

REMARKS BY SANDRA J. KNOWLES

EXECUTIVE DIRECTOR

THE SECURITIES COMMISSION OF THE BAHAMAS

AT BAHAMAJAC 2000

HELD AT QUEEN'S COLLEGE

VILLAGE ROAD

ON

SATURDAY, FEBRUARY 26, 2000

AT 9:00 A.M.

SECURITIES COMMISSION

3. (1) The body corporate established under section 3 of the repealed Act and known as the Securities Board is preserved and shall continue in existence by virtue of and for the purposes of this Act but shall be known after the commencement of this section as the Securities Commission of The Bahamas.

(2) The First Schedule shall have effect with respect to the Commission, its members and staff.

4. (1) The functions of the Commission shall be –

- (a) to formulate principles to regulate and govern mutual funds, securities and capital markets;**
- (b) to maintain surveillance over mutual funds, securities and capital markets ensuring orderly, fair and equitable dealings;**
- (c) to create and promote conditions to ensure the orderly growth and development of the capital markets;**
- (d) to advise the Minister generally regarding mutual funds, securities and capital markets;**
- (e) to do such other things as may be prescribed by this Act or by any other written law.**

(2) The Commission shall have power to do anything which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under subsection (1).

5. (1) The Minister may give the Commission directions in writing for the discharge of its functions and the Commission shall give effect to such directions.

(2) The Commission shall furnish the Minister with any returns, accounts and other information as he may from time to time require with respect to the property and activities of the Commission and shall afford to him facilities for verifying the information in any manner and at such time as he may reasonably require.

6. The funds and resources of the Commission shall consist of –

(a) any moneys as from time to time are provided by Parliament;

- (b) any moneys as from time to time may accrue to the Commission from its operations;**
- (c) any moneys as from time to time are borrowed by the Commission pursuant to section 7;**
- (d) any moneys or other property as from time to time may in any manner be lawfully paid to or vested in the Commission whether or not in respect of any matter incidental to its functions.**

THE COMMISSION, ITS MEMBERS AND STAFF – A Body Corporate

1. (1) The Commission is a body corporate having perpetual succession and a common seal, with power to

purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(2) The Commission may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Commission of any document of whatsoever kind must be made by delivering the document to, or sending it registered post addressed to, the secretary of the Commission at the office of the Commission.

2. (1) The seal of the Commission must be kept in the custody of any officer of the Commission as the Commission may approve, and may be affixed to instruments pursuant to a resolution of the Commission and in the presence of the chairman or the deputy chairman and one other member.

(2) The seal of the Commission must be authenticated by the signature of the chairman or deputy chairman and another member, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the chairman or deputy chairman.

CHAIRMAN AND MEMBERS

4. (1) The members of the Commission shall consist of a chairman, a deputy chairman and such number of other members, not being more than seven as the Minister may from time to time determine.

(2) The Executive Director, the Governor of the Central Bank and the Registrar of Insurance shall be ex officio members of the Commission.

5. (1) The Chairman shall be appointed by the Minister, shall hold office for five years and shall be eligible for re-appointment.

(2) The deputy chairman and the other members of the Commission shall be appointed by the Minister from amongst persons appearing to him to be qualified as having had experience of or having shown capacity in matters relating to industry, commerce, law, finance or administration.

6. A member of the Commission other than the chairman, subject to paragraphs 8 and 9, shall hold office for such period, not exceeding three years or four years as the Minister may direct in the instrument appointing such

**member, and such member shall be eligible for re-
appointment.**

**7. (1) The Minister may by instrument in writing appoint
some suitable person as a member of the Commission to act
temporarily in the place of any member of the Commission in
the case of the absence or inability of such member to act.**

**(2) The Minister shall appoint new members of the
Commission on the advice of the Commission and the
Securities and Mutual Funds industry in The Bahamas.**

**8. Any member of the Commission may at any time
resign his office by instrument in writing addressed to the
Minister.**

**9. The Minister by instrument in writing may at any
time revoke the appointment of any member of the
Commission if he thinks it expedient to do so.**

10. The appointment, removal, death or resignation of any member of the Commission shall be notified in the Gazette.

11. There shall be paid from the funds of the Commission to the chairman and other members of the Commission such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, if any, as the Minister may determine.

PROCEEDINGS

12. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and time and on such days as the Chairman may determine.

(2) The chairman, or in his absence the deputy chairman, shall preside at all meetings of the Commission.

(3) The chairman, or in his absence the deputy chairman, and three other members of the Commission shall constitute a quorum.

