

PRESENTATION ON THE DRAFT SECURITIES INDUSTRY ACT

GRAND BAHAMA
CHAMBER OF COMMERCE
BUSINESS MEETING



July 29, 2009



HISTORY OF SECURITIES REGULATION IN THE BAHAMAS

- **Securities Act, 1971**
- **Securities Board Act, June 1995**
- **Mutual Funds Act, Nov 1995**
- **Securities Industry Act, 1999**
- **Investment Funds Act, 2003**



WHY A NEW LEGISLATION?

- **Recognised Deficiencies in putting SIA, 1999 into practice**
- **IMF Review**
- **Deficiencies to numerous to amend**
- **Compliance with IOSCO principles and AML/CFT recommendations**



DEVELOPMENTS

- Draft SIA released for public consultation January 2008 without Regulations
- Industry position
- The SIR was released for public consultation May 11, 2009.
- Public consultation ended June 24, 2008
- Commission still accepting comments from the public.



LEGISLATIVE FRAMEWORK

- **The key legal obligations appear in the Act.**
- **Detailed requirements are set out in subordinate instruments such as Regulations or Commission-made rules.**
- **This structure is intended to enable the Commission to respond quickly and effectively as circumstances change.**



KEY CHANGES IN NEW LEGISLATION

- **Functions of the Commission**
- **Registration Regime**
- **Enforcement**
- **Prospectus Disclosure**
- **Ongoing Reporting Requirements for Public Companies**
- **Powers of the Minister**
- **Information Sharing**



FUNCTIONS OF THE COMMISSION

- Provide protection to investors from unfair, improper or fraudulent practices.
- Foster fair and efficient capital markets & promote confidence in the capital markets.
- Reduce systemic risk.
- Reduce the extent for regulated business to be used for or connected to a financial crime.
- Promote public understanding of the financial system.



REGISTRATION REGIME

- The definition of securities business and the activities giving rise to the obligation to register under the Act have been fundamentally restructured.
- Registration pursuant to the new legislation will be based on the activities carried out by the proposed registrant as opposed to being based on a proposed registrant's function.



REGISTRATION REGIME

- **Persons will be registered to conduct securities business and the activities that they will be authorized to carry on will be specified. For example:**

- **SIA 1999 provides for registration of:**
 1. **Broker-Dealers**
 2. **Security Investment Advisors.**

- **Draft SIA provides for registration of persons to:**
 1. **Deal in Securities,**
 2. **Arrange Deals in Securities,**
 3. **Manage Securities, and**
 4. **Advise on Securities.**



ENFORCEMENT

- There have been extensive changes made to the Commission's investigation, examination and enforcement powers to bring these up to international standards.
- These include:
 1. providing the Commission with search and seizure powers and
 2. broadening the Commission's ability to access information.



PROSPECTUS DISCLOSURE

- The prospectus disclosure regime would now be triggered by the nature of the transaction being undertaken, rather than the behaviour of the parties involved.
- No prospectus would be required unless the person were carrying out a distribution, which primarily means a primary offering of securities.
- The current Act provides that any publication of an invitation **‘to the public to subscribe for or purchase securities’** triggers the prospectus requirement.



ONGOING REPORTING REQUIREMENT FOR PUBLIC COMPANIES

- **Annual Reports filing requirements were changed from 120 days to 90 days.**
- **Quarterly Reports filing requirements were changed from 90 days to 60 days.**



POWERS OF THE MINISTER

- **The SIA, 1999**
 - Provides for the Minister to appoint Members of Commission and to dismiss without cause.

- **The Draft Legislation**
 - Provides for termination of Members by the Minister with cause, such as insanity or bankruptcy.



INFORMATION SHARING

- **The information sharing provisions in the new legislation have been expanded to ensure international compliance.**
- **In this case, however, the Commission is concerned to ensure that there is compliance with the terms of the IOSCO MMOU.**
- **We are seeking the input from relevant committees within IOSCO to ensure that there will be no issue of compliance when the Commission's application for signatory 'A' consideration is submitted.**



YOUR FEEDBACK

- Commission's website provides a 'Comments' section designed to capture commentary by persons reviewing the legislation.
- This means that those reviewing the legislation can record their concerns directly to the site.
- Commission's website: www.scb.gov.bs