



**COUNTRY PRESENTATION**

**THE BAHAMAS**

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**Panama**

**THE COMMONWEALTH OF THE BAHAMAS**

**COUNTRY PRESENTATION**



## **THE SECURITIES COMMISSION**

The Securities Commission of The Bahamas (“the Commission”) is a statutory body established in 1995 under the Securities Board Act, 1995 which was repealed and replaced by the Securities Industry Act, 1999 (the SIA). The Commission is responsible for the licensing and supervision of the Bahamian securities industry, including market intermediaries, secondary markets, investment funds and their operators and financial and corporate service providers. The mandate of the Commission is to:

1. Formulate principles to regulate and govern investment funds, securities and capital markets;
2. Maintain surveillance over investment funds, securities and capital markets ensuring orderly, fair and equitable dealings;
3. Create and promote conditions to ensure the orderly growth and development of capital markets;
4. Advise the Minister of Finance regarding investment funds, securities and capital markets.

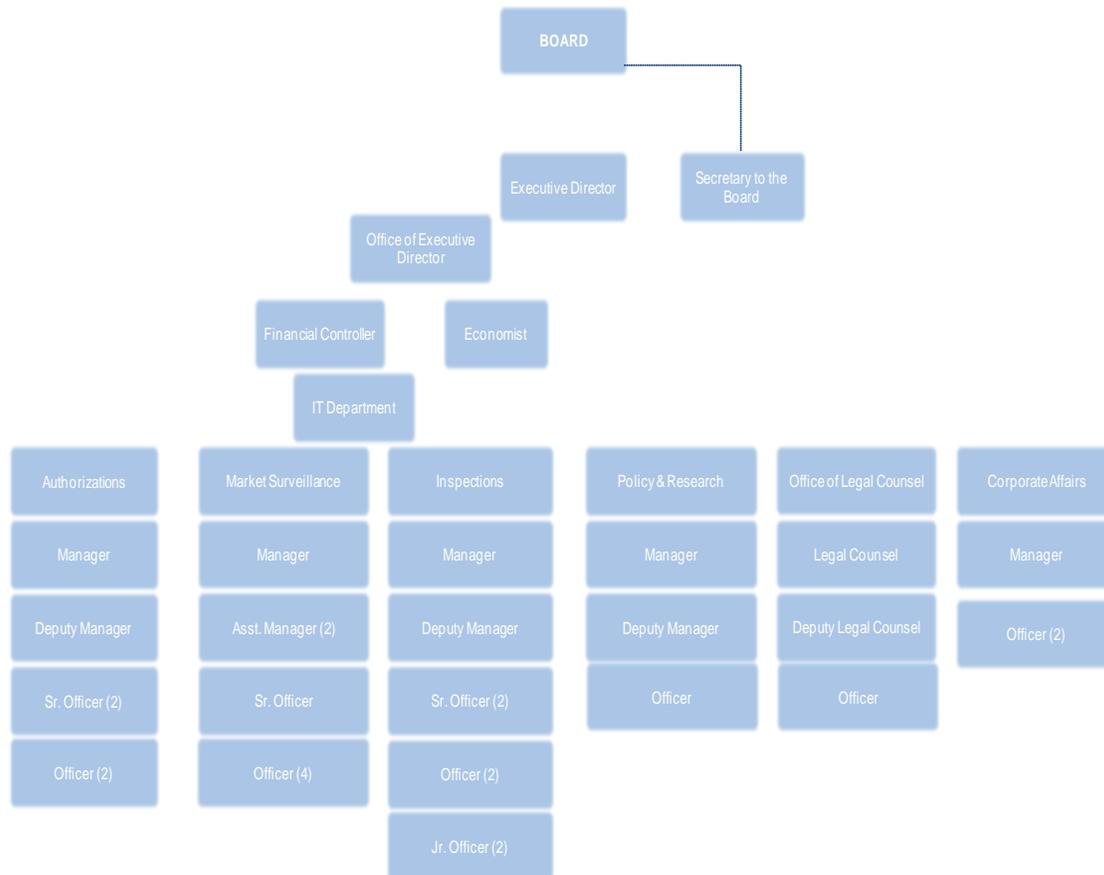
### **Structure of the Commission**

The members of the Board of the Commission comprise a Chairman, Deputy Chairman and other members not to exceed seven. There are currently eight Board members. The Commission’s Board members are responsible for setting and dealing with Commission policy matters, as well as addressing other specific matters assigned to their care, such as the granting of licenses or registration under securities laws. The Commission’s Executive Director, the Governor of the Central Bank and the Registrar of Insurance Companies are also ex-officio members of the Board. The Chairman and members of the Board serve at the discretion of the Minister of Finance. The Executive Director is responsible for the day-to-day running of the Commission. The work of the Commission is carried out by the Commission’s approximately 50 employees, in the following departments:

- Executive
- Authorisations;
- Market Surveillance;
- Inspections;
- Policy & Research;
- Office of Legal Counsel; and
- Corporate Affairs



## Organizational Chart



## **Supervision of Collective Investment Schemes**

Subsequent to the licensing or registration process, the supervision of collective investment schemes by the Commission is shared across the following departments:

- i. The **Market Surveillance Department**, which performs off-site surveillance of licensees, registrants and public companies to ensure compliance with provisions in our securities laws; and
- ii. The **Inspections Department**, which conducts on-site examinations of licensees and registrants. Inspections may be carried out as a part of a routine examination programme or for cause.

