

**Securities Commission of The Bahamas**

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## **PRESS RELEASE**

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### **SCB ADDRESSES FEEDBACK ON CONSULTATION PAPERS**

Securities industry participants were updated on the work of the Securities Commission of The Bahamas (SCB) to enhance the industry’s legislative framework and develop related rules and guidelines since the implementation of new securities legislation on 30 December last year.

The SCB held the Industry Briefing on the Securities Industry Act, 2011 (SIA, 2011) at the Sheraton Nassau Beach Resort & Casino on Wednesday, 14 November 2012. The Regulator for the Securities and Capital Markets, the Investment Funds Industry and Financial and Corporate Service Providers addressed the group of around 130 individuals, representing some 90 registered firms, industry groups, members of the public, and other stakeholders.

In his opening remarks, Minister of Financial Services the Hon. L. Ryan Pinder stressed the importance of feedback from the industry to the regulator. Referencing the adage ‘You can’t regulate the business out of business’, Pinder said that the input of industry participants was critical to assist the Commission in achieving its goals of holistic and balanced regulation conducive to development of the industry.

SCB Executive Director Dave Shannon Smith said the Commission seeks to effectively oversee and regulate the activities of the securities and capital markets to protect investors while strengthening the public and institutional confidence in the integrity of those markets.

“It is hoped that this briefing will assist us in achieving a more efficient and effective regulatory structure as it relates to the securities industry,” Smith said in his welcome to participants.

The SCB presented feedback received from the industry on the nine Consultation Papers it has issued over the last six months. Consultation Papers and the feedback received on them are used when the SCB prepares Legislation, Rules and Guidelines for the sectors it regulates.

The Consultation Papers garnering most comments from the audience were: Corporate Governance for Regulated Entities, Licensing of Compliance Officers, and Regulatory Capital Framework.

The underlying principles of corporate governance espoused in the Corporate Governance Paper are internationally accepted and, in some aspects, similar to those of the Central Bank of The Bahamas (CBoB). However, SCB Consultant Denise Hinds-Jordan noted that issues, such as those related to the

treatment of shareholders and disclosures for public issuers, would not have been considered in the corresponding CBoB Paper, though they are pertinent for public companies. As such, no specific exemption was identified but registrants should adopt the stricter of any required corporate governance standards in situations where the entity is governed by multiple regulators.

Feedback on the Governance Guideline Paper pointed to industry concern about its applicability for small companies. James E. Burrows, Vice President and Director of Vauban Asset Management Ltd., commented on the subject in an interview after the Briefing.

“Take, for instance, the composition of the board.” said Burrows. “It’s been suggested or recommended that there be at least three members of the board instead of two, and one must be completely independent. That’s new for us. Also with the [requirements for] compliance officers, as you can see that’s an ongoing challenge for small Securities Investment Advisors (SIAs) like us because now we have to either go and employ a full-time compliance officer, or find a way to outsource the function.”

During the Briefing, Hinds-Jordan said that good governance strengthens any company, particularly a small company where roles are often merged. She added that registrants should remember to focus on the liability and risks associated with weak governance.

The licensing of Compliance Officers Paper was the subject of significant feedback from the industry, as echoed in Burrows’ comment. Whereas under the former act, compliance officers did not have to be registered, Regulation 40 of the Securities Industry Regulations, 2012 (SIR, 2012) introduced the requirement for their registration with the Commission. Registrant firms have until 30 December 2012 to register their compliance officers.

Hinds-Jordan said that the SCB envisions specific circumstances under which the Compliance Officer function could be outsourced. She cited as examples this outsourcing possibility arising within a group of companies, and where a registrant was looking to outsource to a firm specializing in providing a Compliance service. She reminded registrants that while the function may be outsourced, the risk remained with the registrant.

For small firms to meet the legislative requirement to have a Compliance Officer and to meet the standards set forth in the proposed Licensing of Compliance Officers Paper, Hinds-Jordan said a number of options are available, with the key considerations being that the person performing the function is qualified, has the requisite seniority and is not part of the ‘functional’ side of the business.

Executive Director Smith stressed the importance of not only the required independence of the Compliance Officer, but also the reliance placed on them by regulators. He noted that while the function was new with the promulgation of new legislation, since 2000 the role should be viewed in a similar light as that for Internal Auditors, Certified Public Accounts and Certified Financial Analysts. He noted that due to the regulatory expectation, individual risk translates to the need to ensure competent, qualified Compliance officials are licensed by the Commission.

Fitting regulation to the size of the business was a recurring theme in questions and comments from the audience. Also attending the Briefing was Senator Jerome Gomez, who shared his concerns with ensuring that Regulation was appropriate to the size of businesses and did not preclude greater Bahamian participation in the securities industry.

“I found the Briefing today very productive,” Gomez said in an interview following the event. “I think the Securities Commission is doing a tremendous job to inform its registrants of what’s happening.

“Now, of course, there are going to be instances where people may feel the Commission has been moving too fast, given where we are in financial services and given the changing environment. So I’m hoping that this kind of consultation will continue, and the Commission will be mindful that different sizes of firms need different requirements, so we don’t cause smaller firms to go out of business and Bahamians to own less and less of the Financial Services Industry.”

Regarding the Regulatory Capital Framework Paper, Hinds-Jordan said that following feedback on the proposed position, the SCB is planning to provide training in the first quarter of 2013, specifically for technicians who would be involved in its calculation.

