



# INDUSTRY BRIEFING

## SECURITIES & INVESTMENT FUNDS INDUSTRIES

Thursday 14 September 2017  
British Colonial Hilton, New Providence



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# OPENING REMARKS

THE HON. K. PETER TURNQUEST, M. P.

DEPUTY PRIME MINISTER & MINISTER OF FINANCE



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# ORGANISATIONAL DEVELOPMENTS

CHRISTINA R. ROLLE  
EXECUTIVE DIRECTOR  
SECURITIES COMMISSION OF THE BAHAMAS



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# PRESENTATION OUTLINE

- International Developments
  - Caribbean Financial Action Task Force (CFATF)
  - IOSCO's Enhanced Multilateral Memorandum of Understanding (EMMOU)
  - EU Passporting (AIFMD)
- Legislative Developments
  - Investment Funds Bill
  - Securities Industry Legislation
- SCB's 2017 Policy Changes
- Development and Implementation of Risk Based Supervision



# CARIBBEAN FINANCIAL ACTION TASK FORCE (CFATF)

- Objective: Prevention and control of money laundering and combatting the financing of terrorism and proliferation of weapons of mass destruction
- Tests compliance with FATF Recommendations
- Produces Mutual Evaluation Reports
- Non-Compliance may result in sanctions and reputational damage for the jurisdiction



# CFATF 2015 ASSESSMENT

## – KEY FINDINGS FOR SCB

- Lack of awareness for industry participants on AML/CFT risks associated with securities transactions
- Lack of AML/CFT specific sanctions
- Need to address combatting the financing of terrorism in AML/CFT Rules
- SCB to develop and implement Risk Based Supervision



# EMMoU

- Commission an 'A' Signatory to the prevailing **Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information (MMoU)**
- International benchmark for cross-border cooperation to combat securities fraud and market misconduct
- Changing environment/advancements in technology are driving the need for a further standard
- IOSCO seeks to usher in a new era of improved international enforcement cooperation





# EMMoU

- Key new EMMoU “ACFIT” powers:
  - To obtain and share **A**udit papers
  - To **C**ompel attendance for testimony
  - To assist and provide information to another regulator on how to **F**reeze assets
  - To obtain and share existing **I**nternet Service Provider records
  - To obtain and share existing **T**elephone records
- ACFIT powers to enable securities regulators to respond to risks and challenges posed by globalization and advances in technology
- IOSCO Board discussing potential arrangements for implementation
- EMMoU to co-exist with MMoU



# EU PASSPORTING (AIFMD)

- 27 AIFMD MOUs signed with EU member states
- 4 MOUs outstanding
- Communication with European Securities & Markets Authority (ESMA) on AIFMD Passporting
- Next Steps
  - Execute MOU with Germany
  - MOU with Italy first requires TIEA with Italy
  - Prepare Investment Funds Legislation to meet AIFMD standards



# LEGISLATIVE DEVELOPMENTS (IFA)

- Revamp of the IFA, 2003 is long overdue
- Substantial changes required to achieve modern, world-class regulation and to better facilitate market development
- Good progress to date
- Will create a notably different regulatory regime for investment funds



# LEGISLATIVE DEVELOPMENTS (SIA)

- Securities Industry (Amendment) Act, 2016
  - Enforcement powers enhanced
  - Seek assistance of Commissioner of Police for investigations
  - “Officer” amended to mean a person rather than an individual



# SECURITIES INDUSTRY LEGISLATIVE DEVELOPMENTS (SIA)

- Disciplinary Proceedings (Hearings and Settlements) Rules, 2017
- Registration of Registrar and Transfer Agents Rules, 2016



# SECURITIES INDUSTRY GUIDANCE ISSUED

- Guideline on the Suitability of Clients' Securities Transactions
  - Clarifies and provides guidance on Regulation 69
  - KYC clause
  - Client classifications
- Became effective 31 July 2017



# OTHER SECURITIES LEGISLATIVE DEVELOPMENTS

- Business Capital Rules (Draft)
- Compliance Officer Rules (Draft)
- Whistleblower Rules (Draft)
- Takeover Code (Draft)
- Corporate Governance Rules (Draft)



# SCB POLICY CHANGES

## Minimum Education Requirements

- Updates the Commission's list of recognised examinations for registered persons
- Key changes include:
  - Additional qualifying examinations
  - Examinations categorised by registration type of individual
  - Inclusion of recognised examinations for MLROs
- Published 23 January 2017





# SCB POLICY CHANGES

## Assessment of Automatic Administrative Penalties

### ➤ Rationale:

To foster timely submission of information and documents required by the Commission

### ➤ Key feature:

Automatic levy of penalties for outstanding documents in relation to certain statutory obligations, including financial and material change reporting



# SCB POLICY CHANGES

## Filing of Audited Financial Statements

### ➤ Rationale:

To foster timely submission of audited financial statements

### ➤ Key features:

- Automatic levy of penalties for late filing.
- Procedure on applying for extension to filing deadline

### ➤ Published 17 February 2017



# DOWNGRADE AND RECLASSIFICATION OF AN UNRESTRICTED INVESTMENT FUND ADMINISTRATOR LICENSE

## ➤ Rationale:

To address the issue of persistent late/incomplete filings by UIFAs

## ➤ Key feature:

Reclassify/"downgrade" the license of a UIFA to that of a Restricted Investment Fund Administrator (RIFA)



# UNPUBLISHED POLICIES APPROVED BY THE COMMISSION

- Failure to file annual renewal of professional indemnity insurance
- Due diligence refresher policy
- Regulatory capital calculation for discretionary and advisory firms



# DEVELOPMENT AND IMPLEMENTATION OF RISK BASED SUPERVISION

- Global move by regulators toward forward looking risk-based approaches to supervision
- Traditional compliance based approaches have demonstrated severe limitations and weaknesses
- Risk based approach shown to provide effective and efficient monitoring and evaluation of licensees
- Primary goal is to identify firms where problems might arise, focus scarce resources on those firms, engage with them to recognise those risks and take mitigating action



# RISK BASED SUPERVISION – CONT'D

- Development of risk assessment questionnaire to be distributed to all registrants, licensees and public companies
- Technical assistance from CARTAC (contracting of consultant and training)
- Development of risk parameters and rating tool
- Phased approach to implementation of framework



# LEGAL UPDATES

- Proposed Changes to IFA
- Proposed Amendments to SIA
- Business Capital Rules



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# Investment Funds Bill 2017





# INVESTMENT FUNDS BILL, 2017

## Background International Standard Changes

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- Iosco Recommendations 24 - 28
- 2015 FSAP Report Recommendations

## Consultants Drafting, Technical & Project Team

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- Gonsalves - Sabola
- Graham, Thompson & Co.
- Industry experts

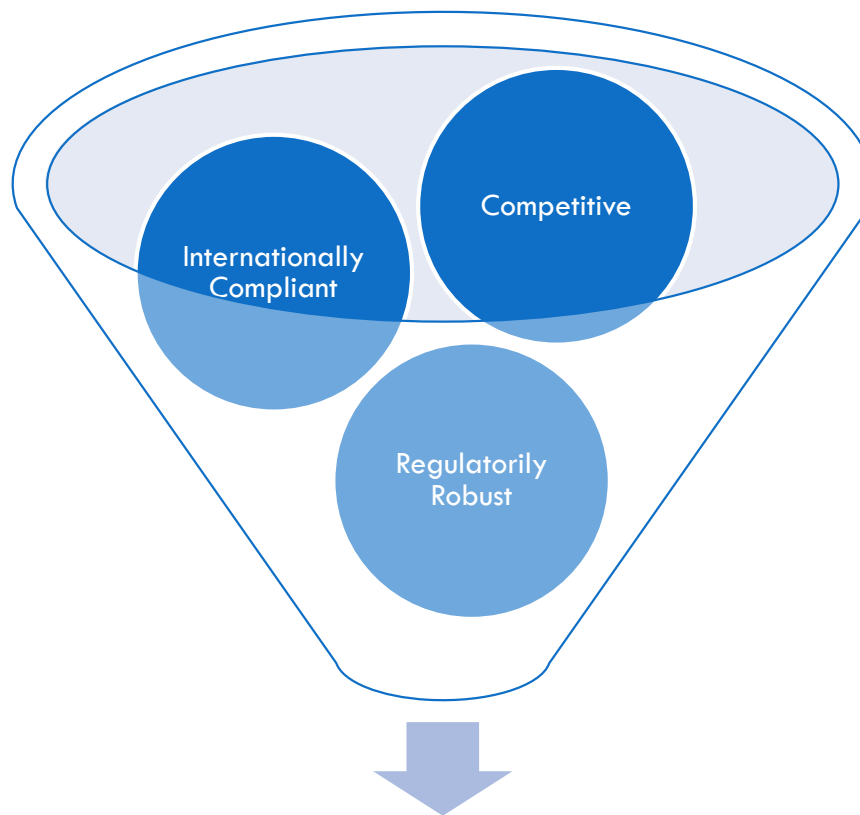
## Status First Draft

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- Project Team Review
- Public Consultation
- International review – Charles Russell Speechlys



