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SECURITIES COMMISSION OF THE BAHAMAS

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BACO MLRO Day

The Modernization of the Bahamian  
Securities Industry

## INTRODUCTION

Protocol being established, I would like to first thank the Bahamas Association of Compliance Officers (BACO) for inviting me to address this distinguished gathering on the efforts made by the Securities Commission of The Bahamas toward modernization of the securities industry.

My first order of business is to give the Commission's standard disclaimer:

The views expressed in this presentation are my own and may not represent those of the Securities Commission, its Members, Management or Staff.

With that out of the way, let me say that I am always grateful to speak at BACO hosted events—not only because of my past roles in compliance but more importantly because I am deeply aware of the reliance regulators place on the shoulders of compliance professionals. Indeed professionals like many of you here today executing functions as a Money Laundering Reporting Officer, Money Laundering Prevention Officer or Compliance Officer are called upon to partner with regulators to:

1. Ensure compliance with applicable laws and codes of conduct;
2. Protect investors; and
3. Reduce the risk of reputational damage.

The success of any jurisdiction's financial regulation regime depends heavily on the commitment and professionalism of its Compliance and Money Laundering Reporting Officers. Put more plainly, you who are seated in this room will have a marked and considerable influence on the jurisdiction's compliance with international standards, and hence its reputation and ability to develop this vital sector of the Bahamian economy.

Therefore, I am confident that you are keen to understand this modernization I am to speak about from the perspective of:

1. changes to the legislative framework,
2. the Commission's technical capacity to execute its mandate, and
3. the Commission's commitment to a balanced and holistic approach to regulation -- one that meets best international standards for capital market regulation in an environment conducive to business growth and development.

#### **HISTORICAL DEVELOPMENT**

The historical 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 over two decades later, establishing the Securities Board. The Securities Board was given general authority to regulate the industry. It was thought that the Board would gain more specific powers to administer and regulate activities in the securities industry with the promulgation of new legislative measures. The Mutual Funds Act, 1995 which came into force in November of that year, was one of these envisioned pieces of legislation, and the Board was vested with responsibility for the its administration. It was subsequently repealed and replaced with the Investment Funds Act, 2003.

Development of the industry continued and, by May 1999, a new piece of legislation, the Securities Industry Act, 1999, came into force. A few months later, in September, the Bahamas International Securities Exchange (BISX) was incorporated. It launched its domestic market for the listing and trading of the securities of local publicly listed companies in May of 2000, and its mutual funds listing facility in April 2001.

Under the Act, the Securities Board became the Securities Commission of The Bahamas and was formally charged to formulate principles to regulate and govern investment funds, securities and capital markets; maintain surveillance over those markets, ensure orderly, fair and equitable dealings; to create and promote conditions to ensure orderly growth and development; and to advise the Minister of Finance regarding investment funds, securities and capital markets.

Though considerably more meaningful a piece of legislation than the Securities Board Act which the SIA, 1999 repealed and replaced, by the time The Bahamas underwent the International Monetary Fund's Financial Sector Assessment Programme (FSAP) in October, 2002 and the subsequent IMF follow-up technical assistance mission in November 2004, extensive changes were identified as essential to bring the securities legislative framework up to international standards.

It was determined that a new Act would be the best avenue to achieve this, and the journey to the promulgation of new securities industry legislation in the form of the SIA, 2011, on December 30<sup>th</sup> last year, was undertaken.

#### **MODERNIZATION THROUGH THE NEW ACT**

Generally, the SIA, 2011 addressed a number of issues identified in the 2002 FSAP. The SIA, 2011 could be said to have added modern tools to the Commission's toolkit, greatly enhancing its ability to deliver on its mandate.

The SIA, 2011 achieves greater flexibility for the Commission and thereby facilitates a more responsive approach to emergent issues. The Commission is able to promulgate rules for matters, eliminating the need for amendments to the Act or Regulations in many instances. This gives the modern regulator greater agility and nimbleness as the securities landscape changes to ensure the regulatory framework is appropriately keeping pace with market developments (e.g. products, services and risks).

It may appear to be a simple change but when coupled with the Commission's approach to developing the industry's legislative framework this flexibility might be described as refreshing and vital to a modernizing process. The approach the Commission employs for regulatory reform is one that considers international standards, such as the 38 Principles of Securities Regulation espoused by the International Organization of Securities Commissions (IOSCO), and benchmarks proposals against relevant jurisdictions. More importantly, the Commission solicits input from all stakeholders, including practitioners operating in or from The Bahamas. Perhaps

this is most recently exemplified in the appointment of an Investment Funds Act Technical Team comprising practitioners, lawyers and visionaries. As a part of our approach, to achieve balance between regulation and market development, the Commission regularly involves industry participants and stakeholders in focus groups and broad consultation papers that contribute to the development of regulations, rules and guidelines.

We cannot stress sufficiently the importance of feedback and engagement in shaping the regulatory landscape. After you hear all the excellent presentations today, under BACO's umbrella theme of "Complying in Challenging Times Whilst Facing a New Compliance Era- Getting it Right!", I hope each of you visit our website right away, [www.scb.gov.bs](http://www.scb.gov.bs). Choose the consultation document of interest to you and comment. You might consider whether the corporate governance guidelines being proposed are "*modern*" enough for your business realities, or whether the Takeover codes are adequate.

Holistic regulations are best achieved through meaningful dialogue with industry stakeholders. Your participation is important. Please let me dispel the chatter and misconceptions being floated by reiterating that the documents are, as stated, "proposed" and or "for consultation" and not finalized guidelines or rules.

