



Securities Commission of The Bahamas

Implementation of SIA , 2011 Town Hall Meeting

British Colonial Hilton
15 December 2011
2:30pm



Agenda

1. Welcome
2. Promulgation of the Securities Industry Act (SIA 2011) and Regulations, 2011
3. White Papers on Physical Presence and Fees
(Industry comments and Commission's position on issues)
4. Overview of the Next Steps
 - a. Re-categorization Process
 - b. Transitional Considerations - Existing Registrants
 - c. Transitional Considerations - New Registrants
 - d. Next Phase of Consultation
5. Any other business



Results of the Industry Consultation on Physical Presence and Fees

Presenter: Denise Hinds-Jordan

Results of Industry Consultation:- Physical Presence

	Concern	Commission's Position
1	Can persons registered as "Managing Securities" be allowed to use the Managing Representative framework?	The Commission has agreed to extend the Managing Representative framework to include persons registered as "Managing Securities."
2	Requiring persons registered under part VI to have two resident director is onerous?	The Commission has reverted to the previous position of one resident director.
3	Has the definition of resident (i.e. persons with a work permit) changed?)	The definition of residency, as used by the Commission, has not been changed.
4	How many positions (compliance officer/director) can one person hold?	This will be addressed under the Corporate Governance Guidelines.

Results of Industry Consultation:- Physical Presence

	Concern	Commission's Position
5	Use of the word "as necessary" in the requirements for records and record keeping.	The Commission is developing physical presence guidelines which will explain the requirements.
6	Why has the Commission decided to take a seven year versus a five year position on its record/information retention policy?	The Commission has maintained its historical approach of seven years so as to ensure that broader requirements such as the statute of limitations are considered.
7	What does the Regulation 20 (2) provide for?	Within the first two years records must be "Immediately available" i.e. on site.

Results of Industry Consultation:- Physical Presence

	Concern	Commission's Position
8	Is it possible for individual FCSP licensees to act as Managing Representatives? If not, what is the rationale behind that?	The Commission maintains the position that only firms will be permitted to act as the Managing Representative of a registered firm. Managing Representatives must have the operational capacity as well as managerial and technical resources and must clearly demonstrate that it can meet the regulatory obligations that are mandated by the Commission.
9	Why is there a need for both the Management and Service Level Agreements?	The rule will speak to the issues to be covered as opposed to the number of agreements. It will be permissible to use one agreement.

