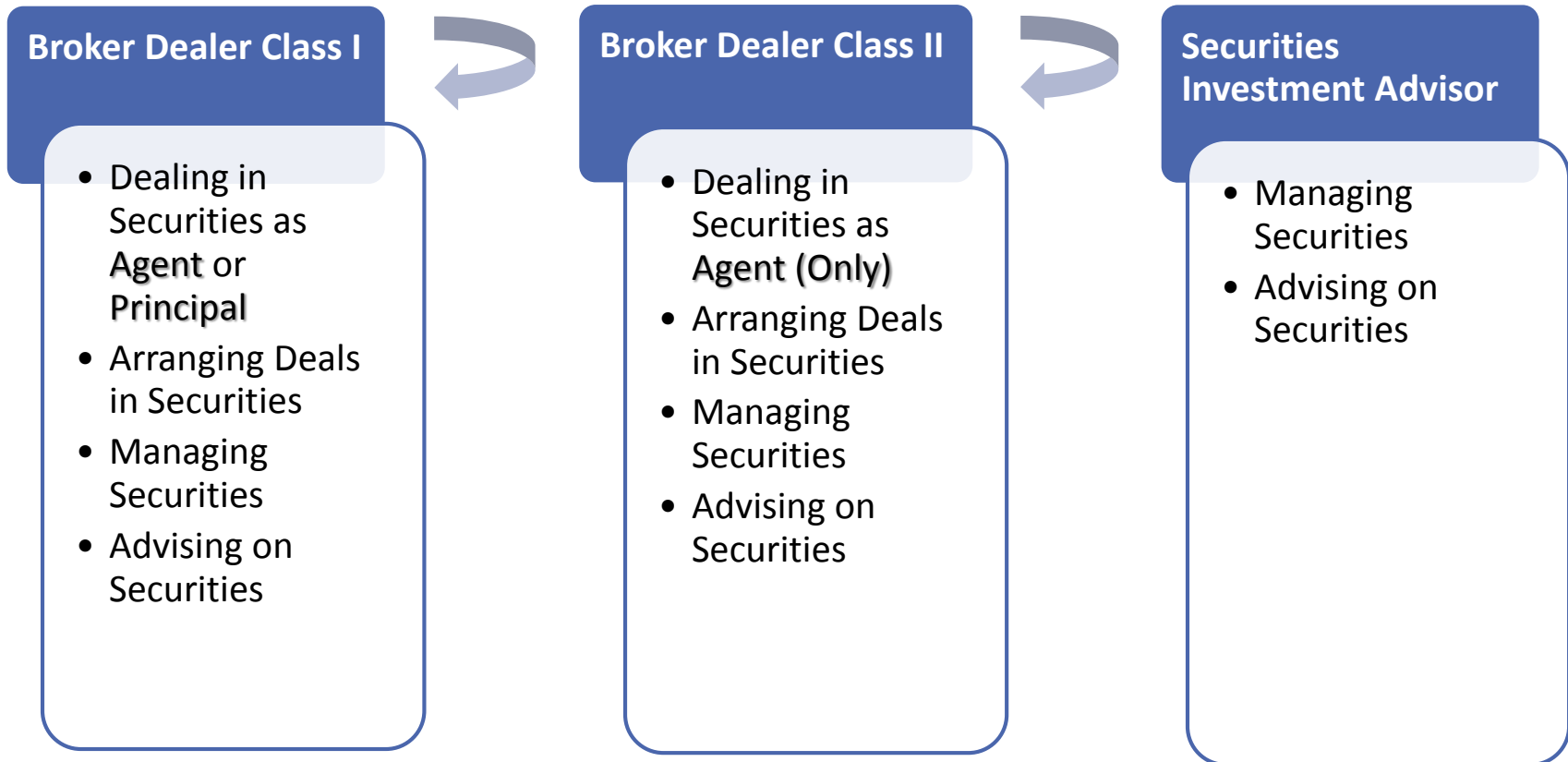
- Update on SIA Re-Categorisation Process
- SIA Registration Requirements for Registered Individuals
- UIFA Filing Requirements for Investment Funds
- Update Registration & Licensing of ICONs



Presenter: Omara Bingham – Manager, Authorisations Department

SIA RE-CATEGORISATION PROCESS

FIRMS & INDIVIDUALS



SIA RE-CATEGORISATION PROCESS

FIRMS & INDIVIDUALS



Mandatory Registration Categories

- ❑ Chief Executive Officer
- ❑ Compliance Officer (MLRO)
- ❑ Registered Representative (Corresponding with Firm)

REGISTRATION REQUIREMENTS

INDIVIDUALS



- ❑ Pursuant to Regulation 58 of the SIR, 2012, registration may be granted, if the applicant:-
 - Is at least 18 years of age;
 - Is Fit and Proper;
 - Does not have other interests, whether directly or indirectly, which may conflict with the conduct and integrity of the person's employment with the registered firm; and
 - Meets any other requirement that the Commission may deem appropriate.

