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Bahamas

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

Most funds operating in the Bahamas take the form of either:

- managed investment companies with shares; or to a lesser extent
- trusts with units representing ownership.

There are two corporate types available:

- regular companies; and
- International Business Companies (IBCs).

IBCs are most commonly used for the many international offshore funds due to their flexibility and freedom from exchange controls for overseas operations. In addition, IBCs incorporated prior to 29 December 2000 have a guaranteed tax exempt status for a period of 20 years from the date of incorporation. IBCs incorporated after this date do not have this guarantee, however at present there are no taxes levied in The Bahamas that apply to them.

Bahamian citizens are not eligible to invest in Bahamian-resident funds owning foreign investments without approval. In addition to union and pension funds, there are currently several Bahamian collective investment schemes available to the Bahamian public.

The Investment Funds Act, 2003 (the Act) and the Investment Funds Regulations, 2003 (the Regulations) seek to regulate the investment fund industry in the Bahamas through oversight and supervision by a Securities Commission and licensed Investment Fund Administrators. Investment funds with a connection to the Bahamas, and local investment fund administrators are required to hold a license in order to carry on business. The concept of self-regulation has been adopted as the Act allows certain licensed administrators to grant licenses to investment funds they administer.

The Act defines an investment fund as a unit trust, a company, or a partnership, that issues or has equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains arising from the acquisition, holding, management, or disposal of investments; but does not include:

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- a person enrolled under the Friendly Societies Act; or
- a company, unit trust, or partnership where the holder of an equity interest does not have the option to redeem his/her equity interest or require the issuer to repurchase his/her equity interest.

A Bahamas-based investment fund means:

- a unit trust:
 - of which the trustee, the administrator, the investment advisor, or the investment manager is either a company incorporated or registered in The Bahamas or a person who has a place of business in The Bahamas or uses an address in The Bahamas; or
 - the trust instrument of which is governed by the laws of The Bahamas.
- a company (including a limited duration company):
 - incorporated or registered in The Bahamas;
 - of which the administrator, the investment advisor, or the investment manager is either a company incorporated or registered in The Bahamas or a person who has a place of business in The Bahamas or which uses an address in The Bahamas; or
 - of which the administration or management, (including the control of substantially all of its assets) is carried on in or from The Bahamas.
- a partnership:
 - of which one or more of the general partners is incorporated or registered in The Bahamas or is a person residing in The Bahamas or uses an address in The Bahamas;
 - whose partnership articles are governed by the laws of The Bahamas; or
 - of which the administrator, the investment advisor, or the investment manager is either a company incorporated or registered in The Bahamas or a person who has a place of business in The Bahamas or uses an address in The Bahamas.

The Commission relates to the Securities Commission established by the Securities Board Act, 1995, and subsequently renamed.

Regulated investment funds

A fund may be licensed as:

- a professional fund: offered to accredited investors only (as specified in the Act);
- a specific mandate alternative regulatory test fund (or SMART Fund): a fund that satisfies the parameters and requirements of a category, class or type of investment fund approved by the Commission;
- a standard fund: a fund that does not satisfy the requirements of a professional fund, a SMART fund, or a recognized foreign fund and can only be licensed by the commission; or
- it may be registered as a recognized foreign fund: the equity interests are listed on a securities exchange prescribed by the commission and the fund is not licensed in The Bahamas; or it is licensed or registered in a jurisdiction prescribed by the commission and not suspended from operation.

In order to conduct business as a professional fund or a standard fund, a fund must appoint a licensed or authorized investment fund administrator to provide its principal office, appoint a suitable trustee if a unit trust, file the current offering document with the Commission and pay the relevant fee.

In order to conduct business as a SMART fund, a fund must comply with any written rule of the commission relating to the administration or contents of the constitutive documents.

In order for a recognized foreign fund to be registered and conduct business it must hold a license or registration from a prescribed jurisdiction; or have submitted evidence of its listing on a prescribed securities exchange; and have submitted to the Commission, within 30 days of the beginning of its operations as a Bahamas-based fund the prescribed details of the fund; and paid the prescribed annual fee.

An entity that would otherwise not qualify as an investment fund because the holder of an equity interest does not have the option to redeem or require the issuer to repurchase the equity interest may elect to be licensed by the Commission as an investment fund.

A professional, smart, or recognized foreign fund may elect to be licensed as a standard fund.

An investment fund may be administered by its own operators performing the functions of an investment fund administrator (referred to as a self-managed investment fund). A self-managed fund can only be licensed by the commission.

An offering document of an investment fund must describe the equity interests in all material respects; contain the prescribed details; and contain such other information to enable the prospective investor make an informed decision as to whether to invest or not.

An investment fund (other than a recognized foreign fund) is required to have a current offering document filed with the commission at all times and must file an amended document within 21 days of being aware of any material information that affects the offering document filed.

