



**Securities Industry Act & Investment Funds Act
Industry Briefing**

**Thursday 27 September 2018; 9:00 a.m.
Bahamar Convention Centre
Nassau, The Bahamas**

**Keynote Address:
“Shifting Goalposts: How does The Bahamas Survive?”
Deputy Prime Minister and Minister of Finance,
The Hon. K. Peter Turnquest, MP
Commonwealth of The Bahamas**

SALUTATION:

Thank you, Mrs. Sands, for the introduction.

Chairman of the Securities Commission of The Bahamas, Mr.
Robert Lotmore,
Executive Director of the Commission, Ms. Christina Rolle,
Other Members of the Commission's Board,
Distinguished guests,
Registrants and licensees,
Ladies and gentlemen,
Good morning.

Introduction

It is always a pleasure to bring remarks at the Securities Commission of The Bahamas' industry briefing for licensees and registrants pursuant to the Securities Industry Act, or SIA, and the Investment Funds Act, or IFA. The Commission has been committed to having at least one annual face-to-face meeting with an open-invitation to all of its constituents to engage with it on regulatory and other developments facing the industry. For me, these are cherished opportunities to interact with *you*, to learn about the challenges, threats, and the opportunities you and your industry face.

Thank you for inviting me. I will keep my remarks brief this morning.

Today's industry briefing falls just a few days ahead of the 30th of September reporting deadline for the Competent Authority under the Organisation for Economic Cooperation and Development's Common

Reporting Standard, or CRS. The timing is fortuitous, as I have entitled this morning's remarks: "Ever Shifting Goalposts: How Does The Bahamas Survive?"

SCB's Scope (Statistical Overview)

Before I delve deeper into the subject, allow me to provide a statistical overview of the Commission's regulatory scope. The Commission regulates investment funds, securities and the capital markets in The Bahamas. As at the 29th of June 2018, according to preliminary statistics from the Commission, there were 153 firms registered to conduct securities business pursuant to the Securities Industry Act, 2011. The number of firms is up slightly from the 31st of December 2017 year end of 150 registered firms. Additionally, there was one registered marketplace— The Bahamas International Securities Exchange, or BISX—and one registered clearing facility—The Bahamas Central Securities Depository—at the 29th of June, unchanged for the year.

BISX reported that as at the 29th of June 2018, the market was comprised of 19 ordinary shares with a market capitalization of \$4.162 Billion, down from 20 ordinary shares with a market capitalisation of \$4.43 billion at the 29th of December 2017. In addition, at the 29th of June 2018, there were 13 preference shares with a market capitalization of \$327.25 Million and 19 bonds with a face value of \$579 Million – with these numbers largely unchanged from the 29th of December 2017. As at the 29th of December 2017

there were 48 mutual funds listed on BISX with approximately \$4.4 Billion in assets under management.

In terms of licensed investment funds, preliminary numbers from the Securities Commission show some growth for the year thus far, from 784 investment funds at the 31st of December 2017 to 789 investment funds at the 29th of June 2018. On the investment funds side, the first six months of the year saw a net decline of one licensed investment fund administrator, from 62 to 61 by the 29th of June 2018. The net decrease was due to an increase of one unrestricted investment fund administrator and a decrease of two restricted fund administrators over the period.

The Commission is also the duly appointed Inspector of Financial and Corporate Services, and as at 29th June 2018 oversaw 346 licensees in that capacity.

In Pursuit of Shifting Goal Posts

I am certain that the ordeal many financial institutions would have contended with recently, and continue to contend with, to satisfy their reporting obligations to the Competent Authority under the CRS is still a very fresh and, perhaps, *not-so-pleasant* memory for many here today. I pause a moment to recognize the effort, the capital and resources that financial institutions doubtless would have invested to ready themselves to comply with this, and other reporting standards over the years. So many compliance officers, account and relationship managers, information technology teams, data entry-

clerks, directors, even your clients would have had to make great sacrifices, and doubtless endured much frustration along the way, to comply. Some of us bear the burden of the responsibility for the decisions that will impact the economic viability of the industry, and hence the nation; others must contend with what new laws and policies mean in the “real world”--what it means to your businesses’ operational structures, compliance costs, business plans, marketing models, and existing clients.

By now, however, I trust that we all realise that jurisdictions that do not rise to comply with the key global standards of the day will be shut out from participating in the global financial services industry. So, as I pause to recognize your effort, I know the true recognition and ultimate reward for you will come from your clients and prospective clients, as you forge paths to sustainable, profitable business models that thrive in the evolving global environment.