The specific responsibilities of the Market Surveillance department are to:



- Detect irregularities in trading activities that may breach trading rules or securities laws;
- Facilitate the financial reporting programme of the Securities Commission;
- Examine annual audited accounts and interim reports of listed companies for compliance with approved accounting standards and financial reporting requirements;
- Attend to queries pertaining to financial reporting and monitor submission of audited annual accounts of public corporations; and
- Monitor developments in the local and international securities markets.

The Inspections department conducts examinations on a routine basis or for-cause, and:

- Administers the Commission's on-site examination and inspection program for all registrants of the Commission, including administrators, broker-dealers, investment advisors/managers, and securities exchanges;
- Assists the Commission in determining whether an applicant meets the criteria for registration, with particular emphasis on operational capacity. Including but not limited to facilities, resources, supervisory procedures and capital sufficiency; and
- Aims to ensure that registrants are functioning in compliance with the legislative requirements and in keeping with the nature of the licence granted.

#### Educational Requirements

The minimum entry requirement for an officer in the Market Surveillance department is an undergraduate degree in Accounting, Finance, Economics, Law, Commerce or Banking. The minimum requirements for an officer of the Inspections department are an undergraduate degree in Accounting, preferably with 1 year audit experience.

Further, approximately 80% of all Commission staff members possess at least an undergraduate degree in relevant disciplines.



## **Rules and Regulations Applicable to Collective Investment Schemes**

The Investment Funds Act, 2003 (IFA) and Investment Funds Regulations, 2003 provide the Commission with its powers to regulate the investment funds industry in The Bahamas. The IFA repealed and replaced the Mutual Funds Act, 1995 and broadened the regulatory scope of the Commission in supervising collective investment schemes.

The Commission is also given the authority to establish rules regarding the standards or educational criteria suitable for parties related to investment funds, namely the funds' administrator, operators, promoter, custodian, investment manager and investment advisor. The Commission cannot license or register persons under the IFA unless it is satisfied that all relevant parties are fit and proper, and qualified to operate in their appointed capacity.

### **Categories of Authorization**

There are three types of investment fund administrators: unrestricted, restricted and exempt administrators. Unrestricted administrators have the ability to license funds that they administer and can administer an unlimited number of investment funds. Restricted administrators do not have the ability to license funds and can only administer funds that are approved by the Commission. Exempt administrators are restricted to administering only one authorized fund.

There are four different categories of regulated funds investment funds: Standard funds, Professional funds, Smart funds and Recognized Foreign funds. The details of each type of fund follow.

- **Professional Funds** - are available solely to accredited or "sophisticated" investors;
- **SMART Funds** – Specific Mandate Alternative Regulatory Test Fund is an investment fund that satisfies the parameters and requirements of a category, class or type of Investment Fund previously approved by the Commission;
- **Recognized Foreign Funds** - funds licensed or registered in a recognized jurisdiction or listed on a recognized stock exchange, as prescribed; and
- **Standard Funds** – funds that generally provide for those not categorized as Professional, SMART, or Recognized Foreign Funds. For example, this category covers, but is not limited to, retail-type funds. The application process for this category is subject to the most stringent scrutiny of the Commission.



## **Recent Developments**

### **Legislation**

As mentioned earlier, Recognized Foreign Funds are funds licensed or registered in a recognized jurisdiction or listed on a recognized stock exchange. For example, jurisdictions such as Barbados, Cayman, Gibraltar and Switzerland are on the list of qualifying prescribed jurisdictions. In 2006, amendments to the IFR increased the jurisdictions on the list to include Bermuda, British Virgin Islands, Guernsey and Jersey.

In early 2007, amendments were made to both the IFA and SIA that gave the Securities Commission of The Bahamas (the Commission) much broader access to information than had previously been provided for. In effect, the Commission now has the authority to directly compel information and allows the Commission to cooperate with other domestic financial regulators by enabling it to request documents, information and/or assistance from any financial institution, director, officer or servant.

Further, as a result of concerns regarding certain restrictions in the IFA and their effect on the competitiveness of The Bahamas in the funds industry, draft amendments to the IFA were proposed that will:

- (i) Amend the definition of “Recognized Foreign Fund” (RFF) to allow funds that are not licensed or registered in a prescribed jurisdiction or listed on a prescribed exchange to register as a RFF provided that the investment manager or investment advisor to the fund is licensed in a prescribed jurisdiction;
- (ii) Amend the definition of “Investment Fund” to remove the nexus of the investment manager/advisor as a basis to require that a fund is licensed by the Commission; and
- (iii) Amend the definition of “Professional Fund” to repeal the requirement that investors in the fund come from a prescribed jurisdiction.