Results of Industry Consultation:- Physical Presence

	Concern	Commission's Position
10	The physical presence rule should be clear so that the Managing Representative can provide the CEO, directors (s) and the compliance officer (CO) functions.	The Commission will be drafting a guideline to assist in registrants understanding the physical presence requirements.
11	The requirements for books and records need to be defined for each functional category of registration. As it stand now aspects of the rule are not applicable for all categories.	As noted before the Commission will be drafting a guideline to assist in registrants understanding the physical presence requirements.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
1	When will licensees have access to the new requirements?	The Commission is in the process of drafting a number of guidelines that will detail the new registration requirements.
2	When will the new fees go into effect?	For new applicants the fees will be effective immediately. With respect to existing registrants the administrative fess will be effective immediately, however annual renewal fees will become effective in 2013.
3	Would the SIA license consider asset management services, along with advisory services?	Persons currently licensed as Securities Investment Advisors (SIA) will be transitioned to the "Managing Securities" and "Advising on Securities" categories.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
4	Are fees paid in the first year prorated?	Annual fees are pro-rated for new registrants.
5	The increase in fees is quite substantial and will be burdensome on small companies.	The Commission advises that extensive benchmarking/research was conducted to ensure that the jurisdiction remains competitive.
6	Administrative fees should be varied according to the size of the company.	The Commission notes that by their very nature administrative fees reflect the work required to execute the action and is not a function of the size of the institution for which the work is being undertaken.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
7	How are late fees defined? Will a grace period be given?	A fee becomes late if paid after the due date (February 1, 2012 - Annual fees).
8	Is there an application fee for each category of registration?	The application fee is calculated based on the number of categories for which an applicant is seeking registration. (See fee schedule)
9	Are annual fees only for newly approved persons?	The annual fee is applicable to both new and existing registrants.
10	Is there a single fee for persons only managing securities?	Where only one category of registration is sought, then only the relevant fees for that category of registration are applicable.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
11	How are existing firms going to be re-categorized under the new legislation?	The industry is directed to the transition provisions set out in Regulations 146 and 151 for the mapping.
12	Increased clarity was needed, particularly how existing registrants will be handled.	The comment was noted. Consideration is being given to developing additional guidance.
13	What is the division regarding managing securities and advising on securities and hence one activity/fee or two activities/fees	Consideration is being given to developing additional guidance. Where two separate activities are being conducted separate fees are required. Persons solely managing securities will require only one registration and hence one fee.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
14	It was felt that the proposed fees in general were too low and specifically those for Advising on Securities and Managing Securities, did not reflect the level of risk associated with these activities. Further the Commission should be careful not to set the fees too low as they should be in line with the internationally recognized competitors so that the jurisdiction could be seen to have a similar stature.	The comments were noted and the registrant advised that the Commission would review all comments.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
15	The use of the word "Initial" on page 4 for "Initial Registration Fees" is misleading. The reference should instead be "Registration Fees."	Initial registration fees refer to a one time fee applicable on approval for new applicants. This will be clarified in the new rule.
16	With respect to the computation of fees for multiple licenses, is the full rate charged for the "main activity" or the activity carrying the highest fee? Does it matter if this activity is not your main business activity?	The full fee is charged for the activity carrying the highest fee. This limits the possibility of arbitrage with respect to fees.

Results of Industry Consultation:- Fees

	Concern	Commission's Position
17	If a Firm is seeking licensing for all four activities, are they required to pay the pro-rated annual fee for each activity in the first year of licensing/approval?	The annual fee is calculated based on the number of activities being registered. (See the computation of fees for multiple licenses.) This fee is then pro-rated.

Registration Categories

- Part 2 of the First Schedule of the Act details the definitions to be used for the regulated activities. It was felt that these definitions were sufficiently detailed with the exception of those for Arranging Deals in Securities and Managing Securities.
- With respect to Arranging Deals in Securities, it was felt that further guidance could be given as to the types of persons likely to be registered in this category.
- It was felt that the key difference between Advising on Securities and Managing Securities was the ability to exercise discretion over the client's portfolio and give instructions. In this event it was felt that only one license should be required.

Registration Categories

- Arranging Deals in Securities

Defined as: Making arrangements with a view to –

(a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting securities;

or

(b) a person, who participates in the arrangements, buying, selling, subscribing for or underwriting securities.

- Persons to be registered in this category include all persons involved in corporate finance work or promotional activities in the securities market.

Registration Categories

- Managing Securities

Defined as: Managing securities belonging to another person in circumstances involving the exercise of discretion

- Given the discussion on the nature of business in the jurisdiction, and positions put forward by the industry the Commission has determined that persons giving advice only on the specific portfolio over which they have discretion, will be required to have only one license (Managing Securities.) Persons licensed to Manage Securities, who give advice to any persons out side of that specific portfolio will be required to have both a Managing Securities license and an Advising on Securities license.

Process for Rule Development

- The Commission will draft the Rules based on the consultation papers and industry feedback.
- The draft rules will be sent to the Office of the Attorney General (OAG) for review.
- The rules, once returned from the OAG, will be forwarded for comments to the Minister of State for Finance for his review.
- If there is no objection within the specified timeframe the rule is gazetted and brought into being.

Status of Rules

- The physical presence rule is in the second draft stage and is anticipated to be sent to the OAG by December 16, 2011.
- The fee rule is in the initial draft stage and is targeted to be sent to the OAG before December 30, 2011.
- Given the process noted above there is the risk that the fees rule will not be in place by January 1, 2012. In the event this risk is realized, the Commission will institute a secondary process to facilitate the application process. Prospective applicants are asked to contact the Commission for details.

