



LEGISLATIVE AGENDA 2015

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EXECUTIVE DIRECTOR
SECURITIES COMMISSION OF THE BAHAMAS



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BACKGROUND

- ❑ Securities Legislation, 1995 -2011
- ❑ All developed by the Commission
- ❑ Securities Industry Act, 1999
- ❑ Investment Funds Act, 2003
- ❑ Securities Industry Act, 2011
- ❑ International Standard Compliance
- ❑ Industry Responsive



SUMMARY OF 2015 LEGISLATIVE AGENDA

- ❑ Review and develop draft of an Amended Financial and Corporate Service Providers Act (FCSPA)
- ❑ Conclude Rules for Securities Industry Act, 2011 Implementation
- ❑ Review of Investment Funds Act deferred to 2016



REVIEW OF THE FCSPA – GOAL ONE

- ❑ New draft of FCSPA by end 2015
- ❑ Long outstanding goal for the Commission
- ❑ General approach of inclusion and consultation
- ❑ GFSR Team appointed to review and develop instructions
- ❑ Industry Focus Groups to be approached for input
- ❑ Broad input required because of nature of the area this legislation covers



AREAS IN FCSPA TO BE COVERED

- ❑ Definition of financial services
- ❑ Application to corporate services
- ❑ Definition of eligible applicants
- ❑ Ongoing Supervisory Regime and obligations
- ❑ Clarification of application of fees
- ❑ Enforcement



IMPLEMENTATION OF SIA RULES

- Updates on the following Rules:
 - Securities Industry Disciplinary Proceedings (Hearing & Settlement) Rules 2015
 - Securities Industry (Anti Money Laundering & Countering the Financing of Terrorism) Rules, 2015
- Compliance Officer and Outsourcing of Compliance Function
- Regulatory Capital Rules



STATUS UPDATE ON SUITABILITY AND SEGREGATION OF ASSETS

- Segregation of Assets
 - SIR, 2012 (Reg. 88) assumes brokerage firm
 - SIR, 2012 to be amended to recognize and account for banking treatment of cash

- Suitability
 - SIR, 2012 (Reg. 69) creates administrative impracticalities
 - Guidance Rules to provide practical approach to application of Reg. 69