# INVESTMENT FUNDS BILL, 2017 CONT'D



Investment Funds Bill, 2017



# INVESTMENT FUNDS BILL, 2017

## ➤ Key Changes:

- ❑ **Licensing of Funds**
- ❑ **Basis for Licensing of Administrators**
- ❑ **Licensing Requirements for Investment Fund Managers**
- ❑ **Principal Office Obligations to be aligned appropriately**
- ❑ **AIFMD Licensing Regime**
- ❑ Regulatory Oversight of Custodians
- ❑ Non Bahamas Based Funds
- ❑ Master/Feeder Fund regime
- ❑ Dormant Fund Regime
- ❑ **Fees**



# INVESTMENT FUNDS BILL, 2017 CONT'D

## Fund Regime Licensing IFA, 2003

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

## Fund Regime Licensing IF Bill, 2017

- Incorporation in The Bahamas
- Sold in The Bahamas



# INVESTMENT FUNDS BILL, 2017 CONT'D

## Administrator Regime Under IFA, 2003

- Categories, UIFA, Restricted and Exempt
- ALL funds administered by licensed IFA considered Bahamas Based
- Requirements for license-
  - ❑ IBC or Company
  - ❑ General qualifications requirements
  - ❑ No physical Presence requirements

## Administrator Regime IFA Bill, 2017

- Categories, UIFA and Restricted
- License required ONLY on the basis that administering funds in or from The Bahamas
- Requirements for license:
  - ❑ Bahamian Company
  - ❑ Expertise
  - ❑ Fitness and Propriety Requirements for Directors, Officers and Senior Managers
  - ❑ Two senior officers residing in The Bahamas



# INVESTMENT FUNDS BILL, 2017 CONT'D

## Licensing Manager Under IFA, 2003

- No licensing Requirements for Managers of funds

## Licensing Manager under IFA Bill, 2017

- Dual level regime
- Registration for Managers of funds for accredited investors
- Licensing required to manage retail funds



# INVESTMENT FUNDS BILL, 2017 CONT'D

## Fiduciary obligations under IFA, 2003

- Administrator required to be Principle Office
- Obligations on administrator included
  - ❑ Audit Statements;
  - ❑ Funds operating in compliance with legal obligations and not prejudicial to investors etc.
  - ❑ Reporting obligations
  - ❑ Operators are meeting obligations and in compliance with the laws

## Fiduciary Obligations IFA Bill, 2017

- Principal Office – Is 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
- Administration means –
  - ❑ Administering operations and administrative affairs of the fund
  - ❑ Administrative services including accounting, valuation and reporting services



# INVESTMENT FUNDS BILL, 2017 CONT'D

## ➤ **AIFMD Licensing Regime**

- ❑ Qualify for EU Pass Porting
- ❑ Entire regime in The Act
- ❑ AIFMD Provisions include –
  - Notification to the Commission
  - Obligations and duties of AIFM (set out in regulations)
  - Financial requirements (Capital and Indemnity Insurance)
  - General organizational requirements and operating conditions of an AIFM
  - Requirements related to the valuation of assets





# Securities Industry Act, 2011



# SECURITIES INDUSTRY ACT, 2011

## ➤ Key Changes:

- ❑ Hearing Panel Structure and appointments
  - Appeals process and judicial review clarification
- ❑ Requirements for EMMoU standards
- ❑ Custodian definition and qualifications - regulatory oversight
- ❑ Sanctions and Penalties - AML
- ❑ Consequent Amendments from IFA
- ❑ Enforcement Amendments (Revocation of license)
- ❑ Clarify transitional provisions for Public Companies/Issuers
- ❑ Clarification on issue of where penalty money ought to go
- ❑ **Fee Structure**



# IFA, 2003 & SIA 2011

## FEE AMENDMENTS

### ➤ Fees -

- ☐ Proposed Increase of approximately 1/3
- ☐ Proposed introduction of fee for registration of individuals
- ☐ First Draft for Consultation – End of Next Week



# Business Capital Rules



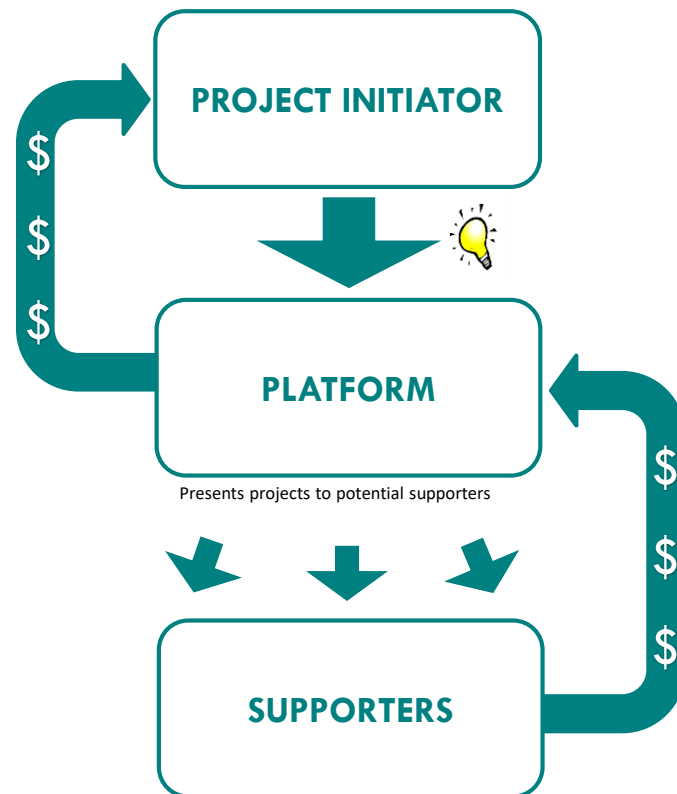
# BUSINESS CAPITAL RULES

- Focus is on raising capital for SMEs
- SMEs Important
  - ❑ Employment Opportunities
  - ❑ Create Wealth
- Challenge - Lack of Access to Funding
- Rules to ease ability to access funding
  - ❑ SME financing and Crowdfunding



# WHAT IS CROWDFUNDING?

- The funding of a project or venture by raising monetary contributions from a large number of people (usually over the internet).
- 3 participants:
  - ❑ Project Initiator
  - ❑ Platform
  - ❑ Supporters





# SME FINANCING

	# OF EMPLOYEES	NET INCOME
<b>SMALL-SIZED ENTERPRISE</b>	< 20 employees	Up to \$1.5 million BSD
<b>MEDIUM-SIZED ENTERPRISE</b>	20 – 49 employees	Up to \$3 million BSD



# MAJOR DIFFERENCES

## Crowdfunding Exemption

- Shares cannot be traded (no secondary market).
- Retail investors limited to \$5,000 in any one project, and \$20,000 in one calendar year.
- Entrepreneurs can raise up to \$1,000,000.
- Audited financial statements not required.

## SME Exemption

- Shares can be traded OTC.
- Retail investors limited to \$10,000 in any one project, and \$50,000 in one calendar year.
- Entrepreneurs can raise up to \$3,000,000.
- Businesses that raise greater than \$1,000,000 (AFS)





# AUTHORISATIONS DEPARTMENT UPDATES




- Licensing Activities & Trends



Presenter: Mrs. Omara Bingham  
Manager, Authorisations Department



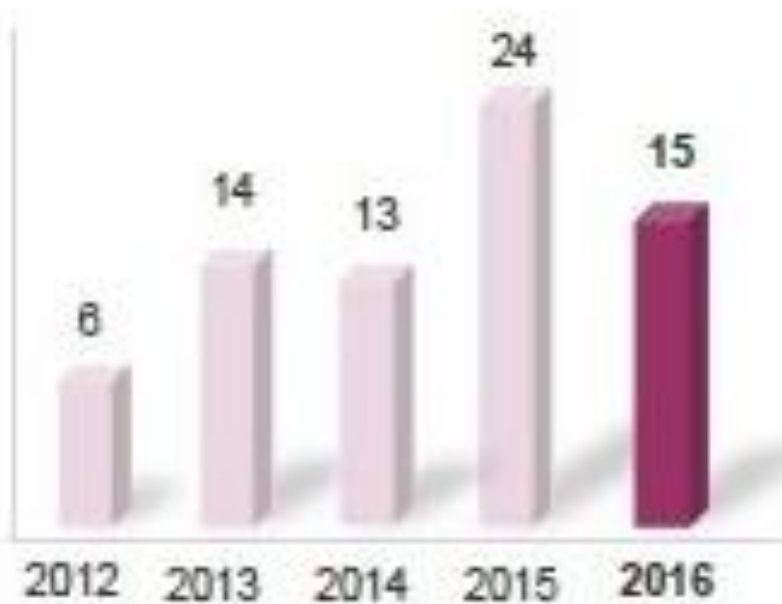
# SIA/IFA LICENSING TREND

- 
- SIA -  **Increase** in overall registration
  - SIA - Managing and Advising most common registration categories among new applicants
  - IFA -  **Decline** in overall registration
  - IFA - SMART FUND Models continue to be most popular and commonly used fund type