(4) The decisions of the Commission shall be by a majority of votes and in addition to an original vote, in any case in which the voting is equal the chairman or the deputy chairman presiding at the meeting has a casting vote.

(5) Minutes in proper form of each meeting are to be kept by the secretary or any officer the Commission may appoint for the purpose, and confirmed by the Commission at the next meeting and signed by the chairman or the deputy chairman as the case may be.

(6) The Commission may co-opt any one or more persons to attend any particular meeting of the Commission for the purpose of assisting or advising the Commission in any matter with which the Commission is dealing, but no co-opted person has the right to vote.

(7) The validity of any proceeding of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

13. Subject to the provisions of this Schedule, the Commission has the power to regulate its own proceedings.

STAFF

14. The Commission may appoint and employ on such terms and conditions as it thinks fit any officers, servants or

agents as it considers necessary for the proper carrying out of the provisions of this Act.

15. (1) Except as provided in any contract of employment with the Commission, the Minister may grant any employee of the Commission in respect of his service with the Commission pensions, gratuities or other like allowances at the rate prescribed by and in accordance with the provisions of the Pensions Act as if reference in that Act to the "Governor-General" the "public service" and a "public officer" were references to the Commission acting with the approval of the Minister, service in the Commission and such employee, respectively.

(2) For the purpose of subsection (1) reference to the service of an employee of the Commission includes any continuous period of service of that employee with an approved authority immediately prior to his service with the Commission.

(3) In this section the expression “approved authority” has the same meaning as in section 2 of the Pensions Act.

(3) The pensions, gratuities or other like allowances which are payable under subsection (1) shall be charged on and paid out of the funds of the Commission or the Consolidated Fund.

I contend that securities markets can and do exist without regulations. However, I will equally argue that they will not succeed in achieving their objectives, nor will they stand up to scrutiny from investors, if it is perceived that the markets are subject to fraud and manipulation.

Jurisdictions that have little or no regulations have a higher level of uncertainty associated with their markets. Consequently investors will be less inclined to invest in this type of environment, and will look to jurisdictions with sound regulatory controls and laws.

The role of the Securities Commission is extremely important. The cornerstones of securities regulation are embodied in three very important principles:

- (1) The protection of investors;**
- (2) Ensuring that markets are fair, efficient and transparent; and**
- (3) The reduction of systemic risk.**

These three principles are closely related and in some respects, overlap. Many of the requirements that help to ensure fair, efficient and transparent markets also provide investor protection and help to reduce systemic risk and those that reduce systemic risk provide protection for investors.

There are five important characteristics that the Securities Commission of The Bahamas, as regulator of the securities industry in this jurisdiction, should possess.

These are:

- (1) Clear and objectively stated responsibilities;**
- (2) Operational independence and accountability in the exercise of its functions and powers;**
- (3) Adequate powers and proper resources to perform its functions;**
- (4) Clear and consistent regulatory processes; and**
- (5) The highest professional standards including appropriate standards of confidentiality.**

The capacity of the regulator to act responsibly, fairly, and efficiently will be assisted by a clear definition of responsibilities. In our case these have been set out in the Mutual Funds Act, 1995 and its Regulations and the Securities Industry Act, 1999.

Further, cooperation among the various government agencies and departments through appropriate channels, will assist this process as well.

The Securities Commission should be operationally independent from external political or commercial interference in the exercise of its functions and powers, and accountable in the use of its powers and resources.

Independence will be enhanced by a stable source of funding. In our case, fees from the mutual fund industry and soon from the securities market, and not a reliance on government subvention.

Accountability implies that a regulator should operate independently of sectoral interests; and have a system of public accountability and a system permitting judicial review of decision of the Securities Commission.

The confidential and commercially sensitive nature of much of the information in the possession of the Commission must be respected. Safeguards must be in place to protect such information from inappropriate use or disclosure.

The Securities Commission have adequate powers, resources and the capacity to perform its functions and exercise its powers. In practical terms this means the powers of licensing, supervision, inspection, investigation and enforcement.

The Securities Commission has comprehensive inspection, investigation and surveillance powers.

It has comprehensive enforcement powers.

The regulatory system ensures an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance programme.

Supervision of market intermediaries' conducted through inspection and surveillance helps to ensure maintenance of high standards and the protection of investors. These preventative programmes are a necessary complement to investigation and enforcement programmes.

The Securities Commission has the power to require the provision of information or to carry out inspections of business operations whenever it believes it necessary to ensure compliance with relevant standards.

Inspection visits may be rotational or driven by risk assessment or complaint.