The commission will prescribe the minimum number of directors (currently two) required by an investment fund that is a company.

An application for a license as professional fund, SMART fund, or standard fund must be made to the licensor and be accompanied by for a professional fund and standard fund, the current offering document (or the latest draft); for SMART fund, such document as required by the Commission; a certified copy of the constitutive documents; details necessary to satisfy the Licensor that the applicant meets the definition of professional fund, SMART fund; or standard fund; such other information and documentation as the licensor may reasonably require and the prescribed fee.

An application for registration as a recognized foreign fund must be accompanied by the prescribed details; a copy of its license from a prescribed jurisdiction or evidence of its listing on a recognized securities exchange, as applicable; such other information and documentation as may be required for the purpose of satisfying the commission that the investment fund meets the conditions of a recognized foreign fund and the prescribed fee.

Where an investment fund is licensed other than by the commission, the licensor must file the offering document and a certified copy of the constitutive documents accompanied by written certification from the administrator of the fund or a counsel and attorney that both the offering document and the constitutive documents are in compliance with the Act; documentation establishing the identity and fitness and properness of the promoter, operator, investment advisor, and/or investment manager, custodian, and auditor of the fund; a copy of the license issued and the prescribed fee with the commission within 30 days.

An unrestricted investment fund administrator may only license professional and SMART funds for whom it is the administrator and it provides the principal office; and it is satisfied that each promoter, operator, investment advisor, and/or manager, auditor, and custodian is fit and proper; and the business of the investment fund and any offer of equity interests in it will be carried out in a proper manner.

A non-Bahamas based investment fund that intends to sell its equity interests in or from The Bahamas must have a representative approved by the commission. A non-Bahamas based investment fund that has some form of nexus to The Bahamas (other than being sold in or from The Bahamas) must inform the Commission within 14 days of such nexus being established or terminated.

2.2 Laws

The legal system is modeled on the British pattern. English common law provides the basis of much of the law combined with Bahamian statute law. The statute under which IBCs are organized is the International Business Companies Act, 2000; for regular companies, the Companies Act 1992; and in the case of a unit trust, the Trustee Act, 1998.

Investment funds are regulated by the Investment Funds Act, 2003, the Investment Funds Regulations, 2003, the Investment Funds (SMART Fund) Rules, 2003, and the Investment Funds (Financial Statements Extension of Time) Rules, 2004, the Investment Funds (SMART Fund) Rules, 2005.

2.3 Managers, trustees, and custodians

Managers

Every investment fund must appoint an investment fund administrator except for:

- a self-administered fund;
- a recognized foreign fund;
- an investment fund administered by a company that is exempt from obtaining an investment fund administrator's license under the Act; or
- an investment fund exempted from this requirement in writing by the commission.

An investment fund administrator must be either a company incorporated or registered under the Companies Act or incorporated under the International Business Companies Act.

A company must not carry on business as an investment fund administrator unless it holds an investment fund administrator's license or is acting in accordance with the authorization of the Commission in extraordinary circumstances.

The Commission may exempt an investment fund administrator from obtaining an investment fund administrator's license if it is satisfied that the applicant would otherwise be granted a restricted investment fund administrator's license, will not be administering more than one specified investment fund, and complies with the prescribed financial requirements.

An application to the Commission for an investment fund administrator's license must be accompanied by such information as the Commission requires and the prescribed fee.

An investment fund administrator must notify the Commission within 14 days of any change of its principal office, registered office, and/or any individuals acting as its agents.

The Commission will not grant an investment fund administrator's license unless the applicant is a company incorporated or registered under the Companies Act or incorporated under the International Business Companies Act, has sufficient expertise to administer investment funds, is of sound reputation, will administer investment funds in a proper manner, has directors, officers, and senior management who meet the fit and proper requirements of the Commission, complies with the prescribed financial requirements, and

- in the case of an application for an unrestricted investment fund administrator's license has a place which will be its principal office in The Bahamas; and two persons residing in The Bahamas to be its agents in the Bahamas; or
- in the case of an application for a restricted investment fund administrator's license, it has a registered office in The Bahamas; and a place in The Bahamas where administration records of the investment funds under its administration are available unless the applicant has a physical place of business in the Bahamas.

A licensed investment fund administrator must pay an annual license fee by 31 January and submit to the Commission, in writing, a declaration that all information filed with the Commission is current and applicable. Failure to pay the fee may result in penalties and if the fee remains unpaid after 1 April the Commission may revoke the license of the investment fund administrator.

If an investment fund administrators' capital fails to meet the prescribed amount, or the Commission has reasonable cause, they may direct the administrator to provide guarantees or insurance or other financial support or increase shareholders' equity.

