

PRESS RELEASE

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Securities Commission of The Bahamas Executive Director Reinforces Importance of Proper Compliance Function

Compliance officers subject to new registration requirements with the Securities Commission of The Bahamas (the Commission) should expect a considered, rather than a casual, approach to registration approvals, due to their critical oversight function.

Dave Smith, the Commission's executive director, expressed the caveat in his keynote address to the Bahamas Association of Compliance Officers (BACO) at its Annual General Meeting, held at the British Colonial Hilton on June 4th, 2012. Advising that firms registered under the Securities Industry Act, 2011 (SIA, 2011) are required to designate and register their compliance officers with the Commission, Smith noted that the compliance officer's function demanded the Commission give their registration due attention.

"It is not envisioned that the registration process for compliance officers would be tantamount to a rubber stamping exercise," Smith said. "There is simply too much at risk."

According to Section 40 (2) of the Securities Industry Regulations, 2012, the compliance officer of a registered firm is responsible for the supervision of the securities business it undertakes and ensuring it is carried out in compliance with the law. As a result, compliance officers have a key investor protection and risk mitigation function complementary to that of the Commission.

The function is critical due to the compliance officer's proximity to ongoing securities business. Whereas the Commission often becomes aware of questionable activities only after-the-fact, compliance officers are gatekeepers positioned to stop breaches of securities laws, regulations or policies before they occur.

Smith cited several examples from leading financial jurisdictions of recent fines levied against compliance officers directly for failure to adequately perform their function, including one of

nearly \$200,000 in the UK early this year. Penalties were even stiffer against the firms involved in the breaches in examples Smith cited.

“It is preferred that prudent business persons would realize that right compliance culture and personnel positions their businesses to avoid the expense of fines and damage to reputation,” Smith said.

To support the new registration requirement, the Commission has released the document “Proposed Guidelines for the Registration of Compliance Officers”. The proposed guidelines are available on the Commission’s website (www.scb.gov.bs) and open for consultation through June 28th, 2012.

The guidelines address the requisite qualifications, skills, knowledge and experience the Commission will consider in authorizing registration of compliance officers. Importantly, they also speak to the compliance culture that should exist at registered firms and the appropriate status and independence the Commission expects for compliance officers. In this regard, the guidelines call for compliance officers to be key members of staff with sufficient seniority to enable sound and independent judgment and sufficient independence to perform the role objectively. The guidelines also note that registered firms should not engage in any activity that threatens that independence.

The expectations set out in the guidelines will not be new to most compliance practitioners, Smith said. However, firms subject to the compliance officer registration requirements under the SIA, 2011 could anticipate heightened attention to the compliance function during onsite examinations conducted as a part of the Commission’s surveillance programme, according to Smith. This attention would include a focus on the independence and status of the firm’s compliance officer.

The previous Act governing the securities industry, the Securities Industry Act, 1999, accommodated registration of a principal designated as the compliance director of a registered firm. Provisions in the new Act and accompanying Regulations allow for such persons to be registered under the new compliance officer category, effective as of the promulgation of the SIA, 2011 on December 30th, 2011.

Entities registered under the new Act will be expected to be in compliance with the requirement to appoint and register a compliance officer with the Commission and to conform with the finalised guidelines for the registration of compliance officers by December 30th, 2012.

The executive director urged BACO members to provide feedback to the Commission on the proposed guidelines and other documents the Commission has released for consultation.

Smith was appointed executive director of the Commission effective 1 March 2012. A member of BACO and of the Bahamas Institute of Chartered Accountants, he holds an MBA from Taylor University, Upland, Indiana, and is a Certified Public Accountant. Smith is also a Fellow of the Bahamas Institute of Financial Services and of the International Compliance Association.

The Securities Commission of The Bahamas (“the Commission”) is a statutory body established in 1995 pursuant to the Securities Board Act, 1995. That Act has since been repealed and replaced by new legislation. The Commission’s mandate is now defined in the Securities Industry Act, 2011 (SIA, 2011). The Commission is responsible for the administration of the SIA, 2011 and the Investment Funds Act, 2003 (the IFA), which provides for the supervision and regulation of the activities of the investment funds, securities and capital markets. The Commission, having been appointed Inspector of Financial and Corporate Services effective 1 January 2008, is also responsible for administering the Financial and Corporate Service Providers Act, 2000.

The Commission’s is mandated to: advise the Minister on all matters relating to the capital markets and its participants; maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities; foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets; protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices; promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing; create and promote conditions that facilitate the orderly development of the capital markets; and perform any other function conferred or imposed on it by securities laws or Parliament.

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