THE PROPOSED GUIDELINES FOR THE LICENSING OF COMPLIANCE OFFICERS
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1. INTRODUCTION

The Securities Commission of The Bahamas (the “Commission”) is responsible for the administration of the Securities Industry Act, 2011 (the “SIA, 2011”), the Securities Industry Regulations, 2012 (the “SIR, 2012”), the Investment Funds Act, 2003 and the Financial and Corporate Service Providers Act, 2000 pursuant to which it supervises and regulates the activities of the securities and capital markets, investment funds, investment fund administrators, and financial and corporate service providers. This regulation extends to the individuals associated with these respective entities as the Commission is vested with the authority to ensure that they maintain proper standards of conduct and professionalism.

This Paper therefore specifically sets out the Commission’s proposed guidelines for the licensing and regulation of Compliance Officers pursuant to Regulations 40 (2) and 56 (1) (b) of the SIR, 2012 and PART VI of the SIA, 2011.

2. PURPOSE

The Commission has endorsed and adopted Principle 23 of the International Organization of Securities Commissions’ (“IOSCO”) Objectives and Principles of Securities Regulation. Based on this principle, market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk and under which management of the intermediary accepts primary responsibility for these matters. Specifically, IOSCO notes that a market intermediary’s compliance with securities regulatory requirements and internal policies and operating procedures and controls should be monitored by a “separate compliance function.” In utilizing this principle and the supplementary principles that accompany it as a benchmark, this Paper and the proposed guidelines therein has been issued to:

- set out the basis upon which the Commission will act in considering whether or not to approve a person as a Compliance Officer and to facilitate the processing of applications for the approval and appointment of Compliance Officers;
- define the parameters within which a person can act in a dual capacity as Compliance Officer and Money Laundering Reporting Officer (“MLRO”); and
- provide some guidance as to the expected roles and responsibilities of Compliance Officers.
Consequently, this Paper also serves to provide a focused approach to an efficient and effective regime that fully informs applicants who are approved as Compliance Officers of their obligations.

3. **APPLICABILITY**

Every registered firm is required to appoint a Compliance Officer who must be of sufficient seniority and qualification in order to properly and adequately perform their functions. The Compliance Officer will be responsible to the Commission for ensuring that his or her firm complies with all relevant laws, regulations and regulatory standards, both locally and internationally.

4. **INTERPRETATION**

For the purpose of this Paper,

“**Commission**” means the Securities Commission of The Bahamas;

“**Compliance Officer**” means the person appointed as such pursuant to Section 40 (2) of the SIR, 2012;

“**Compliance function**” is used as a generic reference to refer to the range of roles and responsibilities for carrying out specific compliance activities and responsibilities;¹

“**Managing Representative**” means a company that is engaged by a registered firm to achieve physical presence within the jurisdiction;²

“**MLRO**” means Money Laundering Reporting Officer;

“**Outsourcing**” means an event in which a registered firm contracts with a third party service provider for the performance of any aspect of the firm’s functions that could otherwise by undertaken by the firm itself;³

“**Registered firm**” means a person registered under Section 69 (1) of the SIA, 2011 to carry on securities business in The Bahamas;

“**Registered representative**” means an individual who is registered to act on behalf of a registered firm⁴;

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¹ As defined in IOSCO’s Compliance Function at Market Intermediaries Final Report, Topic 1  
² As defined in the White Paper Detailing the Proposed Rule for the Imposition of Physical Presence Requirements for Licensees Pursuant to the Securities Industry Act, 2011  
³ IOSCO’s Principles on Outsourcing of Financial Services for Market Intermediaries, pg. 1  
⁴ Refers to registration under Section 69 (4) of the SIA, 2011
“Registerant” means any person registered to carry on securities business or required to be so registered; and

“Representative” means, when used in relation to a registrant, an individual who acts for or on behalf of the registrant in the carrying out of securities business and who is a director, officer, partner or employee of the registrant who performs any such securities business for the registrant.

5. **PART I – APPOINTMENT OF THE COMPLIANCE OFFICER**

5.1 **Appointment and Removal of Compliance Officer**

5.1.1 A registered firm shall appoint one of its senior officers as a Compliance Officer who shall be subject to the approval of the Commission and will be expected to be based in The Bahamas.

5.1.2 Applicants should submit an application for the approval of a Compliance Officer, prior to the planned appointment, in order to give the Commission adequate time to process the application and revert to the applicant with a decision.