EDUCATION & EXPERIENCE REQUIREMENTS



INDIVIDUALS

- ❑ Pursuant to Regulation 59 of the SIR, 2012, the individual must have the education and experience reasonably necessary to perform the activity.
 - The individual must have no less than six (6) months of securities-related experience and have obtained one of the examinations recognised by the Commission, OR
 - At least ten (10) years of securities-related experience.

EDUCATION & EXPERIENCE REQUIREMENTS



INDIVIDUALS

Chief Executive Officer

- No Prescribed Examination

Compliance Officer

- ICA Diploma AML/Compliance Exam
- Chief Compliance Officer Qualifying Examination
- Certified Anti-Money Laundering Specialist Exam
- OR other examination recognised by the Commission

Representative: Trading, Discretionary Management, Advising

- Series 7
- CFA Level 1
- Canadian Securities Course
- OR other examination recognised by the Commission

INVESTMENT FUNDS

LICENSED BY UIFAS

- ❑ Pursuant to Section 13 of the IFA, 2003 – Unrestricted Investment Fund Administrators (“UIFA”) are required to file, within **thirty (30) days** of the licensing of an investment fund, ALL required licensing documents.
- ❑ Documents should be filed in accordance with the Statement of Practice on the Issuance of Blank Licences to Unrestricted Investment Fund Administrators pursuant to the IFA.
- ❑ Failure to provide the required documents to the Commission can result in an **AUTOMATIC PENALTY FEE.**

REGISTRATION REQUIREMENTS

SELF-ADMINISTERED INVESTMENT FUNDS



- ❑ Pursuant to Section 8 of the IFA, 2003, an investment fund may operate and conduct business as a self-administered investment fund.
- ❑ The Operator(s) of the self-administered investment fund performs the function of and is “deemed” the investment fund administrator.
- ❑ An operator of a self-administered fund is prohibited from dealing with the fund as a principal.
- ❑ Self-administered investment funds can only be licensed by the Commission.

SELF-ADMINISTERED INVESTMENT FUNDS VS.

SMART FUNDS – NO ADMINISTRATOR APPOINTED

- ❑ SFM 004, SFM 006, and SFM 007 – The operators may elect to administer the fund, but the fund is not regarded as a self-administered fund.
- ❑ The operators would be responsible for the day-to-day administrative functions of the fund.
- ❑ Such investment funds can only be licensed by the Commission.

FEES

SELF-ADMINISTERED INVESTMENT FUNDS & SMART FUNDS WITH NO ADMINISTRATOR

FUND TYPE	APPLICATION FEE	ANNUAL FEE	PRINCIPAL OFFICE FEE
Self-Administered Investment Fund	\$1,000.00 (\$2,000.00 Fast Tracked)	\$1,500.00	\$650.00
SFM 004	\$1,000.00 (\$2,000.00 Fast Tracked)	\$1,500.00	\$650.00
SFM 006	\$1,000.00 (\$2,000.00 Fast Tracked)	\$1,500.00	\$650.00
SFM 007	\$1,000.00 (\$2,000.00 Fast Tracked)	\$1,500.00	\$650.00

UPDATE REGISTRATION & LICENSING

INVESTMENT CONDOMINIUMS (ICONS)

- ❑ As at 30 June 2015, 11 ICONs have been established and registered with the Registrar General's Department.
- ❑ 3 ICONs have been licensed as investment funds.