An investment fund administrator must not provide a principal office to a licensed investment fund unless it is satisfied that each operator and promoter of the investment fund is of sound reputation; if applicable, the administration of the investment fund will be undertaken by persons who have sufficient expertise to administer the investment fund; and are fit and proper; and that the business of the investment fund and any offer of equity interest in it will be carried out in a proper manner.

An investment fund administrator is obliged to inform the Commission if it knows or has reason to believe that an investment fund for which it provides a principal office, or a promoter or operator of such an investment fund is or is likely to become unable to meet any of its obligations as they fall due; is carrying on business otherwise than in accordance with the Act or any other applicable legislation; or is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund.

An investment fund administrator must not issue, transfer, deal or dispose of shares unless approved by the Commission in advance.

An investment fund administrator must have its financial statements audited annually by an auditor approved by the Commission and submit them within four months of the end of that financial year or within such extension of that period as the Commission may reasonably allow.

The Commission will prescribe the minimum number of directors for an investment fund administrator.

Every director of an investment fund administrator must be fit and proper and on application to the Commission for licensing the investment fund administrator must submit:

- biographical details and an account of the professional qualifications and experience of each of its individual directors; and
- documents of incorporation as well as the biographical details and an account of the professional qualifications and experience of each director for any corporate directors.

An investment fund administrator must pay the requisite fee and obtain written approval from the Commission prior to appointing a director or chief executive officer (or equivalent) unless exempted by the Commission.

Unless otherwise permitted by the Commission, an unrestricted investment fund administrator must have:

- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 500,000 or the equivalent in a currency acceptable to the Commission; or
- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 150,000 or the equivalent in a currency acceptable to the Commission and indemnity insurance coverage of not less than USD 1 million or the equivalent in a currency acceptable to the Commission;

Unless otherwise permitted by the Commission a restricted investment fund Administrator must have:

- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 250,000 or the equivalent in a currency acceptable to the Commission; or
- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 100,000 or the equivalent in a currency acceptable to the Commission and indemnity insurance coverage of not less than USD 500,000 or the equivalent in a currency acceptable to the Commission.

Unless otherwise permitted by the Commission an exempt investment fund administrator must have:

- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 150,000, or the equivalent in a currency acceptable to the Commission; or
- net worth, inclusive of its paid up capital and non-distributable reserves, of not less than USD 50,000 or the equivalent in a currency acceptable to the Commission and indemnity insurance coverage of not less than USD150,000, or the equivalent in a currency acceptable to the Commission.

Where an investment fund administrator owes a debt to its parent company and wants the debt to be considered as a part of capital the debt must be subordinate to all other liabilities of the investment fund administrator, both in terms of its entitlement to income and its rights in a liquidation; and not be settled without the prior written consent of the Commission.

If an investment fund administrator wishes to appoint a director subsequent to licensing, it must forward the same information to the Commission for approval prior to the appointment of that director.

An investment fund administrator must:

- take all reasonable steps to ensure that the operations of an investment fund are carried out in accordance with the investment fund's offering memorandum and constitutive documents and the regulations to the exclusive interest of the investors;
- take all reasonable steps to ensure that the investment fund maintains proper books and records;
- take all reasonable steps to ensure that audited financial statements for the financial year are available for each investor within four months of the end of the investment fund's financial year or within such extension of that period as approved by the Commission;
- make the constitutive documents of each fund it administers available free of charge in The Bahamas at all times for inspection by the investors, during normal office hours at its place of business or at the place of business where duplicate records of the investment fund are available, and make copies of such documents available upon the payment of a reasonable fee;
- take all reasonable steps to ensure that the investment fund is not carrying on its business in a manner, which is or is likely to be prejudicial to investors or creditors of the investment fund;

- make such reports to the Commission regarding investment funds for which it is the administrator as the Commission may require;
- take all reasonable steps to ensure that operators are meeting their obligations and are complying with the Act and regulations.

Unless exempted or otherwise authorized by the Commission, no person other than a licensed investment fund administrator must carry on or attempt to carry on business in or from the Bahamas with the words fund administrator in its name or title and must not represent in any way that it is carrying on the business of an investment fund administrator in or from the Bahamas.

A non-Bahamas based investment fund that intends to sell its equity interests in or from The Bahamas must have a representative approved by the Commission. A non-Bahamas based investment fund that has some form of nexus to The Bahamas (other than being sold in or from The Bahamas) must inform the Commission within 14 days of such nexus being established or terminated.

Where a representative is appointed by a non-Bahamas based fund the representative must be:

- a counsel and attorney-at-law or a firm of counsel and attorneys-at-law in The Bahamas;
- an accountant or firm of accountants in The Bahamas;
- a bank or trust company licensed pursuant to Section 4 of the Banks and Trust Companies Regulation Act;
- an investment fund administrator licensed under the Investment Funds Act;
- a broker-dealer or securities investment advisor registered pursuant to section 22 and 29(5) of the Securities Industry Act; or
- such other person as the Commission may approve.