5.1.3 The Commission may direct the removal of a Compliance Officer, in which case it is the responsibility of the registered firm to identify another senior officer, who is suitably qualified, for approval and subsequent appointment as a Compliance Officer.

6. **PART II – REQUIREMENTS FOR REGISTRATION**

6.1 **Submitting an application for the approval of a Compliance Officer**

6.1.1 An application for approval of a Compliance Officer must be submitted to the Commission in the form prescribed (Form 9). Any additional information that an applicant considers relevant to the processing of the application or in relation to a proposed Compliance Officer (which the Commission should be notified of) shall be provided in writing and attached to the completed application form.

6.1.2 The Commission may request additional information from the registered firm for the purposes of completeness or verification.

6.1.3 Where an application is submitted by a prospective registered firm not yet approved, the Commission may consider the approval of the Compliance Officer simultaneously with the granting of approval to the registered firm.

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5 Refers to registration under Part VI of the SIA, 2011
6 Approval is granted in accordance with the requirements of Regulation 40 (2) of the SIR, 2012
6.2 Fit and Proper Requirements

6.2.1 Before granting approval of an application for a Compliance Officer, the Commission must be satisfied that the individual is fit and proper. Due regard will be given to their:

(i) Honesty, integrity and reputation;
(ii) Competence and soundness of judgment;
(iii) Capability and qualification; and
(iv) Financial soundness.

6.2.2 It is the responsibility of the registered firm to satisfy the Commission that the proposed Compliance Officer has the relevant qualities, experience and skills to perform his or her duties.

6.2.3 When assessing the fitness and propriety of an individual, each case will be considered on its own merits. The Commission may have regard to current, past and prospective matters.

6.3 Education and Experience

6.3.1 A Compliance Officer should have the skills, knowledge and expertise necessary for the discharge of their responsibilities or tasks. In addition to formal qualifications, the main requirement is the ability of the Compliance Officer to perform their role, which may be gained by reason of experience rather than through only study.7

6.3.2 Where an individual intends to be registered as a Compliance Officer, the Commission recommends the following qualifications by way of example:

(a) A legal or business diploma or degree in a field considered relevant by the Commission. In addition, the individual should have at least three (3) years experience in a compliance, anti-money laundering or risk management function in the securities or financial services industry; or

(b) A specific financial services industry, compliance or anti-money laundering related certificate, diploma or degree recognized by the Commission as being appropriate for this purpose. In addition, the individual should have at least three (3) years experience in a compliance or risk management function in the financial services industry.

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7 IOSCO’s Compliance Function Final Report, Topic 4
(c) Examples of some of the specific types of qualifications include the following:

- ICA International Diploma in Anti-Money Laundering or Compliance – Administered by the Bahamas Institute of Financial Services;
- International Risk Manager Designation – Administered by the Bahamas Institute of Financial Services;
- Certified Securities Compliance Professional Designation – Administered by The National Society of Compliance Professionals (NSCP);
- Certified Anti-Money Laundering Specialist (CAMS) – Administered by the Association of Certified Anti-Money Laundering Specialists (ACAMS);
- Certified Compliance & Ethics Professional – Administered by the Society of Corporate Compliance and Ethics (SCCE);
- Certified Risk and Compliance Management Professional (CRMP) – Administered by the International Association of Risk and Compliance Professionals (IARCP).

This list is not exhaustive as the Commission reserves the right to recognize any other related qualification that it deems acceptable.

6.3.3 The Compliance Officer may also be a member of any of the following compliance professional organizations or any other compliance professional organization that may be recognized by the Commission:
- The Bahamas Association of Compliance Officers (BACO);
- The National Society of Compliance Professionals (NSCP);
- Society of Corporate Compliance and Ethics (SCCE);
- International Association of Risk and Compliance Professionals (IARCP);
- Association of Certified Anti-Money Laundering Specialists (ACAMS).

6.3.4 The individual should be knowledgeable of Bahamian laws and written policies and guidelines that may be issued by the Commission from time to time, especially as they relate to securities and financial services regulation.

6.3.5 In addition to technical knowledge of relevant rules, the Compliance Officer should understand the nature of the business within which they operate.
6.4 Registration as MLRO and Compliance Officer

6.4.1 A person appointed as the Compliance Officer may, with the approval of the Commission, also function in the dual capacities of Compliance Officer and MLRO for anti-money laundering and countering the financing of terrorism matters.\(^8\) The Commission recognizes that in many cases it may be appropriate for the same person to undertake the function of MLRO and Compliance Officer.