MARKET SURVEILLANCE DEPARTMENT

- Overview of Material Change Filing Obligations for Ongoing Compliance under the IFA and the SIA
- Overview of Material Change Requirements for Investment Funds
- Administration Records



Presenter: Sandra Duncombe – Manager, Market Surveillance Department

MATERIAL CHANGE REPORTING OBLIGATIONS

ADMINISTRATORS AND REGISTERED FIRMS

MATERIAL CHANGE REPORTING		IFA 2003	SIA 2011
▪ Change in Transfer or disposal of shares	Immediately	Section 40	Regulations 46
▪ Occurrence of any business in contravention to the Act or other applicable legislation (Funds operating prejudicial to investors or creditors)	Immediately	Section 39	Regulations 53
▪ Change in principal office, registered office, or any individual acting as agent	Within 14 days of any change	Section 33(3)	NA
▪ Change in Directorship	Immediately	Section 44	NA
▪ Termination of Administration	30 days prior to the date of termination	Section 21	NA
▪ Employment of representative	Immediately	N/A	Regulation 47 (Form 11)
▪ Termination of representative	Immediately	N/A	Regulation 48 (Form 12)
INDEMNITY INSURANCE	Ongoing	Regulation 14	Regulation 43
FILING OF STATISTICAL INFORMATION (for Funds administered)	Every 6 months: June 30 & December 31	Section 51	NA

PUBLIC ISSUERS

An issuer means a person that has a security outstanding or proposes to issue a security.

A public issuer means an issuer that :-

- a) has filed a prospectus for which the Commission has issued a receipt under Part IX;
- b) has completed a takeover, business combination or other re-organisation, involving an exchange of securities in which one of the parties was a public issuer;
- c) has issued a security that - (i) was listed for trading on a securities exchange registered with the Commission at the time this Act comes into force; or (ii) at any time after this Act comes into force, has been traded on a registered marketplace registered under Part V;
- d) was a public company or deemed public company under the former Act at the time that Act was repealed; or
- e) is described in an order made under subsection 161(2).

Does not include an issuer-

- a) described in an order made under subsection 161(1);
- b) that is an investment fund; or
- c) within a prescribed class of issuers.

DISCLOSURE/MATERIAL CHANGE OBLIGATIONS

PUBLIC ISSUERS

PUBLIC DISCLOSURE REQUIREMENTS

▪ Disclosure to the Public		Section 98
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MATERIAL CHANGE REPORTING

▪ Any information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of an issuer	Immediately	Section 99 (Form 19)
▪ Change of Auditor	Within 10 days of the change	Regulation 15 (Form 2)
▪ Proxy Filing		Section 103

PRIVATE PLACEMENT

- ❑ Definition:
 - The sale of securities through a private offering to a small number of select investors as a way of raising capital.
- ❑ Prospectus required.
 - Section 83 of the SIA - “No person shall trade in a security on the person’s own account, or on behalf of any other person, where the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed with the Commission and the Commission has issued a receipt for each document”.

PRIVATE PLACEMENT

- ❑ Documents to be submitted (Regulation 112 of the SIR, 2012)
 - Most recent Audited Financial Statements;
 - Year-to-date unaudited Interim Financial Statements;
 - Finalised Private Placement Memorandum; and
 - Any other documents as required by the Commission.

- ❑ Notices required to be filed with Commission on exempt sales:
 - Regulation 116 of the SIR, 2012/ Form 16, Second Schedule;
 - The list of Accredited Investors with the applicable allocation basis; and
 - Filing of Notice of Exempt Transaction fee (\$2,000.00).

SHARE TRANSFER REQUESTS

- ❑ Supporting documents to be provided when seeking approval for a share transfer:
 - Form 4 – Personal Questionnaire for Directors, Officers and Security holders of Persons registered under part V of the Act or Registered Firm and required documents;
 - Form 6 – Notice of Proposed Issue or Transfer of Securities of a person;
 - Directors’ resolutions with respect to the transfer;
 - Due diligence on the transferee (if unknown to the Commission);
 - Share purchase agreement;
 - Statement on the financial resources of the transferee;
 - Organisational structure before and after the share transfer (if transferee is a Company);
 - Certificate of Incorporation (Company);
 - Memorandum and Articles of Association (if transferee is a Company);
 - Central Bank Approval (where necessary); and
 - Prescribed fee (\$300.00).