Re-categorization Process

1. Mapping
2. Timelines

Presenter: Denise Hinds-Jordan

Re- categorization- Firms

- For firms currently registered under SIA 1999, Regulation 146 sets out how firms will be mapped under the SIA, 2011.

Broker-Dealer I

- (i) Dealing in Securities;
- (ii) Managing Securities;
- (iii) Arranging Deals in Securities; and
- (iv) Advising on Securities.

Broker-Dealer II

- (i) Dealing in Securities; except 1(b)
- (ii) Managing Securities;
- (iii) Arranging Deals in Securities; and
- (iv) Advising on Securities.

Securities Investment Advisor

- (i) Managing Securities, and
- (ii) Advising on Securities.

Re- categorization- Individuals

- For individuals currently registered under SIA 1999, Regulation 151 sets out how individuals will be mapped under Part VI of the SIA 2011.

Principal, Broker,
Stockbroker

- Representative, Trading

Securities
Investment Advisor

- Representative,
Discretionary Management

Associated Person

- Representative, Advising only

- In addition, two new categories of registration, CEO and Compliance Officer, have been established.

Re-categorization Process

Timeline	Action
January 6, 2012	The Commission will inform the industry and the public, via letters and public notices, of the categories of registration to which current registrants are mapped and authorized to do business.
January 30, 2012	The Commission will advise, via letter, of the formal process by which firms and individuals may change their categories of registration. This will determine those functions for which you will be billed and be authorized to conduct in 2013. It is anticipated that the formal re-categorization process will occur over a 6 month timeframe. CEO's should be registered during his period.
July 30, 2012	Deadline for the submission of formal Change of Registration Categories request for firms and associated individuals and the required supporting documents.

Re-categorization Process

Timeline	Action
September 30, 2012	Having reviewed the information submitted and made its determination, the Commission will advise as to their position with respect to the requested change. The Commission will issue formal notification of the change of registration. Licensees who do not request a change will be assumed to be accurately mapped as per the as per the transitional arrangements and will be licensed and billed accordingly.
September - December, 2012	During this time the Commission will issue new licenses to transitioning registrants identifying their categories of registration. (effective 2013)
November - December, 2012	Transitioning Registrants will be billed for the first time under the new fee regime as per the categories of registration.
December 30, 2012	Deadline for the registration of the Compliance Officer.

Re-categorization

Licensees are encouraged to review their operations to assess the number of functions and the individuals for which they would be required to be registered under the SIA 2011 and advise the Commission should they need to change their categories of registration. The Commission will issue a formal process guideline but licensees seeking to change registration should be aware that they will be required to submit documentation to support any requests. The Authorizations Department will be happy to answer any queries you may have during the re-categorization process.

Change of registration (outside of the re-categorization process)

- There may be some registrants who, based on the transitional mapping, will need to have their categories of registration changed immediately due to the nature of their business. This change in the registration will be done outside of the re-categorization process.
- It is anticipated that this will occur when firms need to be authorized to conduct additional functions. E.g. Firm previously registered as an SIA who intends to engage in dealing or arranging securities during 2012.

Change of/ New Registration

- Entities requiring registration so as to facilitate the conduct of business in 2012 will be required to go through the normal application and approval process; inclusive of the required fees.
- The Commission will be issuing a number of guidelines on the application process for the registration of firms and individuals.

Transitional Arrangements

1. Existing Registrants

2. New Registrants

Presenters: **Sandra Duncombe**

Denise Hinds-Jordan

Transitional Considerations - Existing Registrants

- The ongoing obligations of persons currently registered under SIA 1999 for which there are transitional provisions under SIA 2011 include:
 - Annual Renewal
 - Annual Information Update Forms
 - Financial Reporting
 - Regulatory Capital Requirement
 - Professional Indemnity Insurance
 - Material Change

Transitional Considerations (cont'd)

- Public Issuers:
 - Financial Reporting
 - Insider Reporting Requirements – New Form
 - Proxy Filing
 - Material Change
- Other:
 - Treatment of Joint Licensees
 - Physical Presence