6.4.2 Approval of the appointment as a Compliance Officer does not automatically constitute appointment or recognition as an MLRO. Therefore, in order to be able to undertake both functions, the individual must first provide the Commission with specific written notification to this effect, pursuant to the provisions of the FITRR, 2001. Once approval is granted, only then is he or she properly authorised to serve in such a dual capacity.

6.4.3 Where the Compliance Officer intends to serve in a dual capacity and undertake the responsibilities of MLRO, they must be separately registered with the Financial Intelligence Unit (“the FIU”).\(^9\)

6.4.4 When functioning in a dual capacity, registered firms must institute and maintain internal reporting procedures, which include provisions requiring the Compliance Officer/MLRO to receive internal suspicious transaction reports and to disclose to the FIU, another relevant agency or to a police officer the information or other matter contained in the report, where the individual knows, suspects or has reasonable grounds to suspect a person is engaged in money laundering.

6.5 An approval not conclusive of a future approval

The Commission evaluates applications for the appointment of Compliance Officers on an individual basis. The approval of an individual as Compliance Officer for a registered firm does not indicate that the individual is or will be approved to act as Compliance Officer for another registered firm.

6.6 Status and Independence of Compliance Officer

6.6.1 The Compliance Officer shall be a senior and key member of staff possessing the relevant qualifications and experience to conduct his or her duties effectively.

6.6.2 The Compliance Officer’s position within the registered firm shall be of sufficient seniority as to enable the application of sound and independent judgment and

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\(^8\) Pursuant to Regulation 5 (e) of the FITRR, 2001 and the Guidelines for Licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism issued by the Central Bank of The Bahamas.

\(^9\) Pursuant to Regulation 5 (e) of the FITRR, 2001
effective interaction with the Commission regarding the registered firm’s compliance with established guidelines, policies, laws and practices.

6.6.3 The Compliance Officer shall possess sufficient independence to perform his or her role objectively and a registered firm shall not engage in any activity that threatens the independence of the Compliance Officer.

6.6.4 The Compliance Officer shall occupy a key position within the registered firm and must not be susceptible to undue influence from other parts of the business regarding the manner and extent to which he or she is to perform the functions of a Compliance Officer. They should also have access to senior management and/or as appropriate, to the Commission to discuss significant compliance matters.¹⁰

7. PART III – DUTIES AND RESPONSIBILITIES OF THE COMPLIANCE OFFICER

7.1 Overall Responsibilities

The duty of a Compliance Officer is, on an on-going basis, to identify, assess, advise on, monitor and report on a firm’s compliance with securities regulatory requirements and the appropriateness of its supervisory procedures. This duty extends to identifying and preventing violations of securities regulatory requirements.¹¹

7.2 Manual of compliance policies, procedures and systems¹²

7.2.1 The Compliance Officer shall be responsible for establishing and maintaining a manual of compliance policies, procedures and systems which must be filed with the Commission.

7.2.2 The manual shall identify procedures to be followed when breaches of securities regulatory requirements or internal policies are detected.

7.2.3 The manual shall also cover all legal and regulatory obligations of the registered firm and shall include processes to allow staff to report violations confidentially to the Compliance Officer.

7.2.4 The Compliance Officer shall ensure compliance by staff of the registered firm with the provisions of the manual. Every non-compliance matter shall be recorded, indicating the nature, form and period of non-compliance and included

¹⁰ IOSCO’s Compliance Function Final Report, Topic 3
¹¹ IOSCO’s Compliance Function Final Report, Topic 1
¹² Adapted from the British Virgin Islands Financial Services Commission’s Provisional Guidance Notes on Compliance Regime found at http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf
in a report to the Commission. Such report shall also be made available for inspection or examination by the on-site inspectors or examiners of the Commission.

### 7.3 Developing compliance culture

7.3.1 The Compliance Officer shall ensure that all directors and staff are familiar with and understand the laws and policies of The Bahamas relating to financial services. This embodies the current regulatory regime concerning financial services, including relevant policies and standards of regulation and cooperation, as well as the procedures outlined in the manual of compliance policies, procedures and systems. It is important that the Compliance Officer efficiently and effectively imparts awareness of the need for compliance, thereby developing within the registered firm a robust compliance culture.

7.3.2 The Compliance Officer shall also monitor the developments and changes in legislation, as well as in policies, standards and these and other Guidelines issued or that may be issued by the Commission and in international regulatory standards and keep the registered firm up-to-date with regulatory developments and changes. The aim of the Compliance Officer must at all times be of developing a culture of compliance within a registered firm and this is best done by ensuring a greater understanding of the financial services legislation and related policies, standards and guidelines that are administered by the Commission.

