



REPORTING OF MATERIAL CHANGE INFORMATION GUIDELINES

1. INTRODUCTION

The Securities Commission of the Bahamas (“the Commission”) is mandated to formulate principles to regulate and govern the investment funds, securities and capital markets of The Bahamas, in addition to creating and establishing conditions to ensure the orderly growth and development of these markets. Pursuant to Section 94 of the Securities Industry Act, 1999 (SIA) the Commission is empowered to issue guidelines relating to the operation and standards to be applied in securities markets.

Guidelines are prepared for general guidance to registrants and licensees. They do not have force of law and, therefore, ought not to be relied upon in respect of points of law. Registrants and licensees are expected to adhere to securities legislation i.e. the SIA and the Investment Funds Act, 2003 (IFA), and to conduct their affairs in compliance with all other Bahamian legal requirements. It should be noted however, that these guidelines may be considered by a Court of Law in determining any matter to which they are relevant.

2. PURPOSE

Definitions of ‘material change’ in both the SIA and the IFA are very broad. Interpretation of these definitions therefore, may differ between licensees and registrants resulting in varying standards being applied. In recognition of the principle that regulatory standards ought to be both transparent and consistently applied, it is proposed that guidelines are established to elaborate on these definitions of material change.

These guidelines provide licensees and registrant’s with guidance on the interpretation of provisions in the SIA and IFA that a) are statutory reporting requirements and b) establish a statutory obligation to make general material change reports. Further, these guidelines advise licensees and registrants of what conduct is expected in respect of their responsibilities to make material change information reports.

A list of events that qualify as material change is included in Appendix 2. The list is not exhaustive; it will evolve and expand. The list does not in any way prohibit the Commission from finding an event that has not been specifically designated a material change to qualify as such.

3. **Applicability**

These guidelines apply to all licensees and registrants of the Commission.

4. **Applicable Law**

Sections 64, 81 and 87
Securities Industry Act, 1999

Regulations 35 and 48
Securities Industry Regulations, 2000

Section 33
Investment Funds Act, 2003

Regulations 26 and 44
Investment Funds Regulations, 2003

5. **Material Change Information**

5.1 Material Change is defined in the SIA and IFA as follows:

SIA: Material change is defined in relation to the affairs of an issuer, and is a change in the ownership, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, and includes a decision to implement such a change where confirmation of the decision is probable.

IFA: Material change is defined in relation to the affairs of an investment fund, and is any change that is reasonably expected to have a significant effect on an investment fund or its investors.

5.2 In determining whether an event qualifies as a material change, it is necessary to take into account a number of factors that cannot be captured in a simple standard or test. These factors include the nature of the information itself, the volatility of the company's securities and prevailing market conditions.

5.3 The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors. An event that is "significant" or "major" for a smaller company may not be material to a larger company. Therefore it is accepted that companies should not take an overly technical approach to determining materiality.

- 5.4 Various provisions in securities legislation establish reporting requirements for certain material changes in the affairs of issuers and registrants of the Commission. For example, the legislation expressly requires that information such as a change in Directors be reported to the Commission. These requirements, while qualifying as ‘material changes’ are considered independent ‘statutory reporting requirements’ that are separate and distinct from the general statutory obligation to file material change information not specifically prescribed.
- 5.5 In the first instance these guidelines provide clarification on the ‘statutory reporting requirements’ for issuers and registrants to either report changes to the Commission or to publish them. In addition, specific time frames for statutory reporting requirements are established. In this regard, the Guidelines, for the most part, propose that the reporting of a material event to the Commission and the publication of the information be immediate and simultaneous. See: Appendix 1 below.
- 5.6 With respect to reporting requirements of general material change information the Commission notes that determining the materiality of information is clearly an area where judgment and experience are of great value. If it is a borderline decision, the licensee or registrant should treat the information as material and file a report with the Commission, along with a request for directions as to the treatment of the information. Similarly, if several company officials have to deliberate extensively over whether information is material, they should err on the side of materiality and seek further guidance from the Commission.
- 5.7 In respect of reporting requirements for general material change information these guidelines provide examples of the kind of information that would qualify as material change information requiring that a report is made to the Commission and the information published.
- 5.8 Examples of the types of events or information which may be material are found in Appendix 2. This list is not exhaustive and is not a substitute for companies exercising their own judgment in making materiality determinations.

6. Filing Process

Material change reports should be filed with the Commission in writing and submitted electronically or by fax. The initial filing is to be followed by the original hard copy.