Transitional Periods

- The SIA 2011 speaks to specific periods before segments of the Act become effective for existing registrants these are noted as:
 - Effective Date – Date of promulgation – December 30, 2011
 - First transition date –six months after the effective date - July 1, 2012
 - Second Transition date – one year after the effective date - December 30, 2012
 - Transition date – December 30, 2012

Ongoing Obligations - Parts V & VI

- Fees-

- Current registrants will be billed and pay the annual fees as in the SIA 1999 for the 2012 period. However the administrative fees will be effective immediately, i.e. from December 30, 2011.
- Application of new annual fees - effective December 30, 2012.
- Filing fees - effective December 30, 2011.
- Administrative fees – effective December 30, 2011.
- Fees for the late payment of annual renewal fees - effective December 30, 2011.
- Failure to pay – enforcement action.

Ongoing Obligations- Parts V & VI

- Annual Information Update Form
 - Filed annually with annual renewal fees
 - Persons under Part V – Form 7, Schedule 2, SIA 2011
 - Registered Firms under Part VI – Form 10 Schedule 2, SIA, 2011
 - Failure to file Annual Information Update – enforcement action

Ongoing Obligations - Parts V & VI

- Financial Reporting
 - New financial reporting requirements become effective 1st financial year after the transition date.
 - Audited Financial Statements - Filing due date - within 120 days of fiscal year end.
 - Additional Information – statistical information and new form (Form 13, Schedule 2)
 - Interim reports - quarterly, due within 30 days of the end of each quarter.
 - Licensees are required to continue file audited financial statements and all other financial as per the SIA 1999 format for the duration of 2012.

Ongoing Obligations - Part V & VI

- Regulatory Capital Requirements:
 - New regulatory requirements are being developed and once the rule has been prescribed entities will be given some time to come into compliance.
 - Current regulatory capital requirements to be maintained by all registrants.
 - All registrants are reminded to calculate and submit their capital calculations along with the source documents to the Commission.
 - Treatment of capital for joint licensees remain same.

Registrants are encouraged to contact their MSO for the calculation methodology for the current ratio .

Ongoing Obligations - Part V & VI

- Professional Indemnity Insurance:
 - All registrants, except those granted an exemption are required to have indemnity insurance under the SIA 2011, effective December 30, 2012.
 - The minimum level of indemnity insurance will be recommended in the Regulatory Capital Rule. In the interim, the former requirement remains in place.



Persons Registered under Part VI (Registered Firms)

- Outsourcing Notification - **New Requirement**
 - Immediate application – December 30, 2011.
- Compliance Officer
 - New requirement for firms previously registered as securities investment advisors
 - Each Registered Firm to appoint a Compliance Officer
 - Register Compliance Officer with the Commission
 - One year transition period to comply with requirement – December 30, 2012.
- CEO
 - Immediate application – December 30, 2011

Books & Records

- All registrants are to maintain books and records.
- Currently required for most registrants, however, standards have changed.
- New standard to be met by December 30, 2011.
- 7 years retention policy retained
- For the first 2 years - records must be immediately available to Commission (on site)

Public Issuers

- Financial Reporting – new standards effective 1st financial period after the transition date.
 - Annual audited financial statements
 - Timeline for submission is 120 days after the end of the financial year.
 - Additional information required
 - Annual report – **New Requirement**
 - Contains information found in Form 17 of Schedule 2



Public Issuers – Financial Reporting Cont'd

- Management Discussion and Analysis - **New Requirement**
- Interim Reporting – **New Requirement**
 - Extended to all public issuers
 - Interim statements to be filed with securities holders

Public Issuers

- Insider Reporting Requirement
 - File Report with Commission
 - Form 22, Schedule 2
 - Effective ninety days after the effective date – 31st March, 2012

Public Issuers

- Proxy Filing - New Forms
 - Management proxy statement
 - Form 20, Schedule 2
 - Effective date December 30, 2012
 - Dissident proxy statement
 - Form 21, Schedule 2
 - Effective date December 30, 2012
 - In the interim, all current proxy requirements under the SIA, 2000 will remain in place.

