

SECURITIES COMMISSION OF THE BAHAMAS
SUPERVISORY AND REGULATORY GUIDELINES

GUIDELINES FOR FAST TRACK APPLICATION PROCESS FOR LICENSING
UNDER THE INVESTMENT FUNDS ACT, 2003 {Incorporating amendments of
March, 24, 2009}

1. INTRODUCTION

1.1 Pursuant to Section 3 of the Investment Funds Act, 2003 (“the Act”) an investment fund shall not carry on or attempt to carry on business unless it has been duly licensed pursuant to the provisions of the Act.

1.2 The Securities Commission of The Bahamas (“the Commission”) is required by its mandate to formulate principles to regulate and govern the investment funds, securities and capital markets and to create and establish conditions to ensure the orderly growth and development of these markets.

1.3 The Commission therefore seeks to enhance the efficiency and timeliness of processing applications submitted for its consideration, and to ensure that the procedure adopted is fair, transparent and complies with the provisions of the Act. Various jurisdictions afford different treatment in their licensing process for different types of funds. This distinction in the licensing process within a jurisdiction is generally based on the characteristics of the investors being targeted by the fund. In the circumstances, the Commission has approved a ‘fast track’ licensing process for professional funds and all SMART Funds that are offered to professional investors. The overall rationale is that the funds are targeting “accredited” investors who are expected to be knowledgeable of the industry and capable of conducting their own due diligence, therefore the level of scrutiny required by the regulator is less stringent. The present guidelines are issued in support of this process pursuant to the Commission’s authority in Section 47(1) of the Act.

1.4 Applicants are advised that these guidelines are prepared for general guidance and do not have force of law. Further, these guidelines should not be relied upon in respect of points of law. It should be noted however, that these guidelines may be considered by a Court of Law in determining any matter to which they may have relevance.

INVESTMENT FUNDS APPLYING FOR LICENSING PURSUANT TO THE FAST TRACK PROCESS ARE REQUIRED TO COMPLY WITH ALL PROVISIONS OF THE ACT AND REGULATIONS AND ANY RULES AND GUIDELINES ISSUED BY THE COMMISSION.

2. PURPOSE

2.1 These guidelines are intended to provide applicants for licensing under the Act to which the fast track process applies, with direction as to the requirements for such applications and the procedures applicable to the processing thereof.

2.2 In particular, the following matters are addressed hereunder:

- (i) Requirements for application;
- (ii) Form and content of applications and supporting documents to be submitted in respect of such an application; and
- (iii) Due diligence requirements for applicants;
- (iv) Procedure followed by the Commission in processing such applications.

3. APPLICABILITY

The fast track procedure applies to investment fund applications for licensing as:

- (i) Professional funds; and
- (ii) SMART Fund Models¹

NOTE: THIS PROCEDURE DOES NOT APPLY TO SELF-ADMINISTERED FUNDS.

4. APPLICABLE LAW

- (i) The Investment Funds Act, 2003;
- (ii) The Investment Funds Regulations, 2003 (“the Regulations”);
- (iii) The Investment Funds (SMART Fund) Rules, 2003 (“the SMART Fund Rules, 2003”);
- (iv) The Investment Funds (SMART Fund) Rules, 2005 (“the SMART Fund Rules, 2005”);
- (v) The Investment Funds (SMART Fund) Rules, 2009 (“the SMART Fund Rules, 2009”).

5. REQUIREMENTS FOR APPLICATION

5.1 The applicant must be a fund that is provided for in paragraph 3.

5.2 The applicant must submit a **complete** application which includes the following:

- (i) **Application Form** – a copy of the required form can be found on the Commission’s website: (www.scb.gov.bs).
- (a) An applicant shall submit an application form which sets out the information provided in Form A of Schedule 3.

¹ SMART Fund Models SFM001 which are offered to retail investors are not eligible for consideration.