A representative is not liable for the acts and omissions of the investment fund administrator or an operator of the fund but may be authorized by the fund to:

- receive applications and money for equity interest;
- issue receipts in respect of application moneys received under the previous bulleted item;
- issue contract notes to investors in accordance with the terms of the investment fund;

- receive redemption notices, transfer instructions, and conversion notices from investors for immediate transmission to the administrator of the investment fund;
- accept any notice or correspondence which investors may wish to serve on the investment fund;
- notify the Commission immediately if subscriptions or redemptions of equity interest cease or are suspended;
- make the constitutive documents available for inspection by investors in The Bahamas free of charge at all times during normal office hours at its place of business and make copies of such documents available upon the payment of a reasonable fee;
- provide investors in The Bahamas with information on the investment fund including the investment fund's financial reports and sales literature;
- deliver to the Commission, if so requested, all accounts and records relating to the sale and redemption of equity interests of the investment fund in and from The Bahamas; and
- represent the investment fund in relation to matters in which any investor resident in The Bahamas has a pecuniary interest or which relates to the equity interest sold in or from The Bahamas.

A non-Bahamas based investment fund must notify the Commission immediately upon the retirement or dismissal of its representative and apply to the Commission for the approval of a new representative.

A non-Bahamas based investment fund must submit details of all contracts between the representative and the fund to the Commission and notify the Commission of any amendment to these contracts.

Trustees

Except for self-administered funds, unless specifically exempted by the Commission, an investment fund that is a unit trust must have

- an operator that is independent (or deemed independent) of the investment fund administrator; and
- a custodian which is independent (or deemed independent) of the investment fund administrator.

An investment fund that is a unit trust must appoint as its operator:

- a bank or trust company with an unrestricted license granted pursuant to section 4 of the Banks and Trust Companies Regulation Act; or

- such other bank or trust company or financial institution having:
 - a license in a prescribed jurisdiction; and
 - a minimum net worth of USD 2 million or equivalent inclusive of paid up capital and non-distributable contributed surplus; or
 - a minimum net worth of less than USD 2 million or equivalent inclusive of paid up capital and non distributable contributed surplus, if the trustee is the wholly owned subsidiary of a parent company which:
 - qualifies under the first and second sub-bullets in this section and issues a standing commitment to the Commission to subscribe additional capital to its subsidiary up to USD 2 million or equivalent if so required; or
 - undertakes to the Commission that it must not let its wholly owned subsidiary default; and
 - agrees to comply with any other condition stipulated by the Commission; or
- such other person as approved by the Commission.

An operator must:

- ensure that the sale, issue, repurchase, redemption, and cancellation of equity interest of the investment fund are carried out in accordance with the provisions of the regulations and the trust deed, memorandum, and articles of association or articles of partnership (as appropriate);
- ensure that the value of the equity interest is calculated in accordance with the provisions of the trust deed, memorandum, and articles of association or articles of partnership (as appropriate);
- carry out the proper instructions of the investment manager or investment fund administrator;
- ensure that the investment and borrowing limitations set out in the trust deed, memorandum, and articles of association or articles of partnership (as appropriate) are complied with;
- ensure that the investment fund is audited annually or as required and cooperate with the auditors; and
- not issue equity interest or evidence of such equity interest unless subscription moneys have been paid.

An investment fund must ensure that the appointed operator is a fit and proper person and submit sufficient information to enable the Licensor to assess whether the person is appropriately qualified.

Where the custodian and the administrator of the investment fund are bodies corporate with the same parent company, the custodian and the administrator of the investment fund are deemed to be independent of each other if:

- they are subsidiaries of a financial institution; neither the custodian nor the administrator is a subsidiary of the other; at least one director of the custodian is not also a director of the administrator or operator of the investment fund or both; and the custodian and the administrator and the operator of the investment fund sign an undertaking with the Commission that they will act independently of each other in their dealings with the investment fund; or
- the investment fund is established in a jurisdiction which applies similar rules to those provided in these Regulations with respect to the independence of persons carrying out the functions of custodians, operators and administrators.

Custodians

Except for self-administered funds, unless specifically exempted by the Commission, an investment fund that is a unit trust must have a custodian which is independent (or deemed independent) of the investment fund administrator.

Unless specifically exempted by the Commission an investment fund that is a company or a partnership must have a custodian that is independent (or deemed independent) of the investment fund administrator and of the operator of the investment fund.