# SIA FIRMS LICENSING TREND

*Figure 1: Total number of approvals each year from 2012-2016*



*Figure 2: Total number of registered firms from 2014-2016*

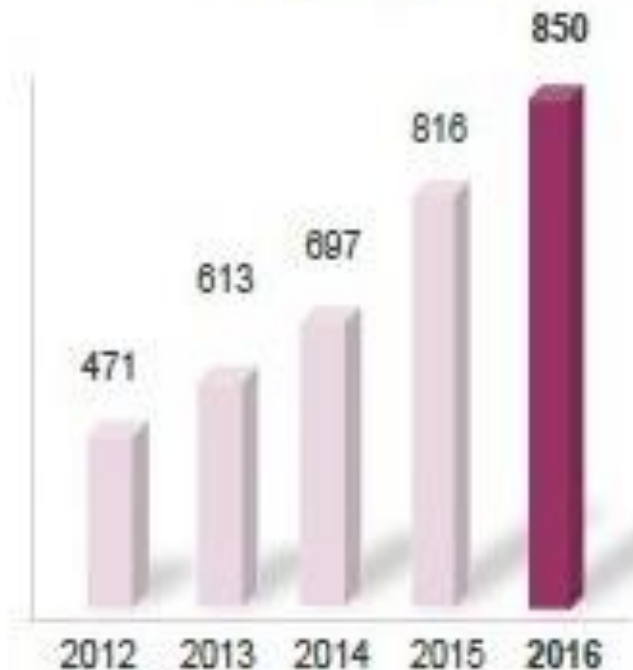


# SIA INDIVIDUALS LICENSING TREND

**Table 4: Total number of registered individuals by category at 31 December 2016**

Category	Total
CEO	123
Compliance Officer	153
Representative – Trading	184
Representative – Discretionary management	102
Representative – Advising	138
CEO and Representative – Trading	7
CEO and Representative – Discretionary management	38
CEO and Representative – Advising	8
Representative – Trading and Discretionary management	9
Representative – Trading and Advising	14
Representative – Discretionary management and Advising	37
CEO, Representative – Trading and Advising	1
CEO, Representative – Discretionary management and Advising	18
Representative – Trading, Discretionary management and Advising	14
CEO, Representative – Trading, Discretionary management and Advising	4
<b>Total</b>	<b>850</b>

**Figure 4: Total number of registered individuals each year from 2014-2016**





# IFA ADMINISTRATORS LICENSING TREND

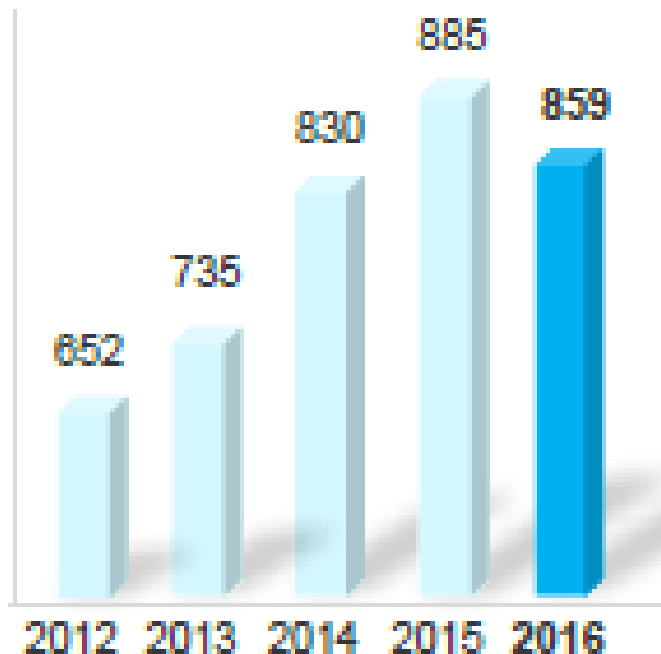
**Table 6: Comparison of total number of investment fund administrators from 2012-2016**

Category	2012	2013	2014	2015	2016
Unrestricted	32	30	32	32	32
Restricted	28	29	27	30	27
Exempt	3	3	3	4	3
Total	63	62	62	66	62



# IFA FUNDS LICENSING TREND

**Figure 5: Total number of investment**



**Table 7: Total Bahamas-based investment funds by category at 31 December 2016**

Category	Total
Standard Funds	35
Professional Funds	221
Recognised Foreign Funds	35
SMART Fund Model 001	4
SMART Fund Model 002	158
SMART Fund Model 003	10
SMART Fund Model 004	278
SMART Fund Model 005	3
SMART Fund Model 006	1
SMART Fund Model 007	116
<b>Total</b>	<b>859</b>



# UPDATE REGISTRATION & LICENCING - ICONS



- **61** ICONs have been established and registered with the Registrar General's Dept. (as at 31<sup>st</sup> Aug 2017)
- **55** - ICONs have been licensed as investment funds(as at 31<sup>st</sup> Aug 2017)



# SIA/IFA - ADMINISTRATIVE REMINDERS



- SIA – Requirement for Individuals to be licensed prior to conducting Securities Business
- IFA – Requirement for UIFA to submit full and complete filing.





# EDUCATION & EXPERIENCE REQUIREMENTS: INDIVIDUALS

Pursuant to Reg. 59 of SIR, 2012 - An individual must have the education and experience reasonably necessary to perform the activity.

<b>OPTION 1</b>	<b>The individual must have no less than six (6) months of securities-related experience <u>and</u> have obtained one of the examinations recognised by the Commission,</b>
<b>OPTION 2</b>	<b>At least ten (10) years of securities-related experience.</b>



# UPDATED LIST OF RECOGNISED EXAMINATIONS

## Media Release 24 January 2017

Registration Category: Trading Representative	
Examination:	Administered by:
Series 7 – General Securities Representatives Examination	FINRA/National Association of Securities Dealers
Irish Registered Representatives Examination	Irish Stock Exchange/Dublin City University
Canadian Securities Course	Canadian Securities Institute/Securities Training Institute
Certified European Financial Analyst	EFFAS Societies with accredited examinations
Certificate in Securities	UK Securities Institute
Certificate in Securities and Financial Derivatives	UK Securities Institute
CFA Institute Investment Foundations Program	CFA Institute/Association for Investment Management and Research
Chartered Financial Analyst (Level 1)	CFA Institute/Association for Investment Management and Research
Certificate in Investment Management	UK Securities Institute
Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
Various	Examinations administered by the French Society of Investment Analysts
Any examination approved by an overseas regulatory authority that exercises functions corresponding to any functions of the Commission, which assesses the competency of an individual to perform functions similar to a trading representative as defined in the Securities Industry Act, 2011	



# UPDATED LIST OF RECOGNISED EXAMINATIONS

## Media Release 24 January 2017

Registration Category: Advising Representative	
Examination:	Administered by:
Series 7 – General Securities Representatives Examination	FINRA/National Association of Securities Dealers
Irish Registered Representatives Examination	Irish Stock Exchange/Dublin City University
Canadian Securities Course	Canadian Securities Institute/Securities Training Institute
Certified European Financial Analyst	EFFAS Societies with accredited examinations
Certificate in Securities	UK Securities Institute
Certificate in Securities and Financial Derivatives	UK Securities Institute
CFA Institute Investment Foundations Program	CFA Institute/Association for Investment Management and Research
Chartered Financial Analyst (Level 1)	CFA Institute/Association for Investment Management and Research
Certificate in Investment Management	UK Securities Institute
Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research



# UPDATED LIST OF RECOGNISED EXAMINATIONS

## Media Release 24 January 2017

Registration Category: Discretionary Management Representative	
Examination:	Administered by:
Chartered Financial Analyst (Level 1)	CFA Institute/Association for Investment Management and Research
Certificate in Investment Management	UK Securities Institute
Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
<i>Any examination approved by an overseas regulatory authority that exercises functions corresponding to any functions of the Commission, which assesses the competency of an individual to perform functions similar to a discretionary management representative as defined in the Securities Industry Act, 2011</i>	
Registration Category: Compliance Officer	
Examination:	Administered by:
ICA International Diploma in Anti-Money Laundering or Compliance	Bahamas Institute of Financial Services
International Risk Manager Designation	Bahamas Institute of Financial Services
Certified Securities Compliance Professional Designation	The National Society of Compliance Professionals
Certified Anti-Money Laundering Specialist	Association of Certified Anti-Money Laundering Specialist
Certified Compliance & Ethics Professional	Society of Corporate Compliance and Ethics
Certified Risk and Compliance Management Professional	International Association of Risk and Compliance Professional



# UPDATED LIST OF RECOGNISED EXAMINATIONS

## Media Release 24 January 2017

Registration Category: Chief Executive Officer	
Examination:	Administered by:
Not Applicable	Not Applicable
Approval Sought: Money Laundering Reporting Officer	
Examination:	Administered by:
ICA International Diploma in Anti-Money Laundering or Compliance	Bahamas Institute of Financial Services
Legal or Accounting Designation	
Completion of (local and international) courses relevant to this function which in the view of the Commission are appropriate for the function.	
<i>Any examination approved by an overseas regulatory authority that exercises functions corresponding to any functions of the Commission, which assesses the competency of an individual to perform functions similar to a Money Laundering Reporting Officer as defined under the Financial Transactions Reporting Act, 2000</i>	