- (b) Every section on the application form must be completed. Where information is requested in the application that is not relevant to a particular, the same should be indicated by placing an 'NA' in the appropriate place.
 - (c) With respect to the requirement for information to be provided on the distribution of the fund and the place of distribution, please note that this requirement may be fulfilled in general terms by indicating in which jurisdictions it is intended to be distributed if the fund will be distributed by more than one distributor.
 - (d) information on the fee structure ought to indicate the type and level of fees payable by the investor and the investment fund.
 - (e) The application form must be signed by persons authorized to act on behalf of the fund. Generally accepted signatures include –
 - i. an operator of the fund,
 - ii. an authorized signatory of the fund's administrator; or
 - iii. the fund's attorney.
- (ii) **Offering document –**
- (a) An application for licensing of a professional fund must be accompanied by a copy of the offering document of the fund containing information as required by Schedule 1 of the Investment Funds Regulations, 2003. An application for licensing of a SMART Fund to which the fast track procedure applies must be accompanied by a copy of the offering document of the fund containing information as set out in either Rule 3, 4, 5 or 6 of the SMART Fund Rules, 2003, Rule 3 of the SMART Fund Rules, 2005 or Rule 3 of the SMART Fund Rules, 2009.
 - (b) The Commission will accept a draft of the proposed offering document of the fund. The fund is expected to submit the final version of the offering document as soon as possible and in any event, prior to the issue of the offering document to investors.
 - (c) Any statements or warnings required to be disclosed in the offering document are not required to be made verbatim provided that the statements made express substantively the required information.
 - (d) Where an offering document does not contain any of the information required by schedule 1 of the Regulations or Rules 3, 4, 5 and 6 of the SMART Fund Rules, 2003, Rule 3 of the SMART Fund Rules, 2005, or Rule 3 of the SMART Fund Rules, 2009, as applicable, the fund will be required to amend its offering document accordingly.
- (iii) **Constitutive Documents-**
- (a) An application for licensing of a fund must be accompanied by a copy of the constitutive documents of the fund containing information as required by Schedule 2 of the Investment Funds Regulations, 2003.

- (b) The Commission will accept a draft of the constitutive documents of the fund. The fund is expected to submit a certified copy of the constitutive documents of the fund as soon as possible and in any event, prior to the launch of the fund.
- (c) The Offering Document of the Fund is not considered a constitutive document and thus, items required by Schedule 2 of the Regulations which are addressed in the offering document only will **not** satisfy the Schedule 2 requirement.
- (iv) **Due diligence information-**
 - (a) Due diligence information is to be provided for the operators of the fund, investment fund manager, investment fund advisor, promoter, custodian, banker, attorney and auditor. (see Appendix 1)
- (v) **Audited Financial Statements-**
 - (a) The most recent audited financial statements of the fund, if applicable.
- (vi) **Certification-**
 - (a) A written certification by the fund's attorney or administrator that the documents submitted are complete and comply with the Act, the Regulations and/or the SMART Fund Rules (2003, 2005, or 2009), and that the information submitted is true and correct.
- (vi) **Application Fee-**
 - (a) The relevant non-refundable application fee must accompany the application.

6. APPLICATION PROCESS

6.1 Once a complete application for an investment fund licence to which the fast track procedure applies, accompanied by the certification signed by the attorney or administrator of the fund has been submitted, the application will be determined within seventy-two (72) hours of receipt.

6.2 For the purposes of this process, "Complete Application" means an application form which has been fully and properly filled out and for which the Commission has in its possession all information, documents and due diligence required for the proper consideration of the application.

6.3 After the fund has been licensed, the Commission shall review the documents submitted in support of the application

6.4 A review of the offering and constitutive documents of the fund will be conducted to verify compliance with applicable law. Should any deficiencies be identified therein, the administrator of the fund will be notified and required to make the necessary amendments. Failure to comply with the Commission's directives may result in disciplinary action being taken against the administrator and/or the fund.

6.5 Where the Commission thinks it is necessary to do so it shall seek to verify the due diligence information submitted on the related parties to the fund in order to ensure that it is complete and satisfies the Commission to the standard required by Section 15 of the Act. In this regard, the Commission shall consider that due diligence information is complete if it complies with the provisions of the Financial Transaction Reporting Act, 2000 and any guidelines for the investment funds industry published by the Commission. Disciplinary action may be taken against the fund and/or the administrator in the event that the Commission is made aware of any information bringing into question the fitness of a party related to the fund.

7. COMMISSION NOTES

7.1 In cases where an attorney or administrator continuously submits certifications in support of applications which do not comply with the Act, the Commission may refuse to accept further certifications submitted by the relevant party.