Where the custodian and the administrator of the investment fund are bodies corporate with the same parent company, the custodian and the administrator of the investment fund are deemed to be independent of each other if:

- they are subsidiaries of a financial institution; neither the custodian nor the administrator is a subsidiary of the other; at least one director of the custodian is not also a director of the administrator or operator of the investment fund or both; and the custodian and the administrator and the operator of the investment fund sign an undertaking with the Commission that they will act independently of each other in their dealings with the investment fund; or
- the investment fund is established in a jurisdiction which applies similar rules to those provided in these Regulations with respect to the

independence of persons carrying out the functions of custodians, operators and administrators.

A custodian of an investment fund must be:

- a bank or trust company with an unrestricted license granted pursuant to Section 4 of the Banks and Trust Companies Regulation Act; or
- such other bank or trust company or financial institution having:
 - a license in a prescribed jurisdiction; and
 - a minimum net worth of USD 2 million or equivalent inclusive of paid up capital and non-distributable contributed surplus; or
 - a minimum net worth of less than USD 2 million or equivalent inclusive of paid up capital and non-distributable contributed surplus if the custodian is the wholly owned subsidiary of a parent company which:
 - qualifies under sub-bullets two and three and issues a standing commitment to the Commission to subscribe additional capital to its subsidiary up to USD 2 million or equivalent if so required; or
 - undertakes to the Commission that it must not let its wholly owned subsidiary default; and agrees to comply with any other condition stipulated by the Commission;
- such other person as approved by the Commission.

The fund must deposit property with the custodian who will take it into its custody or under its control.

The Commission may require at any time evidence from an investment fund that a custodian, investment fund manager or investment fund advisor of the fund is appropriately qualified for the performance of its functions.

An investment fund must appoint one or more custodians unless the operators certify in writing that the structure of the fund or the nature of the assets is such that they do not require one. The Commission may determine that an investment fund is required to appoint a custodian.

Where cash forming part of the investment fund's assets is deposited with the custodian, the investment fund administrator, the investment manager, the investment advisor, or with any bank which is a connected person thereof, interest thereon must be paid at a rate not lower than the prevailing

commercial rate for a deposit of a similar kind, size and term, as is in accordance with normal banking practice.

An investment fund may borrow money from its custodian, investment manager, investment advisor, investment fund administrator, or from any bank which is a connected person to any of those parties, if the rate of interest and any fee for arranging or terminating the loan is not greater than the prevailing commercial rate or fee for a loan of a similar kind, size and term, granted in accordance with normal banking practice.

Any material transaction between the investment fund and its administrator, investment manager, investment advisor, or any connected persons thereof must be disclosed in the investment fund's annual audited financial statement.

There are no legal limits imposed on the fees that may be charged by managers, trustees, or custodians however no person can enter into underwriting or sub-underwriting contracts on behalf of an investment fund:

- without the prior consent of the operators; and
- unless the investment fund or the investment fund administrator provides in writing to the operators that all commissions and fees payable to the administrator or connected person under such contracts and all investments acquired pursuant to such contracts must form part of the investment fund's assets.

2.4 Investment restrictions

There are no restrictions imposed on the investment policies of international funds established as IBCs except that exchange control permission may be required for transactions involving domestic entities.

There are no investment restrictions on regular companies or IBCs owned by Bahamians investing in the Bahamas. Since such companies would be subject to exchange controls, they would have to comply with the relevant legislation prior to investing outside the Bahamas, including investments in Bahamian based funds investing outside the Bahamas.

Such foreign investments can only be purchased through a pool of foreign funds where a premium is applied on purchase of the foreign currency.

2.5 Borrowing

There are no legal restrictions on the borrowing powers of funds in the Bahamas and an investment fund may borrow money from its custodian, investment manager, investment advisor, investment fund administrator, or from any bank which is a connected person to any of those parties, if the rate of interest and any fee for arranging or terminating the loan is not greater than

the prevailing commercial rate or fee for a loan of a similar kind, size, and term, granted in accordance with normal banking practice.

Any material transaction between the investment fund and its administrator, investment manager, investment advisor, or any connected persons thereof must be disclosed in the investment fund's annual audited financial statement.

2.6 Accounts and prospectus

An offering document of an investment fund must describe the equity interests in all material respects; contain the prescribed details; and contain such other information to enable the prospective investor make an informed decision as to whether to invest or not.

An investment fund (other than a recognized foreign fund) is required to have a current offering document filed with the Commission at all times and must file an amended document within 21 days of being aware of any material information that effects the offering document filed.

A subscription form for the purchase of equity interest must be accompanied by the offering document unless that person has previously invested in that fund.

