

2012

SECURITIES COMMISSION OF THE BAHAMAS

DAVE S. SMITH, EXECUTIVE DIRECTOR

JUNE 4, 2012



BACO Annual General Meeting  
Key Note Address

## INTRODUCTION

Kesna Pinder, president of the Bahamas Association of Compliance Officers, other BACO executive members, invited guests, good afternoon.

It is an honor to address you today in my capacity as Executive Director of the Securities Commission of The Bahamas. As a member of BACO and having performed the Compliance Function for a number of years, this allows for an informed perspective of the pitfalls, challenges and opportunities you encounter day-to-day. No doubt like many of you I too have had to square my shoulders and plant my feet firmly in conformance to expectations of policy and law.

I dare to say I have a keen appreciation of the trepidation that might have its genesis in a zealous but misinformed managing director, an ambitious though often less-than-thorough business developer and the customer representative with too many complaints about forms and requests for explanations. The aforementioned coupled with the accusation of being a business inhibitor and not being in a revenue generating job requires a brave spirit. Not to mention that generally the Compliance Officer is relegated to being thrust into the limelight when it is time to fix blame. Perhaps it's fair to say Compliance Officers don't win too many popularity contests.

Today, I hope that you are encouraged. If you are doing the job you ought, Regulators love you, if nobody else does, and number you among our best allies! However, it is also hoped that colleagues and staff would value you as critically instrumental in maintaining organization reputation, confidence, mitigating risks and ultimately protecting revenue and shareholder value.

Oh, this may be a good time to tell you that the views expressed in this presentation are my own and may not represent those of the Securities Commission of The Bahamas, its members or its staff, or any other Regulator.

Of course you might find some humor in all that, but as a regulator seeking to fulfill its mandate, the Commission places great reliance on you, the Compliance Officers of The Bahamas.

As the Commission amplifies its message to registrants and licensees that it desires increased dialogue, transparency and full disclosure, I am also championing the message that, in a world where regulatory supervision and enforcement activities are on the increase, prudent business decision-makers should outfit their organizations with the appropriate Compliance systems, procedures, and, most importantly, personnel.

#### **SECURITIES REGULATORS GROWING GLOBAL FOCUS ON THE COMPLIANCE FUNCTION**

Why is this so important you might ask? Please allow me to sight a few examples of why the timing of such a message is so opportune.

Around January of this year, the UK's Financial Services Authority (FSA) fined the compliance officer at Greenlight UK, One-Hundred and Thirty Thousand Pounds (£130,000) [\$198,988] for failing to question and make reasonable enquiries before selling Greenlight's shareholding in a company, Punch Taverns PLC, ahead of an anticipated significant equity fundraising by that company. It was also determined that he was unfit for his position as compliance officer by the FSA. The fund and its owner were also fined Seven-point-two Million Pounds (£7.2 Million) [\$11 million].

Just last month, the FSA not only fined the Compliance Officer for another firm, Christchurch Investment Management, Eleven-Thousand Five-Hundred and Fifty Pounds (£11,550) [\$17,679], but, also placed a prohibition on him acting as a compliance officer or having responsibility for client money or assets. Thonberry was investigated for failings in relation to client money segregation and was deemed to have had insufficient knowledge and oversight of compliance with FSA client money rules. Christchurch was also fined Twenty-six thousand pounds (£26,000) [\$39,797].

At the end of last year, the FSA fined the Compliance Officer at hedge fund management company Dynamic Decisions Capital Management Fourteen Thousand Pounds (£14,000) [\$21,430] for failing to act with due skill and care. She was also banned from performing any significant influential function in regulated financial services. The boss of that fund was fined a record three million pounds (£3 million) [\$4,592,049] and was deemed not fit and proper to perform any role in regulated financial services.

Earlier this year the United States' Securities and Exchange Commission (SEC) fined the compliance officer of a broker-dealer firm Fifteen Thousand Dollars (\$15,000) for compliance failures and security breaches involving customer privacy violations. Others at the firm were fined as well.

We are not doing case-studies today, but many of you might find the details and circumstances surrounding these charges and fines of interest. The take-away for each of you should be that securities industry regulators the globe over are putting Compliance Officers' feet to the fire, as they recognize the critical investor protection role you take on when you choose to assume the responsibilities of a Compliance Officer.

