

# “CORPORATE GOVERNANCE FOR COLLECTIVE INVESTMENT SCHEMES (CISs)?”

PANELLIST: DENISE HINDS-JORDAN

COSRA – October 29, 2012

# DISCLAIMER

The views expressed are my own and are not those of the Securities Commission of The Bahamas.

# WHY CORPORATE GOVERNANCE FOR CISs

There is significant literature on the importance of corporate governance for public companies/ issuers, many codes and in some cases complex models for the oversight of governance but there is less guidance, particularly in offshore jurisdictions on the regulation of governance in the securities industry, especially for CISs. Yet the risk for investors and the need for the regulation of corporate governance for these type of entities is equally compelling as for public companies.

# IOSCO's Perspective

Broadly defined, Corporate Governance with respect to a ICISs is *"a framework for the organization and operation of investment funds that seeks to ensure that investment funds are organized and operated efficiently and exclusively in the interests of investment funds Investors, and not in the interests of investment funds insiders"*

*Examination of Governance for Collective Investment Schemes - IOSCO 2006*

## Key Considerations

1. Framework for CISs governance must be designed to capture the unique nature and purpose of the fund – There is no single model or framework.
2. Role of investment fund operators or directors
  - i. Execute investment strategies on behalf of well-informed investors;
  - ii. Ensure that the investor has the desired level of risk and potential rewards
3. The use of an Independent Oversight Committee/ Entities

## Keys For Effective Oversight And Governance

- a) Protect, the investment funds assets from loss due to malfeasance or negligence on the part of those that organize or operate the investment funds;
- b) Ensure that investors are adequately informed of the risks involved in their investment relative to the rewards;
- c) Ensure that the investment funds is operated in the investors' best interests at all times;
- d) Minimize or otherwise address conflicts of interest;
- e) Protect and manage the interests of well-informed investors in investment funds; and
- f) Ensure that efficient disclosure requirements, accounting, **valuation**, reviewing and auditing standards are in place in order to make sure that the risk-performance equation of the investment funds is adequately managed.

# Independent Oversight Entities

## A. Definition of independence

An “outside” perspective to protect investors. *“That is a set of arrangements that provide Independent Entities with appropriate legal conditions and autonomy to exercise their powers and functions without constraints or interferences parties, and allow adequate and objective oversight of the CIS and CIS Operator’s activities, with the objective of protecting CIS investors and their Assets.”*

## B. Powers that Independent Oversight Entities

The Independent Oversight Entities should be entitled to receive all relevant information enabling them to perform their oversight function in a proper manner . They should be able to carry out their duties without relying exclusively on the CIS Operator's assistance, and should be able to review the legal and operational conditions of the CIS management in relation with the CIS.

# Independent Oversight Entities

## **C. Functions and tasks of the Oversight Entities**

1. Oversee the CIS Operator and CIS Operator's activities e
2. Ensure that appropriate mechanisms are in place to prevent or avoid the erosion or expropriation of CIS investor's wealth and interests in the CIS
3. Report any material breaches or irregularities in terms of applicable rules or contractual obligations, detected in the course of their controls or any concerns with respect to the operations of the CIS to the Regulator (and ) or CIS unit holder



# CISs in the Bahamas

## Fund Categories

- I. Standards/Retail Funds
- II. Professional Funds
- III. Recognized Foreign Funds
- IV. SMART Funds e.g. Private Family Funds

## Stage of Development of Corporate Governance rules

A green paper on a proposed Corporate Governance Code was issued for consultation August 2012. Single principle based code to govern all registrants in the securities sector, funds and fund administrators and public companies.

# Matters for Consideration

## **Independence:**

The Examination of Governance for Collective Investment Schemes, IOSCO, 2006 advises that this can be achieved in a number of ways: either through the Board of Directors or functional oversight assigned to various parties.

Areas for consideration included:

- a. Availability of persons - a number of persons serving as “independent directors” would no longer qualify.
- b. Qualification - in terms of knowledge and time.
- c. Cost Implications: - potential burden for small funds and a PFF
- d. Access to information:-Asymmetric nature of the information flow and classic agency problem.
- e. Use of corporate entities as Directors
- f. Size of Boards - Established Corporate models that requires only one/two directors

# Matters for Consideration

## Disclosure

Current regime is disclosure-based but not prescriptive with much of the disclosure to the regulator. Considerations included:

- a. Type of disclosures – IOSCO paper on Disclosure (potential for information overload)
  - i. Financial statements and notes,
  - ii. Management reports
  - iii. Governance structure and practices including underlying criteria and board nominating process
  - iv. Conflicts resolution process
  - v. Risk management systems and control environment
- b. To whom and how disclosed
- c. Perceived absence of market discipline
- d. Limited investor knowledge (domestic funds)
- e. Moral Hazard
- f. Privacy – private funds/ family funds

## Other General Considerations

Stage of development of the domestic industry.

Remuneration structures – set limits or parameters?

Enforcement – legal system and perceptions

General understanding of directors of their roles

Cost of implementation

Transition period

Correct regulatory balance: - rule vs guidance

Cost impact

**THANK YOU!**