

PRESS RELEASE

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SECURITIES COMMISSION OF THE BAHAMAS

The New Registration Process under the Securities Industry Act, 2007

“One of the key changes in the draft Securities Industry Act and draft Securities Industry Regulations (the draft Securities Legislation) is the fundamental restructuring of the present system for registration. Persons registered under the existing Securities Industry Act, 1999 are presently registered by category, whereas the provisions in the draft Securities Legislation establishes a system that will require market participants to be licensed to carry out specific functions that will be expressly identified in the registrant’s license. This new approach to registration will result in a clearer and more functional system of registration with the Commission. Thus issues relating to the appropriateness of the licensing/registration status of persons will no longer be of concern.”
[Statement of the Executive Director]

Under the new registration regime established in the draft Securities Industry Act an incorporated entity applying for registration to enable it to conduct securities business must specify what activities it plans to carry on and the firm will be registered accordingly. Securities business is broadly outlined in four categories as (i) Dealing in Securities, (ii) Arranging Deals in Securities, (iii) Managing Securities; and (iv) Advising on Securities. While the draft Securities Industry Regulations presently do not specify the various regulatory requirements applicable to the various activities for which one can be registered, the Commission is presently developing rules which address those standards. The Commission therefore anticipates releasing rules relating to fees, regulatory capital, physical presence and insurance requirements, prior to the promulgation of the draft legislation. Individuals may apply for registration in any one of five categories as applicable i.e. Chief Executive Officer, Compliance Officer, Dealing Representative, Discretionary Management Representative or Advising Representative. The registration of a representative will be directly linked to the firm in relation to which he is registered thus the representative can only register to carry on those securities activities that the firm is registered to undertake.

The overall structure of registration established in the draft securities legislation requires that all participants in the capital markets that are required to register pursuant to the present legislation are also required to be registered under the draft securities legislation. Therefore, securities exchanges, facilities (clearing and ancillary), persons dealing and trading in the securities markets or providing advice (firms and individuals) are presently required to be registered and will also have to register under the proposed legislation. The draft securities legislation however also provides that, if it is considered in the public interest to do so, the Commission may require certain categories of persons related to the securities market to be registered pursuant to the draft securities legislation.

The draft securities legislation also attempts to ensure that the requirements for registration of each of the various categories of registrants are transparent and relevant to the nature of the proposed registration. It is hoped that the rationale for many of the registration requirements is more clearly established throughout this legislation.

The Commission further notes two proposed changes that it views as progressive and as enhancing the existing licensing regime that will result in a more efficient and transparent licensing/registration process. First, the draft Securities Industry Act expressly establishes standard to be considered when the Commission is considering the fitness and propriety of applicants for licensing or registration. Thus the standards applied are transparent and clearly defined as including such elements as solvency, education, experience, reputation, character, reliability and financial integrity. It is noted however that these characteristics are subject to consideration by the Commission of any other information that the Commission thinks relevant to the assessment of the fitness and propriety of the person being assessed. Secondly, the Commission notes the requirements relating to "evidence of registration". The draft Securities Industry Regulations, eliminate the practice of issuing formal certificates of registration which will now be replaced by letters from the Executive Director evidencing the registration of an applicant. The processes surrounding the issue, replacement and cancellation of paper certificates is labor intensive, out of date and yielded very little, if any benefit.

On a general note regarding provisions relating to the procedures established for application, the Commission advises that all application forms have been established in the draft Securities Industry Regulations. The general approach to these forms is to list the required headings, followed by some guidance on the information that should be provided under each heading. In a few cases where standardized responses are desirable, the forms are structured in a 'fill in the blanks' style including tick boxes for yes/no answers.

The draft securities legislation attempts to ensure that both the requirements and the rationale for those requirements are made as clear as possible in the provisions of the draft securities legislation. It must be accepted however that in many cases, this cannot be achieved in one document and thus the methodical separation of provisions relating to substance and process and in some cases to specialized subject matter are left to be dealt with in subsidiary documents such as 'rules' and 'policy statements' as is the case in this regard. The Commission believes that the provisions drafted thus far however do an admirable job at establishing a primary base of clarity that will only be further enhanced as the rules and policy statements attending the draft securities legislation are issued by the Commission.

The Commission looks forward to engaging its constituents on their thoughts with regard to the authorizations process and in relation to any other matter that might arise from the newly proposed provisions. As the Commission has advised in past articles there was an official 45 day consultation period which expired on June 24th, 2009. The Commission advises however that while the formal consultation period has expired we continue to welcome comments on the draft securities legislation. Comments can therefore still be posted directly in the SIA/SIR Comment Forum using: <http://stats.scb.gov.bs/sia2009/> or posted or emailed to the Commission at **Email: sia2008@scb.gov.bs.**