The CRS is just one of the most recent re-locations of a goal-post that has been shifting for three-decades-or-so, when it comes to the transparency of account information for anti-money laundering and tax related purposes. The Financial Action Task Force, established in 1989, put out its Forty Recommendations to combat money laundering in 1990. Eight years later that the OECD published the report, “Harmful Tax Competition: An Emerging Global Issue”, and the pressure began in earnest for The Bahamas and other jurisdictions to comply with the principles of the 1998 Report and to

eliminate what the Report deemed harmful tax practices. By the “2000 Progress Report”, The Bahamas had been named a tax haven¹.

Shortly after, following the Nine-Eleven (9-11) terrorism tragedy in the United States of America, global concerns about the financing of terrorism resulted in the FATF adding standards to fight terrorist financing. These concerns, some would argue, were co-opted into the tax transparency fight. In any event, AML/CFT and tax transparency issues started to become increasingly difficult to distinguish. The global financial system, policy makers, regulators, even public thinking, one might venture, have been shepherded in this direction ever since – one shifting goal post at a time.

Nevertheless, by January 2002, The Bahamas demonstrated its readiness to adapt to the new realities, and entered into a Tax Information Exchange Agreement with the United States of America.

Later, in 2003, the EU Savings Directive/48/EC had been adopted by its Member States and became the first multinational automatic exchange of information programme,² requiring Member States to exchange information on private savings income³. Perhaps there were no direct or immediate implications for The Bahamas, but certainly this move was strategically significant—to the EU, yes, but to The Bahamas as well. Whether we in The Bahamas knew it or not,

¹ “2000 Progress Report: Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices” p17.

² “A Brief History of AEOI”,

³ https://ec.europa.eu/taxation_customs/individuals/personal-taxation/taxation-savings-income/repeal-savings-directive-line-with-international-eu-developments_en

the “writing” was all over the wall: the press was on to forge a global financial system unburdened by banking secrecy, where all clients were well-documented, in terms of who they were, where they operated and lived, and how they came by their wealth and the funds for their transactions. In other words, to create a financial system where nefarious actors, including tax evaders, would find no safe haven, and be restricted from abusing the financial system to benefit from illicit activities, or fund terrorism or weapons proliferation.

To this end, the Financial Action Task Force released the Ninth Special Recommendations, known to many in the industry as the FATF Forty-plus-nine (FATF 40 + 9) in October 2004.

The automatic information exchange agenda ramped up in 2010 when, in the aftermath of the global financial crisis, the United States Congress adopted the Foreign Account Tax Compliance Act, or FATCA, and set the precedent for broad global participation in automatic information exchange regimes.

Of course the Financial Action Task Force was itself still busy over the period and by 2012 had published revised Recommendations which integrated the 9 Special Recommendations on terrorist financing, and addressed the threat of proliferation of weapons of mass destruction, and aimed to equip governments to take action against financial crime.

A few years later, in 2013, the G20 formally requested that the Organization for Economic Cooperation and Development (the OECD)

develop and implement a global reporting standard to facilitate automatic exchange of information. The Common Reporting Standard was approved by the OECD in 2014. The Global Forum on Transparency and Exchange of Information for Tax Purposes, started applying the clamps to ensure broad adoption, and The Bahamas, committed to best practices and standards, steered toward the “goal post” of adopting the bilateral approach to implementing the CRS.

In one of our most recent examples of shifting goal posts, the bilateral option was, The Bahamas found out, *not really* an option. The Government has since signed onto the Multilateral Competent Authority Agreement on the 13th of December 2017, in San Marino, Italy, and, as I alluded to earlier, financial institutions would have undergone their first tranche of reporting under the regime earlier this year, with the 30th of September reporting deadline for the Competent Authority now just a few days away.

At every point highlighted above, these new, updated, amended, revised recommendations and standards translated into some level of upheaval for the financial services industry, usually triggering legislative and policy amendments, or overhauls, and in some instances entirely new legislation. Many resulted in a culling of the client base, and certainly new compliance costs for businesses.