The complex character of securities transactions and the sophistication of fraudulent schemes require strong and rigorous enforcement of securities laws. Investors in the securities market are particularly vulnerable to misconduct by intermediaries and others.

The Securities Commission has also been provided with comprehensive investigatory and enforcement powers through the Securities Industry Act of 1999.

- regulatory and investigative powers to obtain data, information, documents, statements and records from persons involved in the relevant conduct or who may have information relevant to the inquiry;**

- **power to seek orders and/or to take other action to ensure compliance with these regulatory, administrative and investigation powers;**
- **power to impose administrative sanctions, or to seek orders from courts or tribunals;**
- **power to initiate or to refer to matters for criminal prosecution;**
- **power to order supervision of trading in securities or to take other appropriate action.**
And where enforcement action should be taken, the power to enter into enforceable

settlements and to accept binding undertakings.

Adequate funding is essential for the Commission to carry out its functions. Staff must receive ongoing training as required.

In exercising its powers and discharging its functions the Commission should adopt processes which are:

- (a) consistently applied**
- (b) comprehensive**
- (c) transparent to the public**
- (d) fair and equitable**

In the formulation of policy, the Securities Commission has a process for consultation with

those who may be affected by its policies. Public disclosure of policy in important operational areas is generally desirable except perhaps in the areas of surveillance and enforcement where consultation and disclosure may not be necessary and inappropriate as it may compromise the effective implementation of the policy.

Staff of the Securities Commission observe the highest professional standards and be given clear guidance on conduct matters including:

- (a) The avoidance of conflicts of interest (including conditions under which staff may trade in securities).**

- (b) The appropriate use of information obtained in the course of the exercise of powers and discharge of duty.**

- (c) The proper observance of confidentiality and securing provisions and the protection of personal data.**

- (d) The observance of procedural fairness.**

We must deal with self-regulation in the securities market.

The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight and responsibility for their respective areas of competence and to the

extent appropriate to the size and complexity of the markets. (In our jurisdiction, the newest SRO will be the Stock Exchange). SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegating responsibilities.

SROs can be a valuable complement to the Commission in achieving the objectives of securities regulation.

The common characteristics of SROs, in most jurisdictions, are a separation from the government regulators (although government oversight and authorization generally exists) and the participation of business, industry and if appropriate, investors in the operations of the SRO.

There can be substantial benefits from self-regulation.

SROs may require the observance of ethical standards that go beyond governmental regulations.

SROs may offer considerable depth and expertise regarding market operations and practices, and may be able to respond more quickly and flexibly than the government authority to changing market conditions.

The actions of the SROs will often be limited by applicable contracts and rules.

SROs are required to meet minimum standards that are enacted by legislation. They can make standards more stringent for their membership. Oversight of the SRO should be ongoing. Moreover, once the SRO is operating, the regulator assures itself that the exercise of this power is in the public interest and results in fair and consistent enforcement of applicable securities laws, regulation and appropriate SRO rules.

As a condition to authorization, the legislation or the Commission should require an SRO to do the following:

- **Have the capacity to carry out the purposes of governing laws, regulations and SRO rules, and to enforce compliance by its members and**

associated persons with those laws, regulations and rules;

- **Treat all members of the SROs and applicants for membership in a fair and consistent manner;**
- **Develop rules that are designed to set standards of behaviour for its members and to promote investor protection;**
- **Submit to the regulator its rules for review and approval as the Commission deems appropriate and ensure that the rules of the SRO are consistent with the public policy directives established by the Commission;**

- **Co-operate with the Commission and other SROs to investigate and enforce applicable laws and regulations;**
- **Enforce its own rules and impose appropriate sanctions for non-compliance;**
- **Ensure a fair representation of members in selections of its directors and administration of its affairs.**
- **Avoid rules that may create uncompetitive situations; and**
- **Avoid using its oversight role to allow any market participant to gain unfair advantage of the market.**

Regardless of the extent to which self-regulation is used the Securities Commission, which is the government regulator, will retain the authority to inquire into matters affecting investors or the market.

SROs should follow similar professional standards of behaviour on matters such as confidentiality and procedural fairness as would be expected of the regulators.

Finally, there are no specific provisions in the Securities Industry Act and its accompanying Regulations dealing with "*investor education*". However, this is a fundamental responsibility of any

regulator, self-regulatory organisation or intermediary in any securities market.

We have incorporated investor education as an important part of our mandate and will assist in educating the investing public.

Knowledge of the investment process and the capital markets will empower investors to make informed decisions based on critical analysis.

This educational process will also protect the investing public against fraud and other illegal activities that are becoming an increasing problem in emerging markets such as ours.