The Commission recognizes that in spite of the general obligation of confidentiality imposed on its staff there may be circumstances where the information being filed requires particular discretion. In these circumstances it is suggested that the licensee or registrant verbally notify the Commission of the proposed filing. Verbal notice of the filing can be given by contacting any senior official of the Commission.

Appendix 1

Statutory Reporting Requirements

A. Issuers of shares to the Public

| CHANGE | REFERENCE | RECIPIENT OF REPORT | TIMEFRAME |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------------|---------------------|
| 1. Change in the affairs of a public company ¹ | SIA S.64 (1) | SCB | Immediately |
| | | Public | 5 days ² |
| 2. Quarterly Reports | SIA S.65 | SCB | 5 days |
| 3. Audited Annual Reports regarding Issuer | SIA S.65 | SCB | 5 days |
| 4. Acquisition of direct or indirect substantial shareholding in a public company | SIA S.81(1) | SCB | 5 days |
| | | Public Company | 5 days |
| 5. Change in shareholding of insiders | SIA S. 81 (2) S. 86 | SCB | 5 days |
| | | Public Company | 5 days |
| 6. Notification of interest and matters relating to the interest of directors, officers and substantial shareholders. (NB. The obligation was to report at the beginning Commencement of the SIA. Be advised that it is nonetheless relevant.) | SIA S.82 | SCB | Immediately |
| | | Public Company | Immediately |
| 7. Change in shareholdings: nominal to substantial, substantial to nominal | SIA S. 88 | Public Company | 5 days |
| | | SCB | Immediately |
| 8. Change in shareholders, officers or Directors | SIA S.26(1)(a) | SCB | Immediately |

| CHANGE | REFERENCE | RECIPIENT OF REPORT | TIMEFRAME |
|--------------------------------------------------------------------------------------------------------|------------------|----------------------------|------------------|
| 9. Change in application for registration or licensing | SIR R.35 (1) | SCB | Immediately |
| 10. Involvement of a registered firm or any of its employees in criminal, disciplinary or legal events | SIR R.48 (1) | SCB | 5 days |
| 11. Change of principal office, registered office, agents of an investment fund administrator. | IFA S.33(3) | SCB | 14 days |
| 12. Change in investment fund dealing | IFR R.26(1). | Investors | Immediately |
| | | SCB | 7 days |
| 13. Change in dealing requiring an amendment to the constitutive and offering documents | IFR R.26(4). | SCB | 21 days |
| 14. Suspension or cessation of dealing | IFR R.26(4). | SCB | Immediately |
| | | Investors | Immediately |
| 15. Change in application for registration or licensing | IFR R.44 | SCB | 7 days |

Appendix 2

Examples of General Material Change Information

Changes in Corporate Structure

- Changes in share ownership that may affect control of the company
- Major reorganizations, amalgamations, or mergers
- Take-over bids, issuer bids, or insider bids

Changes in Capital Structure

- Public or private sale of additional securities
- Planned repurchases or redemptions of securities
- Planned splits of common shares or offerings of warrants or rights to buy shares
- Any share consolidation, share exchange, or stock dividend
- Changes in a company's dividend payments or policies
- Material modifications to rights of security holders

Changes in Financial Results

- A significant increase or decrease in near-term earnings prospects
- Unexpected changes in the financial results for any periods
- Shifts in financial circumstances, such as cash flow reductions, major asset write-offs or write-downs
- Changes in the value or composition of the company's assets
- Any material change in the company's accounting policy

Acquisitions and Dispositions

- Significant acquisitions or dispositions of assets, property or joint venture interests
- Acquisitions of other companies, including a take-over bid for, or merger with, another company

Changes in Credit Arrangements

- The borrowing or lending of a significant amount of money
- Any mortgaging or encumbering of the company's assets
- Defaults under debt obligations, agreements to restructure debt, or planned enforcement procedures by a bank or any other creditors

Ratings/Credit

- Changes in rating agency decisions
- Significant new credit arrangements

External Political, Economic and Social Developments

- Companies are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of a company that is both material and uncharacteristic of the effect generally experienced by other companies engaged in the same business or industry, the company is urged to explain, where practical, the particular impact on them. For example, a change in government policy that affects most companies in a particular industry does not require an announcement, but if it affects only one or a few companies in a material way, such companies should make an announcement.

Corporate Meetings and Operations

- The possible initiation of a proxy fight