# MARKET SURVEILLANCE DEPARTMENT UPDATES

- Ongoing Obligations
- E-Filing Process
- New Internal Policies



Presenter: Ms. Sandra Duncombe  
Manager, Market Surveillance Department





# ONGOING OBLIGATIONS

## ADMINISTRATORS AND REGISTERED FIRMS

STANDING RENEWAL OF LICENCE		IFA	SIA
• Fees	Payment Annually – by January 31	Section 36	Regulation 45
• Annual Information Update Form	File Annually – January 31	Section 27(1)(a)	Regulation 45
• Annual Declaration	File Annually – by January 31	Section 27(1)(a)	N/A
<b>FINANCIAL REPORTING</b>			
• Audited Financial Statements	Within 120 days of fiscal year end	Section 42	Section 77 (a)
	Within 180 days of fiscal year end (Investment Funds)	Section 31	N/A
• Capital Requirement	Ongoing	Section 37(1)	Regulation 42
• Interim Financial Statements / Form 13 (Financial & Operational Reports)	Within 30 days of the end of each quarter of fiscal year	N/A	Section 77
<b>INDEMNITY INSURANCE</b>	Ongoing	Regulation 14	Regulation 43



# ONGOING OBLIGATIONS

## ADMINISTRATORS AND REGISTERED FIRMS

NOTIFICATION REQUIREMENTS WITH CONCERNING TRENDS		IFA	SIA
• <b>OUTSOURCING</b>	File notification prior to proposed outsourcing arrangement	N/A	Regulation 44
• Change in Directorship	Immediately	Section 44	NA
• Change in Transfer or disposal of shares	Immediately - IFA No less than 30 days before - SIA	Section 40	Regulations 46
• Resignation, Termination or Retirement of a registered Individual	File immediate written notice with the Commission	N/A	Regulation 48
• <b>TERMINATION OF ADMINISTRATION</b>	30 days prior to the date of termination	Section 21	NA
• Surrender of Registration	Application to be made to the Commission	N/A	Regulation 64
• Surrender of License of Registration	14 days prior to effective date of surrender	Section 18 (1)	N/A
<b>FILING STATICAL INFORMATION (for Funds administered)</b>	Every 6 months: June 30 & December 31	Section 51	NA





# ONGOING OBLIGATIONS – AUDITED FINANCIAL STATEMENT

## Extension Requests

1 <sup>st</sup> Extension Request	<ul style="list-style-type: none"><li>• <b>7 days prior to filing period</b><ul style="list-style-type: none"><li>• Proposed date for submission</li><li>• Reason for the extension</li><li>• Relevant administrative fee</li></ul></li></ul>
2 <sup>nd</sup> Extension Request	<ul style="list-style-type: none"><li>• <b>14 days prior to the expiration of the 1<sup>st</sup> extension filing period</b><ul style="list-style-type: none"><li>• Proposed date for submission</li><li>• Letter from Auditor with reason</li><li>• Relevant administrative fee</li></ul></li></ul>
Waivers (Exemptions)	<ul style="list-style-type: none"><li>• <b>7 days prior to filing period</b></li><li>• Reason for the waiver/exemption</li><li>• Director's Resolution</li><li>• Relevant administrative fee</li></ul>



# STATISTICS ON EXTENSION REQUESTS FOR 2017

## EXTENSION REQUESTS APPROVED

	2017
Administrator	5
IF	76
SIA (AFS)	19
SIA (IFS)	3



# INVESTMENT FUNDS: E-FILING PROCESS

## E-Filing Process

1. Reporting Period	<ul style="list-style-type: none"><li>• 1<sup>st</sup> January - 30<sup>th</sup> June</li><li>• 1<sup>st</sup> July - 31<sup>st</sup> December</li></ul>
<ul style="list-style-type: none"><li>• E-Filing Duration (twice p/y)</li></ul>	<ul style="list-style-type: none"><li>• 6 weeks</li></ul>
2. Purpose:	<ul style="list-style-type: none"><li>• to observe the current status of the industry</li><li>• to collect statistical data on the activities of investment funds and measure growth of industry</li><li>• to produce reports outlining any trends observed</li></ul>
3) Inputting Data:	<ul style="list-style-type: none"><li>• Administrator/Operator Information</li><li>• Fund Activity</li><li>• Fund Details</li></ul>



# OVERVIEW OF NEW INTERNAL POLICIES

New Policy	Process
1) Automatic Penalties	<ul style="list-style-type: none"><li>• First Infraction</li><li>• Penalties accrues to max. 60 days</li><li>• Enforcement Action</li></ul>
2) Regulatory Capital Deficiency <b>(not applicable to joint licensees)</b>	<ul style="list-style-type: none"><li>• Regulation 42 of the SIR 2012</li><li>• Section 13 (d) of the SIA 2011</li><li>• Form 13/ Financial &amp; Operational Reports</li><li>• Deficient Regulatory Capital<ul style="list-style-type: none"><li>• Deficiency letter;</li><li>• Capital Management Plan or Injection of capital</li><li>• Referred to Enforcement or Condition Placed on License/Registration</li></ul></li></ul>
3) Regulatory Capital Calculation	<ul style="list-style-type: none"><li>• Firms Managing Securities &amp; Advising on Securities on Discretionary basis<ul style="list-style-type: none"><li>Receivables allowed</li><li>(retrocessions/fees/commissions)</li></ul></li></ul>



# OVERVIEW OF NEW INTERNAL POLICIES

## CONT'D

New Policy	Process
4) Failure to file AFS on time	<ul style="list-style-type: none"><li>• Instances of weekends or holidays, file the working day immediately after the weekend/holiday</li><li>• Penalty applied the next calendar immediately after which the AFS was due</li><li>• Administrative fee of \$500.00</li><li>• Penalty fee of \$200/day for not filing</li><li>• Late filing fee of \$500.00</li></ul>
5) Failure to File Evidence of Professional Indemnity Insurance	<ul style="list-style-type: none"><li>• Regulation 43 of the SIR 2012</li><li>• Regulation 14 (3) of the IFR 2003</li><li>• Penalty of \$200.00/day up to 60 days</li><li>• Enforcement action, may lead to revocation of registration/license</li></ul>



# OVERVIEW OF NEW INTERNAL POLICIES

CONT'D

New Policy	Process
6) Due Diligence Refresher	<p>Applicable: <b>to all Licensees and Registrants (Constituents)</b></p> <ul style="list-style-type: none"><li>• Requirements for Constituents under 5 years On 5<sup>th</sup> anniversary:<ul style="list-style-type: none"><li>i. Updated passport, if expired</li><li>ii. Proof of address</li><li>iii. Personal Questionnaire with Attestation</li></ul></li><li>• Requirements for Constituents over 5 years<ul style="list-style-type: none"><li>i. Updated passport, if expired</li><li>ii. Proof of address</li><li>iii. Personal Questionnaire with Attestation</li></ul></li><li>• Penalties applicable for non-compliance</li></ul>



# INSPECTIONS DEPARTMENT

- Avoiding Common Breaches



Presenter: Mrs. Lesley Pearson  
Manager, Inspections Department



# COMMON BREACHES

1. MLRO's approved by the Commission and registered with the FIU  
*(Financial Intelligence Transaction Reporting Regulations 2001 (Reg. 5 (a) – Internal Reporting Procedures)*
2. AML training not received by employees of the registrant  
*(Financial Intelligence Transaction Reporting Regulations 2001 (Reg. 6 (2) – Training Procedures)*
3. Notice of change in Information after Registration- Primarily the resignations of registered individuals  
*(Securities Industry Regulations 2012 (Reg. 53 (2) – Notice of Change in Information After Registration)*
4. Review at the Board level the adequacy of the firm's indemnity insurance  
*(Securities Industry Regulations 2012 (Reg. 43 (1) (2) – Insurance)*
5. Outsourcing arrangements  
*(Securities Industry Regulations 2012 (Reg. 44 Outsourcing)*





# MLROs APPROVED BY THE COMMISSION & REGISTERED WITH THE FIU

- Internal Reporting Procedures - FITRR, 2001 - Regulation 5(a)
- Ways to ensure compliance:
  - ❑ Upon hiring a Money Laundering Reporting Officer (MLRO), inform the Securities Commission
  - ❑ Ensure the individual is approved by the Commission and registered with the Financial Intelligence Unit (FIU)



# AML TRAINING NOT HELD

- Training Procedures - FITRR, 2001 – Regulation 6 (2)
- Ways to ensure compliance:
  - ❑ Consider completion of training early in the year
  - ❑ Maintain a training log to ensure all employees attend
  - ❑ Ensure employees have access to the Compliance Manual



# NOTICE IN CHANGE OF INFORMATION

- Notice of Change In Information After Registration  
SIR, 2012 Reg. 53(2)
- Most registrants forget to update the Commission  
'After Registration'
- Ways to ensure compliance:
  - ❑ Keep a Checklist of Regulation 53 (2)
  - ❑ If there is a material change within the Company, alert the Commission.



