



2021 Examinations, Supervisory and Enforcement Priorities

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Setting Priorities for 2021

Background

The Securities Commission of The Bahamas (“SCB”/“the Commission”) oversees and regulates investment funds, securities, the capital markets, and non-bank financial and corporate services providers in The Bahamas. Established by statute in 1995, the SCB functions to protect capital markets investors and consumers of non-bank financial and corporate services, facilitate market integrity and reduce systemic risk. The SCB is responsible for the administration of:

- the Securities Industry Act, 2011 (SIA);
- the Investment Funds Act, 2019 (IFA);
- the Digital Assets and Registered Exchanges Act, 2020 (DARE);
- the Financial and Corporate Service Providers Act, 2020 (FCSPA); and
- the Financial Transactions Reporting Act, 2018 (FTRA).

Supervisory Approach

The Commission deploys a risk-based approach to the supervision of registrants, licensees and the markets, which in turn informs enforcement initiatives and strategies. Under this risk-based approach, supervisory, examinations and enforcement priority is given to the areas the Commission identifies as presenting the greatest risk to the public, the capital markets, the financial system, and the reputation of the jurisdiction as an international wealth management centre. The Commission publishes its priorities annually, which allows industry practitioners to review and improve their operations for compliance in the identified focus areas.

Determination of 2021 Priorities

To determine supervisory and enforcement priorities, the Commission considers a number of factors, including:

- high-risk areas identified by global standards setters, such as the International Organization of Securities Commissions (IOSCO) and the Caribbean Financial Action Task Force (CFATF);
 - the risk areas prioritised under the country’s National Risk Assessment program, particularly with respect to anti-money laundering, the financing of terrorism and the proliferation of weapons of mass destruction (AML/CFT/PF);
 - compliance and non-compliance trends of its constituents stemming from onsite and offsite reviews/examinations, including the findings of surveys, such as the desk-based thematic reviews conducted during 2020;
 - global financial crime trends; and
 - its own observations and experiences.
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Examinations Priorities

The Risk Analytics and Examinations Department is responsible for conducting examinations of entities registered under all legislation administered by the Commission. Priorities established identify key areas of risk (existing and emerging) within the securities sector which regulated entities may focus on to evaluate and improve their compliance programs. Focus areas for 2021 examinations include:

Common Reporting Standards (CRS) – Proper tax filing (tax evasion/avoidance)

Examinations will include a review of whether entities potentially pose a risk to the jurisdiction due to improper, inadequate or non-existent tax reporting. Particular focus will be given to complex structuring, which may have the potential to confuse the reporting responsibilities of licensees and registrants. The Commission will also distribute, in 2021, a desk-based thematic review to all licensees and registrants on this topic.

Business continuity planning/Disaster recovery (BCP/DR)

Examination programs will include a review of disaster recovery plans to test the robustness of the securities sector in the aftermath of various disaster scenarios. Examinations will focus on:

- operational capacity and contingency planning;
- record retention with emphasis on wireless restoration and client access to data during downtime;
- safeguards for clients' privacy with electronic security of client information, including encryption policies, data management and accessibility;
- data protection; and
- proper configuration of network storage devices.

Advisory fees and valuations for investment funds

Examinations will review disclosures related to fees and valuation controls and practices. Emphasis will be placed on the valuation of client assets, due diligence, the oversight of investment managers, and how fees are calculated, tested and monitored to ensure accurate reporting to investors.

Supervision Priorities

The Supervision Department is responsible for processing applications for the licensing and registration of persons wishing to conduct registrable and licensable activities under the SIA, IFA, FCSPA of DARE ("the Acts"). Additionally, it is responsible for the offsite monitoring and supervision of market participants under the Acts. The department is also responsible for the review and registration of prospectuses for public offerings and private placements. Areas where licensees can expect focused attention include:

Corporate governance

Corporate Governance is essential to the effective and efficient operation of any organization. Registrants and licensees may expose themselves to regulatory, legal and reputational risk where their corporate governance frameworks are not sufficiently comprehensive or adhered to, and may pose systemic risk to the financial services sector where frameworks are weak. Focus will be given to the fitness and propriety of key personnel, oversight levels by the board and committees of the board, and the development of annual board confirmations. Corporate governance frameworks will be reviewed to ensure they are sufficiently comprehensive and that they do not pose systemic risk to the financial services sector. The Commission intends to resume its courtesy call initiative to foster dialogue with board members and senior management of registrants and licensees.

Compliance with reporting obligations

Following the relaxing of reporting timelines in 2020 due to the Covid-19 pandemic, the Commission will focus on fostering strict compliance with reporting obligations in an effort to mitigate risks arising from lack of regulatory monitoring. This effort will be enhanced by the implementation of the Commission's recently launched compliance and regulatory interface ("CoRI"). Particular attention will be paid to compliance with the following obligations:

- Compliance with filing of self-risk assessment;
- Compliance with filing of Financial and Operational Report and maintenance of regulatory capital requirements; and
- Statistical information and performance reports for investment funds.

Enhanced Industry Outreach

Commencing 2021, the Commission will significantly increase its meetings with registrants and licensees, specifically to enhance the consultation process for the development and implementation of new laws and standards. While social distancing restrictions remain in place, these will take the form of increased virtual meetings to focus constituents' attention on and encourage dialogue about the various regulatory issues and solutions being contemplated.

Enforcement Priorities

The Enforcement Department is responsible for, inter alia, enforcing securities laws and related legislation, investigating unregistered and unlicensed individuals and operations in the securities industry, coordinating settlement of securities breaches by registered or licensed entities, and addressing court matters involving the Commission, both criminal and civil. Priorities established for 2021 include:

Improved communication and coordination with stakeholders

The Department will work to improve communication and coordination with bodies essential to carrying out its functions, such as the Financial Crime Unit of the Royal Bahamas Police Force, when addressing securities-related matters and matters under the Financial and Corporate Service Providers Act, 2020 (FCSPA) that carry criminal penalties. In this vein, it will also work to improve relations with the Department of Public Prosecutions to streamline the handling of indictable criminal matters.

Streamlining of investigations into fraud schemes

Since late 2019, SCB observed an upward trend in financial schemes, particularly involving online multi-level marketing internet-based Ponzi schemes as well as "Asue-branded" schemes. This trend appears to have steadily increased moving into 2021. As a result of the promulgation of the FCSPA, which criminalizes the launch or promotion of certain criminal financial schemes, and recent amendments to securities laws, the SCB has been actively investigating such matters, and plans to actively prosecute them.

Contact Information

Additional information about the Commission and its functions can be found on the Commission's website www.scb.gov.bs, or forward queries via email to: info@scb.gov.bs, or via mail to:

Securities Commission of The Bahamas
Poinciana House
North Building, 2nd Floor
31A East Bay St
P. O. Box N-8347
Nassau, The Bahamas