The Journey Continues

Anyone who feels that this is the end of the journey, however, has not been paying attention. For example:

- At the regulatory level, there are still changes underway for the jurisdiction to be compliant with critical standards. The Commission, for example, has recently implemented risk-based supervision in your industry, which is an approach subsumed under the first recommendation of the Financial Action Task Force. I pause for a moment to commend the Commission for the yeoman's effort to have implemented risk-based supervision for securities and investment funds industry registrants and licensees this year, and in so doing bring the regulation of financial services into greater alignment with international standards.
- Already, financial institutions should have adjusted to the Financial Transactions Reporting Act, 2018, or FTRA, and the Proceeds of Crime Act, 2018, or POCA and their implications for your operations. One of the new provisions under the FTRA empowers the Supervisory Authority to impose administrative penalties for breaches under either of these Acts. Therefore, as you are ensuring compliance, again, the Securities Commission and other financial regulators are adapting to this new responsibility and authority as well.
- The Government is committed to complying with the four minimum standards under the OECD and G20's Base-Erosion and Profit Shifting project, or BEPS. To this end, the

Multinational Entities Financial Reporting Act, 2018 was passed and related legislation is being considered. The jurisdiction must address, for example, accessibility of beneficial owner information, which it aims to accomplish via the Register of Beneficial Owners Bill, 2018.

- In your industry, you should be getting a new Investment Funds Bill soon, and there are amendments to the Securities Industry Act in the pipeline as well.

These are just a few of the more immediate changes on the horizon.

The good news is, we are adapters and survivors at heart in The Bahamas, with a spirit of resilience and an inspired *can-do* attitude. Our financial services industry has already revoked the doomsday prophecies of 2000s, when naysayers gave us a few years at best before we had to close shop.

The Bahamas is a nation governed by the rule of law, and ours is a financial services industry with financial institutions and professionals who are, by-and-large, committed to lawful business practices and legitimate clients. We, therefore, must have excellent standards and practices in place and both be compliant, and be recognised for being compliant with those standards. The evidence of this continues to mount:

- The Bahamas received a largely compliant rating for rounds 1 and 2 of its Exchange of Information on Request peer reviews.

- The Bahamas is FATCA compliant. The Bahamas signed onto, and in the process of exchanging information under the Common Reporting Standard, Mutual Competent Authority Agreement model.
- The Bahamas is a member of the Inclusive Framework on BEPS, with the global forum reporting no harmful tax regimes in place.
- Since its first Tax Information Exchange Agreement with the US, mentioned earlier, The Bahamas is now party to 34 Tax Information Exchange Agreements (TIEAs) with various jurisdictions.
- The Securities Commission, since 2012, has been an 'A' signatory to IOSCO's MMoU governing information exchange in relation to cross-border securities crimes, and, I understand, is poised to be a global leader as one of the first adopters of the new Enhanced MMoU.

Despite shifting goal posts, some things remain constant. Our response must be strategic. We must answer the questions: what are our strengths and how will we leverage them? Where does The Bahamas need to be to achieve sustainable, broad and deep economic growth ... by this time next year? In 3 years' time? In 10, 15 or 20 years? What is the role of financial services, both local and offshore financial services, in that development? What part do the capital markets, locally and internationally, have to play? How do we harness international professionals such as lawyers and accountants

to expand our industry? What is the tax structure best suited to facilitate this progress.

Being strategic also requires a deep understanding of the industry. What are the opportunities (such as in the cyber space, for example)? What are the threats (also, such as in the cyber space, for example)? We must understand our industries, and related to this, we must excel in collecting, analysing and applying pertinent data and information. How else will we make well-informed decisions?

We must be excellent. We have not survived thus far because we are a small, offshore jurisdiction. Rather, we have survived because of the things that we do very well as a small, offshore jurisdiction. For example, ours may well be the best Trust legislation in the world, and we have manifested a capacity for transformative innovation, such as we have seen with the SMART Fund and the Investment Condominium.

We must offer value to our clients and always be about the business of enhancing the value-add this jurisdiction offers.

We talk a lot, about shifting goal posts. But we can also talk about how our pursuit of them, while arduous, has transformed and is transforming the reputation of our jurisdiction. In our response to these obstacles, we demonstrate that we are serious about carving out our niche, and that there are many sound reasons for offshore clients to turn to The Bahamas to conduct their financial affairs.

We will continue to persevere, and be undaunted by the winds of change. Yes, we feel the press of a phantom agenda against the sails, like a steering wind, unseen but steady, thrusting us forward through uncharted seas. Fortunately, ours is not a ship fully at the whims of the weather. We have brain and brawn, tack and rudder and oar, to plot and steer a path that avoid the treacherous shoal and brings us closer to goal of sustainable economic prosperity.

I look forward to your briefing this morning.

Thank you.