MATERIAL CHANGES ONGOING OBLIGATIONS

INVESTMENT FUNDS

MATERIAL CHANGE REPORTING

▪ Amendments to its Offering and Constitutive Documents	Immediately	Section 9(4)
▪ Change to an investment fund or its investors that does not require amendment to the Offering Memorandum	Within 21 days of the occurrence	Section 30(1)
▪ Change in Fund Operators	Immediately	Sections 9(4)
▪ Change in Registered Office or Principal Office	Immediately	Section 9(4)
SURRENDER OF LICENSE OF REGISTRATION	14 days prior to the effective date of the surrender	Section 18(1)
TRANSFER TO AND FROM ANOTHER JURISDICTION:		
i. An investment fund transfer from The Bahamas	14 days prior to the effective date of the transfer	Section 19
ii. An investment fund transfers into The Bahamas	Within 7 days of the transfer	Section 19
TRANSFER OF INVESTMENT FUND ADMINISTRATION	Within 14 days of the effective date of transfer	Section 20
TERMINATION OF ADMINISTRATION AGREEMENT	7 days prior to the effective date of termination	Section 21(2)

WINDING UP OR DISSOLUTION

- ❑ Items to be submitted to the Commission
 - Within 14 days after commencement:
 - Written notification;
 - Directors' resolution; and
 - Shareholders' Resolution.
 - Upon Dissolution:
 - Original license certificate;
 - Certificate of Dissolution;
 - Copy of the liquidation statement;
 - Letter of notification in the Gazette; and
 - Final Audited Financial Statement or copy of the final NAV.

DORMANCY OF A FUND

Dormant Status	Re-Launching of Fund
<ol style="list-style-type: none"> 1) Within 14 days of becoming dormant 2) Written notification to the Commission 3) Directors' resolution 4) Shareholder's resolution 5) The final balance sheet or statement (evidence that all assets have been liquidated) 6) Original licence certificate suspended 7) Date of dormancy and date of intended re-launching 	<ol style="list-style-type: none"> 1) Written application to have suspension of license lifted 2) Submit information required in Schedule 10 3) A copy of the directors Resolution confirming the approval to re-launch the fund 4) The prescribed fee (\$650.00) 5) Any other information required by the Commission

EXTENSION/EXEMPTION/WAIVER REQUESTS

Supporting documents to be provided when a fund or administrator applies for an extension, exemption or waiver of audited statements:

- ❑ The reasons for the inability to file the audited statements;
- ❑ The proposed date on which the audited statements will be available; and
- ❑ Any other information reasonably required by the Commission.

Filing period for audited financial statements:

- ❑ Administrators – 120 days after financial year end; and
- ❑ Funds – 180 days after financial year end.

ADMINISTRATION RECORDS

- ❑ Section 34 (4) of the IFA, 2003: “... Shall have a place in The Bahamas where administration records of the investment funds under its administration are available ...”
- ❑ What are “administration records”?
 - Examples:
 - Accounting records;
 - Valuation records; and
 - Records of material change.



INSPECTIONS DEPARTMENT

- Role of the Inspections Department
- Trends in Common On-site Inspection Breaches



Presenter: Altermize Missick – Manager, Inspections Department

ROLE OF THE INSPECTIONS DEPARTMENT

- ❑ Section 45 (1) of the SIA, 2011 – The Commission's authority to inspect.
- ❑ Objectives of on-site inspections:
 - Understanding of the Registrant's operations;
 - Accuracy of the Registrant's registration; and
 - Ensure compliance with the relevant legislation.

BREACHES UNDER SECURITIES INDUSTRY REGULATIONS, 2012

Regulation 49 (1) (a)	Failure to submit audited financial statements
Regulation 40 (2) (a)	Failure to register appointed Compliance Officer
Regulation 45 (1)	Failure to submit the annual information update form
Regulation 50 (1)(a)(b)	Failure to submit quarterly financial and operational report

BREACHES UNDER INVESTMENT FUNDS ACT, 2003

Section 30 (1)	Failure to notify the Commission of the resignation and appointment of directors and officers
Section 31 (2)	Failure to submit audited financial statements
Section 44 (1)(2)	(1) Failure to seek prior written approval from the Commission for change in Directors and Chief Executive Officer (2) Failure to provide notice to the Commission where there was a material change

BREACHES UNDER INVESTMENT FUNDS REGULATIONS, 2003

- ❑ Regulation 17(1)(g) of the Investment Funds Regulations, 2003 – Failure of the Administrator to take reasonable steps to ensure that operators are meeting their obligations.

BREACHES UNDER FINANCIAL TRANSACTIONS REPORTING ACT, 2000

- ❑ Section 9(2) of the FTRA, 2000 – Failure to monitor the facility holders for the stated account purpose.



QUESTIONS & ANSWERS



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CLOSING REMARKS

MS. CHRISTINA R. ROLLE – EXECUTIVE DIRECTOR
SECURITIES COMMISSION OF THE BAHAMAS



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THANK YOU!



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