



BICA ACCOUNTANT'S WEEK

SECURITIES COMMISSION OF THE BAHAMAS'
REGULATORY UPDATE

Presented by:

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Meliá Nassau Beach

Nassau, The Bahamas

COMPLYING WITH THE NEW LAWS

- **Overview of the Commission**
- **Legislative/Regulatory Updates**
 - Securities Industry Act, 2011
 - Investment Funds Act, 2019
 - Financial and Corporate Services Providers Act, 2000
- **Expectations Under International Obligations (Economic and Ancillary Measures) Act**
- **Supervisory Updates**
 - Risk-Based Supervision
 - Special Initiative

- **SCB is responsible for the administration of:**
 - Securities Industry Act, 2003
 - Investment Funds Act, 2019
 - Financial and Corporate Service Providers Act, 2000
 - Financial Transaction Reporting Act, 2018

As at 31 December 2018:



155
Securities
Firms



2 Marketplaces/
Clearing
Facilities



63 Investment
Fund
Administrators



780
Investment
Funds



353 Financial &
Corporate
Service
Providers

Securities Industry (Amendment) Act, 2019

- Published 30 April 2019
- Amendments to:
 - clarify Commission's administrative structure and investigative powers
 - clarify Commission's role re FTRA, 2018
 - enhance protection of minority investors
 - Enhance transparency on EMMoU authorities

Securities Industry Rules Introduced in 2019

- **(Compliance Officer) Rules (4 February 2019)**
 - CO must be physically present in The Bahamas
 - Must report to the firm's board directly annually
 - Must be able to exercise sound judgements
 - Must be allowed to act independently
 - Provides protections against undermining CO's independence
 - Responsibility remains with registered firm

Securities Industry Rules Introduced in 2019

- **(Corporate Governance) Rules (18 March 2019)**
 - Public Issuers must implement CG principles in line with OECD guidelines
 - Minority shareholder rights are to be protected
 - Board composition, appointment and qualifications addressed
 - Board remuneration and training addressed
 - Requires public issuers implement risk management and internal control protocols

Securities Industry Rules Introduced in 2019

- **(Take-Over) Rules (17 April 2019)**
 - Applies to public companies falling within the SIA legislative framework
 - Aim to ensure protection of minority shareholders in take-overs

- **Improvement in World Bank's Ease of Doing Business 2020 Report**
 - Protection of Minority Shareholders Category:
 - 44-point improvement in category
 - Rank jump from 132nd to 88th in category

Securities Industry Rules Introduced in 2019

- **(Anti-Money Laundering and Countering the Financing of Terrorism) Rules (25 February 2019)**
 - Compliance with:
 - Financial Transactions Reporting Act, 2018 (FTRA)
 - Proceeds of Crime Act, 2018 (POCA)
 - Anti-Terrorism Act, 2018 (ATA)
 - Best practices in AML/CFT

- **Draft Securities Industry (Contract for Differences) Rules, 2019**
 - Public Consultation Period 27 March to 27 May 2019
 - Establish education and experience requirements
 - Establish prudential requirements
 - Aims to ensure transparency
 - Other investor protection measures:
 - Minimum margin requirements
 - Negative balance protections
 - Restrict marketing to retail clients

○ **Draft Digital Assets and Registered Exchanges Bill, 2019:**

Objectives:

- Provide regulatory validation to digital asset business in The Bahamas and clarity to participants in the crypto space
- Ensure compliance with AML/CFT standards
- Applicable to persons participating in the formation, promotion, maintenance, organization, sale or redemption of an initial token offering (ITO).
- Initial Public Consultation Period: 3 April to 28 May 2019
- Will be re-issued for public consultation (Dates TBD)

Investment Funds Act, 2019 (IFA)

- Effective 1 September 2019
 - Overhauls licensing regime for investment funds and administrators
 - Establishes regulatory framework for fund managers and custodians
 - Correctly apportions administrative and fiduciary duties amongst parties related to an investment fund
 - Establishes Alternative Investment Fund Managers Directive (AIFMD) compliant regulatory regime

IFA, 2019: Investment Fund Managers

- Fiduciary duties and obligations include:
 - Duty to act honestly, fairly and with due skill, care and diligence
 - Duty to act in best interests of each investment fund, investors and integrity of the market
 - Duty to take reasonable steps to avoid conflicts of interest
 - Obligation to be appropriately resourced for proper performance of business activities

IFA, 2019: Custodians and Operators

- Custodian obligations include:
 - Ensuring the sale, issue, repurchase, redemption and calculation of equity interests are carried out
 - Ensuring that the value of equity interests is calculated
 - Ensuring that the investment manager's instructions are carried out and
 - Ensuring that transactions involving sale of fund assets are remitted to investment fund without delay
- Operators
 - An operator must be appointed to each fund
 - Duty to ensure compliance with the Act and fund's constitutive documents

IFA, 2019: AIFMD COMPLIANT

- AIFMD Compliance pursued in order to:
 - Allow for The Bahamas to qualify for European Union (EU) Passporting
 - Allow Bahamian funds and managers access to the EU
- Framework grants a distinct license to managers operating in the EU or managing funds from the EU
- Persons must apply for investment manager license to:
 - Market an investment fund or an EU Alternative Investment Fund (AIF) in the EU or
 - Manage an EU AIF, irrespective of where the EU AIF is marketed

Draft Investment Funds Regulations

- Draft Investment Funds Regulations
 - Initial Public Consultation 13 April to 15 June 2018
 - Amendments arising from Consultation
 - Second round of Consultation ends 20 December 2019



Financial and Corporate Service Providers (Anti-Money Laundering/Countering the Financing of Terrorism) Rules, 2019

- Published 25 February 2019
- Compliance with:
 - Financial Transactions Reporting Act, 2018 (FTRA)
 - Proceeds of Crime Act, 2018 (POCA)
 - Anti-Terrorism Act, 2018 (ATA)
 - Best practices in AML/CFT

Financial and Corporate Service Providers Bill, 2019

- Enhances the regulatory and oversight authority of the Inspector of Financial and Corporate Services
- Establishes appropriate conduct standards of FCSPs
- Establishes clear and distinct categories of financial and services providers activity, including:
 - Money lending
 - Money broking
 - Payday and cash advances
 - Credit extension
 - Debt collection
 - Financial leasing
 - Financial intermediation services
 - Financial advisory or consultancy services
 - Trading in commodities and other financial instruments
 - Custody of digital assets
 - Provision of digital wallet services

International Obligations (Economic and Ancillary Measures) Act (IO(EAM)A)

- Notices issued re Afghanistan, Iraq, Iran and the Democratic Republic of North Korea
- Registrants and licensees are to:
 - Review their databases and records (including transaction records)
 - Notify the Commission and the Financial Intelligence Unit of any findings, or submit a NIL report to the Commission
 - Review all transactions, records and databases against any Orders issued under the IO(EAM)A and the United Nations Security Council Sanctions List on a quarterly basis <https://www.un.org/securitycouncil/>
 - File an annual declaration, certifying compliance with the Orders, signed by at least two board directors or one director and the compliance officer registered with the Commission

Risk-Based Supervision

Transition
commenced
late 2017

Risk
Assessment
Questionnaire
Disseminated
March 2018

Registrants
& Licensees
Risk Rated

Data
Gathering
Automated
Platform
Rolled-out
September
2019

Platform to
Interface
with
Internal
Tool

THANK YOU!



QUESTIONS & ANSWERS



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