

Securities Commission of The Bahamas

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PRESS RELEASE

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FOR IMMEDIATE RELEASE
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Attorneys Should Ensure Proper Segregation of Records

The Inspector of Financial and Corporate Service Providers (the “Inspector”) advised attorneys licensed as Financial and Corporate Service Providers (“FCSPs”) that segregation of their law practice and FCSP business should mitigate concerns some may have over breach of legal privilege.

Those concerns were represented in a constitutional action filed in 2001, alleging that provisions of the Financial Services Measures, which included the Financial and Corporate Service Providers Act, violated constitutional rights.

The FCSPA authorizes and obliges the Inspector to examine all FCSP licensees, which some FCSP attorneys were concerned could give rise to breach of lawyer-client confidentiality. The Executive Director of the statutory body appointed as the Inspector clarified its position.

“There has been no movement [on the constitutional action] for some time, and the Inspector will be guided by its regulatory obligation under the Law to carry out examinations,” said Dave S. Smith, Executive Director of the Securities Commission of The Bahamas (the “Commission”). The Commission was appointed the Inspector in January 2008.

Smith’s comments were made at a presentation to attorneys at the Bar Association’s Offices on 13 February 2013. The meeting was a follow-up to a courtesy call paid on the Inspector by representatives of the Bar Association and the Attorney General’s Office on 15 January 2013. The constitutional challenge and other matters were discussed during that meeting.

Attorneys were told that FCSPs are expected to produce full and complete records when required by the Inspector. The Inspector seeks to review only the records of the FCSP during on-site examinations; therefore, concerns over legal privilege should be mitigated if records of the FCSP are separated from those of the law practice.

In addition, Inspector representatives gave a brief overview of the on-site examination process, which focuses on the licensee’s Anti-Money Laundering programmes, disaster readiness, and the fitness and propriety of persons involved in the FCSP business, among other things.

Smith encouraged attendees to complete the risk survey issued to FCSPs in September 2012. The survey will help the Inspector to determine the depth of oversight appropriate for each FCSP business based on its operations, inherent risk and regulatory expectations.

Smith added that he supports Bar Association President Ruth Bowe-Darville's proposal of a practicing certificate for attorneys, as it may help to allay some of the concerns of the Inspector.

Bowe-Darville expressed gratitude to the Inspector for meeting with attorneys on their concerns, noting that this is the first time the Inspector has done this since 2000.

Representing the Inspector at the February visit to the Bar Association Offices were: Dave S. Smith; Gawaine Ward, Manager, Enforcement Department; Kaylisa Adderley, Assistant Manager, Market Surveillance Department; Mechelle Martinborough, Legal Counsel; Omara Bingham, Senior Legal Officer; and Robertha Davis, Officer, Inspections Department.



Back row left to right: attendees Paul Jones and William Fountain. Middle row left to right: Legal Officer Omara Bingham, Inspections Officer Robertha Davis, and Market Surveillance Assistant Manager Kaylisa Adderley. Front row left to right: attendee Monique Gomez, Legal Counsel Mechelle Martinborough, Executive Director Dave Smith, Bahamas Bar Association President Ruth Bowe-Darville, and Enforcement Manager Gawaine Ward.

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 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.