

SECURITIES COMMISSION OF THE BAHAMAS

3RD Floor, Charlotte House
Shirley & Charlotte Streets
P.O. Box N – 8347
Nassau, Bahamas

PRESS RELEASE

Contact: Mr. Hillary Deveaux, Executive Director
242- 356-6291/2

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“Public Consultation imperative to Evolutionary draft of Securities Industry Act and Regulations”

“The provisions of the draft Securities Industry Act and draft Securities Industry Regulations propose changes to the regulatory structure of the Bahamian capital markets that are evolutionary, complex, and innovative with far reaching implications for the Bahamian Securities and Capital market. Thus thorough review and consideration of the draft legislation before it is brought into force is imperative. To ensure that there is every opportunity afforded all that are interested in the securities and capital markets the Securities Commission of The Bahamas has developed a plan for its consultation period that it believes will encourage unprecedented interest in this legislation...” the Executive Director of the Securities Commission noted while highlighting the details of the Commission’s plan for consultation on the draft Securities Industry Act and draft Securities Industry Regulations and summarising some of the key elements of the proposed legislation.

On May 11th, 2009 the Securities Commission released for the first time the draft Securities Industry Regulations accompanied by the re-release of the draft Securities Industry Act, which had been released for public consultation in January, 2008. These documents were released via press release as well as by posting on the Commission’s website at www.scb.gov.bs. The legislation is issued for public consultation for a period of 45 days and will end on June 24th, 2009.

The Commission advises that its 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 immediately without having to note and recreate their comments in a separate document to be forwarded to the Commission under separate cover. In addition, the site allows persons entering to see ALL comments provided on the legislation and can be manipulated so that comments can be viewed section by section. The Securities Commission acknowledges that there may be some concern regarding the confidentiality of persons providing comments thus the site provides the option for comments to be logged anonymously.

Ancillary to the general consultation through the Commission’s website, the Securities Commission also plans a series of additional events that we believe will encourage participation in this process:

- The first of these additional events will be a series of articles on issues of interest arising from the legislation. This is the first of the articles planned to be released by the Commission;
- Secondly, the Securities Commission intends to host a number of meetings with various focus groups that have a particular interest in the legislation such as the Bahamas Institute of Chartered Accountants, the Association of International Banks and Trust Companies, Bahamas Financial Services Board, Bahamas Association of Securities Dealers, Bahamas Association of Compliance Officers and the Bahamas Bar Association. The purpose of these meetings is primarily to have discussions that are focused directly on those issues relevant to the particular group. It is believed that this process will yield benefits in two ways, first by bringing to the attention of the groups identified, the roles that they are specifically expected to play in the new regulatory regime and to open dialogue as regards any concerns they may have with those matters. It is the hope of the Securities Commission that any matters of concern identified can be resolved prior to the promulgation of the legislation.
- Third, the Securities Commission proposes to make regular appearances on the various talk shows on Radio and Television to ensure that persons are aware of the consultation and encouraged to participate. These appearances began with the initial appearance on The Platform on Friday May 29, 2009.
- Finally, we anticipate pulling the whole consultation process together by hosting a public forum on the legislation where the issues raised during this process can be addressed and a presentation of the legislation in its final draft form taking account of the comments raised during the consultation can be presented to the public.

In developing this consultation plan the Commission was concerned to ensure that there was some means by which the news of the consultation would reach all interested persons and encourage their participation.

The draft Securities Industry Act and its supporting legislation were prepared to be consistent with international best practices as provided by the 30 IOSCO Objectives and Principles of Securities Regulation as well as the 40 plus 8 Financial Action Task Force recommendations to combat money laundering and terrorist financing. The changes proposed are extensive and many of them affect the core of the regulatory regime of the securities and capital markets as it presently exists. The summary below of **'some'** of the key changes proposed establishes that this legislation is intended to be evolutionary:

- The first significant change is the inclusion of a 'purposes' section. Thus the scope of the legislation is defined and the new section provides guidance on interpreting the provisions of the legislation, particularly where matters of public interest are concerned.
- The independence of the Securities Commission from the Government is enhanced as the role of the Minister is restricted purely to matters of providing financial support to the Commission. Independence of the Regulator is a key principle in international standards. Additionally, the

Minister's ability to terminate Members of the Commission without cause has been repealed as has Minister's authority to issue directives to the Commission on any matter.

- The definition of securities business and the activities giving rise to the obligation to register under the Act have been fundamentally restructured. Registration under the new legislation will be based on what activities a proposed registrant intends to conduct i.e. a person will be registered to Deal in Securities, Arrange Deals in Securities, Manage Securities, and Advise on Securities. The present system requires that persons are registered as a 'broker dealer' or a 'securities investment advisor' leaving the interpretation of what category is correct to the Commission to determine. This has not always been easy. The change in the system therefore leaves little room for error as every type of business a registrant conducts must be specified by the license.
- The Commission's investigation, examination and enforcement powers have been enhanced to bring these up to international standards, including providing the Commission with search and seizure powers and broadening the Commission's ability to access information.
- The proposed provisions in the new legislation that enable the Commission to share information with other international securities regulators and agencies have also been expanded to ensure international compliance by ensuring the Commission's ability to sign onto the IOSCO Multilateral Memorandum of Understanding concerning Consultation and Cooperation and The Exchange of Information (the international Memorandum of Understanding between IOSCO Member Regulators that sets out the standards to be applied to requests for assistance). These changes in particular appear likely to be of some concern to other financial services participants as they have serious implications for the standard of confidentiality obligations to be applied in the jurisdiction.
- The criteria established to determine when an issuer of shares (a person who is offering shares for sale to the public) is required to file a prospectus with the Commission will be changed. The current Act provides that any publication of an invitation **'to the public to subscribe for or purchase securities'** triggers the need to file a prospectus. There are two concepts in the present provisions that are dated and cause some confusion. The requirement that an issue be registered when made to the 'public' and the language of 'subscribe for or purchase' securities. These areas are of particular concern because (i) it is notoriously difficult to determine in advance who is or is not a member of the public; and (ii) the term 'subscribe for or purchase' would catch 'secondary market' trades (trades on shares already issued to the public) when prospectus disclosure is usually only required for 'primary market' trades (trades conducted during the Initial Public Offering of a companies shares and in some selected other circumstances). Under the provisions in the draft legislation a prospectus would have to be filed with the Commission on all distributions by an issuer, not just a public one, unless an exemption for the nature of the trade or the nature of the securities is available.
- Provisions under the draft legislation for continuous disclosure obligations would be extended from applying to only listed companies to applying to all public issuers.

The Securities Commission acknowledges that the task before it is a daunting one and one for which it has established a rigorous program. We also acknowledge that the information is technical and the

legislation is lengthy. It is because of these factors in particular, that the Commission believes that the input of both the public and the industry is imperative to this process. We therefore implore everybody with a direct or an indirect interest in the development of the securities and capital markets in The Bahamas to, in the words of the Dr. OFFFF “Get Involve” and give us your insight. We are firmly of the view that the ultimate level of success of this project will largely depend on the input provided by the industry and the public generally.

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By fax to : (242) 356-6291/2
By email to : info@scb.gov.bs
Website: www.scb.gov.bs