

Securities Commission of The Bahamas

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MEDIA RELEASE

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New Policies to Impact Securities, Investment Funds, Financial and Corporate Service Providers

The Securities Commission of The Bahamas (“the Commission”) announced that it has published three new policies, in effect since January 2017, which will affect registrants and licensees across the suite of legislation it administers.

The policies address: the regulatory capital calculation for firms managing and advising on securities, the Commission’s approach to the downgrade of an unrestricted investment fund administrator (UIFA) licence, and the Commission’s expectations with regard to accessing current due diligence on its registrants and licensees. Published 9 March 2018 on the Commission’s website (www.scb.gov.bs), the policies commenced effective 3 January 2017.

The Commission established the policies to clarify its position on various aspects of securities laws and the Financial and Corporate Service Providers Act. In keeping with the Commission’s overall approach, the policies aim to enhance regulatory oversight of the various industries and their participants in a rational, pragmatic manner.

With regard to the “Regulatory Capital Calculation for Firms Managing and Advising on Securities Policy”, the Commission has taken the position that firms registered to advise on securities or to manage securities who do not hold client cash or other assets may apply receivables for retrocessions, fees and commissions in the calculation of net regulatory capital. These receivables are often significant to the operations of such firms and do not necessarily increase the firm’s risk profile. For eligible firms to use these receivables to calculate regulatory capital, however, the receivables must be discounted according to their age, pursuant to the policy.

The second policy, “Reclassification and Downgrade of an Unrestricted Investment Fund Administrator Licence” speaks to the conditions that will trigger the issuance of, first, a warning letter to Unrestricted Investment Fund Administrators (UIFAs) who are negligent in certain key responsibilities, and, subsequently, referral to the Commission’s Enforcement Department for a regulatory hearing. As the policy’s name indicates, such a hearing could result in the UIFA’s license being reclassified to that of a “Restricted” investment fund administrator. Restricted investment fund administrators do not have the Commission’s delegated authority to license investment funds.

The final of the three policies, the “Due Diligence Refresher Policy”, sets out the Commission’s approach to ensuring it has current due diligence documentation on registrants and licensees pursuant to the Securities Industry Act, 2011, the Investment Funds Act, 2003 and the Financial and Corporate Service Providers Act, 2000. Pursuant to the policy, once advised, registrants and licensees will have six weeks to deliver required due diligence documents to the Commission, or else face administrative penalties of up to \$100 per day for 60 days, after which time if the documents are still outstanding enforcement action would be pursued. The policy establishes that registrants and licensees operating for more than five years will be required to refresh their due diligence documentation.

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Editor’s Information:

1. **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.**
2. **The Commission’s mandate is now defined in the Securities Industry Act, 2011 (SIA, 2011).**
3. **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.**
4. **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.**
5. **The functions of the Commission are 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 (SIA, 2011, s.12).**