The offering document of a standard or professional fund must include:

- Details of fund:
 - Name, registered address and place and date of the creation of the investment fund, with an indication of its duration if limited
 - Address of principal office of the investment fund
- Investment objectives and restrictions:
 - Details of investment objectives and investment policy, including a summary of the investment and borrowing restrictions. In the event that there are no such investment or borrowing restrictions, include a statement to this effect.
- Risks
 - A description of the risks involved in an investment in the investment fund
- Operators and principals
 - The names and registered addresses of the following parties:

- Parties related to the investment fund
 - The auditors
 - The attorney's (if applicable)
 - The bankers
- Characteristics of equity interests:
 - Minimum investment (if any)
 - A description of the different types of equity interest in the investment fund including their currency of denomination
 - Form of certification
 - Frequency of valuation and dealing, including subscription and redemption days and valuation days
- Application and redemption procedures;
 - Procedure for subscribing and redeeming equity interest in the investment fund
 - The maximum interval between the applicable date of redemption and the dispatch of the redemption proceeds
 - The circumstances in which redemption of equity interest in the investment fund may be suspended
- Valuation of property and pricing:
 - The method of pricing the underlying assets of the investment fund and the circumstances under which it can change
 - The policy of the investment fund for valuing unquoted securities which it holds
 - The method of calculating the issue and redemption prices
 - The method of determining the value of the assets and liabilities of the investment fund and the net asset value accordingly
- Distribution policy:
 - The distribution policy and the approximate dates on which dividends will be paid (if applicable)

- o Name and registered addresses of paying company
- Fees and charges:
 - o The level of all fees and charges payable by an investor, including all charges levied on subscription and redemption and switching (in the case of umbrella investment funds)
 - o The level of all fees and charges payable by the investment fund
 - o Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the investment fund
- Reports and accounts:
 - o The date of the investment fund's financial year
 - o A specified time in which the audited financial statements will be made available to investors
- Warnings: prominently display warnings reading substantively as follows:
 - o Important: if you are in doubt about the contents of this offering document, you should consult your financial advisor;
 - o A warning that the price of equity interests in the investment fund and the income from them (where income is distributed) may be subject to market fluctuations
- General information:
 - o A list of constitutive documents and an address in The Bahamas where they may be inspected free of charge or purchased
 - o The date of publication of the offering document
 - o A statement that the operators of the investment fund accept responsibility for the information contained in the offering document as being accurate as at the date of publication
 - o Where details of an investment fund not regulated by the Commission is disclosed in the offering document, there must be a statement that such an investment fund is not regulated by the Commission
 - o A statement that in licensing, registering, or filing the investment fund the Commission does not take responsibility

for the financial soundness of the investment fund or for the correctness of any statements made or opinions expressed in this regard.

The offering document of a SMART fund must contain the information prescribed by the Commission.

Where the performance data or estimated yield is stated in the offering document, advertisement, or other invitation to invest in an investment fund, all calculations and representations must be justified and explained.

The offering document and the constitutive documents must be consistent.

A fund must disclose in the offering document:

- its intention to invest subscription proceeds prior to the close of an initial offer;
- the basis for calculating the offer and redemption prices if other than the investment fund's net asset value divided by the number of units, shares or interests outstanding. Any fees and charges must be clearly disclosed;
- the maximum interval between the redemption date and payment of redemption proceeds must be disclosed in the offering document; and
- in what circumstances, if any, redemption requests may be deferred to the next redemption day.

No person must publish, make, or issue an advertisement or other invitation, including a public announcement, for persons to invest in a fund, unless the advertisement or other invitation:

- contains sufficient relevant information so that it is not misleading; and
- where it is made, issued or published outside The Bahamas, complies with any laws in the jurisdiction where the advertisement or other invitation is made, issued or published; or
- where it is made, issued or published in The Bahamas it is approved by the Commission prior to publication upon application containing the information prescribed in Schedule 5 of the Investment Funds Regulations, 2003 and payment of the prescribed fee.

An investment fund must make its annual audited financial statements available to investors within four months of the end of the investment fund's financial year or within such extension of that period as the Commission may allow.

An investment fund administrator must have its financial statements audited annually by an auditor approved by the Commission and submit them within

four months of the end of that financial year or within such extension of that period as the Commission may reasonably allow.

The auditors appointed to an investment fund or an investment fund administrator must be approved by the Commission.

An auditor of an investment fund or investment fund administrator must satisfy the Commission that:

- in the case of an individual, he/she is a member in good standing of The Bahamas Institute of Chartered Accountants or of any other international accounting body prescribed by the Commission by notice in the Gazette;
- in the case of a firm of accountants, the partners of the firm are all members of The Bahamas Institute of Chartered Accountants in good standing, or are members in good standing of any other international accounting body prescribed by the Commission by notice in the Gazette.

An individual or accounting firm must supply the Commission with such other information as they may require.