7.2 In any case, where the Commission is of the opinion that an application is not appropriate for the fast tracking application process the Commission may refuse to 'fast track' the application and require the applicant to submit to the regular licensing process applicable to other categories of funds.

7.3 Incomplete applications **will not** be processed. Upon receipt of such applications, the Commission shall notify the applicant that the application is considered incomplete and that, should the application not be made whole within twenty-one (21) days, it will be stale-dated. A new application and application fee will be required in the event that an application has been stale-dated.

APPENDIX I

REQUIRED DUE DILIGENCE INFORMATION

Due diligence information for a fund must be submitted for operators of the fund, investment fund manager, investment fund advisor, promoter, custodian, banker, broker, attorney and auditor.

In determining whether a party related to the fund is fit and proper the Commission shall review the information submitted with a view to ensuring, among other things, that the party is of good general reputation, has not been convicted of any criminal offence deemed relevant to the conduct of business in the financial services industry, has not been found liable in any civil matter for conduct deemed undesirable in the conduct of business within the financial services industry, has not been found guilty of any regulatory breaches by another overseas regulatory authority and has sufficient experience and expertise.

All funds to which the fast track procedure applies **must** appoint an Investment Fund Administrator that is licensed as such by the Commission. This is a pre-condition to licensing. **The Commission therefore, does not require any due diligence information on the fund's administrator.**

1.1 Operators of the Investment Fund

1.1.1 Directors

Where the fund is structured as a company, the following information is required in respect of each Director of the Fund. Pursuant to Regulation 8 of the Investment Funds Regulations, 2003, an investment fund is required to have a minimum of two (2) directors.

Where the Director is an individual

- Full name of the person;
- Copy of the relevant pages of passport, driver's license, voter's card, national identity card or such other identification document bearing a photographic likeness of the person as is reasonably capable of establishing the identity of the person;
- Permanent address;
- Telephone, fax number and email address (if any);
- Date and place of birth;
- **Current** curriculum vitae;
- Police Certificate – Where the individual director has been resident in the Bahamas for 10 years or more a Bahamian police certificate will suffice. In circumstances where the individual has resided in The Bahamas for a period of less than 10 years, a police certificate or its equivalent is required from the individual's country or countries of residence for the 10 years preceding the submission of the application;
- Two character references to be provided by an independent person not in any way related to the application being submitted for consideration;

- One financial reference from any recognized financial institution with whom the individual has a relationship;
- First Directors Resolution: and
- Evidence of licensing or registration with any other regulatory agency.

Where the Director is a Company

This is not required on behalf of:

- (i) a financial institution regulated in a prescribed jurisdiction;
- (ii) a company listed on an exchange in a prescribed jurisdiction;

provided current documentary evidence of such regulation or listing is submitted.

- Certified copy of Certificate of Incorporation (or equivalent);
- Certified copy of Memorandum and Articles of Association (or equivalent). Where the country of incorporation does not issue either Certificates of Incorporation or Memorandum or Articles of Association, legally established documents of incorporation will suffice;
- Addresses of Registered office and registered agent;
- Names and addresses of all officers and substantial shareholders;
- A copy of the relevant pages of passport, driver's license, voters card, national identity card or such other identification document bearing a photographic likeness of the person as is reasonably capable of establishing the identity of each officer and substantial shareholder; and
- The individual directors of a corporate director must comply with the provisions of individual directors as noted above.

1.1.2 Trustees

Where the fund is structured as a Trust, the following due diligence information is required in respect of each trustee of the fund:

Where the Trustee is a Licensed Bank or Trust Company in the Bahamas or in a prescribed jurisdiction

- Name and address of the Trustee;
- Evidence of licensing and good standing issued by the relevant authority must be current i.e. no more than thirty (30) days old.; and
- Where the Trustee is a Bank or Trust Company licensed in a prescribed jurisdiction, evidence that the Trustee complies with the capital requirements of Regulation 7(1) (b) of the Investment Fund Regulations, 2003 must be provided. Submission of the Trustee's latest audited financial statement is sufficient for this purpose.

Where the Trustee is a Financial Institution other than a Bank & Trust Company

- Name and address of the Trustee;
- Summary of the Trustee's business and operations;

- Evidence of licensing and good standing issued by the relevant authority must be current i.e. no more than thirty (30) days old.; and
- Evidence to establish that the Financial Institution complies with the capital requirements of regulation 7(1) (b). Submission of the Trustee's latest audited financial statement is sufficient for this purpose.

