



THE SECURITIES COMMISSION OF THE BAHAMAS

Draft Securities Industry Act and Regulations
BFSB Industry Briefing
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DISCLAIMER

The views expressed in this presentation are those of the speaker and do not represent the views, formal or otherwise, of the Securities Commission of the Bahamas.



Draft Securities Industry Act and Regulations

Objective of Presentation:

- Background
- Highlight critical changes
- Summarize the draft legislation
- Advise of Industry Concerns with draft legislation



Draft Securities Industry Act and Regulations

Background

- International Monetary fund report – 2002
- Appointment of Consultant – Tanis MaClaren
- Draft Securities Industry Act concluded May 2008
- Draft Securities Industry Regulations Concluded April 2009
- Public Consultation Process



Draft Securities Industry Act and Regulations

General Objectives of Legislation

- International Compliance
- Competitiveness
- Effective Regulatory and Business Tool
- User Friendly
 - Plain English
 - Details subjugated to subsidiary legislation



Draft Securities Industry Act and Regulations

KEY CHANGES

- Flexible Legislative Structure
- Restructuring of the Basis of the Registration System
- Enhancement of the Commission's Investigative and Enforcement Powers
- Restructuring of the Basis for Disclosure Requirements
- Expansion of Reporting Requirements to include all Public Issuers



Draft Securities Industry Act and Regulations Preliminary

- Part 1 – Preliminary Section
- Mainly Definitions
- More Extensive than in 1999 Legislation
- New Definitions to Note
- Possible industry confusion in definition of market participants



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- Part II - The Securities Commission
- Maintains Structure and Operation
- Key Changes - Commission's Powers and Duties; Members Appointments; Authority to Set Fees; Delegation Orders
- Industry Comments - Limitation of Terms of Members, Industry to Recommend Members, Declaration of Interests, Limitation on Securities Holdings.



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- Part III - Legal Framework for Information Sharing
- Key Changes – IOSCO MMOU Compliant ???
- Existing Information Sharing Procedure
- Industry Comment – Comparability to TIEAs, Direct International Regulator Access, Refusal of Requests



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- Part IV -Investigations and Inspections
- Key Changes – Legislative Framework Provided
- Industry Comments – Harsher Penalties for Non Compliance, Checks and Balances, Costs, Use of Information Received



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- Part V – Regulation of Marketplaces, Clearing or Ancillary Facilities, SROs
- Key Changes - Framework for Ongoing Supervision
- Industry Comments – 90 Day Period for Annual Reporting, Interim Reporting, Record Retention Requirements



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- Part VI – Regulation of ‘Persons Carrying on Securities Business’
- Key Changes – ‘Title’ to ‘Function’ Based Registration
- Industry Comments – 90 Day Reporting, Insurance Requirements, Section 76(2)(b) Report, Hold Mail



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- Part VII - Conduct of Securities Business
- Presently rely on BISX rules as there are no provisions in SIA 1999
- New provisions reflect international standards
- Key Changes – Standard of Care, Direct Auditor Access
- Industry Comments – Suitability Requirement, Reconciliations, Advertisements



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Part VIII gives Commission discretion to establish requirements for Compensation Fund



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- Part IX – Distributions and Prospectuses
- Key Changes – Updated Concepts
- Part X - Ongoing Obligations of Public Companies
- Key Changes – 90 Day Reporting, Proxy Material
- Industry Comment – Material Events Clarification, Proxy Material, Exemptions for Foreign Issuers
- Part XI and XII– Corporate Governance and Takeover Bids



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- Part XIII - Market Misconduct
- Insider Trading continues to be an offence
- Other existing offences maintained with the addition of Front Running and various defenses



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- Part XV - Enforcement
- Key Changes - Convoluted process and lack of authority
- Industry Comment – Clarity of Application and Process which will be Developed in Rules, Right to Appeal



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- Part XVI – Civil Liability for Misrepresentation
- Part XVII addresses miscellaneous matters including :
 - Regulations , Rules, Guidelines , Reviews and Appeals, Status of Documents, Power to Exempt, Designation Orders, Recognition of Jurisdictions and Exchanges, Commission Register



Thank You