



BAHAMAS FINANCIAL SERVICES BOARD  
BAHAMAS BRIEFING  
2008

‘Regulatory Update from the Securities  
Commission’

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Chairman

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Good morning/afternoon ladies and gentlemen. I would like to thank the Bahamas Financial Services Board for inviting me to speak at this event and for providing me the opportunity to discuss regulatory updates pertaining to our Bahamian capital markets in general but more specifically, to the ***international component of the markets***. However, before I begin, I must use the Commission's standard disclaimer: that the views expressed are my own and may not represent those of the Securities Commission, its members or staff.

My goal is to provide an overview of the components of the capital markets and the laws that govern them. I would then like to talk about the Commission's mandate and approach to regulation, discuss a little on the current market environment and close by highlighting some of the changes to securities laws that will take place in the near future. In all of this, it is important to keep in mind that underlying the regulation of the Bahamian capital markets is integrity.

### ***Bahamian Capital Markets***

The Bahamian capital markets consist of both local and offshore (international) financial activities. The ***local capital markets*** consist primarily of traditional capital market products such as equities traded on the Bahamas International Securities Exchange (BISX) or over-the-counter; corporate debt of listed companies; government treasury bills and registered stock administered by the Central Bank; and investment funds. Derivatives and asset backed securities are virtually non-existent in the local market. The ***offshore capital market*** is

dominated by investment fund administration and management, and asset management activities that engage in, and for all practical purposes, are an integral component of the international financial market.

### *Bahamian Securities Laws*

The securities laws that govern the Bahamian capital markets include:

1. **The Securities Industry Act, 1999** – which established the Securities Commission, sets out its mandate and provides for the authorisation and supervision of individuals and firms operating in the securities industry, as well as products offered to the public; and
2. **The Investment Funds Act, 2003** – which provides for the authorisation of investment funds, administrators and service providers operating in or from The Bahamas;

Further, having been appointed Inspector, the Commission is responsible for the administration of the Financial and Corporate Service Providers Act effective January 1, 2008. In addition to corporate service providers, this Act provides for the supervision and regulation of financial service providers not otherwise regulated under securities, banking, or insurance laws.

## *The Mandate of the Securities Commission*

Under the Securities Industry Act, the mandate of the Commission is to:

1. Formulate principles to regulate and govern investment funds, securities and capital markets;
2. Maintain surveillance over investment funds, securities and capital markets ensuring orderly, fair and equitable dealings;
3. Create and promote conditions to ensure the orderly growth and development of capital markets;
4. Advise the Minister of Finance regarding investment funds, securities and capital markets.

In carrying out its mandate, the specific functions of the Commission encompass the authorisation of market participants and of products that are being offered to the public.

## *The Commission's Approach to Regulation*

Balancing growth and regulation means building a regulatory regime that aims to protect investors through the maintenance of pre-requisites to healthy capital markets - orderly, fair and equitable dealings. Although not explicit in its mandate, the primary responsibility of the Commission is to protect the interest of the investing public, both domestic and international (*This obviously involves a protocol of cross-border cooperation and exchange of information*). Protecting the investing public is based on a simple premise: if investors have confidence that they will be treated fairly in the capital markets, they will be willing to invest their money.

In protecting the investing public the Commission has to ensure that persons, including individuals and firms, operating in the industry are fit and proper, adhere to good corporate governance principles, and follow proper codes of conduct and high business standards. Further, the Commission has to ensure that issuers of securities are providing full disclosure of material change in their organizations in a timely fashion to ensure that opportunities for insider trading or manipulation of the market are minimized; and that the investing public is in a position to make informed investment decisions. These activities translate into ensuring orderly, fair and equitable dealings – a direct mandate of the Commission.

The Commission takes these responsibilities seriously, and while the current body of securities legislation has served the industry well, some changes are needed to reflect the development and growth that has taken place.

## *Securities Industry Act, 1999*

Under the Securities Industry Act, 1999 the Commission registers the following participants and products:

- Broker-dealers
- Securities Investment Advisors
- Stock Exchanges
- Offers of securities to the public

The Commission expects to enhance its regulatory capabilities through the implementation of a new Securities Industries Act, and related Regulations. This is expected to be completed and enacted in early 2009. Some of the changes to look forward to include:

1. A more extensive use of regulations for matters that require more frequent updating;
2. Formally making investor protection as one of the Commission's functions (this includes the re-introduction of a more comprehensive Investor Education Program, which is already underway);
3. Establishing a new basis for registration of industry participants by function rather than title;
4. Making provisions for the sharing of information that are compliant with the provisions of the Multi-lateral Memorandum of Understanding (MMoU) of the International Organization of Securities Commissions (IOSCO). ;
5. Enhancing the enforcement and investigative authority of the Commission;
6. Simplifying the disciplinary process of the Commission; and
7. Creating new disclosure provisions for issue of shares in the Bahamian capital markets.

### *Investment Funds Act, 2003*

Some of you may already be aware, but for those of you that are not, the Investment Funds Act, 2003 provides for the licensing of unrestricted and restricted investment fund administrators as well as the following types of investment funds:

- **Professional Funds** – which are available solely to accredited or “sophisticated” investors;
- **SMART Funds** – The Specific Mandate Alternative Regulatory Test Fund is an investment fund that satisfies the parameters and requirements of a category, class or type of Investment Fund previously approved by the Commission;
- **Recognized Foreign Funds** – are funds licensed or registered in a recognized jurisdiction or listed on a recognized stock exchange, as prescribed; and
- **Standard Funds** – are funds that generally provide for those not categorized as Professional, SMART, or Recognized Foreign Funds. For example, this category covers, but is not limited to, retail-type funds. The application process for this category is subject to the most stringent scrutiny of the Commission.

Through collaboration with the industry and the BFSB Funds Working Group, and also based on the Commission’s experiences in administering the legislation, several amendments have been put forth for consideration. Proposed amendments to the Investment Funds Act include:

1. Amending the definition of “Recognized Foreign Fund” (RFF) to allow funds that (a) are not required to be licensed or registered in their respective jurisdiction of incorporation; and (b) those not listed on a prescribed exchange to register as an RFF, provided that the investment manager or investment advisor to the fund *is* licensed in a prescribed jurisdiction;
2. Amending the definition of “Investment Fund” to remove the nexus of the investment manager/advisor as a basis to require that a fund is licensed by the Commission;
3. Amending the definition of “Professional Fund” to remove the term “prescribed jurisdiction” as a qualifying criteria for a person to be an eligible investor in this fund type. In addition, the definition was further expanded to broaden the types of entities that qualify as eligible investors in Professional Funds; and
4. Amending the time period within which a fund is required to file its annual audited financial statements with the Commission after its financial year end from four to six months.

These amendments have been approved at the Board level and will shortly be forwarded to begin the process of codification.

### ***Financial and Corporate Service Providers Act, 2000***

With respect to the Financial and Corporate Service providers Act, the Commission has committed to a full review of the provisions, including the definition of financial services.



## *Conclusion*

It would be remiss of me not to mention the current market turmoil – and we are all aware of what’s happening in that arena. Through this financial crisis it is imperative to note that the Commission is in a position to supervise the industry, and to make sure that it protects the integrity of the jurisdiction as an international financial centre. The Commission has to ensure that the investing public has confidence in its regulatory oversight to enhance the development of the industry. This is accomplished by employing the tools available and through working with promoters of the jurisdiction –BFSB – to be competitive globally and increase market share.

I thank you once again for this opportunity and extend best wishes for the success of the remaining activities of BFSB’s Bahamas Briefing.

I trust that you have enjoyed your stay so far in The Bahamas. Good afternoon.