APPROACH TO DEVELOPMENT OF LEGISLATION

- ❑ Flexible
- ❑ Responsive to Industry
- ❑ Plain English
- ❑ Consultation



FUNDS REGULATION IN THE BAHAMAS

HIGHLIGHTS AND RECENT DEVELOPMENTS

PRESENTER: STEPHEN COAKLEY WELLS
DEPUTY EXECUTIVE DIRECTOR



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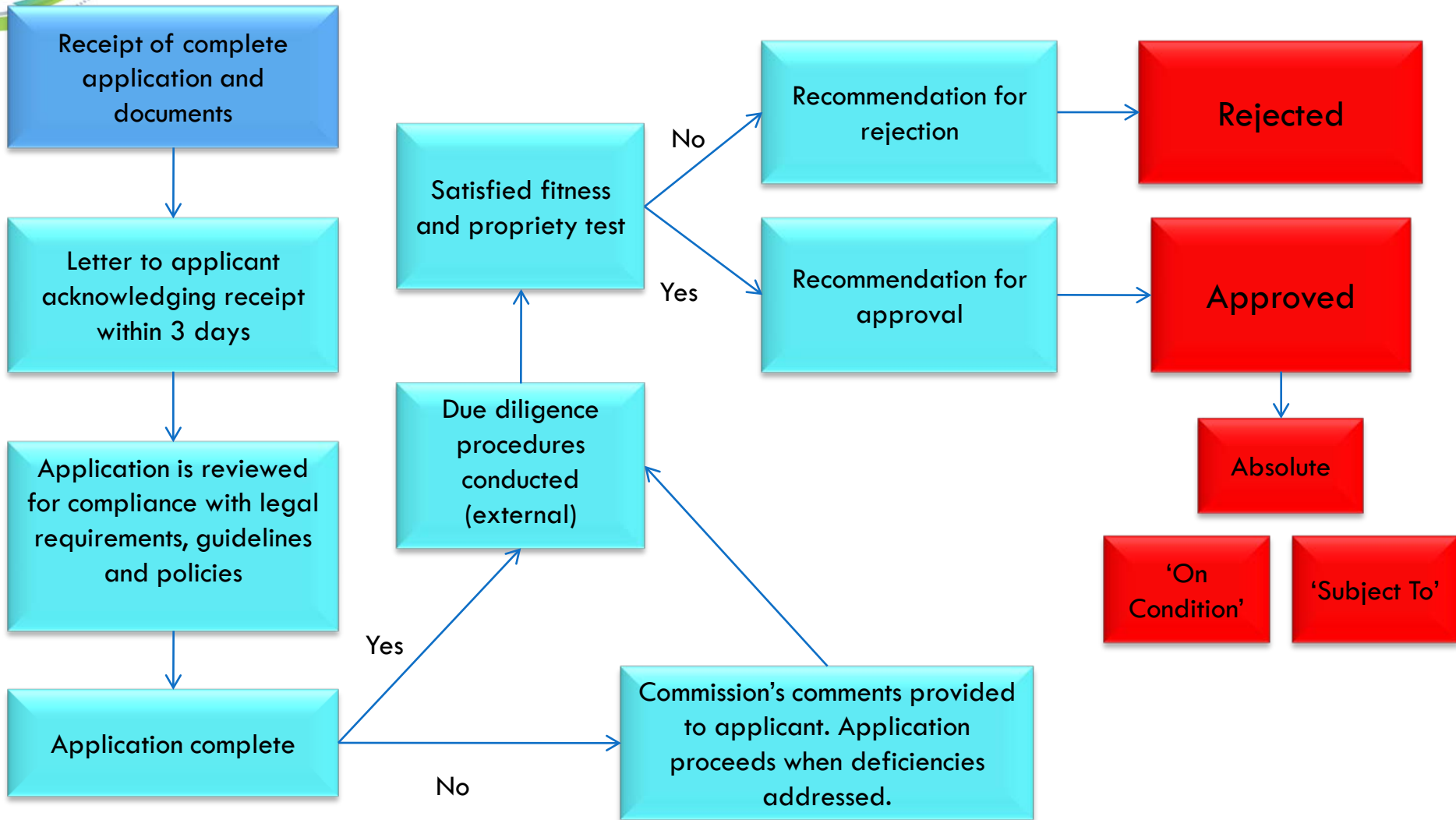