While I have already turned this corner, local folklore once described the SCB has the "toothless tiger". Admittedly, experience to date does not seem to reflect the appropriate acceptance that the Securities Commission of The Bahamas is a regulator and therefore must fulfill its mandate to regulate. I must say that the storyline is changing. The SIA, 2011 also updated the Commission's investigation, examination, information-sharing and enforcement powers. In fact, one or two news stories suggested the Commission got a whole new set of 'teeth'.

The Commission envisions a thoughtful and considered application of these new authorities in an effort to foster more cooperation and compliance with regulatory principles by-and-large observed by leading financial jurisdictions the world over.

I won't delve into the enhanced enforcement powers, but I will take this opportunity to reiterate the point that the Commission's approach to modern regulation is one that relies heavily on engagement with our stakeholders. As stakeholders, as Compliance and Money Laundering Reporting Officers, you should know and fulfill your obligations under the law. Encourage dialogue with the Commission when your business is steering out of the light and into the gray. This dialogue may avert an enforcement conversation, which I think we all agree is a preferred approach.

With more modern information sharing provisions reflected in the SIA, 2011, The Bahamas as I speak is being considered for approval as a Signatory A to IOSCO's Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information (MMOU). That status will signal to the rest of the world the quality of the Bahamas' securities regulatory regime and its willingness as a modern player to be a part of the broader effort to protect the world's investors.

Once 'A' signatory status is achieved, I am told with anxious breath that previously restricted international asset managers, particularly those in Brazil, would be able to access Bahamas-based investment fund administrators. This, I believe, sends a clear beacon that The Bahamas remains a safe haven for quality business.

The SIA, 2011 also achieves a number of other improvements. For example:

1. it requires a prospectus based on the nature of a transaction rather than the characteristics of the parties involved;
2. it subjects all public issuers to the same disclosure requirements; and
3. it changes the categories of registration for firms and individuals and reflects similar definitions to those in use by other Commonwealth and Caribbean countries.

## TECHNICAL CAPACITY

In 1996, shortly after the Securities Board was established, the Regulator had a staff complement of four (4). In 1999, the year the first Securities Industry Act was promulgated, the staff complement had risen to 17. It almost doubled to 32 by 2001, ahead of the 2002 FSAP review. On the promulgation of the SIA, 2011, the staff complement stood at to 56. This increase in capacity has not been simply an increase in bodies, but also in technical expertise, with the Commission's human capital resource now equipped with 36 graduate and Post Graduate Degrees and eight professional certifications, and a substantial and growing cumulative number of years of experience in the industry, both regulatory and from private businesses operating in the sector.

The World Bank's and International Monetary Fund's 2002 Financial Sector Assessment Programme (FSAP) review noted the development of the technical skill of staff as a sector-wide deficiency. The Commission has commenced an initiative targeting the development of this resource internally, and it was a prominent aspect of the Commission's strategic plan for 2010 through 2012. A strong and continued focus on developing the technical skills of staff is also a critical competitive success factor.

The Commission has adopted a modern human resources approach that focuses on training designed to support the organization's mandate and mission. For example, this means that when SCB inspectors visit your businesses, they will:

1. have the right technical and inter-personal skill sets to conduct examinations,
2. have an adequate understanding of your business operations,
3. demonstrate a practical understanding of the regulations and the expectations SCB has of registrants, and
4. respond swiftly and adequately to registrants.

The Commission makes its Strategic Priorities a public document so much of what we are doing to modernize should not be a surprise. Internally, departments have been reorganized and

realigned. Processes are being streamlined and new standards, such as an Authorizations Service Standard, are being introduced. So when your business sends a complete application to us, and I don't need to reiterate to an assembly of Compliance and Money Laundering Reporting Officers that those applications need to be *complete*, you will have a reliable standard for the return of an acknowledgement letter and subsequent notification of an approval or decline.

Modernization also means continuous improvement. We are in the process of examining forms, and reworking them where appropriate to enhance utility of information and user-friendliness.

You might be happy to know that the Commission's disciplinary process is also undergoing some modernization. While it will maintain the highest level of integrity, we are aiming to reduce the number of panels and steps in the process.

#### CONCLUSION

I heard it said recently that The Bahamas must repent of its commitment to simply being competitive as a financial services jurisdiction, and commit itself to being an innovator and leader among financial services jurisdictions. I believe this is possible. No, perhaps innovation should be our holistic focus to secure a future.

Take, for example, the Specific Mandate Alternative Regulatory Test Fund, or SMART Fund. A shining example of what can happen when regulator and industry work together. After the Great Recession struck, while many traditional funds were being liquidated or consolidating to other jurisdictions, this innovative Bahamian product saw growth – in fact a 16 percent growth between 31 December 2009 and 31 December 2011. While asset managers have been able to access this innovative Bahamian product since 2003, they continue to discover its versatility for financial planning and structuring and the Commission continues to receive and approve applications for new SMART Fund models.

The Commission has been given a new, expanded mandate under the new SIA. To quote from Section 12 of the Act, “The functions of the Commission are to:

- a) advise the Minister on all matters relating to the capital markets and its participants;
- b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;
- c) foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;
- d) protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices;
- e) promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;
- f) create and promote conditions that facilitate the orderly development of the capital markets; and
- g) perform any other function conferred or imposed on it by securities laws or Parliament.

We are committed to this mandate, and keeping all stakeholders engaged in the modernization process. It is hoped that collaboration, communication and cooperation would be the description of our efforts together.

Thank you for your time and attention.

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