Public Issuers

- Notification of Material Change -
 - Changed from SIA, 1999
 - Required Immediate notification to public
 - Notify Commission within 5 days
 - Use of Forms for submission of information
 - Effective immediately – December 30, 2011

Treatment of Jointly Supervised Entities

- The Commission and the Central Bank have worked judiciously over the recent years to limit the regulatory burden of jointly supervised institutions. This effort will continue into 2012.
- It is anticipated that a formalized position on a number of key issues related to the supervision of joint licensees will be shared with the industry in the near future, however current initiatives will be continued.
- As such there will be a continuation of the joint inspection process, continued mutual reliance on due diligence and financial reporting as well as capital computation.



Physical Presence

- Physical Presence Rule
 - Managing Securities
 - Advising on Securities
- Managing Representative function extended to Managing Securities
- Extended requirements under Books and Records
- Applicable for December 30, 2012 (Existing registrants)
- In the interim, registrants are expected to comply with the Statement of Practice on Physical Presence

Transitional Arrangements

1. Existing Registrants

2. New Registrants

Presenters: Sandra Duncombe

Denise Hinds-Jordan

Transitioning – Existing Applicants

- The Commission wishes to advise that applications under SIA 2011 with outstanding items as identified in the deficiency letters are considered incomplete and as such are unlikely to be processed or considered for approval before the end of the 2011 period.
- Applicants should note that the 2011 Act repeals the existing SIA 1999 and as such removes the framework for the processing of these applications.
- Open/incomplete applications that are carried into the 2012 period will be required to comply with the standards detailed in the SIA 2011.

Transitioning – Existing Applicants

- Open/incomplete applications that are carried into the 2012 period will be required to submit a new application form as per the SIA 2011 and the additional information not previously submitted. No new application fee will be charged but on approval applicants will be required to pay the new fees.
- No applications will be approved under the SIA 2011 until such time as the fees rule is effective.

Registration – New Applicants

- Application guidelines with the requirements as detailed under the new legislation will be shared with the industry. Key changes include:
 - New educational requirements, including the acceptance of experience in lieu of specific qualifications
 - Detailed standards to be used for assessing the adequacy of the structure and contents of business plans, references, affidavits and other documents
 - Additional categories of the registration for individuals
 - CEO
 - Compliance Officer
 - Registered Representatives
- Applicants should note that incomplete applications will not be considered for approval.

Registration - New Applicants

- Professional Indemnity Insurance (PII)
 - All categories of registrants (firms) unless exempted will be required to have PII.
 - The level of PII will be dependent on the nature of the business of the firm and the standards are being developed as part of the capital rule.
 - As a result of numerous comments from the industry, the Commission is currently evaluating if PII needs to be in place at application or if entities should be given some time within the first year of existence to get the appropriate level of PII in place.

Registration - New Applicants

- Initial capital
 - Until such time as the capital rule has been made effective, the current levels of initial capital in the SIA 1999 have been saved. These will be mapped to the SIA 2011 registration categories as per the mapping seen in Regulation 146.
 - New persons registered under this arrangement will be given some time to transition their capital levels to the minimums under the SIA 2011 capital rule, once that rule has been established.

Registration - New Applicants

- Other than the anomalies noted above, all fees and requirements under the SIA 2011 become immediately effective December 30, 2011.

Persons expecting to apply for registration in early 2012 are encouraged to seek independent professional advice on the SIA 2011 and contact the Authorizations Department as soon as possible for further information and guidance.



Next Phase of Consultation

Presenter: Denise Hinds-Jordan

Going Forward

- Guidelines - Q1 2012
 - Re-categorization process
 - Registration (SIA 2011)
 - Physical presence
 - Fees
 - Continuing Obligations
 - Outsourcing
- Status of proposed Regulatory capital rule
 - Issue for broader consultancy in February of 2012 but intend to have it reviewed by small focus group in January 2012
- Remaining Rules under development for Q1 2012
 - Takeover code
 - Corporate governance
 - Segregation of Assets
 - Liquidity
 - Large exposures
 - Disciplinary process

Thank You

Questions?