APPLICATIONS PURSUANT TO THE IFA

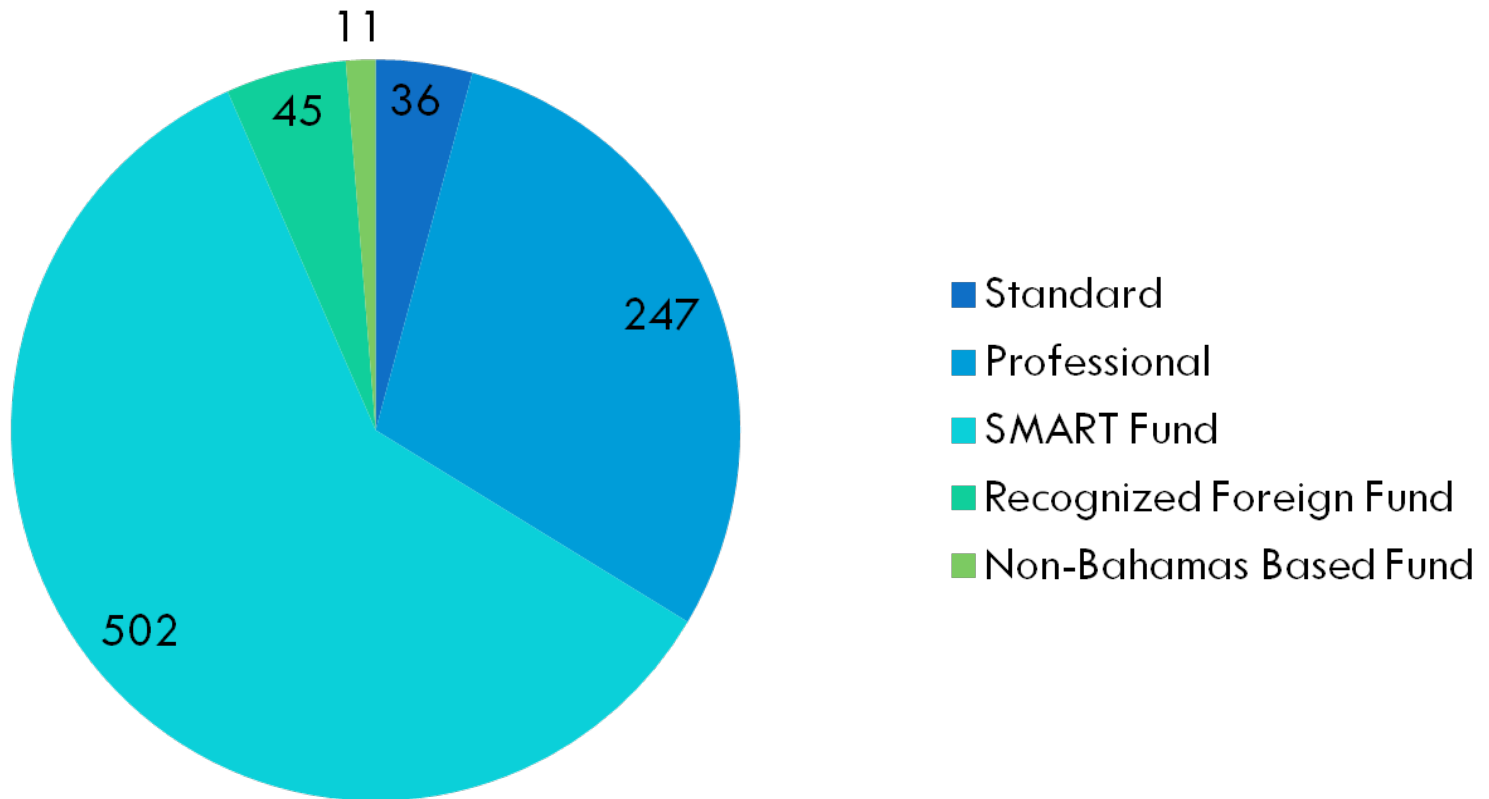
- Investment Funds
 - Standard Fund
 - Professional Fund
 - SMART Fund Models (001, 002, 004, 005, 006, 007)
 - Registration as Recognized Foreign Fund

- Investment Fund Administrators
 - Unrestricted Investment Fund Administrator (UIFA)
 - Restricted Investment Fund Administrator (RIFA)
 - Exemption from obtaining an Investment Fund Administrators Licence

THE APPLICATION PROCESS



NUMBER OF LICENSED/REGISTERED INVESTMENT FUNDS AS AT 31 DECEMBER 2014





TOTAL NON-SMART FUNDS 2010 – 2014

Fund	2010	2011	2012	2013	2014
Professional	243	254	215	226	247
Standard	70	50	39	41	36
Recognized Foreign	158	104	72	53	45
Non-Bahamas Based*		12	14	14	11
Total:		408	326	320	328

* Not licensed or registered in The Bahamas and not reflected in total number of funds.



TOTAL SMART FUNDS INCEPTION – 31 DECEMBER 2014

Fund Model	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
SMART Fund 001							0	1	2	1	1	3
SMART Fund 002							93	107	121	114	132	140
SMART Fund 003							27	24	23	19	17	17
SMART Fund 004							140	146	156	189	250	273
SMART Fund 005							3	3	2	2	3	3
SMART Fund 006							1	1	1	1	1	1
SMART Fund 007							0	0	0	0	29	65
Total:	0	75	88	122	146	177	264	282	305	326	433	502



CATEGORY & JURISDICTION COMPARISON

Fund Administrators

Administrators	2010	2011	2012	2013	2014
Restricted	28	28	29	29	28
Unrestricted	35	34	35	30	32
Total:	63	62	64	59	60

Funds by Jurisdiction

Jurisdiction	# of Funds	Period
Cayman Islands	11,010	Dec. 2014
Bermuda	661	Sept. 2014
The Bahamas	830	Dec. 2014



THE INVESTMENT CONDOMINIUM (ICON) FUND



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HIGHLIGHTS OF THE ICON FUND

- ❑ An ICON is a contractual relationship.
- ❑ It may be formed to operate as an open-ended fund or a closed-ended fund.
- ❑ An ICON, as an entity without legal personality, is represented by its administrator.



