

PRESS RELEASE

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**FOR IMMEDIATE RELEASE
November 15, 2011**

Improving the Securities Legislative Framework: The Securities Industry Act, 2011

A key responsibility of the Securities Commission of The Bahamas (**the Commission**) is to protect the interest of the investing public, both domestic and international. Protecting the investing public is based on a simple premise: if investors have confidence that they will be treated fairly in the capital markets, they will be willing to invest.

The development of securities legislation in The Bahamas began with the passing of the Securities Act, 1971 which was never brought into force. With the continued development of the Bahamian capital markets, the Securities Board Act, 1995 was passed and established the Securities Board. As the industry developed, including the establishment of a Bahamian securities exchange, it became clear that modern securities legislation would be required. Meaningful securities legislation came into effect when the Securities Industry Act, 1999 (the current Act) was passed. In this Act, the Securities Board became the Securities Commission of The Bahamas.

In October 2002 the International Monetary Fund (IMF) conducted a full review of the securities regulatory regime in The Bahamas as part of an Offshore Financial Centre assessment. An IMF follow-up technical assistance mission, in November 2004, recommended a number of changes to the regulatory regime including improvements to the current Act in light of international best practices. Given the extensive nature of some of the proposed changes, it was determined that a new act be drafted. Another factor contributing to the need of a revamped Act, was the objective of meeting the standards outlined by the International Organization of Securities Organizations' (IOSCO) 30 Principles and Objectives of Securities Regulation.

The new legislation was developed following a legislative framework commonly used for securities legislation. The key legal obligations appear in the Act itself, while detailed requirements are set out in subordinate instruments such as regulations or Commission-made rules. This structure is intended to enable the Commission to respond quickly and effectively as the financial markets and products develop. This structure is used in many major jurisdictions, such as the United Kingdom, the United States, Canada, Hong Kong and Singapore.

The new Securities Industry Act, 2011 (SIA, 2011) was passed in the House of Assembly on April 18, 2011 and in the Senate on May 19, 2011. The regulations were drafted and are expected to be signed into law immediately after the Act has been brought into force, which is set for December 30, 2011.

Key changes of the new SIA include: a flexible legislative structure, which allows for easier amendments to regulations and rules as circumstances in the industry change; simplification of the categories of registration for firms and individuals, which also reflects a similar definition structure used by other Commonwealth and Caribbean countries; extensive changes to the Commission's investigation, examination, and enforcement powers; need for a prospectus based on the nature of a transaction rather than the characteristics of the parties involved;

and all public issuers would be subject to the same disclosure requirements. The Commission also notes that these changes are expected to make us a Signatory 'A' to the IOSCO Multilateral Memorandum of Understanding.

The Act introduces express provisions setting out the purposes of the Commission. These purposes include; to provide investor protection; to ensure the conduct of fair and efficient markets; the reduction of systemic risk; the reduction of the use of regulated business in financial crime; and fostering Investor Education.

In planning for the promulgation of the Act (or the appointed day notice), the Commission has launched an eighteen-month project to fully implement the new SIA. This project is multi-phased with the initial phase focused on the development of urgent and critical rules, establishing processes for re-categorization and re-registration, revision of the Inspections Manual and re-vamping of the Commission's database.

As a part of the implementation plan the Commission has created an ongoing communication strategy to ensure that the industry is kept abreast of developments. In regard to consultation papers for the development of rules and guidelines, it is intended to release them in phases so as to reduce the burden on the industry; however, occasionally the Commission may find it necessary to release more than one at the same time. The consultation period, for each paper, will be for a minimum of 45 calendar days but may be longer depending on the urgency, and complexity of the paper or other considerations. The key rules and processes identified to facilitate the promulgation of the SIA and early period of transition to the new Act are: Physical Presence Rule; Fees Rule; Regulatory Capital Rule; Corporate Governance Rule; Takeover Code; Disciplinary Rule and Development of the Re-Categorization Process. There will be other rules developed and put in place during the remaining implementation period.

The Physical Presence and Fees Rules have been released for public consultation and can be found on the Commission's website (www.scb.gov.bs). The consultation period for these proposed rules will end on November 18 and December 2 respectively. The Commission invites the public to take this opportunity to review and provide comments on the rules released for consultation.

The Commission is of the view that the Act will provide the Commission with a new and effective regulatory tool, which in turn can only enhance the effective and efficient execution of the Commission's regulatory obligations.

The Securities Commission of The Bahamas ("the Commission") is a statutory body established in 1995 pursuant to the Securities Board Act, 1995, which was repealed and replaced by the Securities Industry Act, 1999 (the SIA). The Commission is responsible for the administration of the SIA 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 Service Providers effective 1 January 2008, is also responsible for administering the Financial and Corporate Service Providers Act, 2000.

The Commission's mandate is to formulate principles to regulate and govern investment funds, securities and capital markets; maintain surveillance over investment funds, securities and capital markets ensuring orderly, fair and equitable dealings; create and promote conditions to ensure orderly growth and development of capital markets; and to advise the Minister of Finance regarding investment funds, securities and capital markets.

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