The level of initial capital required for firms licensed to manage and advise on securities was considered too high, according to a number of responses on the Regulatory Capital Framework Paper. Hinds-Jordan said these comments were being ‘taken on board’ in line with comparable requirements in benchmarked jurisdictions and risk considerations.

Acting Manager of the SCB’s Market Surveillance Department, Narissa Gaitor, told participants that registrants should continue to calculate regulatory capital using the SIA, 1999 methodology until such time as the revised capital rule is promulgated. Entities should use Form 13 for this, which is available on the SCB’s website ([www.scb.gov.bs](http://www.scb.gov.bs)). She noted that the form is very similar to the previously used Form H, which registrant firms would be familiar with.

Gaitor added that in the interim, all firms should be preparing to move to the new regulatory capital framework and as such evaluate their capital according to the standard it proposes, to facilitate the move to the new rule once it has been brought into force.

Some requirements or provisions of the SIA, 2011 took immediate effect with its promulgation on 30 December 2011, and others would take effect either six months or a calendar year after the promulgation of the Act. Gaitor told participants of certain requirements that will take effect on 30 December 2012, including the revised annual renewal fees, and the requirement to file interim reports on a quarterly, rather than a monthly basis by the 30<sup>th</sup> day after the end of each quarter. She also highlighted some of the key continuing obligations SIA registrants are subject to.

SCB Legal Counsel Mechelle Martinborough summarized the key changes sought through the new legislation. Moving through the 16 Parts of the Act, she highlighted some of the new provisions included in each.

One of the ultimate objectives of the new Act was to bring the regulatory regime for the Securities Industry into compliance with the International Organisation of Securities Commissions' (IOSCO's) 38 Objectives and Principles of Securities Regulation. IOSCO is the international standard-setter for securities regulation. It is believed that the Act accomplished this, according to Martinborough.

Compliance with IOSCO's 38 Principles sets the stage for achieving 'A' signatory status to IOSCO's Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information (MMoU). It is thought that this status will open markets such as Brazil to mutual fund managers and administrators operating in or from The Bahamas. Martinborough updated participants on the status of the IOSCO 'A' signatory application, saying that the Commission was currently answering follow-up questions from the Organization, which is a standard part of the approval process.

Martinborough summarized that Part IV of the act expands the SCB's investigation authority, empowering it to investigate 'any person', whereas under the SIA, 1999, the SCB was only empowered to investigate its registrants. She said the investigation authority also now includes search and seizure powers. Part IV of the Act also grants the Commission express powers to conduct both routine inspections and inspections 'for-cause', and authorises the Commission to require an auditor to carry out an inspection.

The enforcement powers of the Commission were 'truly enhanced' in Part XV of the new Act, Martinborough said. She noted that they allow the SCB to act 'more immediately and more forcefully' when necessary.

One of the accomplishments of the new Act was that it provided for a reorganization of the licensing regime for industry participants, moving from a 'title' based registration structure to licensing registrants to perform specific functions. Therefore, whereas under the 1999 Act, a person might have been licensed as a Securities Investment Advisor, that person would likely register to perform the functions of 'managing securities' and 'advising on securities' under the SIA, 2011.

Sherinn Munnings, Senior Officer in the SCB's Authorizations Department, said that during the months of November and December the SCB would be advising registrants of its determinations regarding any requested changes to the default categories the Regulations provided for them to be mapped to, and issuing new licenses.

A mapping regime for firms and individuals was established under sections 146 and 151 of the Securities Industry Regulations, 2012 (SIR, 2012), respectively. The Regulations define the default activities firms or persons registered under the SIA, 1999, would be registered to perform under the new Act. Applicants who wished to change the default activities they would be registered to perform according to the new Regulations had until July 30<sup>th</sup> to file the appropriate form, "Annex I", with the SCB.

The SCB also presented its envisioned service delivery standards for the processing of SIA applications. Munnings said the SCB anticipates a three business day target for acknowledgement of receipt of an application, a 10 business day target for approval of applications that arrive with all requirements having

been satisfied, and a 40 business day target to communicate a decision on all other applications received.

Munnings said that applications may receive an absolute approval, but may also be granted an approval allowing the applicant to operate 'on condition' that certain specified criteria are met within an indicated timeframe. She added that applications may also be approved but the applicant not allowed to operate until certain specified conditions are met.

Munnings added that an appeal process is available to applicants whom the SCB declines, pursuant to subsection 58 (6) of the SIA, 2011.

The SCB noted several upcoming events anticipated for the first quarter of 2013, including the mentioned training on the Regulatory Capital Framework, a focus group meeting on the Bahamas Takeover Codes, and Anti-Money Laundering/Countering Terrorist Financing training for Financial and Corporate Service Providers.

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**The Securities Commission of The Bahamas ("the Commission") is a statutory body established in 1995 pursuant to the Securities Board Act, 1995. That Act has since been repealed and replaced by new legislation. The Commission's mandate is now defined in the Securities Industry Act, 2011 (SIA, 2011). The Commission is responsible for the administration of the SIA, 2011 and the Investment Funds Act, 2003 (the IFA), which provides for the supervision and regulation of the activities of the investment funds, securities and capital markets. The Commission, having been appointed Inspector of Financial and Corporate Services effective 1 January 2008, is also responsible for administering the Financial and Corporate Service Providers Act, 2000.**

**The Commission's is mandated to: advise the Minister on all matters relating to the capital markets and its participants; maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities; foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets; protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices; promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing; create and promote conditions that facilitate the orderly development of the capital markets; and perform any other function conferred or imposed on it by securities laws or Parliament.**