The auditor must prepare:

- a report on the financial statements stating whether or not the financial statements present fairly (or present a true and fair view of), in all material respects, the financial position of the investment fund or investment fund administrator and the results of its operations, changes in owners' equity and its cash flow in accordance with standards accepted by The Bahamas Institute of Chartered Accountants or any other international accounting body recognized by the Commission; and
- a report on whether or not the business of the investment fund or investment fund administrator has been conducted in accordance with the provisions of the Act relating to the record keeping, filing requirements, and the financial affairs of the investment fund or investment fund administrator.

Where in the course of performing their duties the auditor identifies a matter that could give rise to a qualification in their audit report on the financial statements or that a major deficiency, weakness, or non-compliance should be reported to the Commission, they must request the investment fund or investment fund administrator (as the case may be) to notify the Commission accordingly and, if the fund or administrator fails or refuses to do so, the auditor must notify the Commission immediately in writing with a copy of such notification being supplied to the investment fund or investment fund administrator.

All documents submitted to the Commission or required by them and all documents and records of the investment fund that are kept or maintained by

the investment fund administrator must be in English or accompanied by a certified translation in English.

A fund may choose any end date for an accounting period.

2.7 Supervision

Supervision is carried out by the Securities Commission of the Commonwealth of The Bahamas, P O Box N 8347, Nassau, Bahamas. Tel (242) 356 6291 Fax (242) 356 7530, e-Mail info@scb.gov.bs, Web site www.scb.gov.bs.

The Commission has the authority to regulate the investment fund industry, and the operations and duties of investment funds and parties related to the investment fund and may conduct on-site and off-site examinations and reviews of the business of investment funds and parties related to an investment fund under the Act.

The Commission may at any time instruct an investment fund or investment fund administrator to have its accounts audited and to submit its audited financial statements to the Commission within such time as it specifies.

If requested to do so by the Commission, a party related to an investment fund must provide the Commission such information relating to the investment fund as it may reasonably require. A similar obligation exists for investment fund administrators in respect of their investment fund administration activities or operations.

If requested to do so by the Commission, a party related to an investment fund must give the Commission access to, or provide at any reasonable time, all records relating to the investment fund.

The Commission may revoke the license or registration of an investment fund or investment fund administrator where it has ceased to carry on or attempt to carry on business or if it becomes insolvent or is wound up or otherwise dissolved.

The Commission may also apply for a court order to compel persons to comply with directions, cease contravening the Act or rectify omissions under the Act. The Commission may also attach conditions to a license for a maximum period of 90 days or apply to the court to have the investment fund or investment fund administrator wound up, dissolved, liquidated, or otherwise terminated.

The Commission may conduct regulatory hearings and as a result may censure, fine, suspend, or revoke the license and/or filing of an investment fund or an investment fund administrator or appoint advisors or impose sanctions or remedies.

The Commission has wide ranging powers in the event that an investment fund or investment fund administrator is carrying on or attempting to carry on business in contravention of the Act.

Persons who fail to comply with the Act may be liable for fines from USD 10,000 to USD 150,000 and/or imprisonment ranging from 2 to 10 years.

2.8 Fund ownership

There are no restrictions on the percentage of shares or units which any person or group of persons may own except that Bahamian residents are prohibited from owning shares in IBCs and in funds which have non-Bahamian assets unless Central Bank approval is obtained.

At any meeting of the investors who own voting shares, units or interests that are also equity interests:

- investors may appoint proxies;
- votes must be proportionate to the equity interests held;
- the quorum for meetings at which an extraordinary resolution is to be considered must be the investors holding 25 percent of the equity interest in issue;
- the quorum for meetings at which an ordinary resolution is to be considered must be the investors of 10 percent of the equity interest in issue;
- an ordinary resolution may be passed by a simple majority of the votes of those present and voting and an extraordinary resolution may be passed by 75 percent or more of those present and voting; and
- if within half an hour from the time appointed for the meeting a quorum is not present, the meeting must stand adjourned for not less than 15 days and the quorum at an adjourned meeting must be those persons present in person or by proxy.

The constitutive document of an investment fund must provide for class meetings, where conflicts of interests exist between different classes of investors.

The operators of an investment fund, the custodian, the investment fund administrator, investment manager, investment advisor and their connected persons must be permitted to vote their beneficially owned equity interests at, a meeting in which they have a material interest in the business to be contracted, if:

- full disclosure of the existence of such a relationship is made in the offering document of the investment fund; and
- the possibility exists of a decision being made to the detriment of the investors of the investment fund, and that the investors had been notified of such conflict prior to the meeting and were afforded the opportunity to redeem their shares, units, or interests in an investment fund prior to a meeting being held.

An extraordinary general meeting must be called for the following purposes:

- to modify, alter, or add to the constitutive documents, except as provided under Regulation 23;
- to increase the rate for maximum fees to be paid to the investment fund administrator, operators of the investment fund, investment manager, investment advisor, or custodian; or
- to impose fees, other than those specified in the second bullet.

