

Securities Commission of The Bahamas

**3RD Floor, Charlotte House
Shirley & Charlotte Streets
P.O. Box N – 8347
Nassau, Bahamas**

PRESS RELEASE

**Contact: Mr. Dave Smith
242- 397-4100**

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Regulatory Landscape Continues to Take Shape

The regulatory framework of the securities and capital markets in The Bahamas is drawing closer to achieving higher international standards through the implementation of the Securities Industry Act, 2011 (SIA), and with the closing of the industry consultation period on six key proposed Rules and Guidelines.

The statement from the Securities Commission of The Bahamas comes as an International Monetary Fund Mission wrapped-up its Financial Sector Assessment Programme (FSAP) review of the jurisdiction last week. Without commenting on any results coming out of that review, the Commission's Executive Director, Dave Smith, said the promulgation of the well-crafted SIA, along with the ongoing development of key Rules and Guidelines needed for its full implementation, are achieving the goal of demonstrably improving the regulatory regime for the securities and capital markets.

"A significant number of issues related to the legislative framework of the securities and capital markets have been addressed with the passing of the SIA," according to Smith. "The way the SIA is structured, there were a number of critical Rules and Guidelines which were imperative to fully implement the new law."

Releasing Papers for consultation to industry participants is integral to the process the Commission employs to develop legislation, regulations, rules and guidelines. A total of 1980 copies of papers were forwarded to registrants (based on governing legislation) and industry associations, and valuable feedback has been received, ultimately assisting in shaping the regulatory landscape.

Smith admits that while the pace of change has been rapid, it should be understandable, given the necessity and urgency of the implementation of the SIA.

According to Smith, the number and content of the formal responses returned on these important regulatory matters suggests an industry by-and-large supportive of the many changes being brought about through the various proposals forwarded in the consultative Papers. He emphasized that the necessary development of the regulatory framework yields the best result with full engagement by all stakeholders.

Four Papers concluded the industry consultation phase of their development on July 31, covering areas including: a proposed fee regime for investment fund administrators and financial and corporate

services providers; a proposed regulatory capital framework; the outsourcing of material functions; and the licensing of compliance officers. Two additional papers governing the fitness and propriety criteria of applicants for regulated activities; and proposed liquidity risk guidelines for licensees and registrants will conclude consultation on September 1, 2012. It is also anticipated that a further three papers will be issued for consultation in the first week of August, 2012. Papers are released for consultation for a period of no less than 45 days.

During 2011, consultation on proposed physical presence and fees rules was concluded and the relevant rules established.

Smith said the Commission has a clear understanding of the 38 Principles for good financial regulation prescribed by the International Organization of Securities Commissions (IOSCO)—the international standards setter for securities and capital markets regulation.

The process the Commission uses to move the regulatory framework to the international standards espoused by IOSCO considers benchmarking against appropriate jurisdictional contemporaries, primary research and initial screening by small focus groups followed by broad industry consultation prior to being implemented.

The Bahamas is seeking to achieve signatory status to Appendix A of a key international benchmark for cross-border cooperation and combating securities and derivatives law violations, for which the implementation of the SIA is essential. The benchmark is IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU).

The Appendix A signatory status is the goal of all members, and it is expected to allow Bahamian securities firms to access certain markets from which jurisdictions not signatory to Appendix A are excluded.

International recognition of the regulatory framework aside, Smith said the ongoing changes to the regulatory framework ultimately bode well for the jurisdiction, bringing regulatory clarity to the markets and their participants, and protecting the investing public and other consumers of financial services.

According to Smith, as the key supplements to the SIA, 2011 are put in place, the Commission will turn its focus to updating the IFA, 2003 with a goal of modernizing the current regulatory philosophy by moving to a more prudential approach that considers the operation and management of investment funds and their related parties. The current philosophy relies heavily on full and frank disclosure and has not kept pace with international standards.

“The modern regulatory approach has moved away from mere disclosure to focus more on prudential oversight of investment funds and related parties and demands a regulatory regime specific to Hedge Funds,” said Smith. “We envision a fairly complete overhaul of the legislation will be required to fully comply with IOSCO's principles with regard to the regulation of collective investment schemes.”

Smith acknowledges that some industry participants might be challenged to meet new requirements, so changes are phased in. Ultimately, a holistic, long-term view of the regulatory landscape is encouraged.

The SIA, 2011 came into effect on 30 December 2011, repealing and replacing the SIA, 1999.

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.

The Securities Commission of The Bahamas
3rd Floor, Charlotte House
Charlotte Street
P.O. Box N- 8347
By fax to: (242) 356-6291/2
By email to: info@scb.gov.bs
Website: www.scb.gov.bs