### 7.4 Establishing a training programme

7.4.1 The Compliance Officer shall establish and maintain a programme, at least once per year, of training staff of the registered firm in compliance functions, such as client acceptance procedures, know your customer (KYC) procedures and suspicious activity reporting relevant to the firm’s activities.

7.4.2 In addition to establishing a training programme, the Compliance Officer should also undertake additional training, in order to enhance their professional skills, at least once per year.

### 7.5 Conducting reviews and assessments

The Compliance Officer shall undertake structured reviews of compliance arrangements and systems of control and make regular assessment reports to senior management, identifying any deficiencies and making recommendations for any updates or revisions.

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13 BVI Guidance Notes on Compliance Regime at http://www.bvifsc.vg/Portals/2/Provisional%20Guidance\%20Notes\%20on\%20Compliance\%20Regime.pdf

14 BVI Guidance Notes on Compliance Regime at http://www.bvifsc.vg/Portals/2/Provisional%20Guidance\%20Notes\%20on\%20Compliance\%20Regime.pdf

15 http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf
7.6 **Annual compliance report**\(^{16}\)

The Compliance Officer shall prepare and submit to the board of directors an annual compliance report. A copy of the compliance report should be maintained with all other books and records of the registered firm.

7.7 **Establishing a complaints procedure**\(^{17}\)

The Compliance Officer shall establish, maintain and monitor a complaints procedure for the monitoring and handling of complaints.

7.8 **Unrestricted access and provision of sufficient resources**\(^{18}\)

7.8.1 The Compliance Officer shall have unrestricted access to the executive and non-executive directors, senior management and auditors of the registered firm. They must also have unrestricted access to all books and records, customer due diligence files and related correspondence files of the registered firm and its clients.

7.8.2 A registered firm shall provide a Compliance Officer with sufficient resources to perform his or her functions effectively.

7.9 **Liaison functions**

Either the Compliance Officer or the CEO shall act as the liaison between the registered firm and the Commission and may be the first point of contact for the Commission concerning compliance matters and responding to enquiries about the registered firm and the conduct of its business affairs.

8. **PART IV – CAPACITIES WITHIN WHICH THE COMPLIANCE FUNCTION MAY BE CARRIED OUT**

8.1 **Acting within a group of affiliated companies**\(^{19}\)

8.1.1 Firms operating as part of a financial conglomerate or group of affiliated companies may centralize their compliance function, taking into account the business operations and compliance systems established by the parent company or other entities within the group.

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\(^{16}\) [http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf](http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf)

\(^{17}\) BVI Guidance Notes on Compliance Regime at [http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf](http://www.bvifsc.vg/Portals/2/Provisional%20Guidance%20Notes%20on%20Compliance%20Regime.pdf)

\(^{18}\) IOSCO’s Compliance Function Final Report, Topic 3

\(^{19}\) IOSCO’s Compliance Function Final Report, Topic 1
8.1.2 Given the structure and diversity of the business operations of these financial conglomerates or groups of affiliated companies, the Compliance Officer may be permitted to act for more than one registered firm within the group. Please note that prior approval from the Securities Commission is required.

8.2 Acting in multiple capacities

The compliance function must be completely independent and as such, Compliance Officers will not be permitted to serve in any functional capacity as a Chief Executive Officer, Trading, Discretionary Management or Advising Representative.

9. PART V – OUTSOURCING PRINCIPLES

9.1.1 Firms that outsource certain compliance functions to Compliance Officers who are acting as third party service providers, however, still retain full legal liability and accountability to the Commission for any and all of those all functions to the same extent as if the service were being performed in-house.\(^{20}\)

9.1.2 The firm should conduct suitable due diligence processes in selecting an appropriate Compliance Officer and in monitoring their ongoing performance so that it can be satisfied that he or she has the ability and capacity to undertake the provision of the service effectively.\(^{21}\)

9.1.3 Where a firm has been approved by the Commission to act in the capacity of Managing Representative, they may be permitted to provide compliance services for their clients. *(Refer to the Securities Industry (Physical Presence) Rules, 2012 for further details on the Managing Representative function.)*

9.1.4 Registered firms should refer to the Outsourcing Guidelines issued by the Commission for further information on Outsourcing requirements.

\(^{20}\) IOSCO’s Compliance Function Final Report, Topic 8

\(^{21}\) Principles on Outsourcing, Topic 1