An investment fund must maintain a register of investors and a current copy of the register of investors must be kept at the principal office of the investment fund. In the case of a restricted investment fund administrator whose place of business is outside of The Bahamas, a current copy of the register of investors must be available at a place in The Bahamas where corporate and accounting records are available.

2.9 Fund structure

Virtually unlimited flexibility in ownership structure is available. Funds of funds are permitted, as are umbrella funds.

It is not possible to offer units in bearer form.

Hedge funds are permitted and there are no restrictions or special regulatory requirements.

2.10 Stock exchange

The Bahamas International Securities Exchange (BISX) was launched on 12 May 2000 for the listing and trading of Bahamian public companies.

On 10 April 2001 BISX commenced its investment funds listing facility. The listing facility is targeted primarily at meeting the needs of international investors. These investors, when making an investment choice, will often give priority to a vehicle, which has the extra visibility and transparency, which comes from being listed on an established international securities exchange. It is also a convenient way for offshore funds to enhance their offshore status.

BISX provides for primary and secondary listing of Bahamian regulated and overseas-regulated investment funds.

Some of the features and initiatives of the investment funds listing facility are as follows: competitive listing rules.

BISX has adopted a set of rules designed to be user friendly and to recognize existing investment fund regulations. These rules have been approved by the Securities Commission of The Bahamas.

Competitive listing fees.

BISX has positioned itself competitively at USD 2,000 for a primary listing and USD 1,000 for a secondary listing. Discount arrangements are available for umbrella structures.

Fast track listing.

A listing committee has been established with the objective of turning applications around in the fastest possible timeframe.

International recognition.

BISX's listing facility plan clearly addresses the importance of international recognition for the exchange from overseas regulators, exchange federations, and, of course, institutions. Various initiatives are planned or underway to ensure maximum exposure for the exchange.

Recognition of existing registration documents.

BISX will give recognition to existing offering fund prospectuses as part of the listing requirements, thus avoiding additional expense to issuers.

2.11 Bank Secrecy

Bahamian legislation provides for the preservation of confidentiality. The Banks and Trust Companies Act, 2000 restricts disclosure of information relating to the affairs of a bank or of a customer of the bank by any person who has acquired such information in the performance of the duties or the exercise of his/her functions under the Banks and Trust Companies Act, 2000. Under the Investment Funds Act, 2003, the Commission, the Commissioner, a licensed administrator, and their staff must not disclose any information relating to a license application, the affairs of a fund or a fund administrator or the affairs of an investor in a fund nor must they use any such information for their benefit. Criminal penalties exist for cases of improper or unauthorized disclosure.

2.12 Fund set-up

A Bahamian IBC can be incorporated within a few days. A unit trust agreement can be drawn up quickly with many of the local trust companies. Government fees to establish an IBC range from USD 350 to USD 1,000 and professional adviser fees may range from USD 5,000 to USD 25,000 depending on complexity and the level of advice needed. The overall process can take between one and two months.

The initial registration fee and annual fee for a recognized foreign fund is USD 100. The application fee for an investment fund license is USD 750 and the annual license fee is USD 950, or USD 1,000 for self-administered funds.

2.13 Foreign funds

The Bahamas markets itself as a desirable offshore centre for the establishment and/or management of international funds and accordingly, there are no restrictions on foreign funds except that carrying on business with residents of the Bahamas may require exchange control approval.

In order for a recognized foreign fund to be registered and conduct business it must hold a license or registration from a prescribed jurisdiction; or have submitted evidence of its listing on a prescribed securities exchange; and have submitted to the Commission, within 30 days of the beginning of its operations as a Bahamas-based fund the prescribed details of the fund; and paid the prescribed annual fee.

A non-Bahamas based investment fund that intends to sell its equity interests in or from The Bahamas must have a representative approved by the Commission. A non-Bahamas based investment fund that has some form of nexus to The Bahamas (other than being sold in or from The Bahamas) must inform the Commission within 14 days of such nexus being established or terminated.

2.14 Bearer shares

It is not possible to issue bearer shares.

2.15 Use of the internet

At present there are no specific legal restrictions on the use of the internet as a marketing tool for domestic or foreign funds. However to comply with the regulations no person must publish, make, or issue an advertisement or other invitation, including a public announcement, for persons to invest in a fund, unless the advertisement or other invitation:

- contains sufficient relevant information so that it is not misleading; and

- where it is made, issued or published outside The Bahamas, complies with any laws in the jurisdiction where the advertisement or other invitation is made, issued or published; or
- where it is made, issued, or published in The Bahamas it is approved by

the Commission prior to publication upon application containing the information prescribed in Schedule 5 to the regulations and payment of the prescribed fee.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.