# BOARD OF DIRECTORS REVIEW

## INDEMNITY INSURANCE

➤ Insurance - Securities Industry Regulations, 2012- Regulation 43

➤ Ways to ensure compliance:

- ☐ Annually, discuss the Indemnity Insurance maintained by the firm
- ☐ Discuss the risks faced by the company
- ☐ Ensure the insurance coverage is sufficient
- ☐ Document the discussion in board minutes



# OUTSOURCING ARRANGEMENTS

- Outsourcing - Securities Industry Regulations, 2012 Regulation 44
- Ways to ensure compliance:
  - ❑ Alert the Commission of any arrangements with a Service Provider
  - ❑ Allow the Commission to approve the arrangement or let you know that approval is not required
  - ❑ Ensure the arrangement is made on an arm's length basis



# SECURITIES INDUSTRY (AML & CFT) RULES, 2015

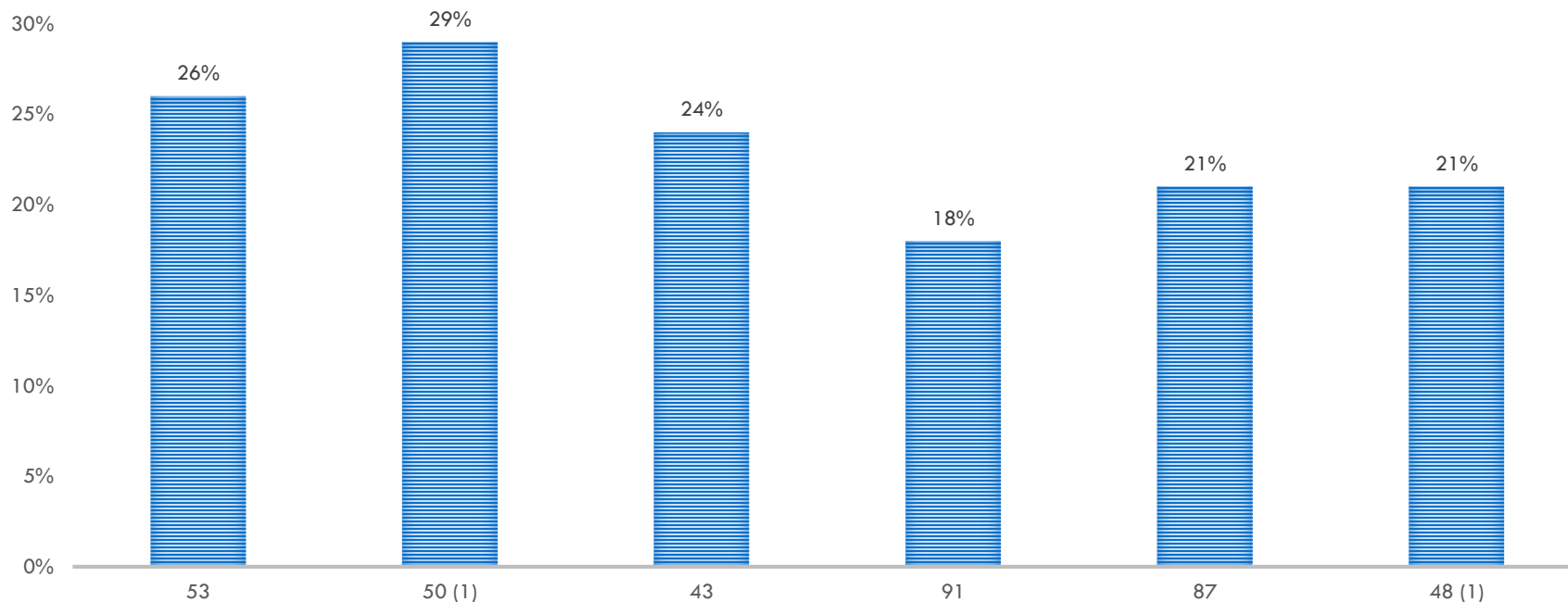
- Effective December 2015
- Area of Concern for Registrants are RISK RATING.
- Risk rating conducted by registrants should include the areas note below as applicable:
  - ❑ Complexity of Ownership
  - ❑ Complexity of Legal Structure
  - ❑ Source of Business
  - ❑ Type of Assets
  - ❑ Country of Domicile

The risk areas noted above are not exhaustive, the complete listing is included within the rules.



# COMMON BREACHES

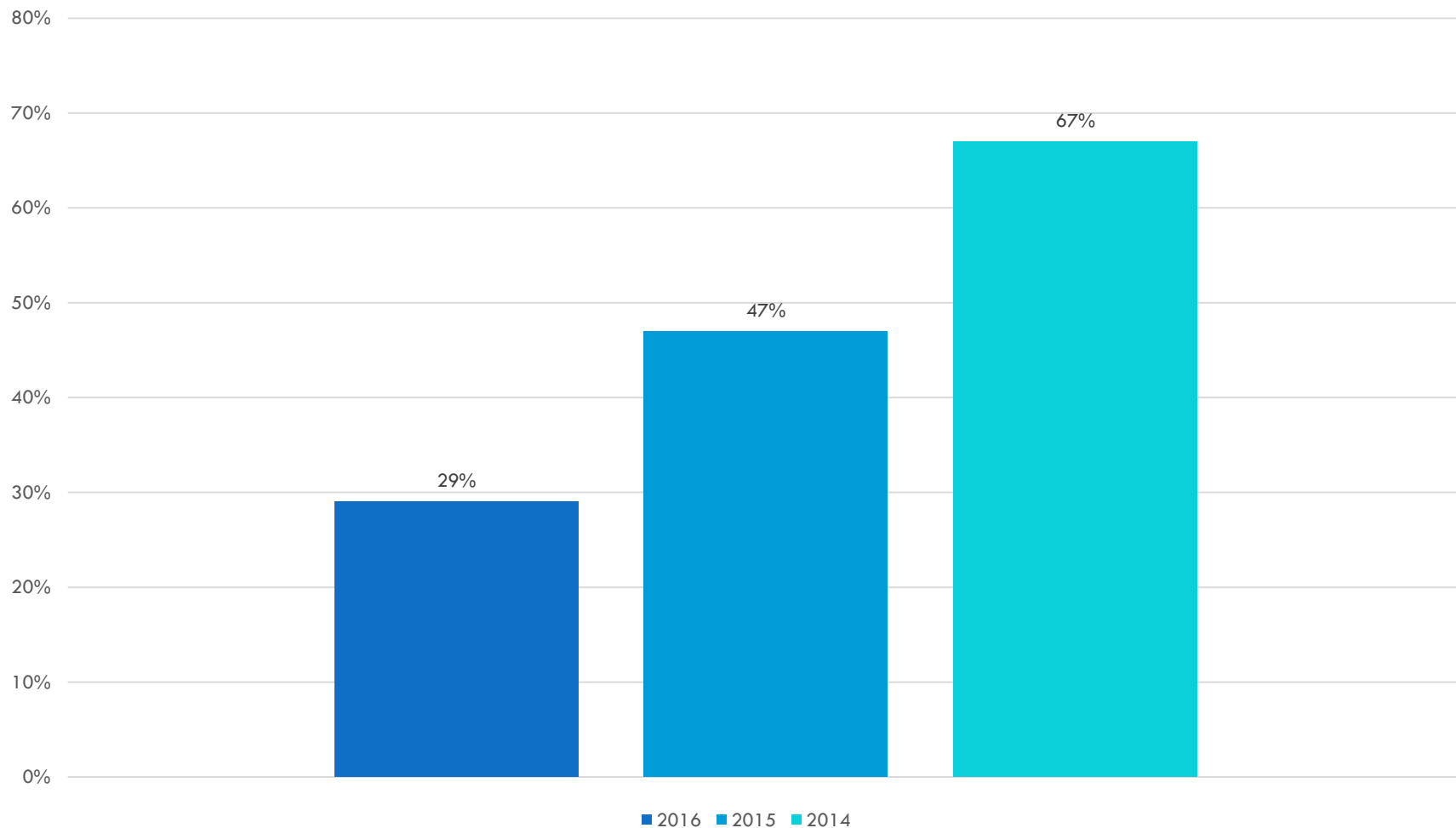
## TOP 5 BREACHES 2016



- ❑ **50 (1) – Reporting to the Commission – Interim Reporting** **29%**
- ❑ **53 – Change in Information after Registration** **26%**
- ❑ **43 – Insurance Review at the Board level** **24%**
- ❑ **48 (1) – Termination of Representative & 87 – Reconciliation** **21%**
- ❑ **91 – Reporting to the Commission on Compliance** **18%**