CREATING AN ICON

- ❑ Name must be reserved with the Registrar General
- ❑ Initial Participants agree and sign the Governing Regulations effectively establishing the ICON
- ❑ Initial Participants appoint the governing administrator and general administrator
- ❑ Certificate of Establishment issued by the Administrator and submitted to Registrar along with fee within 7 days of date of establishment for stamping by the Registrar
- ❑ A Certificate of Establishment stamped by the Registrar is evidence of compliance with registration requirements. Governing Regulations may but need not be filed
- ❑ ICON must be licensed as an investment fund within 90 days of date of establishment



GOVERNING REGULATIONS

- ❑ Name
- ❑ Statement that it is formed exclusively to operate as an investment fund (statement of purposes)
- ❑ Name and address of Administrator (governing and general)
- ❑ Address in The Bahamas for service of process
- ❑ Provisions relating to audit
- ❑ Duration of the ICON
- ❑ Provisions for the dissolution of the ICON
- ❑ Number and currency of participation interests to be issued
- ❑ Rights, powers (voting/non-voting) of the participation interests
- ❑ The manner in which material agreements and Governing Regulations are to be amended
- ❑ Liability of participants
- ❑ Valuation procedures
- ❑ Duties of governing administrator and general administrator
- ❑ Such other items as are required by the Investment Funds Act and Regulations, 2003



HOW THE ICON OPERATES

- ❑ An ICON may have an unlimited number of participants, but the minimum number is one.
- ❑ Participation interests may but need not carry voting rights, and such rights are specified in governing regulations. Participation interests are personal property, and enforceable by the participants as a chosen action.

RIGHTS OF PARTICIPANTS:

- ❑ Entitled to participation interest and to redemption
- ❑ Participation interest can be issued as voting or non-voting
- ❑ Voting participation interests may remove and replace the Administrator
- ❑ Disclosure and other rights as investors as required by the Investment Funds Act, 2003 (“IFA”)



ADMINISTRATION

- ❑ Initial Participants appoint an Administrator
- ❑ Single institution performing governance and general administrative roles possible
- ❑ Separate institutions splitting those roles – the governing administrator and general administrator
 1. General Administrator must be a financial institution licensed by the Securities Commission of The Bahamas (“SCB”) as a restricted or unrestricted fund administrator
 2. Governing administrator is the “operator” of the fund
 3. Governing Administrator must be:
 - Restricted or Unrestricted Investment Fund Administrator;
 - A Financial and Corporate Service Provider;
 - Licensed Dealer in Securities;
 - Bank or Trust Company licensed by the Central Bank of The Bahamas (“CBB”); or
 - Entity in foreign jurisdiction licensed by a regulator having authority equivalent to the CBB or SCB.
- ❑ General administrator acts in the same way as administrator of other funds with the same roles and responsibilities
- ❑ Delegation permitted



CONVERSION

- ❑ Existing Bahamian IBC, Exempted Limited Partnerships or Unit Trusts may become ICON Funds.
- ❑ There is no need for a terminating event triggering a capital gain or other adverse tax consequence.
- ❑ Entities established under the laws of another jurisdiction may also convert to an ICON though they must first be redomiciled and continued under Bahamian law, in the case of an IBC or ELP, or effect a change in the governing law in the case of a trust.



SUMMARY

- ❑ ICON is not a legal entity but a contractual relationship
- ❑ Cannot declare dividends or make distributions
- ❑ Separate administrators or same entity can perform both functions
- ❑ Can only be used as a Fund
- ❑ Not required to file Governing Regulations (except in case of conversion)
- ❑ Closed-end ICON must be licensed
- ❑ One annual general meeting of participants with voting rights required at any location
- ❑ Participant Interests enforceable as a chosen action (similar to a share)
- ❑ Conversion



FEES

- ❑ Registration fees of an ICON billed in a reduced sliding scale:
 - First quarter of a calendar year - \$350.00
 - Second quarter of a calendar year - \$250.00
 - Third quarter of a calendar year - \$150.00
 - Fourth quarter of a calendar year - \$100.00
- ❑ Filing of certificate of Good Standing - \$150.00
- ❑ Certificate of Good Standing - \$ 50.00
- ❑ Annual Fees - \$350.00
(penalties for late payment applicable)
- ❑ Filing Notice of Dissolution - \$150.00
- ❑ Restoration fee - \$750.00



QUESTIONS & ANSWERS



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THANK YOU