These proposed amendments are currently being reviewed.

### **Policy**

Under the SIA, 1999, a securities investment advisor engaged in investment management or advisory services is subject to approval at the registration stage as well as having ongoing obligations to the Commission. This is in contrast to requirements under the IFA, where there is no regulatory authority over investment managers apart from during the initial licensing of the investment fund.



The Commission has addressed this regulatory gap in the draft of a new SIA but in the interim through the application of a policy that waives the requirement for a party conducting investment advisory/management activity in or from The Bahamas to register under the SIA, 1999 if the services are provided only to Bahamian licensed investment funds. The rationale for this is that the investment advisor/manager would be captured through due diligence exercises conducted on parties associated with the fund during the licensing of the fund. This practice removes the need for obtaining two licenses, which might otherwise act as a deterrent to the use of Bahamian service providers.

Another development has been a policy on Master/Feeder Fund Structures. The policy statement addresses specific queries forwarded to the Commission from the industry regarding its policies relating to the registration/licensing of Master/Feeder fund structures in this jurisdiction. Up to the development of the policy statement, it has been the approach of the Commission that unless otherwise exempted, all funds in a Master/Feeder fund structure would be required to be licensed individually. The Commission has undertaken to review the concerns raised and formulate a position such that: where the Master Fund (a open- or closed-end fund) does not require licensing/registration and the offshore feeder is registered/licensed in a prescribed jurisdiction, the Onshore Feeder would be exempted from the requirement that it be licensed its home jurisdiction and the SCB would register it as an RFF.

### Market Developments

Globally, financial markets have experienced severe fallout as a result of the subprime mortgage crisis. Fortunately, the realized impact on the Bahamas' investment funds industry is minimal. All investment fund administrators were asked to provide information on the investment funds under their administration which may have been impacted by the subprime mortgage crisis. Based on responses, the industry appears not to have been significantly impacted.

The Bahamian investment funds industry has seen an increase in the total number of authorized funds, which grew from 723 to 782 (8.1%) between December 2006 and December 2007. Recognized Foreign funds contributed to the largest increase with 35 funds. Professional funds, which represent the largest class of funds, experienced a decline of 4% from 298 to 286 funds. During the same period, net asset values have increased significantly by 45% from \$204.7 billion to \$297.6 billion.



## Enforcement Cases

The Commission's focus for the past year has been to enhance and pursue its enforcement efforts. This process is in its early stages but has begun operations and has concluded several inaugural matters. In the case of the Disciplinary Committee, six matters have been disposed of to date and recommendations made with respect to all of them, including referrals to the Hearing Panel for sanctions where they are deemed appropriate. The Hearing Panel has rendered decisions in respect of four matters, two of which were cases against funds and two were against fund administrators.

Additional industry statistics are provided in Annex1 and application processing fees in Annex2.

**Securities Commission of The Bahamas  
Nassau, Bahamas  
May, 2008**

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Additional information on The Bahamas, specifically its capital markets can be obtained from the following websites:

Securities Commission	<a href="http://www.scb.gov.bs">www.scb.gov.bs</a>
Bahamas International Securities Exchange	<a href="http://www.bisxbahamas.com">www.bisxbahamas.com</a>
Central Bank of The Bahamas	<a href="http://www.centralbankbahamas.com">www.centralbankbahamas.com</a>
Bahamas Financial Services Board	<a href="http://www.bfsb-bahamas.com">www.bfsb-bahamas.com</a>
Compliance Commission	<a href="http://www.bahamas.gov.bs/compliancecommission">www.bahamas.gov.bs/compliancecommission</a>



## **Annex 1: Industry Statistics**

Administrators Authorized Under the Investment Funds Act, 2003		
	<b>30 December 2006</b>	<b>31 December 2007</b>
Unrestricted	37	36
Restricted	22	27
Exempt	2	2
<b>TOTAL</b>	<b>61</b>	<b>65</b>

Funds Authorized Under the Investment Funds Act, 2003		
	<b>30 December 2006</b>	<b>31 December 2007</b>
Standard Funds	132	144
Professional Funds	298	286
Recognized Foreign Funds	171	206
SMART Funds	122	146
<b>TOTAL FUNDS</b>	<b>723</b>	<b>782</b>



**Annex 2: Fees**

	Application Processing Fee (\$)	Annual Supervisory Fee (\$)
<u>Administrators</u>		
Restricted	2,000	5,000
Unrestricted	5,000	10,000
Exempt	1,500	1,500
Self-Administered		1,000
Representative	250	100
<u>Funds</u>		
Standard	750	950
Professional	750	950
SMART	750	950
Recognized Foreign	100	100