Where the Trustee of the fund is a Partnership

- Name and address of Registered Office of Trustee;
- Location of the principal place of business;
- Verification of all beneficial owners as per the requirements re directors who are individuals or Companies (as applicable);
- Certified copy of partnership agreement; and
- Description of the business conducted by the Partnership.

1.1.3 General Partner(s)

Where the fund is structured as a Partnership, the following due diligence information is required in respect of each general partner of the fund:

- Name and address of Registered Office of the General Partner(s);
- Location of the principal place of business;
- Verification of all beneficial owners as per the requirements re directors who are individuals or Companies (as applicable);
- Certified copy of partnership agreement; and
- Description of the business conducted by the Partnership.

1.2 Investment Fund Manager/Advisor

Where the Investment Fund Manager/Advisor are not the same person, each party is required to meet the necessary due diligence standards.

- The documents required in respect of the Investment Manager/Advisor of the fund should establish that the Investment Fund Manager/Advisor is appropriately qualified for the performance of its functions.
- The Commission will consider both educational qualifications as well as past experience of the Manager or Advisor.
- In the case of a professional fund the qualification of the Investment Fund Manager or Advisor need not be related to the management or advisement of investment funds.
- Evidence supporting the Investment Fund Manager's/Advisor's licensing or regulation with a regulatory body.
- Where the Investment Fund Manager/Advisor is not a regulated entity, the applicant is to submit all the information and supporting documents required of a director who is an individual or company as applicable.

The Commission reserves the right to require the removal of an Investment Fund Manager/Advisor if due diligence information suggests to the Commission that the Manager/Advisor is not suitable.

1.3 Promoter

The following information must be provided on behalf of the Promoter(s):

- Name
- Business Address
- Phone number, fax number and email address (if any)
- Registered Office (if applicable)
- Evidence supporting the Promoter's licensing or regulation with a regulatory body (if applicable).
 - Where the Promoter of the applicant is not a regulated entity, the applicant is to submit all the information and supporting documents required of a director who is an individual or company as applicable.

The Commission reserves the right to require the removal of the Promoter if due diligence information suggests to the Commission that the Manager/Advisor is not suitable.

1.4 Custodian

The custodian of an investment fund shall satisfy the requirements set out in Section 11 of the Investment Funds Regulations, 2003.

The following information must be provided on behalf of the Custodian:

- Name
- Business Address
- Phone number, fax number and email address (if any)
- Evidence supporting the Custodian's licensing or regulation with a regulatory body.

(It might be useful to provide the Commission with the website of the **licensor/regulator** of the custodian).

1.5 Banker

The banker of an investment fund shall be licensed and in good standing with the relevant authorities. This information is not required if the banking function is performed by the Custodian.

- Name of the bank
- Address
- Evidence supporting the bank's licensing or regulation with a regulatory body.

Should the Commission discover that the bank is not in good standing with its regulatory body or is otherwise unsuitable, the Commission will require the fund to appoint another bank which is acceptable to the Commission.

(It might be useful to provide the Commission with the website of the **licensor/regulator** of the bank).

1.6 Broker

The broker of an investment fund shall be licensed and in good standing with the relevant authorities.

- Name of Broker
- Address
- Evidence supporting the broker's licensing or regulation with a regulatory body.

(It might be useful to provide the Commission with the website of the **licensor/regulator** of the broker).

1.7 Attorney

An attorney should be a member in good standing with the relevant authority.

The following information is to be provided on behalf of the fund's attorney:

- Name
- Business address
- Details of registration with a Bar or other Association.

1.8 Auditor

An auditor must be a professionally qualified accountant or an accountant licensed to practice as such under the Public Accountants Act of The Bahamas. The Bahamas Institute of Chartered Accountants publishes a list of persons qualified and licensed to act as auditors.

Auditors from outside the Bahamas are required to provide evidence of their qualifications and good standing with a licensing/regulatory body similar to The Bahamas Institute of Chartered Accountants.

The following information is to be provided on behalf of the fund's auditor:

- Name
- Business address
- Details of registration with an accounting body with which registration exists.