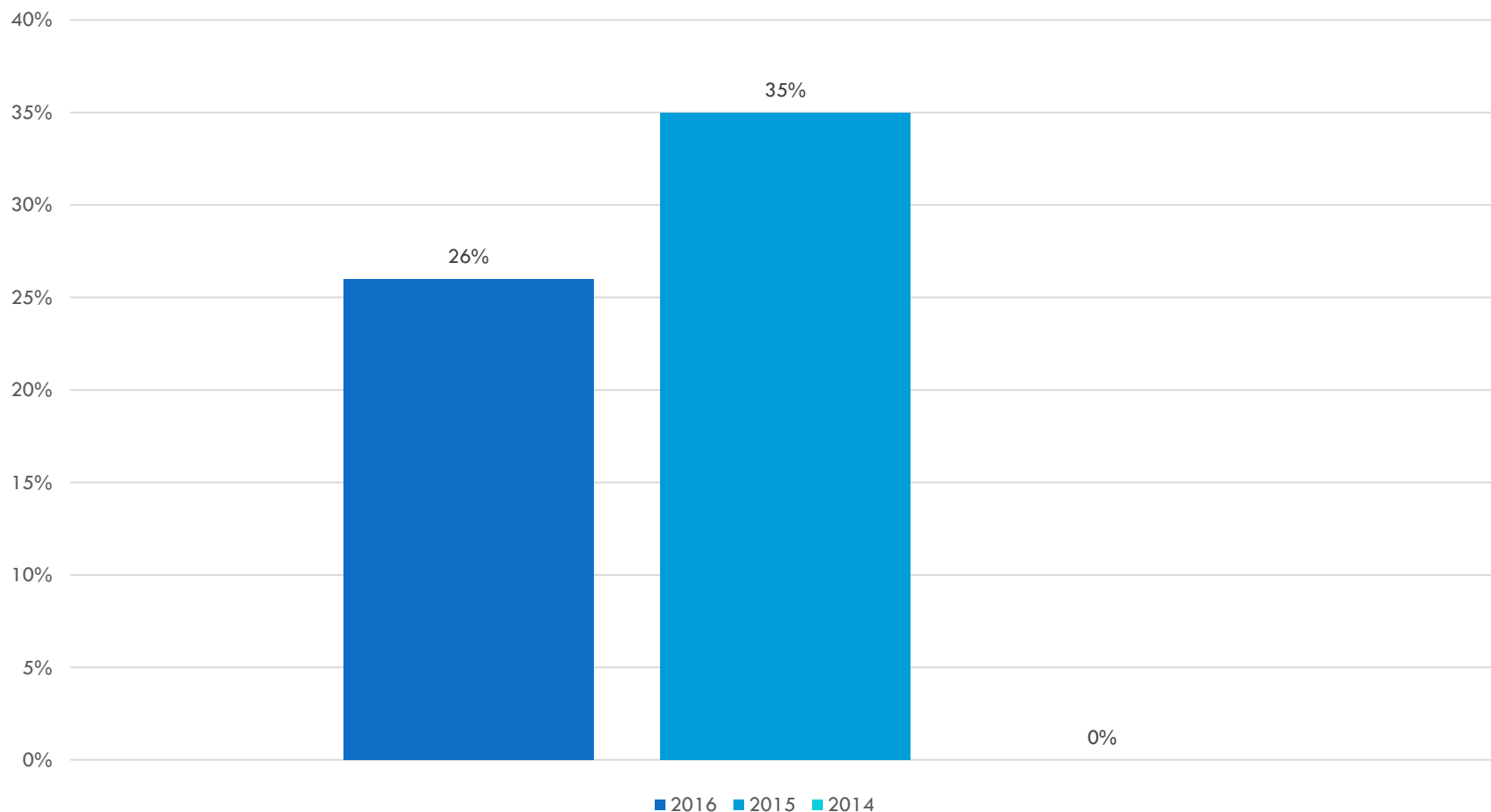
# SIR 2012, REG. 50 (1) REPORTING TO THE COMMISSION – INTERIM REPORTING





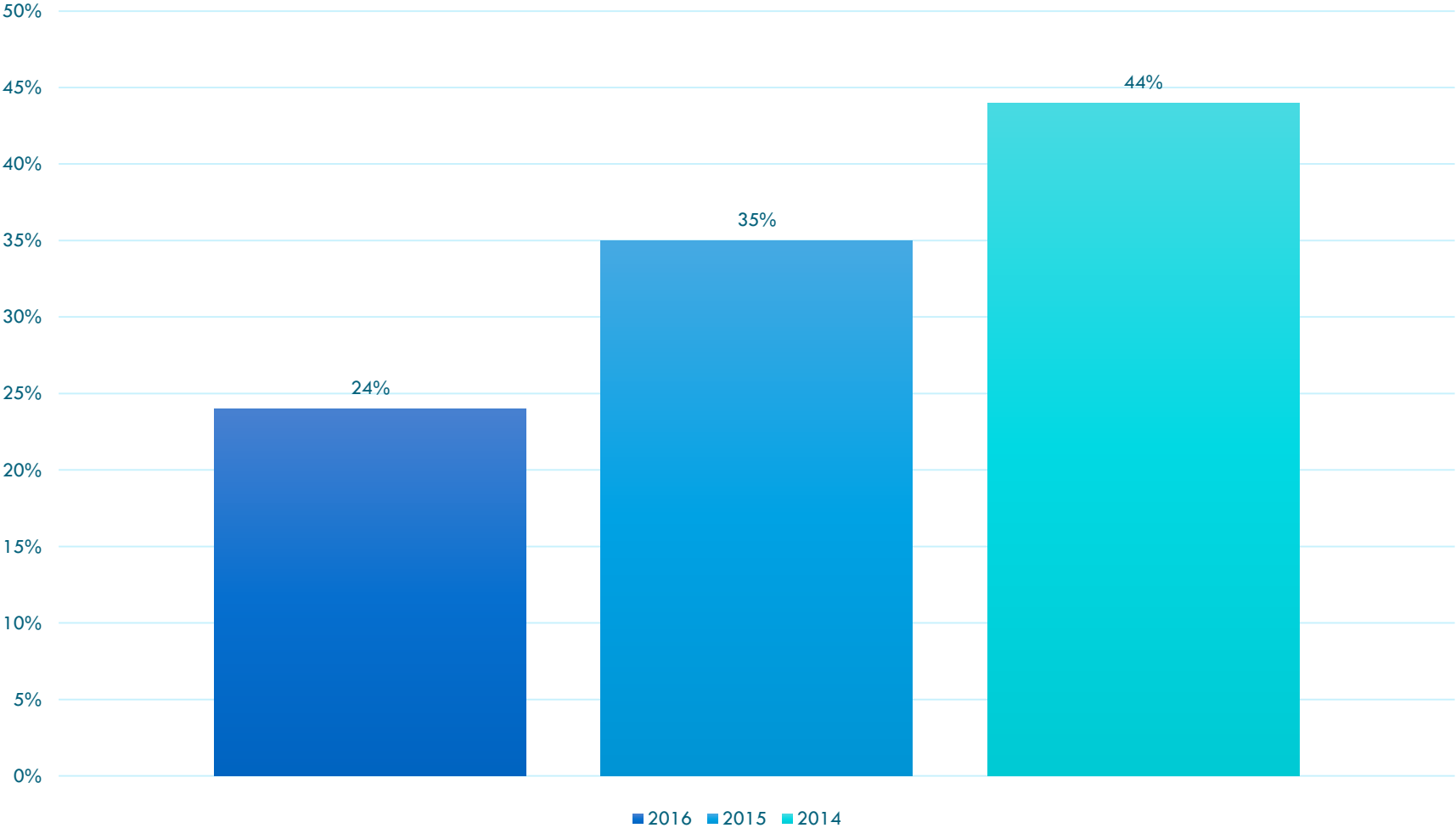


# SIR 2012, REG. 53 NOTICE OF CHANGE IN INFORMATION – AFTER REGISTRATION





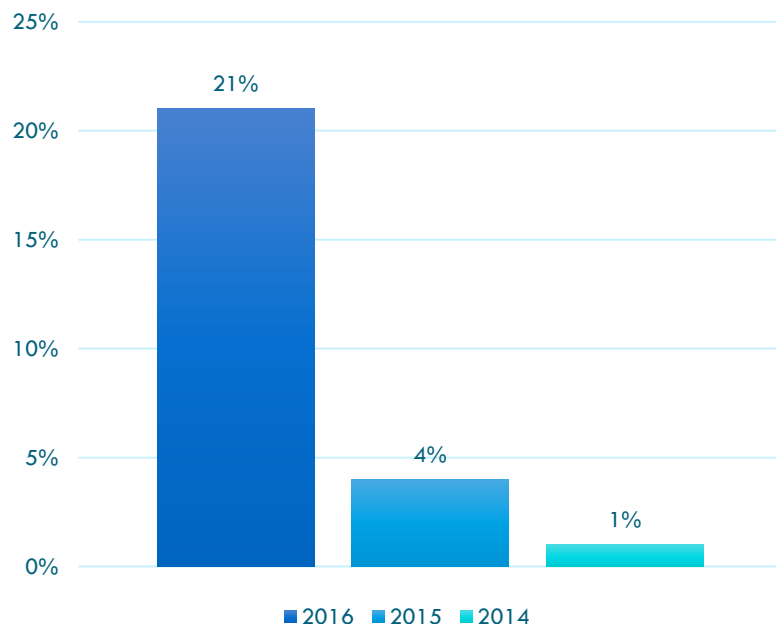
# SIR 2012, REG. 43 INSURANCE



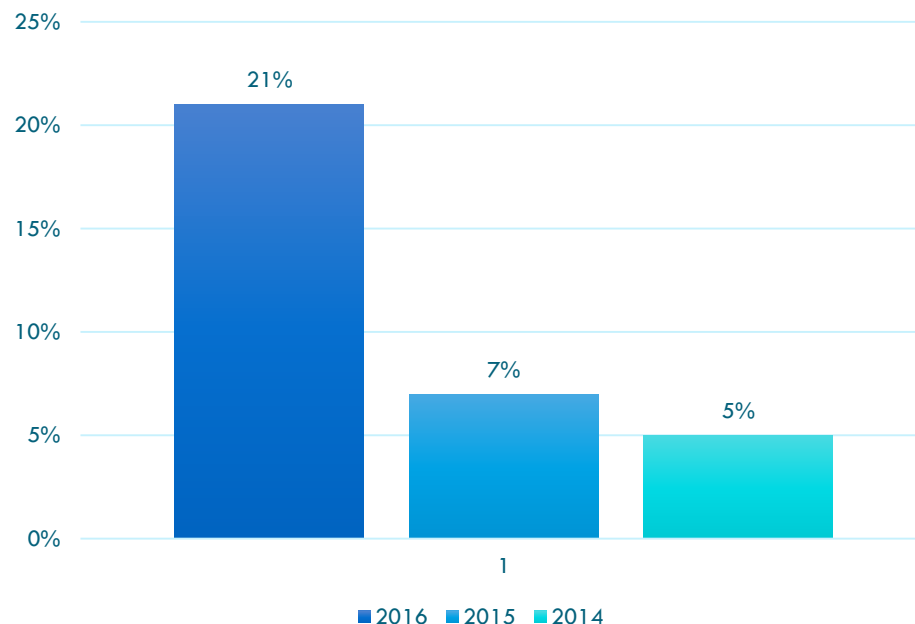


# SIR 2012, REGS. 48 & 87 – TERMINATION OF REPRESENTATIVE AND RECONCILIATIONS

## 48 – Termination of Representative

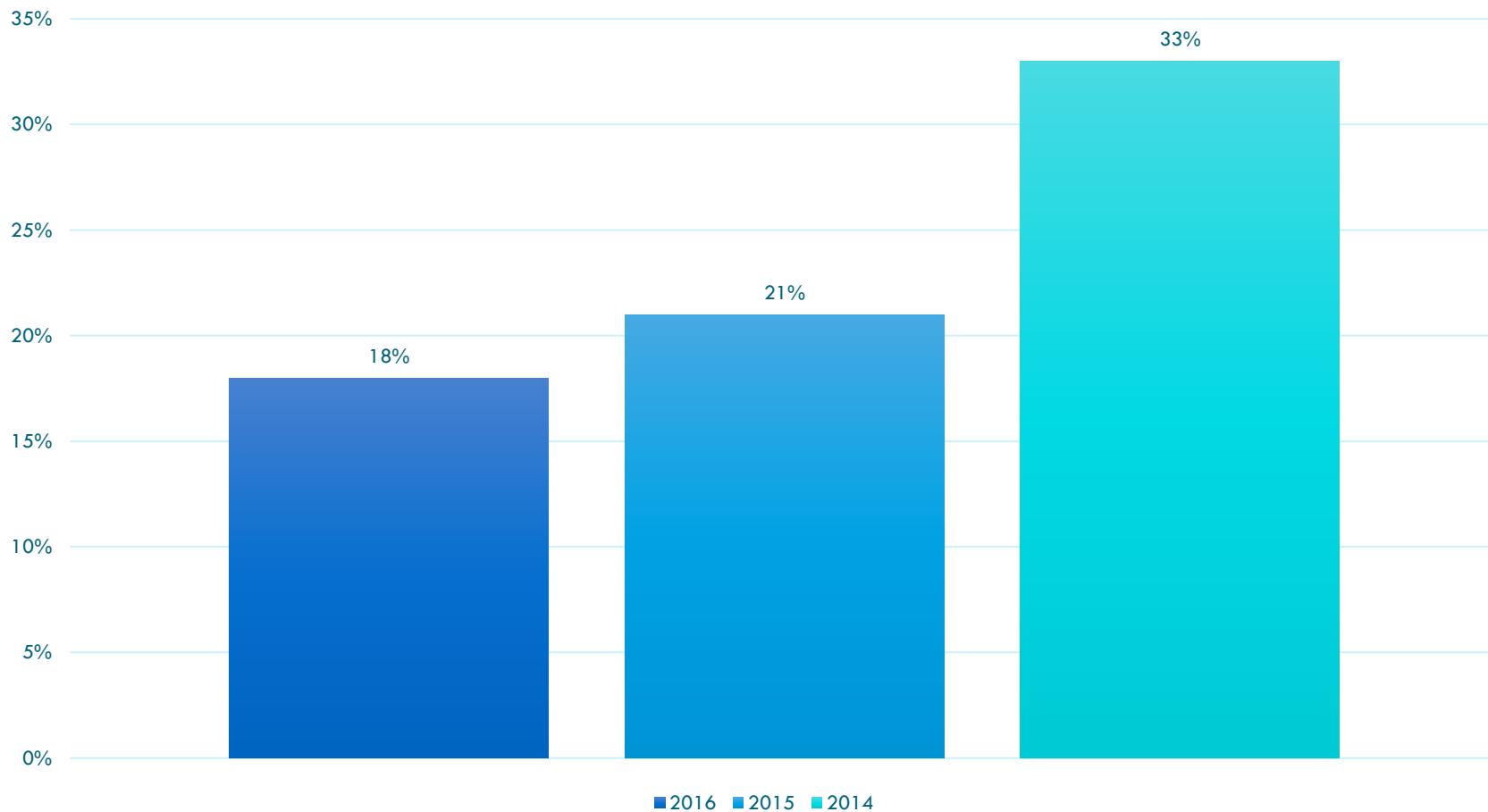


## 87 - Reconciliations





# SIR 2012, REG. 91-REPORTING TO THE COMMISSION





# ENFORCEMENT UPDATES

- Proposed Enforcement Changes in SIA
- Hearing/Disciplinary Process
- Recent Court Judgments



Presenter: Mr. Gawaine Ward  
Manager, Enforcement Department



# PROPOSED AMENDMENTS TO SIA 2011





# PROPOSED CHANGES TO SIA 2011

- New sections to be included to empower the Commission to, inter alia, summarily impose certain sanctions for violations, such as AML-CFT breaches.
  - ❑ amendment seeks to provide the Commission with authority to impose administrative sanctions for breaches of AML/CFT requirements in laws administered by SCB, such as the FTRA.
    - Currently, although the Commission administers the FTRA for its registrants and licensees and it authorises criminal penalties there are no administrative sanctions.



# PROPOSED CHANGES TO SIA 2011 (CONT.)

- Amendments to various sections to correct certain deficiencies, such as sec. 28 of SIA to permit the Commission to issue public statements, where necessary, for investors' benefit.
  - ❑ SCB does not have the discretion to publicise matters where deemed necessary, other than final decisions from hearings.
  - ❑ Remove inability to make/issue certain public statements about automatic penalties imposed on registrants or licensees; currently, SCB not to divulge its own or its registrants' affairs which would breach sec. 28 SIA.





# PROPOSED CHANGES TO SIA 2011 (CONT.)

- Where necessary, sections to be amended to ensure the Commission's authority under SIA is also consistent with similar requirements of the draft/new IFA.
- ❑ This amendment seeks to primarily address common requirements, such as Insurance coverage and Regulatory Capital deficiency, via penalty and summary suspension or revocation
  - E.g. where the Reg. Cap. is deficient for specified consecutive periods, whether or not the registrant fails or outright refuses to take remedial action within a specified and/or reasonable time period.