#### **PROPOSED GUIDELINES FOR THE REGISTRATION OF COMPLIANCE OFFICERS**

With this in mind, the Commission has released for consultation through 28-June, its guidelines for the Registration of Compliance Officers. It sets out the basis upon which the Commission will act in considering approval of a person as a Compliance Officer and provides some guidance as to what the expected roles and responsibilities of the Compliance Officer are. It is timely that the Commission releases the guidelines as Section 40 (2) of the Securities Industry Regulations, 2012, requires registered firms to designate an officer as the Compliance Officer of the firm who shall be –

- (a) registered as such with the Commission; and
- (b) responsible for the supervision of the securities business undertaken by the firm to ensure it is carried out in compliance with the law. This responsibility may not be delegated.

The requirement to have a registered Compliance Officer is applicable to firms registered under the Securities Industry Act, 2011 (SIA), but I am convinced that the proposed guidelines should prove valuable for anyone performing the compliance function, whether at an SIA registered firm or not.

Please let me say at this point, that it is not envisioned that the registration process for Compliance Officers would be tantamount to a “rubber stamping” exercise. There is simply too much at risk!

You all are aware that the Commission is a member of the International Organisation of Securities Commissions (IOSCO), the standard setter for securities and capital markets around the world and a forum for the global industry’s’ Regulators. In March, 2006, the Technical Committee of IOSCO released its Compliance Function at Market Intermediaries Final Report. That report, in its preamble, hearkened back to IOSCO’s core principals for securities regulators—a Ten Commandments of sorts that guides most securities and capital market regulators around the globe. The Technical Committee’s report was built on what was then Principle 23, which states that:

“Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.”

The report noted that, regardless of an intermediary’s size, nature of business and the risk it undertakes, the intermediary should have a compliance function, adding that it should be a separate function that monitors compliance with securities regulatory requirements and internal policies, operating procedures and controls.

Having regard to IOSCO’s expectations and the risks in terms of education and experience the Commission’s proposed guidelines call for the Compliance Officer to have the skills, knowledge and

expertise necessary for the discharge of their responsibilities or tasks. Where an individual intends to be registered as a Compliance Officer, examples of the Commission's recommended qualifications include:

A legal or business diploma or degree in a field considered relevant by the Commission. Examples of some of the specific types of qualifications the Commission would consider include:

- The ICA International Diploma in Anti-Money Laundering or Compliance – Administered by the Bahamas Institute of Financial Services;
- The International Risk Manager Designation – Administered by the Bahamas Institute of Financial Services;
- The Certified Securities Compliance Professional Designation – Administered by The National Society of Compliance Professionals (NSCP);
- The Certified Anti-Money Laundering Specialist (CAMS) – Administered by the Association of Certified Anti-Money Laundering Specialists (ACAMS);
- The Certified Compliance & Ethics Professional – Administered by the Society of Corporate Compliance and Ethics (SCCE); and
- The Certified Risk and Compliance Management Professional (CRMP) – Administered by the International Association of Risk and Compliance Professionals (IARCP).

The proposed guidelines also list a number of organizations or other compliance professional organizations recognized by the Commission which the Compliance Officer may be a member of, including The Bahamas Association of Compliance Officers (BACO); as well as:

- The National Society of Compliance Professionals (NSCP);
- The Society of Corporate Compliance and Ethics (SCCE);
- The International Association of Risk and Compliance Professionals (IARCP); and the
- Association of Certified Anti-Money Laundering Specialists (ACAMS).

I believe many of you will be glad to know the proposed Guidelines address the status and independence that a Compliance Officer should have within the registered firm. The Compliance Officer should be a key member of staff, whose position carries sufficient seniority to enable the application of sound and independent judgment and facilitates effective interaction with the Commission regarding the registered firm's compliance. This individual should possess sufficient independence to perform the role objectively. The proposed guidelines also note that a registered firm shall not engage in any activity that threatens the independence of the Compliance Officer.

Of course, many if not all of you are already familiar with these expectations. However, you can anticipate that they would receive heightened attention during onsite examinations.

#### **CONCLUSION**

Today I hope you leave reminded of the critical nature of your function and most importantly encouraged to be thorough in executing your duties. The examples I shared at the outset of some of the penalties applied against Compliance Officers will hopefully encourage you to this end, as Regulators use the tools available to them to fulfill their mandate. The Securities Commission of The Bahamas is no exception.

However, those examples cited earlier should be a strong incentive to those employing you, to ensure you have the qualifications, ongoing training, status, resources and independence necessary to carry out your function. You'll remember the firms involved generally received stiffer penalties than the compliance officer. It is preferred that prudent business persons would realize that right compliance culture and personnel positions their businesses to better avoid the expense of fines and damage to reputation.