

**THE COMMONWEALTH OF THE BAHAMAS**  
**THE SECURITIES COMMISSION OF THE BAHAMAS**

**IN THE MATTER** of the Administration of the Securities Industry Act, 2011 and  
the Securities Industry Regulations, 2012

**BETWEEN**

**THE SECURITIES COMMISSION OF THE BAHAMAS**

**AND**

**ATLANTIS ARBITRAGE FUND LTD.**

**SETTLEMENT AGREEMENT**

**1. RECITALS**

**WHEREAS**, Atlantis Arbitrage Fund Ltd. ("Atlantis" or "the Fund") has on the 1<sup>st</sup> day of November 2019, pursuant to section 133(1) of the Securities Industry Act, 2011 (hereafter, "the Act"), agreed to settlement of the breach outlined herein at paragraph 2(10) and enter into this Settlement Agreement (hereafter "Settlement") with the Securities Commission of The Bahamas (hereafter "the Commission");

**AND WHEREAS** the Commission has approved this Settlement, having particular regard to the terms in Clause 3 below;

**2. FACTS AGREED**

Solely for securities regulatory purposes and as the basis for this Settlement concerning the Commission's disciplinary action against Atlantis the facts and conclusions set out herein are agreed as follows —

- (1) At all material times (from 2017 to 2018), Atlantis was conducting securities business without being duly licensed by the Commission pursuant to sections 3 and 5 of the then-applicable Investment Funds Act, 2003 ("IFA 2003"), which has since been replaced by the Investment Funds Act, 2019 ("IFA 2019").

**Settlement Agreement – Re: Atlantis Arbitrage Fund Ltd.**

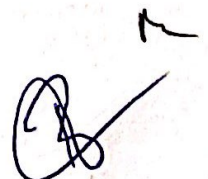
- (2) Atlantis was incorporated on 20 June 2017, and issued shares to investors on 22 June 2017 and 14 July 2017, operating as a SMART Fund 007, and did not apply for licensing by the Commission until 31 October 2018.
- (3) The Commission here notes that the Investment Funds (SMART Funds) (SFM007) Rules, 2012 (“the Rules”) require the Fund to be licensed by the Commission.
- (4) The Fund’s operation was brought to the Commission’s attention by their attorneys, Lennox Paton, who advised that the Fund’s Directors had originally engaged Fiducia International, LLC, (“Fiducia”) a Delaware company domiciled in Brazil, to assist in obtaining the required licensing from The Commission, and had provided Fiducia with all of the documentation to submit an application. However, Fiducia incorrectly advised Atlantis that it could begin the issuance of equity interests without the required licensing, and subsequently did not submit an application for licensing to the Commission on the Fund’s behalf.
- (5) The Fund was advised by its Administrator, Maitland Administration Limited, to seek legal advice for the purpose of being regularized by the Commission, which is what led to the application eventually being submitted to the Commission for a licence.
- (6) On 31 October 2018, the Commission received documents from Atlantis further to its application for licensing under the IFA 2003.
- (7) Atlantis has assured the Commission, via declaration regarding the Fund and any person associated with the Fund, both past and present, that no complaints were made, no legal actions were taken, and no disciplinary action was taken by any regulator in any jurisdiction.
- (8) The Commission, relying on the certification from the attorney that the information and due diligence documentation submitted was in full compliance with the IFA, 2003, approved the application in principle, subject to any disciplinary action taken by the Commission against the Fund concerning the matters aforesaid.
- (9) The Commission acknowledges that the period for registrable activity ran for approximately 17 months, inclusive of the time for receiving all documents to complete the application.

**Breach(es)**

- (10) Atlantis has engaged in securities business without being licensed, contrary to sections 3 and 5 of the IFA, 2003, and the Rules, aforesaid.

**Mitigating Factors**

- (11) Atlantis voluntarily informed the Commission of its engagement in securities business without a license and fully acknowledges and accepts responsibility for its non-compliance with the IFA, 2003 and the Rules. Atlantis also took concrete steps to rectify the abovementioned breach, the subject matter of this ensuing Settlement.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a checkmark-like flourish.



Settlement Agreement – Re: Atlantis Arbitrage Fund Ltd.Conduct contrary to Statute and/or Public Interest

- (12) In summary, during the material times and notwithstanding Atlantis' explanation, as outlined at paragraph 2, Atlantis' actions failed to comply with the IFA 2003 and the Rules.

**3. TERMS OF SETTLEMENT****IT IS HEREBY AGREED THAT THE FOLLOWING CONSTITUTE THE TERMS OF THIS SETTLEMENT:**

- (1) Atlantis understands and agrees that notwithstanding anything to the contrary, and solely for purposes of this Settlement, the Commission agrees to Atlantis neither admitting nor denying breaches, allegations and/or liability, aforesaid. Atlantis accepts the above Facts Agreed as stated herein and further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the Facts Agreed, the breach herein or creating the impression that any of the foregoing is without legal or factual basis. If Atlantis breaches this Settlement, the Commission may then commence administrative and/or court proceedings in the usual manner and pursue a full hearing of the breaches in the report and any other matter emanating therefrom.
- (2) The Commission has considered the gravity of the mentioned breach, aforesaid, and considered the circumstances outlined above. Hence, Orders and/or sanctions will be imposed by the Commission in the public interest, pursuant to section 133 of the Act, and are accepted by Atlantis, as follows:
- a. All of the statutory fees for the period of 17 months that are due and owing be settled and paid in full by Atlantis, in addition to the penalty below; and
  - b. A Penalty for failure to be licensed, pursuant to section 135(1) of the Act, in the amount of \$42,500.00 to be paid in full by Atlantis.
- (3) This settlement only concerns the breach indicated herein and the circumstances which led to same. and Atlantis is enjoined from further breaching the Act and/or the current IFA, 2019 by conducting unregistered securities business, and further hereby agrees to comply with the IFA, 2019 in all respects and immediately correct any and all matters that may not have come to the Commission's attention, and consequently are not mentioned herein.
- (4) Provided Atlantis fully satisfies Terms 3(1) to, and inclusive of, 3(3) above, the Commission will not pursue further disciplinary action relative to this matter, including any civil penalty. It is further agreed that, provided the abovementioned terms are satisfied, the Commission will not pursue criminal action, if applicable, for the matters covered by this Settlement Agreement.
- (5) The effective date for the sanctions in Term 3(2) will commence from the date of execution of this settlement agreement. The payment of monetary sanctions is expected by no later than 29 November, 2019 failing which further disciplinary action may ensue to address such failure.

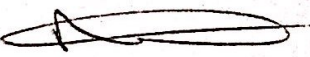


Settlement Agreement – Re: Atlantis Arbitrage Fund Ltd.

**4. WAIVERS, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

- (1) This Settlement Agreement and its terms will be treated as confidential by all parties to it.
- (2) If this Settlement is approved by the Commission, the parties to this Settlement will not make any statement that is inconsistent with this Settlement.
- (3) The parties waive any rights to a hearing, judicial review or appeal of this Settlement and/or any of its provisions, or any document outlining the breaches and/or allegations giving rise to this Settlement.
- (4) The parties acknowledge that the terms set out in Clause 3 above shall be deemed to be and treated as a final decision of the Commission.

Signed Bruno Freitas Mikanda.  
(print name) BRUNO FREITAS MIKANDA  
(for Atlantis)

Signed   
(print name) ROBERT V. LORMONE  
Chairman  
Securities Commission of The Bahamas

Made this 21<sup>st</sup> day of January 2020