# HEARING/DISCIPLINARY PROCESS

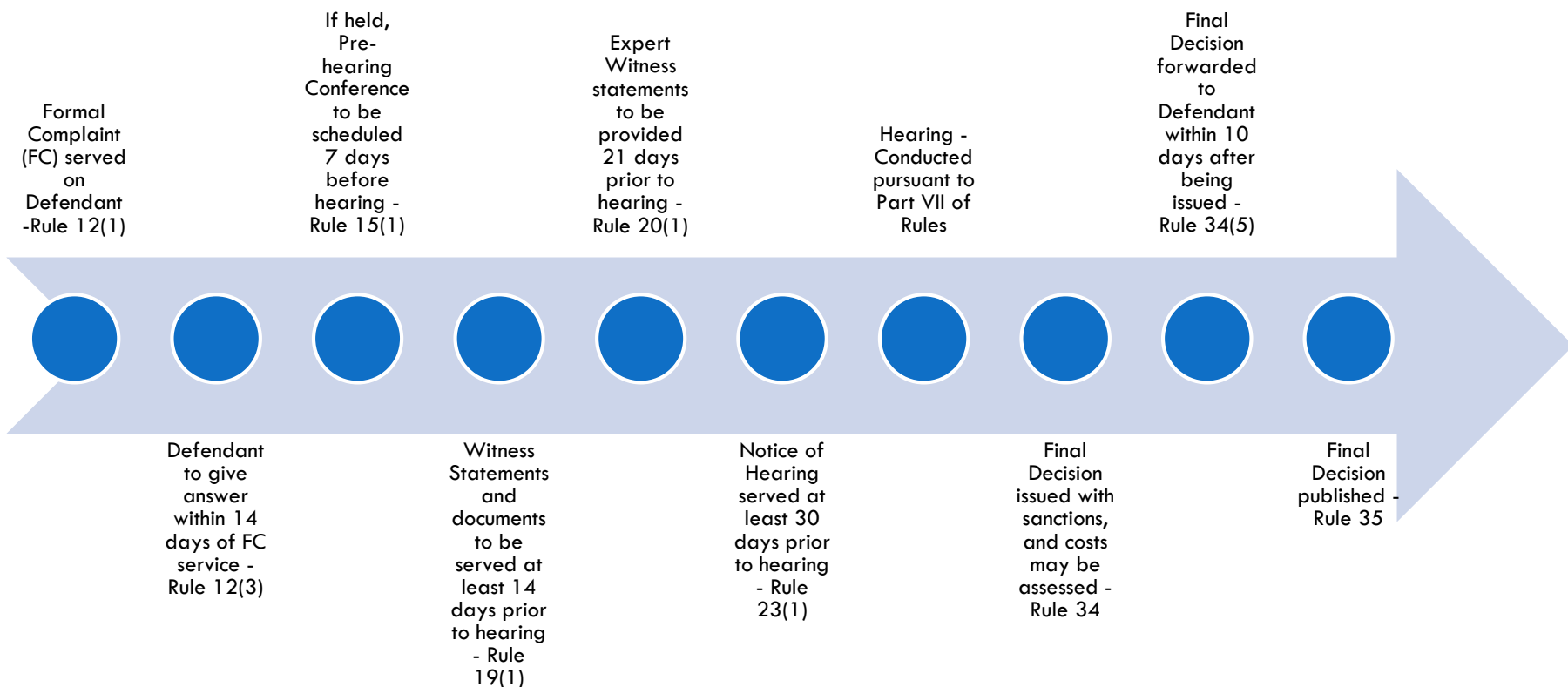




# ENFORCEMENT PROCESS

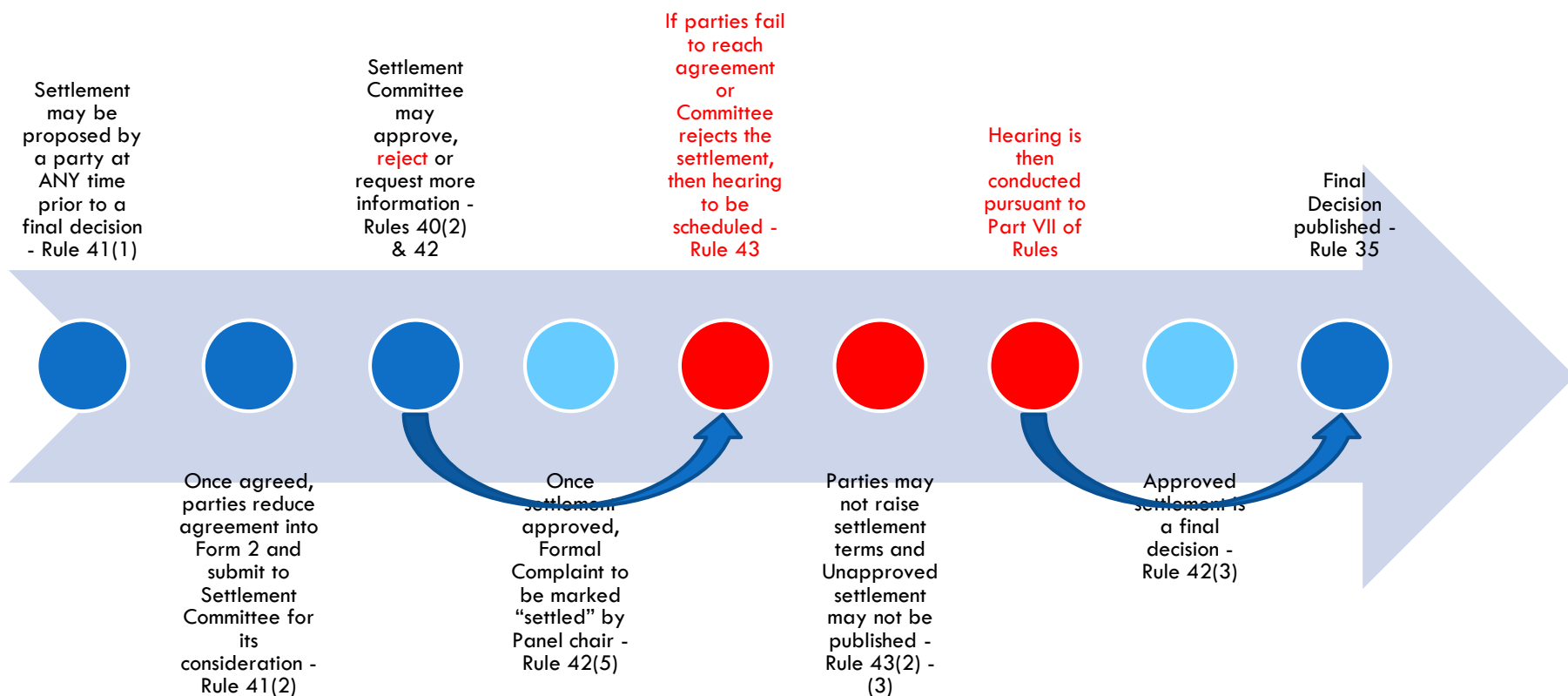
- While the Commission has a number of enforcement tools at its disposal, such as registration conditions, its formal hearing process is outlined under Part XV of SIA.
  - ❑ **s. 133A** -The Commission is authorized to conduct investigations and hold regulatory hearings for any breaches of securities laws.
  - ❑ **s. 133** – The Commission may impose orders, incl. penalties, after a settlement or a disciplinary hearing for persons found to have breached securities laws.
  - ❑ **s. 135(1)** – Fine up to \$300,000 for each contravention.
  - ❑ **s. 139** – **Hearing preserves transparency; ensures persons' right to be heard.**
- The Commission's hearing and settlement processes are outlined in the Securities Industry Disciplinary (Hearings and Settlements) Rules 2017 -
  - ❑ Settlement Committee for Settlements and Hearing Panel for Admin. Hearings.

# HEARING SUMMARY





# SETTLEMENT SUMMARY





# COURT MATTERS





# COURT – LITIGATION

➤ Commission decisions may be appealed in 2 ways:

- ❑ **Appeals (s.157 SIA) -**

- Final decisions (HP)

- ❑ **Judicial Review (O. 53 of RSC ) –**

- Other Commission decisions (e.g. Orders, information-sharing requests)



# COURT – LITIGATION (cont.)

- Judgments where the Commission is a party are posted to the Commission's website.
- Currently, there are 4 ongoing court matters.
- Most of the matters for which we received judgments are still under appeal, and so may not be discussed at this time.





# RECENT JUDGMENT(S)

## ➤ **Securities Commission v. Alliance Investment Management Ltd. (Court of Appeal):**

- ❑ The Commission sought to examine Alliance and imposed a temporary order under s. 133(3), which facilitates quick disciplinary action in circumstances warranting it;
- ❑ Alliance applied for JR of the Commission's decision and the Supreme Court held the Commission exceeded its jurisdiction;
- ❑ The Commission appealed the Supreme Court's judgment which was overturned by the CA; the CA clarified the interpretation of sec.133(3) SIA, which authorizes temporary imposition of orders for 15-days without a hearing (after which a hearing is to be held).



# RECENT JUDGMENT(S)

## ***Securities Commission v Alliance Investment Management Ltd. (Court of Appeal judgment)***

*“The appellant can issue an order to a person before holding a hearing; however, it must be satisfied that it is necessary and in the public interest to do so. Parliament expressly stated the order is to have a temporary effect; and is intended to protect the integrity and reputation of the securities industry. The power is engaged in circumstances where the appellant, as a prudent regulator charged with oversight of the industry, deems it crucial to intervene quickly and nip in the bud, practices or actions which may be harmful to the country's financial sector, of which the securities industry is a part.*

*It is recognised that a party is entitled to be heard under the audi alteram partem rule but courts have long accepted that the rule may be relaxed provided certain pre-conditions exist or are reasonably suspected to exist. The issue of whether the belief held by the (Commission) for the issuance of an order was reasonably justified will be determined at the hearing required under section 133(6) of the Act.*

*The Judge misconceived the effect of section 133(3). In light of the preconditions and limitations imposed by section 133(3) of the Act, it was not Parliament's intent to deprive the respondent of its right to be heard; nor was the respondent deprived wholly of its right to be heard. Parliament made provision for an affected person to be heard via section 133(6) of the Act.”*



# THANK YOU!





# CONTACT INFORMATION

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